

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Florence County
Thomas A. Russo, Circuit Court Judge

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MAR 02 2018

S.C. SUPREME COURT

THOMAS E. DAVIS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

APPELLATE CASE NO. 2017-000105

APPENDIX

Volume I

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)
STATE,)

TRANSCRIPT OF RECORD
11-GS-21-1371

v.)

THOMAS EDWARD DAVIS,)
DEFENDANT.)

June 18, 2012
Florence, South Carolina

BEFORE :

THE HONORABLE THOMAS A. RUSSO, JUDGE;
AND JURY

APPEARANCES:

JOHN C. JEPERTINGER, ESQ.
Assistant Solicitor

RICHARD W. STROBEL, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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1	Note from the jury
2	Note from the jury

1 THE COURT: We are ready to begin
2 selecting the jury for our first case.
3 Mr. Jepertinger, if you'd like to call the case.

4 MR. JEPERTINGER: Yes, sir, if it please
5 the Court, Your Honor, the State would call the
6 State against Thomas Edward Davis, 2011-1371.

7 THE COURT: Thank you, sir. Ladies and
8 gentlemen you heard Mr. Jepertinger call the first
9 case that the State intends to try, that being the
10 State of South Carolina versus Thomas Edward Davis.
11 Now, a couple of things before we get started.
12 Ladies and gentlemen, I hold in my hand a piece of
13 paper that we call an indictment. An indictment is
14 simply an accusation or allegations that the State
15 has made against a defendant. It is simply the
16 piece of paper that brings this case into court. To
17 the allegations that are on this indictment
18 Mr. Davis has pled not guilty and that plea of not
19 guilty places upon the State the burden of proof to
20 prove guilt and they must do so beyond a reasonable
21 doubt. But as we stand here today Mr. Davis has
22 pled not guilty to these charges; and that plea of
23 not guilty, he is presumed innocent of these charges
24 and he will remain innocent of these charges unless
25 or until the State is able to prove guilt in this

1 case beyond all reasonable doubt.

2 Now I'm going to go over with you the
3 charges that are made against Mr. Davis and if you'd
4 please listen carefully. This is a three count
5 indictment and each count is a separate and distinct
6 charge. Count one of the indictment is a charge of
7 attempted murder and the allegation is that Thomas
8 Edward Davis did in Florence County on or about
9 April the 6th of 2011 commit an unlawful act of
10 violent injury to the victim Johnny — is it
11 Henicks?

12 MR. JEPERTINGER: Yes, sir.

13 THE COURT: Johnny Henicks, to wit, by
14 shooting him in the abdomen with a semiautomatic
15 handgun, thus, committing the crime of attempted
16 murder in violation of Section 16-3-29 of the South
17 Carolina Code of Laws 1976 as amended. Count 2 of
18 this indictment charges that, is a charge of armed
19 robbery which alleges that Thomas Edward Davis did
20 in Florence County on or about April the 6th of 2011
21 while armed with a deadly weapon, to wit, a
22 semiautomatic handgun, take and carry away personal
23 property of Johnny Henicks from or in the immediate
24 presence of Johnny Henicks with intent to deprive
25 him of possession of his wallet and its contents and

1 jewelry by use of force, threats, or intimidation,
2 in violation of Section 16-11-330(a) of the South
3 Carolina Code of Laws 1976 as amended. The third
4 charge in this indictment charges the charge of
5 possession of a weapon during the commission of a
6 violent crime. And it alleges that Thomas Edward
7 Davis did in Florence County on or about April
8 the 6th, 2011 possess a firearm or visibly display
9 what appeared to be a firearm or visibly displayed a
10 knife during the commission or attempted commission
11 of a violent crime and armed robbery and an
12 attempted murder all in violation of Section
13 16-23-490 of South Carolina Code of Laws 1976 as
14 amended. As I said, ladies and gentlemen, these are
15 allegations that have been made against Mr. Davis to
16 which he has pled not guilty.

17 Is there any member of the jury panel who
18 based on what I've shared with you thus far knows
19 anything about this case, if so, please stand.

20 (There was no response.)

21 THE COURT: Thank you, there are none.
22 I'm going to recognize the attorneys that will be
23 appearing before you, ladies and gentlemen, and have
24 them introduce themselves. Please listen carefully
25 if you would.

1 Mr. Jepertinger.

2 MR. JEPERTINGER: Good morning, ladies and
3 gentlemen, my name is John Jepertinger. I'm deputy
4 solicitor here in the Twelfth Judicial Circuit.
5 That's Florence County and Marion County. Seated
6 with me at the table today is your Solicitor Ed
7 Clements. Also in our office is Bob Wells, Patricia
8 Singleton Parr, Steven Hill, Catherine Wyse, Todd
9 Tucker, Matthew Ozment, and Emily Crayton.

10 THE COURT: Thank you, Mr. Jepertinger.

11 Is there any member of the jury panel or
12 member of your — well, let me back up. Any member
13 of the jury panel have any personal relationship,
14 know, is related by blood or marriage, or have any
15 kind of relationship with or has been prosecuted by
16 either Mr. Jepertinger or Mr. Clements or any member
17 of Mr. Clements' office, if so, please stand.

18 All right, sir, can I get your name
19 please.

20 POTENTIAL JUROR: Warren Cockfield.

21 THE COURT: Mr. Cockfield, and who do you
22 know in that group?

23 POTENTIAL JUROR: I'm acquaintance with
24 Solicitor Clements and John Jepertinger.

25 THE COURT: All right, sir. And this is

1. Juror No. 35. Mr. Cockfield, the fact that you know
2 both Mr. Jepertinger and Mr. Clements, would that in
3 any way have any effect on your ability to be fair
4 and impartial if you were selected in this case?

5 POTENTIAL JUROR: I don't believe so, sir.

6 THE COURT: Thank you very much, sir. You
7 may have a seat.

8 Your name, ma'am?

9 POTENTIAL JUROR: Elizabeth Pierce, 141.

10 THE COURT: Juror 141, all right.

11 POTENTIAL JUROR: I work for the school
12 that Mr. Clements' children attend, and they are
13 friends with my children and Mr. Tucker.

14 THE COURT: All right. Ms. Pierce, the
15 fact that you work at the school where the
16 Solicitor's children attend and you know he and
17 Mr. Tucker through that relationship, would that in
18 any way affect your ability to be fair and impartial
19 giving both the State and the Defense a fair trial?

20 POTENTIAL JUROR: I don't think so.

21 THE COURT: Thank you, Ma'am, you may have
22 a seat.

23 Yes, ma'am.

24 POTENTIAL JUROR: Denise Finklea.

25 THE COURT: All right, Ms. Finklea, and

1 this is Juror No. 56.

2 POTENTIAL JUROR: My children go to the
3 same school that Mr. Clements' children do and they
4 play athletics together.

5 THE COURT: And Ma'am, the fact that you
6 have that relationship with Mr. Clements through the
7 children, would that in any way affect your ability
8 to be fair and impartial?

9 POTENTIAL JUROR: No, sir.

10 THE COURT: Thank you, Ms. Finklea, you
11 may have a seat.

12 Sir, your name please.

13 POTENTIAL JUROR: Tony Fowler. It may be
14 Anthony on the file there.

15 THE COURT: All right, sir. Number 57,
16 all right. Mr. Fowler, who do you know, sir?

17 POTENTIAL JUROR: I've known Ed since I've
18 been in Florence for about 35 years.

19 THE COURT: All right. Sir, the fact that
20 you know the Solicitor, would that in any way have
21 any affect on your ability to be fair and impartial
22 giving both the State and the Defense a fair trial?

23 POTENTIAL JUROR: No, sir.

24 THE COURT: Thank you, Mr. Fowler, you may
25 have a seat.

1 Sir, your name please.

2 POTENTIAL JUROR: Mike Weatherford.

3 THE COURT: Mr. Weatherford, Juror 167.

4 All right, Mr. Weatherford.

5 MR. STROBEL: Mr. Clements and I are
6 acquainted.

7 THE COURT: All right. And the fact that
8 you know the Solicitor and he's an acquaintance of
9 yours, would that in any way, Mr. Weatherford,
10 affect your ability to be fair and impartial?

11 POTENTIAL JUROR: No, sir.

12 THE COURT: Thank you very much, sir. You
13 may have a seat.

14 Yes, ma'am.

15 POTENTIAL JUROR: Stacie Kirby. I go to
16 church with Mr. Jepertinger and my husband's friends
17 with Mr. Clements.

18 THE COURT: All right. This is Juror No.
19 102. Ms. Kirby, the fact that you know
20 Mr. Jepertinger and that your husband knows
21 Mr. Clements, would that in any way affect your
22 ability to be fair and impartial?

23 POTENTIAL JUROR: Not at all.

24 THE COURT: Thank you very much, ma'am.
25 You may have a seat.

1 Yes, ma'am.

2 POTENTIAL JUROR: Tirrell Eagleton.

3 THE COURT: This is Juror No. 51.

4 POTENTIAL JUROR: I know Ms. Parr.

5 THE COURT: All right. Ma'am, the fact
6 that you know Ms. Parr, Patricia Singleton Parr, who
7 is a member of the Solicitor's Office, would that in
8 any way affect your ability to be fair and
9 impartial?

10 POTENTIAL JUROR: (No verbal response.)

11 THE COURT: Thank you very much, ma'am.
12 You may have a seat.

13 All right. And ladies and gentlemen, I'm
14 going to let Mr. Strobel introduce himself.

15 Mr. Strobel.

16 MR. STROBEL: Richard Strobel for the firm
17 of Strobel and Duffy, and this is Skip Duffy to my
18 left. I've been practicing law privately in the
19 City of Florence for a little over 41 years. Thank
20 you.

21 THE COURT: Thank you, gentlemen.

22 Ladies and gentlemen, is there any member
23 of the jury panel who is related by blood, connected
24 by marriage, or who has any close business or
25 personal relationship or who has been represented by

1 either Mr. Strobel or Mr. Duffy, if so, please
2 stand.

3 (There was no response.)

4 THE COURT: Thank you. There are none.

5 And Mr. Strobel, if I could get you to
6 introduce your client to the members of the jury,
7 sir, please.

8 MR. STROBEL: Yes, sir.

9 Stand up.

10 This is Thomas Edward Davis.

11 THE COURT: All right. Thank you very
12 much, Mr. Davis. You may have a seat.

13 Ladies and gentlemen, is there any member
14 of the jury panel who is related by blood, connected
15 by marriage, or who has any close business or
16 personal relationship with Mr. Thomas Edward Davis,
17 if so, please stand.

18 (There was no response.)

19 THE COURT: Thank you. There are none.

20 Now ladies and gentlemen, that question that I just
21 asked you with regards to Mr. Davis; that is, are
22 you related by blood, connected by marriage, or have
23 any close business or personal relationship, that's
24 the question that I'm gonna be asking you as it
25 relates to the names that I'm about to call out.

1 The names that I'm about to call out are possible or
2 potential witnesses who may appear during the course
3 of this trial. So if you would be — if you would
4 keep that question in mind as I call out the names;
5 and if that question applies to any of the names
6 that I call out, if that applies to you, I would ask
7 that you stand when you hear that name called. Now
8 please, if you do stand, continue to listen
9 carefully because I have several names here that I'm
10 going to be calling out and it may be that you know
11 more than one of the folks that are listed on this
12 list. These, as I said, are potential witnesses
13 that may appear during the course of this trial. If
14 any of these witnesses are in court I would ask that
15 you please stand and face the jury for a moment and
16 then you may have a seat.

17 All right, ladies and gentlemen, the
18 following are, as I said, possible witnesses that
19 may appear: Alvin Powell, Paul Bird, Jolly Hicks,
20 Keith Lutcken, William Neal, Gary Parish, J. Watson,
21 Grant Summersett, Gary Beckett, Jason Collins,
22 Rodney Fridley, William Nida, John Powell, Kendrick
23 Spears, Ira Parnell, Jr., Ila N. Simmons, Johnny
24 Henicks, Rasheem Thomas, Arentheus Garrett,
25 Demetrius Rush.

1 MR. JEPERTINGER: Your Honor, we have one
2 more. It'd be Larry Quick of the Sheriff's
3 Department.

4 THE COURT: And Larry Quick. All right,
5 let me — I'm gonna begin over here on the far side.
6 Ma'am, your name please.

7 POTENTIAL JUROR: Rebecca Watts.

8 THE COURT: All right. Ms. Watts, Juror
9 No. 166. Who on that list did that question apply
10 to you, ma'am?

11 POTENTIAL JUROR: Alvin Powell.

12 THE COURT: Who?

13 POTENTIAL JUROR: Alvin Powell.

14 THE COURT: Ma'am, the fact you know
15 Mr. Powell would that — are you related or know
16 him?

17 POTENTIAL JUROR: Know him.

18 THE COURT: All right. Would that in any
19 way affect your ability to be fair and impartial?

20 POTENTIAL JUROR: No, sir.

21 THE COURT: Thank you very much, ma'am.
22 You may have a seat.

23 Your name, ma'am, please.

24 POTENTIAL JUROR: Tracie Williams.

25 THE COURT: Ms. Williams, that's Juror No.

1 173. Ms. Williams, who on that list did you know?

2 POTENTIAL JUROR: Alvin Powell.

3 THE COURT: All right. And ma'am, would
4 that in any way affect your ability to be fair and
5 impartial?

6 POTENTIAL JUROR: No.

7 THE COURT: Thank you very much,
8 Ms. Williams.

9 Sir?

10 POTENTIAL JUROR: William Beasley.

11 THE COURT: All right, Mr. Beasley is ---

12 POTENTIAL JUROR: 14.

13 THE COURT: Juror 14.

14 POTENTIAL JUROR: I think I went to school
15 with Grant Summersett or Summerford. I couldn't
16 remember what his last name was.

17 THE COURT: That was Summersett I think.
18 Yes. The fact that you would have that relationship
19 with Mr. Summersett, would that in any way affect
20 your ability to be fair and impartial?

21 POTENTIAL JUROR: No, sir.

22 THE COURT: Thank you.

23 Back here, Ma'am.

24 POTENTIAL JUROR: I'm Lucie Cumbia.

25 Mr. Keith Lutcken, I used to work with his daughter

1 at our office. He has and worked for —

2 THE COURT: And your name is?

3 POTENTIAL JUROR: Lucie Cumbia. I guess
4 I'm a receptionist there so I didn't bring this up
5 earlier, but I know we have to refer clients out
6 sometimes so I don't know if that's a problem with
7 Mr. Clements' office or not.

8 THE COURT: Okay. Well, Ms. Cumbie, the
9 fact that you know the folks that you know, would
10 that in any way affect your ability to be fair and
11 impartial giving both the State and the Defense a
12 fair trial?

13 POTENTIAL JUROR: I don't think so.

14 THE COURT: Well, I need to know whether
15 it would or wouldn't. Do you think it might?

16 POTENTIAL JUROR: I would prefer to be
17 excused from it if I could.

18 THE COURT: Okay. Well, and I'm not
19 trying to be picky because I think most people would
20 rather not even been here, but I need to know if
21 there's a reason based on the relationships that you
22 mention that you know, is there a reason that —

23 POTENTIAL JUROR: Well, I do think a lot
24 of Mr. Lutcken. We saw him very frequently.

25 THE COURT: I don't need you to go into

1 details. I just need —

2 PROBATION OFFICER: But no, sir, I guess
3 not.

4 THE COURT: Ms. Cumbie, I —

5 POTENTIAL JUROR: No.

6 THE COURT: Let me finish, if you would
7 please. What I need to know is if the relationships
8 that you mentioned would have any affect on your
9 ability to be fair and impartial by giving both s
10 sides a fair trial; and if it would, I would
11 certainly excuse you for that. If not, then I would
12 allow you to have a seat and continue.

13 POTENTIAL JUROR: No, sir, I don't think
14 it would affect my ability.

15 THE COURT: All right, well thank you very
16 much, ma'am. Thank you. I appreciate it.

17 Sir, your name please.

18 POTENTIAL JUROR: Travis Hyman.

19 THE COURT: All right, Mr. Hyman. This is
20 Juror No. 84. Who is it you know, Mr. Hyman?

21 POTENTIAL JUROR: Mr. Kendrick Spears, his
22 mother taught me in third grade.

23 THE COURT: All right, sir. Would that
24 relationship in any way affect your ability to give
25 both sides a fair and impartial trial?

1 POTENTIAL JUROR: No, sir.

2 THE COURT: Thank you very much. You may
3 have a seat.

4 And again, Mr. Cockfield; is that correct?

5 POTENTIAL JUROR: Yes, sir, 35.

6 THE COURT: Yes, sir. And who on the
7 list, Mr. Cockfield?

8 POTENTIAL JUROR: Also acquaintance with
9 Officer Lutcken.

10 THE COURT: All right. Would that in any
11 way affect your ability to be fair and impartial,
12 sir?

13 POTENTIAL JUROR: No, sir.

14 THE COURT: Thank you very much.

15 And I think Mr. Fowler, correct?

16 POTENTIAL JUROR: No. 57 I believe.

17 THE COURT: 57, that's correct.

18 Mr. Fowler, who else on that list?

19 POTENTIAL JUROR: William Neal and Keith
20 Lutcken here in Florence.

21 THE COURT: Would that in any way affect
22 your ability to be fair and impartial?

23 POTENTIAL JUROR: No, sir.

24 THE COURT: Thank you very much, sir.

25 Ma'am, your name please.

1 POTENTIAL JUROR: Kylie Cribb.

2 THE COURT: All right, Ms. Cribb. This is
3 Juror No. 41.

4 POTENTIAL JUROR: I know Gary Beckett.

5 THE COURT: All right. And Ms. Cribb,
6 would this in any way affect your ability to be fair
7 and impartial?

8 POTENTIAL JUROR: No, sir.

9 THE COURT: Thank you, Ms. Cribb.
10 Yes, sir.

11 POTENTIAL JUROR: Chad Haselden. I know
12 Grant Summerset and Keith Lutcken.

13 THE COURT: And would that in any way,
14 sir, affect your ability to be fair and impartial
15 giving both sides a fair trial?

16 POTENTIAL JUROR: No, sir.

17 THE COURT: Thank you, sir. You may have
18 a seat.

19 And again, ma'am.

20 POTENTIAL JUROR: Stacie Kirby.

21 THE COURT: Ms. Kirby.

22 PROBATION OFFICER: Several of the
23 Sheriff's Offices work with my husband and have been
24 friends with our family.

25 THE COURT: All right. And Ms. Kirby, the

1 fact that you do know these folks through your
2 husband and in other ways, maybe you personally know
3 them beyond your husband; but the fact that you know
4 these folks, would that in any way have any affect
5 on your ability to be fair and impartial if you were
6 selected as a juror?

7 POTENTIAL JUROR: No.

8 THE COURT: Thank you, Ms. Kirby. I
9 appreciate that. All right.

10 Anyone else?

11 (There was no response.)

12 THE COURT: Ladies and gentlemen, is there
13 any member of the jury panel or member of your
14 immediate family who has ever been in the past or is
15 currently being prosecuted by the Twelfth Circuit
16 Solicitor's Office, if so, please stand.

17 (There was no response.)

18 THE COURT: Thank you, there are none. Is
19 there any member of the jury panel who is a
20 contributor either by way of financial contribution
21 or by way of volunteering of your time, a
22 contributor to any organizations such as: MADD,
23 Mother's Against Drunk Driving; SADD, Students
24 Against Drunk Driving; CAVE, Citizens Against
25 Violence; the South Carolina Sheriff's Association,

1 South Carolina Trooper's Association, the Fraternal
2 Order of Police, any of those types of
3 organizations, is there any member who is a
4 contributor by either financial means or by
5 volunteering of your time?

6 Ma'am, your name please.

7 POTENTIAL JUROR: Laura Cruz.

8 THE COURT: All right. And this is juror
9 number 43; is that right? Yep. Ma'am, the fact
10 that you're a contributor to those, any one of those
11 organizations or organizations of that type, would
12 that in any way affect your ability to be fair and
13 impartial?

14 POTENTIAL JUROR: No.

15 THE COURT: Thank you very much, ma'am.
16 You may have a seat.

17 Ma'am, your name please.

18 POTENTIAL JUROR: Marry Louise Brown.

19 THE COURT: All right, Ms. Brown.

20 MR. CLEMENTS: 22, Your Honor.

21 THE COURT: Juror number 22. Ms. Brown,
22 the fact that you are a contributor to any of those
23 types of organizations, would that in any way affect
24 your ability to be fair and impartial?

25 POTENTIAL JUROR: No.

1 THE COURT: Thank you, Ms. Brown. You may
2 have a seat.

3 Ladies and gentlemen, as you can probably
4 tell by the questions that I've been asking, the
5 purpose and the goal in asking these types of
6 questions are to -- our goal in this case and in
7 every case that's tried here in circuit court,
8 whether it be a civil or criminal case, is to
9 impanel a jury that can listen to the evidence and
10 exclude from their consideration anything outside of
11 this courtroom, put anything that you know of
12 outside the confines of this courtroom and focus
13 your attention on the evidence that's presented in a
14 trial and then base your decision strictly on that
15 evidence and on nothing else and give both the State
16 and the Defense a fair and impartial trial. That's
17 the goal of every jury that we impanel. And so
18 these questions are designed to determine whether or
19 not someone has a issue with a particular case that
20 would affect their ability to be fair and impartial.
21 I could ask you questions all afternoon I imagine to
22 try to determine that, but maybe the best way to go
23 about that is to simply ask this: Is there any
24 member of the jury panel who knows of any reason why
25 if you were selected as a member of this jury that

1 you would not be able to give a fair and impartial
2 decision? In other words, that you would be biased
3 towards either the State or to the Defense? Is
4 there any member of the jury panel who knows of any
5 reason that your ability to be fair and impartial
6 may be compromised, if so, please stand.

7 (There was no response.)

8 THE COURT: Thank you, there are none.
9 Any further voir dire questions of the jury from the
10 State?

11 MR. JEPERTINGER: Not from the State, Your
12 Honor.

13 THE COURT: Anything further from the
14 refense?

15 MR. STROBEL: No, sir.

16 THE COURT: All right. Ladies and
17 gentlemen, let me tell you exactly how we go about
18 drawing juries here in general sessions court. Mrs.
19 O'Hara here is the deputy clerk who runs criminal
20 court for the clerk's office. She is on her
21 computer. She has this list of names. These are
22 all of you who are here. And that list is in
23 alphabetical order. She's gonna hit a key on her
24 computer, and what that program does is it takes
25 this list of jurors and it completely and randomly

1 reorders your names so that, for example, if I was
2 on the list and I was juror 134, it may be that I'm
3 on this new list that it generates, I end up being
4 juror number two. But bottom line is, it takes that
5 the list of your names and completely reorders them
6 and it puts them on a sheet of paper.

7 Now from that list, she'll start at the
8 top of that list and she'll call the first name.
9 And when she calls that first name, if your name is
10 called I would ask you to get up and to come
11 forward. Come through the door over here on the
12 side and come stand next to this microphone, not —
13 you don't have to stand in front of it; you're not
14 going to use it. So if you will just stand next to
15 it and face the back of the courtroom as I'm doing
16 now and just stand there and Mrs. O'Hara will first
17 inquire of the State what say you for the State.
18 The State can either excuse you; and if they do
19 that, then you'll just go back and have a seat in
20 the jury panel, or they can present you. If they
21 present you you'll remain standing, and then she'll
22 ask of the defendant, what say you for the Defense.
23 And the Defense has two options: They can either
24 excuse you, and if they do so you'll go have a seat;
25 or they can seat you. And if they seat you then

1 you'll come around and you'll have a seat in the
2 jury box. So we'll go through that process until we
3 have selected all our jurors.

4 Each side gets a certain number of what we
5 call peremptory strikes, and they can exercise those
6 strikes how they see fit. And as we go through that
7 process once we have our jury panel in place, that
8 will be the end of the process. So it's important
9 because no one knows when — if your name is called,
10 no one knows whether or not you're gonna be excused
11 or seated. So please, if your name is called please
12 bring with you anything you brought to court today,
13 whether it's a pocketbook, a book, or a hat, a coat,
14 whatever. Bring your belongings with you because it
15 may be that you're gonna be having a seat in the
16 jury box and you won't be returning to your seat so.

17 5 and 10, correct, gentlemen?

18 MR. JEPERTINGER: Yes, sir.

19 THE COURT: Now is the State ready to
20 proceed to jury strike?

21 MR. JEPERTINGER: State is ready, Your
22 Honor.

23 THE COURT: Defense ready?

24 MR. STROBEL: We're ready.

25 THE COURT: Ladies and gentlemen, please

1 listen carefully.

2 THE CLERK OF COURT: 113, Melissa Marsh
3 (white female). What say the State?

4 MR. JEPERTINGER: Please present the
5 juror.

6 THE CLERK OF COURT: What say Defendant?

7 MR. STROBEL: Swear the juror.

8 THE CLERK OF COURT: Please have a seat in
9 the jury box.

10 51, Tirrell Eagleton (black female). What
11 say the State?

12 MR. JEPERTINGER: Please present the
13 juror.

14 THE CLERK OF COURT: What say Defendant?

15 MR. STROBEL: Swear the juror.

16 THE CLERK OF COURT: Please have a seat in
17 the jury box.

18 67, Cynthia Gregg (black female). What
19 say the State?

20 MR. JEPERTINGER: Please present the
21 juror.

22 THE CLERK OF COURT: What say Defendant?

23 MR. STROBEL: Swear the juror.

24 THE CLERK OF COURT: Please have a seat in
25 the jury box.

1 57, Anthony Fowler (white male). What say
2 the State?

3 MR. JEPERTINGER: Please present the
4 juror.

5 THE CLERK OF COURT: What say Defendant?

6 MR. STROBEL: Excuse the juror.

7 THE CLERK OF COURT: You've been excused
8 for this trial only, sir. You may return to your
9 seat.

10 131, Melvin Morgan (black male). What say
11 the State?

12 MR. JEPERTINGER: Please present the
13 juror.

14 THE CLERK OF COURT: What say Defendant?

15 MR. STROBEL: Swear the juror.

16 THE CLERK OF COURT: Please have a seat in
17 the jury box, sir.

18 26, Janet Bugbee (white female). What say
19 the State?

20 MR. JEPERTINGER: Please present the
21 juror.

22 THE CLERK OF COURT: What say Defendant?

23 MR. STROBEL: Swear the juror.

24 THE CLERK OF COURT: Please have a seat in
25 the jury box, ma'am.

1 140, Alex Pettigrew (black male). What
2 say the State?

3 MR. JEPERTINGER: Please present the
4 juror.

5 THE CLERK OF COURT: What say Defendant?

6 MR. STROBEL: Swear the juror.

7 THE CLERK OF COURT: Please have a seat in
8 the jury box.

9 76, Chadwick Haselden (white male). What
10 say the State?

11 MR. JEPERTINGER: We'd excuse this juror
12 for purposes of this trial only.

13 THE CLERK OF COURT: You've been excused
14 for this trial only so you may return to your seat.

15 173, Tracie Williams (black female). What
16 say the State?

17 MR. JEPERTINGER: Please present the
18 juror.

19 THE CLERK OF COURT: What say Defendant?

20 MR. STROBEL: Swear the juror.

21 THE CLERK OF COURT: Please have a seat in
22 the jury box, ma'am.

23 84, Travis Hyman (black male). What say
24 the State?

25 MR. JEPERTINGER: Please present the

1 juror.

2 THE CLERK OF COURT: What say Defendant?

3 MR. STROBEL: Excuse the juror.

4 THE CLERK OF COURT: You've been excused
5 for this trial only, sir. You may return to your
6 seat.

7 61, Cynthia Gee (black female). What say
8 the State?

9 MR. JEPERTINGER: We'd excuse this juror
10 for purposes of this trial only.

11 THE CLERK OF COURT: You've been excused
12 for this trial only.

13 Laura Cruz Vivaldi (white female).

14 THE COURT: 43.

15 THE CLERK OF COURT: I'm sorry, 43. What
16 say the State? .

17 MR. JEPERTINGER: Please present the
18 juror.

19 THE CLERK OF COURT: What say Defendant?

20 MR. STROBEL: We excuse the juror for the
21 trial of this case.

22 THE CLERK OF COURT: You've been excused
23 for this trial only.

24 31, Sherod Chandler (white male). What
25 say the State?

1 MR. JEPERTINGER: Please present the
2 juror.

3 THE CLERK OF COURT: What say Defendant?

4 MR. STROBEL: Swear the juror.

5 THE CLERK OF COURT: Please have a seat in
6 the jury box, sir.

7 99, Brenda Kight (white female). What say
8 the State?

9 MR. JEPERTINGER: Please present the
10 juror.

11 THE CLERK OF COURT: What say Defendant?

12 MR. STROBEL: Swear the juror.

13 THE CLERK OF COURT: Please have a seat in
14 the jury box, Ma'am.

15 130, Eric Montgomery (black male). What
16 say the State?

17 MR. JEPERTINGER: Please present the
18 juror.

19 THE CLERK OF COURT: What say Defendant?

20 MR. STROBEL: Swear the juror.

21 THE CLERK OF COURT: Please have a seat in
22 the jury box.

23 167, Michael Weatherford (white male).
24 What say the State?

25 MR. JEPERTINGER: Please present the

1 juror.

2 THE CLERK OF COURT: What say Defendant?

3 MR. STROBEL: Excuse the juror.

4 THE CLERK OF COURT: You've been excused
5 for this trial only, sir.

6 151, Phillip Skipper (white male). What
7 say the State?

8 MR. JEPERTINGER: Please present the
9 juror.

10 THE CLERK OF COURT: What say Defendant?

11 MR. STROBEL: Swear the juror.

12 THE CLERK OF COURT: Please have a seat in
13 the jury box.

14 12, Shankie Barr (black female).

15 MR. JEPERTINGER: Number again, Ma'am?

16 THE CLERK OF COURT: 12. What say the
17 State?

18 MR. JEPERTINGER: We'd excuse this juror
19 for purposes of this trial only.

20 THE CLERK OF COURT: You've been excused
21 for this trial only, ma'am.

22 110, Carlene Lyerly (white female). What
23 say the State?

24 MR. JEPERTINGER: Please present the
25 juror.

1 THE CLERK OF COURT: What say Defendant?

2 MR. STROBEL: We excuse her for the trial
3 of this case.

4 THE CLERK OF COURT: You've been excused
5 for this trial only.

6 141, Elizabeth Pierce (white female).
7 What say the State?

8 MR. JEPERTINGER: Please present the
9 juror.

10 THE CLERK OF COURT: What say Defendant?

11 MR. STROBEL: We'd excuse Ms. Pierce for
12 the trial of this case.

13 THE CLERK OF COURT: You've been excused
14 for this trial only.

15 166, Rebecca Watts (white female). What
16 say the State?

17 MR. JEPERTINGER: Please present the
18 juror.

19 THE CLERK OF COURT: What say Defendant?

20 MR. STROBEL: Swear the juror.

21 THE CLERK OF COURT: Please have a seat in
22 the jury box.

23 That's 12, Judge.

24 THE COURT: All right, one alternate.

25 THE CLERK OF COURT: One and two?

1 MR. JEPERTINGER: Yes, sir, one and two.

2 THE CLERK OF COURT: 126, Alex Miles
3 (white female).

4 THE COURT: We're going to do two
5 alternates. Strikes still one and two each.

6 MR. JEPERTINGER: Name again, ma'am?

7 THE COURT: 126.

8 MR. JEPERTINGER: Thank you so much.
9 Please present the juror.

10 THE CLERK OF COURT: What say Defendant?

11 MR. STROBEL: Swear the juror.

12 THE CLERK OF COURT: Please have a seat in
13 the jury box.

14 134, Karen Murrow (white female). What
15 say the State?

16 MR. JEPERTINGER: Please present the
17 juror.

18 THE CLERK OF COURT: What say Defendant?

19 MR. STROBEL: Excuse Ms. Murrow.

20 THE CLERK OF COURT: You've been excused
21 for this trial only.

22 35, Warren Cockfield (white male). What
23 say the State?

24 MR. JEPERTINGER: Please present the
25 juror.

1 THE CLERK OF COURT: What say Defendant?

2 MR. STROBEL: Excuse the juror.

3 THE CLERK OF COURT: You've been excused
4 for this trial only, sir.

5 64, Cornelius Boston (black female). What
6 say the State?

7 MR. JEPERTINGER: Please present the
8 juror.

9 THE CLERK OF COURT: Does Defendant wish
10 to challenge this juror for cause?

11 MR. STROBEL: No.

12 THE CLERK OF COURT: Please have a seat in
13 the jury box.

14 THE COURT: All right, are there any
15 motions regarding jury selection from the State?

16 MR. JEPERTINGER: No, sir, there are none.

17 THE COURT: Anything from the Defense
18 regarding jury selection?

19 MR. STROBEL: No, sir.

20 THE COURT: All right. Mr. Strobel, Mr.
21 Jepertinger, if y'all will step up for a second.

22 (WHEREUPON, counsel approached the Bench
23 for an off-the-record discussion.)

24 THE COURT: Ladies and gentlemen, if I
25 could have y'all's attention. I'm going to in just

1 a moment excuse you for lunch, and I'm going to ask
2 you to be back at 2:00. And when you come back at
3 2:00, when you back to the courthouse if you'll have
4 the stickers on that Ms. Joe gave you, if will just
5 have that on. That lets the folks downstairs know
6 that you are a juror sitting on a pending case and
7 then they'll direct you where you need to come. You
8 need to come back up here to the eleventh floor; but
9 when you get here, they'll be either Ms. Joe or Mr.
10 Propps will meet you at the elevator and they'll
11 bring you on in and we'll escort you back into the
12 jury room, okay?

13 Now I'm gonna send you with this
14 instruction, ladies and gentlemen, and it's
15 important that you adhere to these instructions.
16 Throughout the course of this trial, anytime you're
17 not here in the jury room in the — excuse me, in
18 the courtroom in the jury box, your instruction is
19 gonna be to not have any conversation about this
20 case. And so when you leave here to go to lunch, if
21 anyone tries to speak to you about the case or —
22 and I wouldn't anticipate they would — but if
23 anyone did, just ask you, hey, are you a juror on
24 that case, whatever, what you need to do is tell
25 them that you're not allowed to talk about the case

1 at all, that you are a juror and you can't talk and
2 that should end it. If it doesn't, then — and they
3 persist to ask questions, try to find out who they
4 are and you let me know who it is and I'll make sure
5 that it does stop. It's important that you not have
6 any conversation with anybody. When you're together
7 as a jury in the jury room, you are also to not have
8 any conversation about the case. Some people look
9 at me kind of funny and go, well, I thought that was
10 the whole reason we get together. Well, it is, but
11 it's — you don't have conversation about the case
12 until you have all of the evidence and you've heard
13 from the lawyers with their closing arguments and
14 I've given you the charge on the law. Until that
15 time it's improper for you to have any conversation
16 with anybody and that means amongst yourselves as
17 well so please adhere to that.

18 When you gather back after lunch, anytime
19 you're in the jury room if you need anything, you
20 want something to drink, you want a snack or
21 anything, let Ms. Joe know, she'll get that for you.
22 But just don't — talk about anything in the world
23 you want to talk about, just don't talk about the
24 case, okay?

25 Now Mr. Propps — William, is the hall

1 clear?

2 THE DEPUTY: Yes, sir.

3 THE COURT: If we can get an elevator for
4 the jury panel. Ladies and gentlemen, I'm gonna, as
5 I said, excuse you now to go to lunch, and I would
6 ask that you be back here in the jury room ready to
7 go at 2:00, okay?

8 THE DEPUTY: Can we hold up just a minute.
9 We got one more load getting on the elevator.

10 THE COURT: I'll let you go in just a
11 minute and ask you to be back at two, and then we'll
12 get started at that point. Let me tell you another
13 thing that I'm gonna ask you to do. As you see,
14 there are fourteen of you. The first twelve of you
15 are the main panel and then, of course, you two
16 ladies are alternates. It is important that as
17 alternates that you pay close attention to all the
18 testimony and all the evidence because if at any
19 time one of the members on the main panel cannot
20 continue, then one of you would have to be
21 substituted on to the main panel so it's important
22 that you listen to everything and you're exposed to
23 everything throughout the trial. But I'm gonna ask
24 you later on when you return, I'm gonna ask you to
25 go into the jury room and to select a foreperson for

1 the jury.

2 The foreperson of a jury is the person who
3 is the communicator between the jury panel and the
4 Court. In other words, if at any time the jury is
5 out deliberating, if you have any questions the
6 foreperson would write that question on a piece of
7 paper and pass it out to the Court and then I would
8 respond to it. The foreperson also would be the
9 person who would start and stop the deliberations.
10 In other words, once you get the case for your
11 consideration, then any time you have a group of
12 people who are discussing something the foreperson
13 needs to get the deliberation started. If somebody
14 has to leave the room to excuse themselves to use
15 the restroom or whatever, then the foreperson would
16 say, okay, let's stop talking about the case until
17 that person returns, and then once that person
18 return, start back.

19 But I'm gonna get you to, whenever the
20 time is appropriate, I'm gonna have you elect a
21 foreperson amongst yourselves. And any member —
22 let me say this about a foreperson as well. You are
23 all equal members of the jury. Your decision in
24 this case has to be unanimous. No one person's vote
25 or decision or opinion carries any more weight than

1 anyone else; you're all equal. . So the foreperson
2 doesn't run the show; they are simply one of twelve.
3 But they're the person that is just gonna be the one
4 that will communicate between the Court and the jury
5 panel, okay? All of you are eligible to serve as
6 the foreperson if you choose to make yourself
7 available for that. The only two folks that would
8 not be eligible to be the foreperson would be our
9 two alternates, okay? Everyone else would be
10 eligible for that role. All right, if you would
11 please be back at 2:00.

12 (WHEREUPON, the jury was removed from the
13 courtroom at 12:30 p.m., and the following
14 proceedings commenced in open court.)

15 * THE COURT: All right. Mr. Jepertinger,
16 is there a matter we need to take up?

17 MR. JEPERTINGER: Yeah, there are a couple
18 of things, Your Honor. The first issue is in terms
19 of impeachable evidence under 609 for some of the
20 witnesses.

21 THE COURT: All right, sir.

22 MR. JEPERTINGER: Your Honor, the victim
23 in the case, Mr. Henicks, the one that was shot,
24 Your Honor, had a conviction for attempted armed
25 robbery and common law robbery, two separate charges

1 back in 2002, Your Honor. I'm not contesting that.
2 I think, you know, they both carry over one year,
3 but I just want to make the Court aware of that if
4 Mr. Strobel chooses to impeach him —

5 THE COURT: All right.

6 MR. JEPERTINGER: —with that, Your
7 Honor.

8 THE COURT: Okay. And I don't think
9 there's any doubt that those would be open for
10 questioning.

11 MR. JEPERTINGER: Sure, sure. The next
12 individual, Your Honor, that I would want to look at
13 at this time because I think we had some other
14 witness with a little bit of record too but these
15 are the initial ones, Your Honor.

16 THE COURT: All right, sir.

17 MR. JEPERTINGER: Would be Arentheus
18 Garrett, Your Honor. And I will tell you, Your
19 Honor, that he has a record according to this NCIC
20 that goes back to 1997. I think that is too distant
21 and remote, Your Honor, so I would like to go back
22 to what I think Mr. Strobel can go over with Your
23 Honor and in 1999 — and the reason I go back, I
24 guess that would have been 12 years, Your Honor, but
25 I think he may have caught a little time. Am I

1 correct that you caught some time? When did you get
2 out of jail? He got out in 2003. That's why it
3 would be in that ten year time frame.

4 THE COURT: Yeah.

5 MR. JEPERTINGER: But he had a criminal
6 domestic violence of a high and aggravated nature,
7 Your Honor. According to the NCIC I think they can
8 get into that. They can get into a contributing to
9 delinquency of a minor. He had a lewd act upon a
10 child under 16, Your Honor, at the same time, and he
11 had a burglary second degree. I think all those are
12 fair game.

13 THE COURT: All right. Mr. Strobel, would
14 you agree with that?

15 MR. STROBEL: I would.

16 THE COURT: All right, sir.

17 MR. JEPERTINGER: I would say this, Your
18 Honor. There was a grand— sometimes have victims
19 end up with they have received what the — once they
20 get them to Department of Corrections. And I would
21 think that there's a assault and battery of high and
22 aggravated nature. Is that what it was, or CDV high
23 and aggravated nature?

24 (Attorneys confer.)

25 MR. JEPERTINGER: All right. Your Honor,

1 all I can say is he has on the NCIC, he says he's
2 not been convicted of those; however, I see received
3 burglary, a grand larceny, contributing to
4 delinquency of a minor, and then on received section
5 assault and battery of a high and aggravated nature,
6 five years suspended to one year and two years
7 probation concurrent. The lewd act on a child and
8 the grand larceny. Which one do you contest?

9 (Mr. Jepertinger and witness confer.)

10 MR. JEPERTINGER: CDV. He contests the
11 CDV.

12 THE COURT: So would that be the ABHAN?

13 MR. JEPERTINGER: That could be the ABHAN.
14 It says ABHAN received into the system.

15 THE COURT: 'Cause oftentimes, as you well
16 know, those are often pled as ABHAN instead of
17 criminal domestic violence.

18 MR. JEPERTINGER: Right. He had a driving
19 under suspension. I don't think he can get into
20 that, Your Honor.

21 THE COURT: No.

22 MR. JEPERTINGER: The sexual offender
23 registry violation which only carried 90 days for
24 first offense, I don't think he can get into that
25 from 2007.

1 THE COURT: I would agree.

2 MR. JEPERTINGER: And a DUS second, I
3 would say that's — can't get into that, Your Honor.
4 He had a, looks like a dist— was it distribution
5 cocaine base first from 2007? I think that's fair
6 game.

7 THE COURT: It is.

8 MR. JEPERTINGER: And it looks like he
9 also had a possession of meth or cocaine base second
10 offense, Your Honor, and that's also fair game.

11 THE COURT: Right.

12 MR. JEPERTINGER: Looks like he had a
13 shoplifting. I would consider it a first offense,
14 Your Honor, 2011. And that's all that I see against
15 him in terms of the NCIC.

16 THE COURT: All right. Mr. Strobel, is
17 there anything other than what we've mentioned here
18 that you would believe were open for questioning or
19 is that it?

20 MR. STROBEL: That's it.

21 THE COURT: All right.

22 MR. JEPERTINGER: Okay. Thank you, Your
23 Honor.

24 THE COURT: Anything else before we break
25 then?

1 MR. JEPERTINGER: Yes, sir, very, very
2 briefly. I noticed on one of the reports of one of
3 the officers, Your Honor, that when this defendant
4 was arrested approximately five to twenty minutes
5 after the event in question, that there — a woman
6 came up to him and he kept saying, I'm sorry baby,
7 I'm sorry baby, I'm sorry, or something of that
8 nature, Your Honor. Now I don't — he wasn't in
9 custody at the time; however, it wasn't subject to
10 any interrogation so I don't think we have to go
11 through the necessity of a Jackson v. Denno hearing.
12 I think it was something contemplated by State
13 versus Howard which was a voluntary statement for
14 whatever good it's worth, Your Honor.

15 THE COURT: Yeah, it wasn't in response to
16 any police questioning or interrogation?

17 MR. JEPERTINGER: Oh, no, sir.

18 THE COURT: All right. Well, I don't
19 think that's subject to a Jackson v. Denno.
20 Anything else?

21 MR. JEPERTINGER: No, sir.

22 THE COURT: All right, we'll will start
23 back at 2:00. So we'll be in recess till that time.

24 (WHEREUPON, a lunch break was taken.)

25 (WHEREUPON, State Exhibits Nos. 1 through

1 40 were marked for identification only and
2 State Exhibit No. 38 was withdrawn after
3 being marked.)

4 THE COURT: Before we get started let me
5 put on the record, I had a Ms — juror number 126,
6 Alexa Miles. She was one of the alternates. She
7 she had come to the Court after we qualified the
8 jury panel as a whole, and she never stood up during
9 jury qualification; but afterwards, she came up to
10 me and said, Judge, I don't know, she said I didn't
11 speak to you when you were asking the questions but
12 I just think you need to understand that I suffer
13 from panic attacks and I've got medication for it
14 but the medication doesn't seem to be working very
15 well. And I said, well, Ms. Miles, how are you
16 doing right this minute? And she said, well, I'm
17 okay right this minute. I said go ahead and just
18 relax, and I said you may not even get selected on a
19 case. Well, obviously she was selected in this case
20 as an alternate, and she came to the office along
21 with her mother. She first reported to the Clerk's
22 Office, then she — they brought it to my attention;
23 she came to my office. She was clearly in a state
24 of distress, and she was almost inconsolable in the
25 Clerk's Office when she came in my office, and I

1 instructed her mother that I didn't have a doctor
2 excuse which is why I didn't excuse her from the
3 panel as a whole.

4 A lot of that just to basically tell you
5 that I have excused her from service in this case.
6 There was absolutely no way she could have
7 functioned, and I did not want her suffering from
8 her panic attacks to have any influence over the
9 other members of the jury. So when we begin the
10 case I will — and she never went back to the jury
11 room after the lunch break so I'll instruct the
12 members of the jury that she was excused by the
13 Court. So we have our original twelve jurors, and
14 we still have juror number 64, Cornelius Boston.
15 Ms. Boston is still available as an alternate, and
16 we'll proceed in that manner. All right, anything
17 from the State regarding that?

18 MR. JEPERTINGER: Not in terms of that
19 matter, Your Honor.

20 THE COURT: Anything from the Defense
21 regarding that issue?

22 MR. STROBEL: No, sir.

23 THE COURT: Mr. Jepertinger, anything
24 before we get started then, sir?

25 MR. JEPERTINGER: Yes, sir. We've

1 premarked the exhibits that we intend to introduce
2 in the trial of this case, Your Honor, exhibits 1
3 through 40, Your Honor. However, I will tell you
4 that I withdrew Exhibit 38. That's withdrawn.

5 THE COURT: All right.

6 MR. JEPERTINGER: And it's my
7 understanding that Mr. Strobel does not have any
8 objection to the introduction of these items, 1
9 through 40, with 38 withdrawn, into evidence in
10 trial of this case.

11 THE COURT: All right. Is that correct,
12 Mr. Strobel?

13 MR. STROBEL: It is.

14 THE COURT: All right then, as far as the
15 court reporter's list of State's Exhibits 1 through
16 40, they are in evidence without objection with the
17 exclusion of number 38, and number 38 is withdrawn
18 all together. All right.

19 **(WHEREUPON, State Exhibits Nos. 1 through**
20 **37, 39, and 40 were admitted into evidence**
21 **and 38 was withdrawn.)**

22 THE COURT: Anything else before we bring
23 the jury out, from the State?

24 MR. JEPERTINGER: No, sir.

25 THE COURT: Anything from Defense,

1 Mr. Strobel?

2 MR. STROBEL: No, sir.

3 THE COURT: All right.

4 MR. JEPERTINGER: Your Honor, I will state
5 that per the Court's recommendation, Your Honor, a
6 trigger lock is on the gun in this case.

7 THE COURT: Okay, all right. That's —
8 thank you very much for taking care of that.

9 (WHEREUPON, the jury was returned to the
10 courtroom at approximately 12:26 p.m., and
11 the following proceedings commenced in
12 open court.)

13 THE COURT: All right, ladies and
14 gentlemen, I want to welcome everyone back. Hope
15 you had a good lunch break. Before we get started,
16 ladies and gentlemen, you may have noticed that
17 you're short one individual. Juror number 126,
18 Ms. Miles, who was selected as an alternate in this
19 case had to be excused from service. She had a
20 medical problem, and so she was excused by the
21 Court. So, just so you'll, in case you were
22 wondering what happened with Ms. Miles, she's been
23 excused and we'll proceed now without her
24 assistance. Before we begin I'm gonna ask you if
25 you would please give Mrs. O'Hara your attention and

1 she's going to place you under oath for your role as
2 jurors in this case.

3 THE CLERK OF COURT: If you will, stand
4 and raise your right hand to be sworn.

5 (WHEREUPON, the jury was sworn.)

6 THE CLERK OF COURT: You may be seated.

7 THE COURT: All right. Ladies and
8 gentlemen, the case we're about to try, is as you're
9 aware, is the State of South Carolina versus Thomas
10 Edward Davis. Before we begin the trial I want to
11 tell you that more than likely this trial is gonna
12 be very different from what you might expect. I say
13 that for this reason. Most peoples' experience as
14 it relates to jury trials comes from what they've
15 seen on television or what they've read in books or
16 what they've seen in the movies. Most folks don't
17 have the opportunity to sit in on an actual jury
18 case such as you're doing this week, and so their
19 perspective is that which they've seen out of what
20 basically is what I term Hollywood. And of course,
21 those trials are always full of high drama, intense
22 action, and riveting circumstances because those
23 trials are there to create an entertainment factor
24 for you. While any number of those things may occur
25 during the course of this trial, what is important

1 for you to understand is that this trial is not for
2 your entertainment. This is a fundamental part of
3 our democracy. It is a search for the truth in an
4 effort to make sure that justice is done between the
5 parties that are before the Court. Searching for
6 the truth and making sure that justice is done
7 oftentimes is slow, deliberate, sometimes it's
8 repetitive. In other words, it's just oftentimes
9 much the opposite of what you've seen on television
10 or read in books or seen in the movies.

11 This courtroom is a place of honor that is
12 dedicated to the protection and to the preservation
13 of citizens' rights through what many have called
14 the greatest justice system ever created. The
15 attorneys that appear before you are advocates for
16 the parties that they represent; but first and
17 foremost, they are officers of the Court sworn to
18 uphold the integrity and the fairness of our
19 judicial system and to help you in your search for
20 the truth. You should expect them to be
21 professional, competent, and ethical in the
22 representation of their client's interest.
23 Remember, you have just taken an oath to try this
24 case and to reach a fair and a just verdict and so
25 you are also expected to be professional,

1 reasonable, and ethical in the performance of your
2 duties, and I have absolutely no doubt you'll do
3 just that. And I want to take this opportunity to
4 thank you for your contribution to our system of
5 justice here in Florence County.

6 Now what I'm gonna tell you now, ladies
7 and gentlemen, is meant to serve as an introduction
8 to the trial of this case. These remarks are not a
9 charge on the law. I will instruct you on the law
10 which is applicable to this case at the end of the
11 trial before you begin your deliberations. What I'm
12 gonna go over with you now is merely an explanation
13 of the procedures that we're gonna follow as we go
14 through this trial so that you can better understand
15 and follow what's going on.

16 In this case, ladies and gentlemen,
17 Mr. Davis is charged by an indictment that is filed
18 with this Court. As I shared with you earlier on
19 that indictment Mr. Davis is charged with three
20 allegations: One, he's charged with an attempted
21 murder charge; two, he is accused of an armed
22 robbery charge; and three, possession of a weapon
23 during the commission of a violent crime. The
24 elements of these charges, the elements of these
25 crimes, I will explain to you later in the charge I

1 give you on the law. What is important for you to
2 understand is that the indictment is simply the
3 charge by which this case is brought into court, and
4 it is not in any sense evidence of the allegations
5 that it contains. The defendant has pled not guilty
6 to these charges and the State, therefore, has the
7 burden of proving each of the elements of the
8 indictment beyond a reasonable doubt. It will be
9 your duty, ladies and gentlemen, to decide whether
10 or not the State has met that burden. Your purpose
11 as jurors is to find and to determine the facts.
12 You are the sole judge of the facts in this case.
13 If at any time I make any comment regarding the
14 facts you must disregard those comments because only
15 you, the jury, can decide what the facts are in this
16 case. You are to determine the facts from the
17 testimony that you hear and other evidence that may
18 be introduced during the trial of this case. It
19 will be up to you to determine the inferences which
20 you feel may be properly drawn from the evidence.

21 It is especially important, ladies and
22 gentlemen, that you perform your duty of determining
23 the facts diligently and conscientiously because
24 ordinarily there's no way for us to correct an
25 erroneous determination of facts by a jury. Now on

1 the other hand but with equal emphasis, the same law
2 that makes you the judges of the facts makes me the
3 judge of the law. The law as given by the Court is
4 the only law that you may consider. You must accept
5 and follow it even though you may disagree with it.
6 I'm not allowed to tell you what I think about the
7 facts in this case or what the facts in this case
8 are. And you, on the other hand, are not allowed to
9 disagree with me about what the law is or what the
10 law should be. Your job is to take the law as I
11 give it to you and apply it to the facts as you find
12 the facts to be from the testimony of witnesses and
13 other evidence that may come in during the course of
14 this trial.

15 Now until I advise you that it's
16 appropriate to begin your deliberations you are not
17 to discuss this case with anyone, and that includes
18 amongst yourselves, amongst your fellow jurors.
19 After this case has been submitted to you, you then
20 will have the opportunity to discuss it amongst
21 yourselves but those discussions must be confined to
22 the jury room and nowhere else. It is important,
23 ladies and gentlemen, that you keep an open mind
24 throughout this trial and that you do not decide any
25 issue in this case until all of the evidence has

1 been presented, the parties have had an opportunity
2 to address you with their remarks, and I have
3 instructed you on the law that is applicable to this
4 case. It is your solemn responsibility to determine
5 the guilt or innocence of the defendant, and your
6 verdict must be based solely on the evidence as it
7 is presented to you during the course of this trial
8 and on the law as I instruct you at the close of the
9 trial.

10 Now in just a moment the Solicitor is
11 gonna have an opportunity to stand up and make what
12 we call an opening statement. In that statement he
13 will explain to you the issues that are gonna arise
14 in this case, or at least what he believes the
15 issues are that are gonna arise in this case. After
16 he's completed his opening remarks, then Mr. Strobel
17 will have an opportunity to address you with an
18 opening remark if he chooses to do so; but he's not
19 required to do that. He's not required to do
20 anything. What is important for you to understand
21 is this, what the lawyers tell you in their opening
22 remarks is not evidence. It is merely their
23 contention as to what they believe the evidence will
24 show. The evidence in this case is going to be
25 presented to you by the testimony of witnesses who

1 are sworn and placed under oath and take the witness
2 stand and testify from that stand and then any
3 exhibits when may come in during the course of this
4 trial.

5 Now during this trial, from time to time
6 you may have one of the attorneys say something
7 along these lines: Judge, we've got a matter of law
8 we need to take up with the court; or Judge, you
9 mind if we approach the Bench. During those times,
10 ladies and gentlemen, I may find it necessary to ask
11 you to step into your jury room. If I do that, the
12 reason I would ask you to do that is simply this,
13 there are times when I'm taking up issues of law
14 with the attorneys or a matter of law that in
15 discussing that issue it might be necessary for me
16 to make some comment on the facts that have been
17 presented in connection with a ruling that I have to
18 make on that issue of law. Well, as I told you
19 earlier, I'm not to have any influence over you
20 about the facts of this case. So to protect you or
21 to prevent you from getting tied up in those
22 comments that I may have to make in connection with
23 a ruling, I may ask you to step into the jury room
24 so that I can do that, make the ruling, and then
25 bring you back out and allow you to continue to hear

1 the evidence and to determine the facts of the case.
2 So if I do ask you to step out, it is only to
3 protect you so that I don't interfere with your role
4 as the fact finders.

5 Now, in determining what the true facts
6 are in this case you're gonna have to decide whether
7 or not the testimony of witnesses who testify,
8 whether that testimony is believable or not. It's
9 going to be my job as the judge of the law to
10 determine whether any testimony is going to be
11 allowed into evidence; but once that testimony is
12 allowed into evidence, whether or not you believe it
13 is solely up for you to decide. In deciding whether
14 to believe a witness you have the right to consider
15 the interest of any witness, the bias of any
16 witness, the opportunity for that witness to have
17 seen the matters and the things about which that
18 witness testifies, the things that the witness says,
19 the way they act on the witness stand. You have the
20 right, ladies and gentlemen, to consider anything
21 that is in this record that will help you in
22 evaluating the testimony and the believability of
23 the witnesses. That's why it is important that you
24 pay close attention to the witnesses that are on the
25 witness stand, listen carefully to their testimony.

1 Don't just listen with your ears but watch them,
2 observe them, listen to the attorneys and to the
3 Court. It is important that you do not let your
4 thoughts wander, but that you give strict attention
5 to all of the testimony in this case as well as any
6 exhibits which enter in. After the arguments of
7 counsel have been made and I've given you the charge
8 on the law, you will then be in a position to take
9 this case into the jury room, deliberate, discuss
10 it, and reach a verdict in this case which speaks
11 the truth.

12 Now, before I turn it over to the
13 attorneys I'm going to first ask with regards to the
14 State, are there any objections or exceptions to the
15 Court's opening remarks?

16 MR. JEPERTINGER: No, sir.

17 THE COURT: Anything from the Defense?

18 MR. STROBEL: No, sir.

19 THE COURT: All right. Thank you very
20 much, gentlemen.

21 Ladies and gentlemen, now please, if you
22 would give the attorneys your close and undivided
23 attention as they address you with any opening
24 remarks they may have.

25 Mr. Jepertinger.

1 MR. JEPERTINGER: Yes, sir, if it please
2 the Court, counsel. Ladies and gentlemen of the
3 jury, I want to thank you with the kind attention
4 you give me in the next few minutes. When I was not
5 too much of a boy but a younger man, I remember a
6 famous sermon that said Friday is here, but Sunday
7 is coming. In this case if I could plagiarize,
8 steal that pastor's sermon, it would be Wednesday is
9 here but Monday is coming. Johnny Henicks on
10 Wednesday, April the 6th, 2011, was at home with his
11 three year old son Shaheem. He and Sherry Sparks
12 had two children together. She had four on her own.
13 She was at the DSS building that day. The five
14 older children were at school, at Greenwood
15 Elementary School. They all lived together in a
16 mobile home at Smith and Smith Mobile Home Park,
17 which is located right off of Gilbert Drive. And
18 Gilbert Drive, to kind of orient you, is located
19 between Freedom Boulevard and National Cemetery
20 Road. And he was there with little Shaheem.
21 Shaheem was born on January 8th of 2008. He was
22 three years old. It was a normal day. Johnny was
23 hoping to land a full-time job. The day before he'd
24 done some yard work for his sister and is still
25 looking for full-time work.

1 Folks, it was a Wednesday, a typical
2 Wednesday. The children were gonna come home
3 somewhere around 2:30. He went outside with
4 Shaheem; it was a nice day. Got away from him, went
5 to the mailbox, that light bill hadn't come yet. He
6 saw some other people out there. He began talking
7 with them, smoked a cigarette with one of them, and
8 sat down with Shaheem on his lap. But folks, it was
9 Wednesday. An unnoticed car comes into the mobile
10 home park and you'll hear about that car. Shortly
11 after 2:15 in the afternoon. The passenger gets out
12 of the back seat, what you will find out was a
13 Nissan Altima. He didn't come to the park alone.
14 There were two other individuals. There was the
15 driver and front seat passenger. The driver was a
16 gentleman by the name of Michael Evans. Front seat
17 passenger was Rasheem Thomas.

18 The next thing Johnny perceives as he's
19 sitting there with a three year old on his lap is
20 that he's now being struck in the back of the head
21 with a heavy object. It hurts. Shaheem is still in
22 his lap. He tries to rise from the chair but is
23 struck once or twice again. He pushes Shaheem out
24 of harms way, he falls to the ground, and then a
25 loud explosion as a bullet that rips through his

1 back exiting his abdomen. It's Wednesday. Monday
2 is coming. A black man with dreads, light skin, is
3 swearing profusely at him, threatening him with the
4 gun again as he points it at his head. All the
5 while he's hearing little Shaheem yell at the
6 attempted murderer. The would-be killer isn't
7 finished. Remember, it's Wednesday. He rips the
8 gold chain with the unusual medallion off of
9 Johnny's neck, and Johnny is that young man with the
10 striped shirt with his hands folded sitting right
11 behind counsel table. They get his wallet and
12 everything that a wallet contains. Then this armed
13 robber, would-be killer, makes his escape, hops into
14 the back of that Nissan Altima and drives away with
15 the others in that vehicle clean as a whistle. It's
16 Wednesday and Johnny is left there bleeding with a
17 hole in him; but folks, Monday is coming.

18 Monday, June the 18th, 2012, this Monday.
19 This is the Monday we've been waiting for because
20 what will this Monday show? Monday you will hear
21 from Arentheus Garrett who's in the courtroom —
22 he's got a cast on his arm today — who heard a loud
23 explosion, looked out his window and saw Thomas
24 Davis, black man, light skinned black man with
25 dreads, standing over the fallen body of Johnny

1 Henicks with a gun in his hand. Now you're gonna
2 hear how Arentheus ran to the other side of the
3 trailer with his buddy Demetrius in there calling
4 out the license tag number of the Nissan Altima and
5 Demetrius is calling 9-1-1, calling it out in his
6 presence, the tag number he read. Now let me just
7 stop here one second.

8 You're gonna hear that Arentheus has got a
9 record. He's got a substantial criminal record.
10 I'm not gonna hide that from you. Johnny Henicks
11 has got a criminal record. But the place of this
12 shooting and the time of this shooting was chosen by
13 Thomas Davis, not Arentheus Garrett, not Johnny
14 Henicks. He shot him in front of the people he shot
15 him in front of. Johnny will tell you what he saw.
16 And as His Honor instructed you, record or no record
17 you are to judge the credibility of this witness and
18 this victim.

19 Monday will show also that this crime
20 happened at approximately 2:19. And at 2:23, the
21 Nissan Altima containing the driver Michael Evans,
22 Michael Tyon Evans, Rasheem Thomas, the front seat
23 passenger, and Thomas Edward Davis, the accused in
24 this case, saw them going down National Cemetery
25 Road, spotted by law enforcement. I make fun of

1 him, but the one that looks like a hobo here with
2 the long white beard, Santa Clause, Rodney Fridley,
3 was in a car with other narcotics agents. This
4 wasn't a narcotics case. That's what they do for
5 the city police. They spotted this vehicle as the
6 license tag was called out over dispatch, and they
7 were on this vehicle. They gave chase, and
8 ultimately these fine officers from the City Police
9 Department caught the three individuals after they
10 bolted from the vehicle. Michael Evans, the driver,
11 caught. Rasheem Thomas, the front seat passenger,
12 caught. Thomas Davis, the accused in this case, the
13 back seat passenger, caught. And the only one with
14 dreadlocks, folks, as he wears his hair today the
15 same way as he did on April the 6th, 2011, was
16 Thomas Edward Davis. As you'll see photos of their
17 booking pictures when they were arrested with
18 Michael Tyon Evans with short hair, Rasheem Thomas
19 with cornrows, and this gentleman as you see him
20 today as he was way back then.

21 What else will this Monday show you? That
22 of the three, the only one that had gunshot residue
23 on his hands was Thomas Edward Davis. You will also
24 see where that gold chain with the unusual medallion
25 was located. Folks, it was in the vehicle. You'll

1 also see that Johnny Henicks' wallet with his
2 identifying information was found in or in close
3 proximity to the vehicle, the vehicle that the three
4 ran from. You will also see that a .45 caliber
5 semiautomatic handgun was found in the direction in
6 which Thomas Davis and Rasheem Thomas ran. The same
7 gun, I would allege, fired the bullet that struck
8 Johnny Henicks and tried to kill him. The same gun
9 that expelled a shell casing that matched the shell
10 casing found at Smith and Smith Mobile Home Park off
11 of Gilbert Drive. It is Monday; isn't it?

12 And the judge has already told you that
13 this accused is basically clothed in a robe of
14 righteousness and is presumed innocent. But it is
15 on this Monday, it may be tomorrow, it may be the
16 day after, that the evidence will cut and tatter
17 that robe. That robe isn't made out of Kevlar or
18 some impenetrable material. It's simply a
19 presumption. And once that robe of innocence is
20 torn off his shoulders by the evidence, it will lead
21 Thomas Edward Davis bare to the truth of what he
22 did. And what did he do? Under the law, not per my
23 opinion, he both attempted to murder Johnny Henicks
24 with malice aforethought. Malice is a legal term.
25 It means a heart bent on evil, devoid of social

1 conscience, full of ill will. It means hatred,
2 wickedness, wrongful intent to injure another
3 person. That's what he did, folks, and that's what
4 the evidence will show. That Johnny Henicks is
5 alive is a testament to Johnny Henicks' fortitude,
6 not based on the actions of what this accused did.

7 He also robbed Johnny while armed with a
8 deadly weapon. There's a third charge that he
9 possessed that weapon during the commission of a
10 violent crime. His Honor will instruct you at the
11 end of this trial that either offense, armed robbery
12 or attempted murder, are qualifying offenses, that
13 they're both violent offenses. Now His Honor has
14 also told you that in a case of this magnitude in
15 this court that the State has the burden of proving
16 this defendant's guilt beyond a reasonable doubt.
17 That is not a fanciful doubt; that is not doubt
18 beyond all measures. If we prove to you that he did
19 it and you are firmly convinced that the evidence
20 shows that he did it, that is beyond a reasonable
21 doubt. It's no magical term; it is a term of law.
22 And I would propose that the evidence in this case
23 will leave you firmly convinced of his guilt.

24 Now a trial at its core, as His Honor has
25 already alluded to you, is a search for the truth.

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1 As you weigh what happened that Wednesday to Johnny
2 Henicks, the truth as the evidence will show, will
3 cry out for one verdict and that's guilty on all
4 three counts for that will be a decision that speaks
5 the truth. And when you perform your duty and your
6 obligation under that truth you will have done
7 justice both to the State of South Carolina and to
8 this defendant. It is Monday.

9 THE COURT: Thank you, Mr. Jepertinger.
10 Mr. Strobel.

11 MR. STROBEL: Your Honor, I choose to
12 address the jury later.

13 THE COURT: All right, sir.

14 Mr. Jepertinger, you may call your first
15 witness, sir.

16 MR. JEPERTINGER: I would call Johnny
17 Henicks in this case.

18 THE COURT: Mr. Henicks, if you'd please
19 come around to be sworn, sir.

20 THE CLERK OF COURT: If you will, sir,
21 place your left hand on the Bible, raise your right
22 hand.

23 WHEREUPON,

24 **JOHNNY SHANDRE HENICKS,**
25 having been duly sworn by the Clerk of Court,

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1 testified as follows:

2 THE CLERK OF COURT: Please be seated in
3 the witness chair. State your full name for the
4 record.

5 THE WITNESS: Johnny Shandre (ph) Henicks.

6 **DIRECT EXAMINATION**

7 BY MR. JEPERTINGER:

8 Q Johnny, how old are you?

9 A 31.

10 Q And what is your date of birth?

11 A 3/24/81.

12 Q Okay. Are you currently working?

13 A No, I'm not.

14 Q All right. With whom do you live?

15 A My father and my mother.

16 Q Okay. And what are their names?

17 A Johnny Henicks and Frances Henicks?

18 Q Where do you live?

19 A With my mother.

20 Q Here in Florence or?

21 A Florence, South Carolina.

22 Q Okay, all right. How long have you lived with
23 your folks now?

24 A For about a year now.

25 Q Okay. Prior to living with your folks with whom

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1 did you live?

2 A With Sherry Sparks.

3 Q Okay. And do you have any children with Sherry?

4 A I have two.

5 Q Okay. And how many does she have by herself, I
6 guess, for lack of better term?

7 A Four.

8 Q It's not by herself, I understand that, but she
9 have four? All right. And the two that you had,
10 were they the youngest of the —

11 A Yes, sir.

12 Q Six?

13 A Yes, sir.

14 Q All right. And how old is the youngest one?

15 A Four now.

16 Q Okay. And when was his birthday?

17 A January 8th.

18 Q Okay. 2008?

19 A Yes, sir.

20 Q All right. And what's his name?

21 A Shaheem, Jay Shaheem Henicks.

22 Q At the time that this all happened how old was
23 he?

24 A Three.

25 Q Where did you live with Sherry and the children?

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1 A Smith and Smith Mobile Home Trailer Park.

2 Q And can you tell the — I kind of mentioned it
3 during opening statement, could you tell them where
4 Smith and Smith Mobile Home Park is.

5 A Off National Cemetery Road.

6 Q Okay.

7 A Gilbert Drive.

8 Q It's Gilbert Drive? I was gonna ask you —

9 A Yes, sir.

10 Q —is Gilbert Drive there? Is Gilbert — let me
11 ask you, is Gilbert Drive between Freedom Boulevard
12 and National Cemetery?

13 A Yes, sir.

14 Q All right. And is the mobile home park closer to
15 National Cemetery or is it closer to Freedom
16 Boulevard?

17 A Probably in the middle of both.

18 Q Okay, fair enough. All right. The date of this
19 incident were you working?

20 A I was doing some landscaping for my sister, cut
21 her grass, but I was unemployed at the time looking
22 for work.

23 Q Okay. And when did you do the landscaping for
24 your sister?

25 A April — I mean, April 5th.

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1 Q The day before —

2 A The day before.

3 Q —this happened, okay. That day — what day of
4 the week was it?

5 A Wednesday.

6 Q All right. Was Sherry home all day?

7 A She was at the DSS office.

8 Q All right. And how about the five older
9 children, where were they?

10 A At school.

11 Q Where did they go to school?

12 A Greenwood Elementary.

13 Q All right. And what were you and Shaheem doing
14 that day?

15 A I was going to check the mailbox to get my light
16 bill.

17 Q Not the whole day?

18 A Well, you want me to start the whole day what he
19 did?

20 Q Yea, just kind of give us a thumbnail sketch.

21 A Woke up, washed him up. We ate. Nice day
22 outside, decided to walk to the mailbox to check and
23 see if my light bill came.

24 Q Did it come?

25 A No, sir.

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1 Q All right. The day went by just kind of normal?

2 A No. I got hit in the back of the head, shot,
3 jewelry gone, my wallet.

4 Q Okay. Well, we're going to talk about that here
5 in a second, but up to that point that going on —

6 A Normal day.

7 Q Excuse me?

8 A A normal day.

9 Q All right. Now what time did the five older ones
10 get out of school?

11 A Usually get home probably around 2:30, something
12 like that.

13 Q And did a bus bring them home?

14 A Bus, yes, sir.

15 Q And would the bus leave them off at on Gilbert
16 Street?

17 A Gilbert Drive.

18 Q Gilbert Drive?

19 A Yes, sir.

20 Q All right. And were you and Shaheem waiting for
21 them?

22 A Yes, sir.

23 Q Okay. Can you tell the ladies and gentlemen of
24 the jury right before this incident began to happen
25 to you, what were you doing just right before it

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- 1 happened?
- 2 A Smoking a cigarette.
- 3 Q Okay.
- 4 A And talking.
- 5 Q Who were you talking to?
- 6 A Just friends out there. I don't know them all by
7 name. We just, we see them every day, you know, you
8 get to know each other. Just talking.
- 9 Q All right. And what was Shaheem doing at this
10 time?
- 11 A Standing up beside me. I ain't sit down yet.
- 12 Q All right. And then what happened? Did you go
13 back to the mailbox to check to see if the light
14 bill came?
- 15 A No, I done checked it by then so I just got tired
16 of standing up. The sun was kind of hot so, like I
17 said, it was a nice day out to chill. Sat down and
18 put him in my lap.
- 19 Q All right. And just waiting for the kids?
- 20 A Yes, sir.
- 21 Q All right. Then what happened?
- 22 A And I got struck and shot and robbed.
- 23 Q Okay. Let's go through the — let's slow down a
24 little bit here. You got struck. Was that the
25 first thing that you felt?

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1 A Yes.

2 Q Did you know where the, where the blow was coming
3 from?

4 A It had come from behind 'cause ain't nobody came
5 where I could see them.

6 Q All right. And what did it feel like?

7 A It felt like something hard. I ain't know what
8 it was though. All I know is I was struck, kind of
9 lightheaded.

10 Q Did — were you still holding on to Shaheem at
11 that point?

12 A Yeah, he held on to me.

13 Q And did you turn around to help —

14 A Didn't turn around. Tried to get up again.

15 Q Then what happened?

16 A Fell down and got hit again. I just tried to
17 push him off.

18 Q Push who off?

19 A My son, Shaheem.

20 Q Okay. Then what happened?

21 A Then I got shot.

22 Q Were you out of the chair when you got shot or
23 were you sitting in the chair?

24 A I was out the chair almost. It was like in
25 between. You know, when you trying to get up from

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1 somewhere.

2 Q Well, sit in that chair under the portrait so I
3 can see you.

4 MR. JEPERTINGER: Would that be okay,
5 Judge, for him to —

6 THE COURT: Sure, that's fine.

7 MR. JEPERTINGER: Why don't you use this
8 chair if you could, to show the jury what you're
9 talking about.

10 THE WITNESS: About like this.

11 THE COURT: And — okay.

12 BY MR. JEPERTINGER:

13 Q Thank you. Just return to your seat. And what,
14 you hear something or feel something or what was the
15 deal there?

16 A Another hit. I felt the hit. I ain't — I heard
17 the shot after when I got shot.

18 Q And what happened after you got shot?

19 A Lay on the ground. My son was crying. I told
20 him to run home. He ran. And I got the — felt
21 like some steel to my head, on the back of my head
22 'cause I was kind of out of it, and my jewelry got
23 snatched from the back. I threw my wallet and it
24 was over.

25 Q Well, let me ask you this, when you got shot can

SW - J. HENICKS - DIRECT

1 you tell the — I know you kind of showed us how you
2 got shot, but do you know where you got shot on your
3 body?

4 A My back.

5 Q Okay. And how do you know you got shot in the
6 back there?

7 A 'Cause the assailant was behind me. The
8 assailant, the accuser was never in front of me. He
9 was always behind me.

10 Q And did you ever feel back there for any hole or
11 anything like that?

12 A Oh, I was numb. I knew I was hit because I
13 couldn't move my left side.

14 Q All right. And at that point do you have any
15 earthly idea what is happening to you?

16 A I was out of it really.

17 Q Did you have — did you have a chance to hear or
18 see a car?

19 A No, I never saw a car.

20 Q Okay. Did you happen to see who was hitting you
21 and who was shooting you?

22 A All I saw was a black shirt. I got a description
23 of those witnesses, told me what he looked like.

24 Q How about, did you see anything out of the
25 periphery of your vision what this individual looked

SW - J. HENICKS - DIRECT

1 like?

2 A All I seen was brown skin like my complexion and
3 a durag. That about it.

4 Q How about hair style?

5 A Ponytail, but I ain't really pay attention after

6 —

7 Q When you're talking about a ponytail are you
8 talking about a white man's ponytail or dreads, or
9 what are you talking about?

10 A Some ponytail like I got right here.

11 Q Similar to what the defendant has his hair in
12 right now?

13 A He got a ponytail; but like I say, I never saw
14 his face.

15 Q Okay, all right. And at that point does Shaheem
16 go home or does he stay there with you, or what?

17 A He was gone. He was gone already.

18 Q Okay. Is he yelling at anyone at this point?

19 A Who?

20 Q Shaheem?

21 A Shaheem?

22 Q Uh-huh.

23 A Yea, he yelled out he shot — excuse my french —
24 he shot my damn daddy.

25 Q All right. And do you check your body for any

SW - J. HENICKS - DIRECT

1 holes?

2 A Yes, sir. This was after the fact though.

3 Q Okay. And when you say after the fact what do
4 you mean after the fact?

5 A When whoever — after he was gone, that's when I
6 guess people ran over and I looked at my leg 'cause
7 my whole left side of my body I really couldn't
8 feel. It wasn't bleeding from the leg or nothing so
9 I lift up the back of my shirt and looked, and I
10 just seen a hole.

11 Q In your back?

12 A In my back. And then I turned and I saw a entry
13 wound. Then I looked in the front and saw no blood
14 so I pull up my shirt and I saw the exit wound.

15 Q Now it entered, the bullet entered on which side
16 of your body, on your left side?

17 A My left.

18 Q Okay. And where did it exit?

19 A Front of my stomach, right side.

20 Q Right side?

21 A About right there.

22 Q Okay. Now did you get robbed first or did you
23 get shot first?

24 A Shot.

25 Q All right. And then you say that a chain was

SW - J. HENICKS - DIRECT

1 pulled off your neck; is that correct?

2 A Yeah, from the back.

3 Q All right. Can you describe this chain to the
4 jury?

5 A Cookie monster.

6 Q A cookie monster?

7 A Slim chain, kind of big John.

8 Q I'm gonna show you State's Exhibit 34 that's in
9 evidence. Can you tell the ladies and gentlemen of
10 the jury what this is.

11 A Cookie monster gold chain.

12 Q Was this your property?

13 A Yes.

14 Q When is the last time that you saw this?

15 A April 6th.

16 Q Of 2011?

17 A Yes, sir.

18 Q And where was this on April 6th, 2011, in
19 relationship to your person? Was it in your pocket,
20 around your neck?

21 A Around my neck.

22 Q And was that the first item taken from you, the
23 gold chain?

24 A Yes, sir.

25 Q Now what happened with your wallet?

SW - J. HENICKS - DIRECT

1 A My wallet wasn't taken from me. I threw my
2 wallet.

3 Q Why did you do that?

4 A 'Cause I feel that could have saved my life.

5 Q Did the person that shoot you and took the gold
6 chain, did they say, I don't need that wallet?

7 A I can't remember but whoever did it took it. I
8 throw it, it was gone. I didn't get it back.

9 Q I'm gonna show you what's in State's Exhibit 35.
10 Do you recognize State's Exhibit 35 that's in
11 evidence?

12 A Yes, sir, my wallet.

13 Q How do you know it's your wallet?

14 A That's my I.D. card right there.

15 Q And is this your South Carolina, not a driver's
16 license, I.D. card?

17 A Yes, sir.

18 Q And whose name is on that please?

19 A Johnny Shandre Henicks.

20 Q And also there is a Netspend visa debit card.

21 Whose name is on that Netspend Visa card?

22 A Johnny Shandre Henicks.

23 Q And I see a Florence County library card as well.

24 There's a signature on the back. Whose signature is
25 that?

SW - J. HENICKS - DIRECT

1 A Johnny Henicks.

2 Q And when is the last time you saw all of these
3 things?

4 A April 6, 2011.

5 Q Okay. After you got shot and after you got hit
6 in the head with a heavy object and the person left,
7 did anyone come to assist you?

8 A Yes, sir.

9 Q Who came — do you know who came to assist you?

10 A I just know a guy came to assist me.

11 Q And what did that guy do?

12 A Help me look for my wounds.

13 Q All right. Were you bleeding at the time?

14 A No, sir, I never was bleeding.

15 Q All right. Did an ambulance come to get you?

16 A Sheriff came first.

17 Q Huh?

18 A The sheriff came first.

19 Q Did you speak with the sheriff's deputies?

20 A Yes, sir.

21 Q Do you remember which sheriff's deputies you
22 spoke with?

23 A No, sir.

24 Q Were you a bit out of it?

25 A A bit out of it, but he kept asking me questions,

SW - J. HENICKS - DIRECT

1 social security number, what's the name of my kids,
2 stuff like that, just to make sure I'm conscious I
3 guess.

4 Q Did an ambulance come after that?

5 A Yes, sir.

6 Q And where did they take you to?

7 A McLeod.

8 Q And how long were you at McLeod Hospital?

9 A About a week-and-a-half, something like that,
10 close to two weeks.

11 Q All right. Did they have to do surgery on you?

12 A Yes, sir.

13 Q All right. Are you better today?

14 A Yes, sir.

15 Q Okay. Now Johnny, I will ask you this and I'm
16 not doing this to embarrass you; but you yourself
17 have a little bit of criminal record; is that
18 correct?

19 A Strong armed robbery.

20 Q Strong armed robbery and attempted armed robbery;
21 is that correct?

22 A Yes, sir.

23 Q And that was back in 2002?

24 A Yes, sir.

25 Q Did you catch a little time for it?

SW - J. HENICKS - DIRECT

1 A Yes, sir.

2 Q Have you paid your debt to society?

3 A Yes, sir.

4 Q Prior to this happening to you on that day on
5 that Wednesday, did you know Thomas Edward Davis?

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

7 Q Didn't have a personal beef with him?

8 A No, sir.

9 Q Did you know any of his kin or any of that
10 nature?

11 A No, sir. Only thing, only one I knew was
12 Rasheem.

13 Q Thomas?

14 A Thomas. I think that's his name. No? I had a
15 squabble with him a couple of weeks before then.

16 Q All right. But nothing, nothing else?

17 A Nothing else.

18 Q And you never laid eyeballs on this man?

19 A Never laid eyes on him.

20 Q All right. Thank you. Please answer any
21 questions that the defense attorney may have for
22 you.

23 MR. STROBEL: Mr. Strobel.

24 THE COURT: Mr. Strobel.

25 MR. STROBEL: Yes, sir.

SW - J. HENICKS - CROSS

CROSS-EXAMINATION

1
2 BY MR. STROBEL:

3 Q Mr. Henicks?

4 A Yes, sir.

5 Q According to your testimony the individual that
6 attacked you was apparently rather close to you?

7 A Yes, sir, close from behind.

8 Q He struck you in the back of the head or
9 whatever; is that correct?

10 A Yes, sir.

11 Q Is there any reason why -- or what could have
12 prevented him from shooting you in the back of the
13 head?

14 A You say what could have prevented that?

15 Q Yes. Was there anything there?

16 A Well, a chair. That's about the only thing, a
17 chair I was sitting in.

18 Q A what?

19 A I said I was sitting in a chair. I wasn't around
20 no other objects or nothing.

21 Q You sitting in a chair and that prevented him
22 from shooting you in the back of head?

23 A No.

24 MR. JEPERTINGER: I would object. This
25 would call for speculative answer other than any

SW - J. HENICKS - CROSS

1 physical impediment if that's what he's getting to.

2 MR. STROBEL: He's charged with —

3 THE COURT: Overruled. It's a valid
4 question. He can answer if he knows.

5 BY MR. STROBEL:

6 Q He's charged with attempted murder, that he
7 attempted to murder you; is that correct?

8 A Yes, sir.

9 Q All right. Was there anything to prevent him
10 when he came up from the back of you of shooting you
11 in the back of the head?

12 A Well, there was if they wanted to shoot me they
13 could have pulled the trigger, if they wanted to
14 kill me.

15 Q Did he shoot you in the heart?

16 A No.

17 Q When he shot you in the stomach and it went out
18 the other side —

19 A Back to my stomach.

20 Q Beg your pardon?

21 A That from the back.

22 Q Did he say I'm going to kill you?

23 A No.

24 Q Did he — did that person ever use the expression
25 that he wanted to, you to die from this?

SW - J. HENICKS - CROSS

1 A No.

2 Q But yet you charged him with attempted murder; is
3 that correct?

4 MR. JEPERTINGER: I would object to that.
5 He didn't charge him with anything.

6 THE COURT: Sustained. Sustained.

7 BY MR. STROBEL:

8 Q Was anybody else charged besides him with the
9 attempted murder?

10 A I think two other.

11 Q Two others were charged likewise?

12 A Yes, sir.

13 MR. STROBEL: That's all I have, Your
14 Honor.

15 THE COURT: Anything further,
16 Mr. Jepertinger? Redirect?

17 MR. JEPERTINGER: No, sir.

18 THE COURT: All right. Thank you very
19 much, sir. You may step down.

20 MR. JEPERTINGER: I call Arentheus Garrett
21 to the stand.

22 THE COURT: All right, Mr. Garrett. If
23 you will please come around to the stand please,
24 sir.

25 THE CLERK OF COURT: If you will, sir.

SW - A. GARRETT - DIRECT

1 place your left hand on the Bible, raise your right
2 hand.

3 WHEREUPON,

4 **ARENTHEUS GARRETT,**

5 having been duly sworn by the Clerk of Court,

6 testified as follows:

7 THE CLERK OF COURT: Please be seated,
8 state your full name for the record.

9 THE WITNESS: Arentheus Garrett.

10 **DIRECT EXAMINATION**

11 BY MR. JEPERTINGER:

12 Q Mr. Garrett, how old are you?

13 A 34.

14 Q Where do you live?

15 A I live on Church Street.

16 Q How long have you lived there?

17 A About a year.

18 Q Please keep your — if you'd pull that microphone
19 closer to you. All right, are you currently
20 working?

21 A Yes.

22 Q Can you tell the ladies and gentlemen of the jury
23 where you work?

24 A I work at Golden Corral.

25 Q Okay. And what do you do at Golden Corral?

SW - A. GARRETT - DIRECT

1 A I'm a cook.

2 Q All right. Did you have an occasion to be at
3 Smith and Smith Mobile Home Park back on April 6th,
4 2011?

5 A Yes, I was there.

6 Q All right. Can you tell the ladies and gentlemen
7 of the jury what you were doing at Smith and Smith
8 Mobile Home Park?

9 A I actually went to go and see somebody to get a
10 telephone number from them so I can make a telephone
11 transfer.

12 Q Okay. Do you know who the person was you went to
13 see?

14 A Yeah, Demetrius were there.

15 Q Rush?

16 A Yeah. All I know is Demetrius.

17 Q And now what time were you there? Around what
18 time were you there at the mobile home park?

19 A I probably got there maybe like a quarter to two,
20 going on 2:00. I was trying to make sure I made it
21 back home before my kids got home.

22 Q Okay, what time would your kids get home?

23 A Probably around 2:35, 2:40, something like that.

24 Q Where were they going to school?

25 A My kids were going to school at McLaurin at the

SW - A. GARRETT - DIRECT

- 1 time.
- 2 Q And where were you living at the time?
- 3 A I was living on Marlboro Street in north
4 Florence.
- 5 Q Okay. Now did anything unusual happen that
6 afternoon that kind of changed your plans?
- 7 A I mean, yeah, this little incident. I heard a
8 gunshot while I was standing at the refrigerator and
9 actually there was —
- 10 Q You were inside of the mobile home?
- 11 A Right.
- 12 Q Okay. And you heard a gunshot, correct?
- 13 A Uh-huh.
- 14 Q Was it loud?
- 15 A It was loud, yeah.
- 16 Q All right. And can you tell the ladies and
17 gentlemen of the jury — I think you said you were
18 standing by the refrigerator — what you did when
19 you heard that gunshot.
- 20 A I mean, as soon as I heard a gun shot I looked
21 out the window, and that's when I pretty much saw
22 everything.
- 23 Q What did you see?
- 24 A I saw a guy with dreads standing over the victim
25 —

SW - A. GARRETT - DIRECT

1 Q Can you describe —

2 A —with a gun.

3 Q —that individual to — besides dreads, can you
4 describe that individual? Were they free dreads,
5 ponytail dreads, braid dreads, what —

6 A Kind of pulled up in a ponytail.

7 Q Okay. Do you recognize anybody in the courtroom
8 that had those dreads pulled up in a ponytail that
9 was standing over Johnny Henicks?

10 A I mean, it's a strong resemblance, you know what
11 I'm saying, but it's more like the defendant.

12 Q All right. And at that — at that point what did
13 you observe this individual with the dreads kind of
14 pulled up in a ponytail do?

15 A He had a gun pointed at the defendant's head
16 and — well, at the victim's head, and —

17 Q Was he talking?

18 A He probably was, but from being inside I couldn't
19 hear him.

20 Q All right. But you saw the gun pointed towards
21 —

22 A Yeah.

23 Q —Henicks' head?

24 A Right.

25 Q And what did you see then?

SW - A. GARRETT - DIRECT

1 A Okay. Well, Mr. Henicks was laying on his
2 stomach and I saw him, you know, he reached around
3 and grabbed his chain and snatched the chain off of
4 him. And then I saw Mr. Henicks go in his pockets
5 and pull, you know, whatever he had in his pockets
6 and threw it, and then the guy ran off. At the
7 point in time that he ran off I ran to the other
8 side of his trailer so I could see what kind of ride
9 he was in.

10 Q And when you went to the other side of the
11 trailer to see what type of ride he was in was
12 Demetrius doing anything at this point?

13 A Demetrius is already on the phone with 9-1-1. As
14 soon as he heard the gunshot he ran to — I was at
15 the window, Demetrius ran to the window, was like,
16 oh man, that's my brother, blah, blah, blah. So he
17 got on the phone, he called 9-1-1, and I ran to the
18 other side.

19 Q And what are you looking for at this point?

20 A The car.

21 Q Okay. And what type of car did you see?

22 A It was a white Nissan Altima.

23 Q All right. And what were you doing with the
24 Altima? Could you see the license tag?

25 A Oh, yeah, it was very visible.

SW - A. GARRETT - DIRECT

1 Q All right. I'm gonna show you a picture of 9-B
2 which is in evidence. Can you identify that car?

3 A That look like the same car to me.

4 Q All right. And was there anything unusual about
5 the license tag in terms of the letters?

6 A Yeah, it was two Zs.

7 Q And what license tag do you see there? Can you
8 read that for the jury?

9 A It says FZZ562.

10 Q All right. And did you see him get into which
11 seat of the car?

12 A Back seat.

13 Q Behind the passenger side or behind the driver?

14 A Behind the passenger.

15 Q All right. And were you calling out the names to
16 Demetrius while —

17 A Uh-huh.

18 Q —the numbers to Demetrius while you were
19 observing this?

20 A Right.

21 Q All right. After you did that what did you do?

22 A I ran outside to the victim.

23 Q All right. And what did you do when you ran
24 outside to the victim?

25 A Well, Demetrius hand me a rag and I ran outside

SW - A. GARRETT - DIRECT

1 and I applied pressure to his wound. I stayed there
2 with him till the ambulance got there.

3 Q Okay. And did you speak with law enforcement?

4 A Yeah.

5 Q And how long did it take for the police to get
6 there or the sheriff deputies?

7 A Maybe like five or six minutes.

8 Q All right.

9 A Might not be that long.

10 Q Okay. And after you spoke with them did you do
11 anything else in this case?

12 A Naw, I just stayed with the victim and just asked
13 him questions to know who he was, did he know where
14 he was, trying to keep him focused 'cause he pretty
15 much kept saying he was dizzy.

16 Q Now Arentheus, let me ask you, did you know who
17 Johnny Henicks was at all?

18 A I mean, I saw him a couple of times from going
19 out there to see Demetrius but that's about it.

20 Q Do you really know him other than seeing him from
21 observation?

22 A Naw.

23 Q All right. Now Arentheus, you've got a bit of a
24 record, correct?

25 A Yeah.

SW - A. GARRETT - DIRECT

1 Q So no question about that, more than a record?

2 A No question about that.

3 Q A lot, correct?

4 A A lot.

5 Q Okay. And let's just go through these. I guess
6 you got a burglary conviction and a grand larceny
7 conviction, contributing to delinquency of a minor,
8 and lewd act conviction, and maybe an ABHAN
9 conviction. Does that sound good, and I think maybe
10 even drug distribution conviction. Does that at all
11 sound right to you?

12 A Yes, sir.

13 Q Okay. With all those convictions you had, you
14 had to do time I take it?

15 A Yes, sir, I probably gave the Department of
16 Corrections about five years of my life.

17 Q When you went to transfer your phone and observe
18 what you did and all that sort of business and
19 helped to apply pressure to Henicks' wounds and all
20 that sort of business, did you think at all about
21 that criminal record of yours?

22 A No.

23 Q All right. Did that have any significance for
24 you when you observed what you observed?

25 A No.

SW - A. GARRETT - CROSS

1 Q And let me ask you this, when you saw what you
2 saw, had — and you're looking out the window by the
3 refrigerator, —

4 A Right.

5 Q —had that wall from the mobile home not been
6 there, okay, had it not been there, approximately
7 what distance were you away from the shooter and
8 Johnny Henicks?

9 A Maybe from where I'm sitting at now to the desk
10 that you were sitting at.

11 Q Okay. What you estimate that at, about 15,
12 20 feet?

13 A Might be less than that.

14 Q All right. And it was in the afternoon, correct?

15 A Right.

16 Q Clear day?

17 A Clear day.

18 Q Thank you. Answer any questions Mr. Strobel may
19 have for you.

20 THE COURT: Mr. Strobel.

21 MR. STROBEL: Yes, sir.

22 **CROSS-EXAMINATION**

23 BY MR. STROBEL:

24 Q You were relatively pretty close to the action;
25 were you not?

SW - A. GARRETT - CROSS

- 1 A Oh, yeah.
- 2 Q And you can't identify his face today from what
3 you saw then?
- 4 A Because his back was turned to the window that I
5 was standing at.
- 6 Q What?
- 7 A His back was turned to the window that I was
8 standing at.
- 9 Q I see. The only thing you know is this person
10 had a ponytail or dreadlocks, something of that
11 nature?
- 12 A Dreadlocks.
- 13 Q Could you describe to me how he was dressed.
- 14 A I couldn't tell you. It was kind of like a light
15 colored shirt.
- 16 Q Well, when Officer Parish got your interview you
17 said he had a white T-shirt.
- 18 A That's a light colored shirt.
- 19 Q White shirt?
- 20 A Okay.
- 21 Q Is that correct?
- 22 A If that's what I said at the time, then yes,
23 that's correct.
- 24 Q You can't remember? Okay. Did you hear the
25 victim describe what he was wearing? You were

SW - A. GARRETT - CROSS

1 sitting over here; weren't you?

2 A Right.

3 Q Huh?

4 A Right.

5 Q And what he said?

6 A What the victim said?

7 Q Yes.

8 A I didn't hear a question about the shirt that he
9 had on.

10 Q You didn't hear what he said he was wearing?

11 A No.

12 Q No. But you said he had a white T-shirt?

13 A That's correct.

14 Q And you had never seen him before?

15 A No, sir.

16 Q That's all.

17 MR. JEPERTINGER: That's all I have for
18 this witness.

19 THE COURT: Thank you very much, sir. You
20 may step down.

21 MR. JEPERTINGER: I ask if he can be
22 excused.

23 THE COURT: Any objection, Mr. Strobel?

24 MR. STROBEL: No.

25 THE COURT: You're free to go, sir. Thank

SW - R. FRIDLEY - DIRECT

1 you.

2 MR. JEPERTINGER: I would call Rodney
3 Fridley to the stand.

4 THE COURT: All right, sir, if you would
5 please come to be sworn.

6 WHEREUPON,

7 **RODNEY FRIDLEY,**
8 having been duly sworn by the Clerk of Court,
9 testified as follows:

10 THE CLERK OF COURT: Please be seated,
11 state your full name for the record.

12 THE WITNESS: My name is Rodney Fridley.

13 **DIRECT EXAMINATION**

14 BY MR. JEPERTINGER:

15 Q Rodney, can you tell the ladies and gentlemen of
16 the jury where you work?

17 A I work with the Florence Police Department with
18 I'm assigned to the special investigation unit at
19 this time.

20 Q And special investigations unit basically a
21 narcotics unit; is it not?

22 A Yes, sir.

23 Q And how long have you been working for them?

24 A I've been with narcotics almost two years.

25 Q And how long has that beard been growing?

SW - R. FRIDLEY - DIRECT

1 A Almost two years.

2 Q That's what I thought, okay. Affectionately
3 would you be known as an undercover, I guess,
4 narcotics officer?

5 A That's what some people refer to us as.

6 Q Okay. Back on April the 6th, 2011, can you tell
7 us where you were?

8 A On —

9 Q Around, I would say around after two.

10 A We were in — we were in two — there was five
11 agents, myself and four others, were in two
12 different surveillance vehicles working in the east
13 Florence area of Florence.

14 Q All right. And where would this east Florence
15 area be?

16 A Everywhere east of Church Street all the way down
17 to Palmetto, McLeod Hospital, from there all the way
18 up to where Pet Dairy area used to be, in that area.
19 That's where most people refer to as east Florence.

20 Q Okay. And did you receive any sort of bolo that
21 afternoon?

22 A Yes, we did. When we're in —

23 Q And we're gonna stop right now because they don't
24 know what a bolo is except what Argentinians throw
25 at cattle. What is a bolo?

SW - R. FRIDLEY - DIRECT

1 A It's broadcast by either an individual officer or
2 the central communications. It's for a
3 be-on-the-lookout is what they're giving us.

4 Q Okay. And approximately what time would that be
5 that you received this bolo?

6 A Around 2:00, somewhere in that area.

7 Q Okay. Well, I, -- you didn't prepare a written
8 report. I'm gonna show you Officer Beckett's report
9 and see if that can jog your memory ---

10 A That's correct.

11 Q --at what time you received the report?

12 A 2:23.

13 Q Okay, 2:23. Could you write that on the
14 blackboard there for me please.

15 A Sure. (Complies.) That was at 2:23 p.m.

16 Q Okay. And 2:23 p.m., all right. And the bolo
17 was for what?

18 A It was for the report of the County had a
19 shooting in their jurisdiction. When the County has
20 a significant incident occurring in their area
21 they'll bolo it to us in case people that they're
22 looking for happen to be in the city or close to the
23 city.

24 Q All right. And specifically what were you
25 supposed to be-on-the-look out for?

SW - R. FRIDLEY - DIRECT

1 A For the white four door sedan.

2 Q And was the information given to you —

3 A Yes, it was.

4 Q —reflected on Exhibit 9-B?

5 A That's correct.

6 Q And that was a white Nissan Altima; is that
7 correct?

8 A Right.

9 Q With license tag of FZZ562; is that correct?

10 A That's correct.

11 Q All right. So you're looking for FZZ562 on a
12 South Carolina tag, a white Nissan Altima. At
13 approximately 2:23 p.m. what did you observe?

14 A We were — myself, Agent Beckett, and Agent
15 Collins were in a vehicle, surveillance vehicle
16 being operated by Agent Beckett. We were eastbound
17 on Cherokee Road because the offense had occurred
18 over in the area off of Freedom Boulevard so we
19 started that direction in case we come up on the
20 vehicle.

21 Q And did you come up on the vehicle?

22 A Yes, we did. As we were approaching, heading
23 towards Freedom Boulevard, Agent Beckett saw the
24 vehicle coming towards us. As it got closer to us
25 we turned around and we did verify it with central

SW - R. FRIDLEY - DIRECT

1 communications that it was the correct vehicle by
2 the tag that was on the back of it.

3 Q All right. And what did you guys do then?

4 A We stayed behind the vehicle. We didn't activate
5 any blue lights or anything at that time. What we
6 usually do is we get more units in the area in case
7 the chase starts, a chase ensues, or if the people
8 bail out of the vehicle so we're waiting on more
9 vehicles to get to us or in our location.

10 Q All right. So you follow that vehicle, right?

11 A Right. We followed it back westbound on National
12 Cemetery.

13 Q Okay. And then what happened?

14 A Before we could follow it too far he started
15 accelerating making evasive maneuvers, we figured at
16 that point they realized who we were.

17 Q All right. And then what happened?

18 A Then the chase -- we started a pursuit. Agent
19 Beckett was pursuing the vehicle.

20 Q Can you briefly tell the jury where you chased
21 this vehicle.

22 A It stayed -- the chase stayed mostly in the east
23 Florence area. At one point we were in, I guess, a
24 pasture or a field. As we were pursuing the vehicle
25 he ran his vehicle to the point where he got to

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- 1 where there's a chain across an exit from the field.
2 We figured at that point when he saw the doors
3 coming open they were going to run on foot, but they
4 didn't. The vehicle hit the chain. The chain
5 actually flew, stayed in one piece, flew over the
6 top of the car and we had to stop at that point
7 because there's a heavy chain across that exit from
8 the field.
- 9 Q Now you're in one vehicle; is that correct?
10 A Right.
- 11 Q And you're with Jason Collins here in the red
12 shirt; is that right?
13 A That's correct, yes, sir.
- 14 Q And you're with Officer Beckett as well?
15 A That's correct.
- 16 Q And he's in the white shirt here, —
17 A Yes, sir.
- 18 Q —correct? Now you said there are five of you?
19 A Right.
- 20 Q Okay. Who are the other two?
21 A Agent Nida was driving his vehicle which looked
22 similar to ours except it's a different color and
23 Agent Spears is with him.
- 24 Q And Agent Spears is the African American
25 detective there, correct?

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1 A That's correct.

2 Q And Investigator Nida there is with — he's got a
3 green shirt on; is that correct?

4 A That's correct.

5 Q And they're in another vehicle?

6 A That's correct.

7 Q Are you guys communicating with each other —

8 A Yes, sir.

9 Q —over radio at to this point?

10 A Yes, we were.

11 Q What are you talking about at this point? What
12 were you chatting?

13 A We were given the location as where we were at as
14 each turn was made. Just bad luck for the driver of
15 the Nissan that when we got to the chain and
16 couldn't go any further Sergeant Nida and Corporal
17 Spears were coming down the street, and they
18 immediately took pursuit up from us on the back of
19 the car.

20 Q All right. And then what happened? What did —

21 A They continued. We had to go around the field to
22 get back out. When we got back up to National
23 Cemetery the people already bush bonded out. They
24 exited the vehicle.

25 Q Hold on, you used a term that we're not familiar

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1 with. Bush bond, what's that?

2 A They jumped out the car and took off.

3 Q Now how many people did you see jump out of the
4 car and take off?

5 A There was three.

6 Q Okay. And did you see anyone leave the rear
7 passenger seat, right side?

8 A I didn't see anybody leave the vehicle itself;
9 but Sergeant Nida called it in, told us who was
10 running where.

11 Q All right. And were you given directions of
12 where they were running?

13 A Yes, we were. Two of them we were given
14 directions. Corporal Spears had already gone after
15 one.

16 Q All right. And then can you tell us what you
17 did.

18 A We were told that the two suspects were running
19 northbound through National Cemetery heading towards
20 trailers over on a dirt road off of Irving Street.

21 Q Did you go over that way?

22 A Right. We drove over -- we drove our vehicle
23 till we got to the point where we couldn't drive any
24 further.

25 Q And then did you exit your vehicles?

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1 A We exited our vehicle, yes, sir.

2 Q And what did you find or who did you find?

3 A We, after brief pursuit we found the two other
4 suspects in the car. One of them's last name is
5 Evans, and I don't recall the other one at this
6 time.

7 Q All right. But not this individual?

8 A No, sir.

9 Q All right. And I'm just asking 'cause — okay.
10 So it was — you got the two other ones; is that
11 correct?

12 A Uh-huh.

13 Q Okay. If I'm mistaken let me know, okay? All
14 right, then what did you do?

15 A One of the — the suspect I detained was actually
16 laying face down in the ground in the grass. I
17 placed him in handcuffs. The other suspect was
18 trying to hide underneath of a porch at the rear of
19 the trailer. And Agent Collins tried to pull him
20 out from under the porch, and he started to
21 struggle. He was tazed by Agent Collins.

22 Q All right. Now all three were arrested on that
23 day, correct?

24 A Yes, sir.

25 Q And I'm gonna show you a picture of Thomas Edward

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1 Davis. Does that correctly reflect — and that's on
2 State's Exhibit 1. Does that correctly reflect how
3 he looked on that day?

4 A I don't recall exactly on that day.

5 Q All right. How about Michael Tyon Evans on
6 State's Exhibit 2?

7 A That's correct.

8 Q Was that the individual that was tazed?

9 A Yes, sir — no, sir, Evans wasn't. It was the
10 other subject.

11 Q I will show you Rasheem Thomas.

12 A He was the one tazed under the porch.

13 Q And of the three, which one was the only one with
14 dreadlocks?

15 A It would be the defendant.

16 Q All right. Then can you tell us what happened?

17 A We took — walked them back to Irving Street
18 which is in front of the trailer. The lady that
19 owned the trailer was extremely upset. She — we
20 had called EMS for her so that they could treat her.
21 She had some trouble breathing.

22 Q All right. And then what happened?

23 A We — at that point my part of it was turned over
24 to sheriff's department.

25 Q All right. And why was — why was all this

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1 turned over to the sheriff's department?

2 A 'Cause that's where the incident, the shooting
3 incident initially occurred.

4 Q Did — what county did the shooting incident take
5 place in?

6 A It's in Florence County.

7 Q All right. And they have jurisdiction over that,
8 correct?

9 A The sheriff's department over the shooting. We
10 had jurisdiction over the blue light violation and
11 —

12 Q All right. That's all I have for this witness.

13 THE COURT: Mr. Strobel.

14 MR. STROBEL: Yes, sir.

15 **CROSS-EXAMINATION**

16 BY MR. STROBEL:

17 Q Is it my understanding that two ran towards this
18 trailer park or trailer area and another vehicle ran
19 another direction and you went in the direction
20 where the two individuals went; is that correct?

21 A Myself and Agent Collins followed two. Agent
22 Spears followed the third person.

23 Q But y'all got in the car and went around?

24 A We were in — myself and Agent Collins and Agent
25 Beckett were in Agent Beckett's vehicle, yes, sir.

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1 Q So you didn't have your eyes on them continuously
2 from the time they jumped out of the car?

3 A No, sir.

4 Q Okay. And you picked up what I assume and you
5 assumed were the two later on?

6 A No, it was within a couple of minutes.

7 Q Well, that's later on.

8 A Yes, sir.

9 Q And tell me which one was hidden underneath the
10 house?

11 A The one that Agent Collins detained.

12 Q Yes, sir, what was his name?

13 A Whatever they just gave us here. Mine was the
14 Tyon Evans.

15 Q What?

16 A The one I detained was Tyon Evans. I don't
17 recall the name of the other subject at this time.

18 Q Well, it was this individual?

19 A No, sir. That was one Agent Spears detained him.

20 Q So one is to I assume that Mr. Davis was the one
21 that went off separate from the other two?

22 A Yes, sir.

23 Q Okay. And who allegedly captured him?

24 A Agent Spears.

25 Q Spears?

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1 A Yes, sir.

2 Q Okay. And did you see him?

3 A No, sir.

4 Q Well, what did he do when he captured him?

5 A That I couldn't tell you. They were in a
6 separate vehicle. He was going after his guy, and
7 we were going after ours.

8 Q So you never saw Mr. Davis any?

9 A No, I didn't see him. Other than the back of
10 somebody's head in the back of a vehicle, that's all
11 I saw. They went in different direction.

12 Q And you didn't see Mr. Davis get out of the white
13 car?

14 A No, sir.

15 Q That's all. Thank you.

16 **REDIRECT EXAMINATION**

17 BY MR. JEPERTINGER:

18 Q Officer Fridley, and I don't mean to throw dirt
19 on your testimony, but could you be mistaken about
20 who was caught where and by whom?

21 A Agent Spears caught the defendant.

22 Q All right.

23 A Myself and Agent Collins caught the other two.

24 Q All right.

25 MR. JEPERTINGER: All right, thank you.

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1 THE COURT: All right.

2 MR. JEPERTINGER: If he can be excused,
3 Your Honor.

4 THE COURT: Any objection?

5 MR. STROBEL: No, sir.

6 THE COURT: Without objection.

7 MR. JEPERTINGER: We call Officer Collins
8 to the stand.

9 THE CLERK OF COURT: Raise your right
10 hand.

11 **WHEREUPON,**

12 **JESSIE COLLINS,**
13 **having been duly sworn by the Clerk of Court,**
14 **testified as follows:**

15 THE CLERK OF COURT: Please be seated,
16 state your full name for the record.

17 THE WITNESS: Jessie Collins.

18 **DIRECT EXAMINATION**

19 BY MR. JEPERTINGER:

20 Q Officer Collins, can you tell the ladies and
21 gentlemen of the jury where you work.

22 A I'm currently assigned to the special
23 investigations unit.

24 Q You're a narcotics officer I take it?

25 A Yes, sir.

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1 Q How long have you been doing that?

2 A Two-and-a-half years.

3 Q Okay. Prior to that were you a street officer?

4 A Yes, sir.

5 Q Okay. And on April the 6th, 2011, approximately
6 2:23 can you tell the ladies and gentlemen of the
7 jury who you were with and what you were doing?

8 A Myself and Agent Becket and Agent Fridley were in
9 a unmarked vehicle conducting surveillance on the
10 east Florence side of town.

11 Q All right. And did anything unusual in terms of
12 a bolo come out over dispatch occur?

13 A Yes, sir. As Agent Fridley stated, a bolo came
14 out to be-on-look-out for a white Altima that was
15 involved in a shooting in the county.

16 Q And did you observe anything?

17 A Yes, sir. We were close by the area so we
18 immediately began heading towards National Cemetery
19 Road and actually saw the vehicle approaching us and
20 we passed it, turned around and we got behind it.

21 As Agent Fridley stated and maintained the visual on
22 the vehicle, confirmed the license plate was indeed
23 the one given out on bolo and waited for more units
24 to arrive in the area.

25 Q Were you in communication with Nida and Spears?

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1 A Yes, sir, we were.

2 Q And did you tell them what you had?

3 A Yes, sir. We let them know that we were behind
4 the vehicle, and they were also close by so as they
5 were — we were following the vehicle, they were
6 coming towards the vehicle.

7 Q Okay. And then what happened?

8 A As Agent Fridley stated, the vehicle began to
9 accelerate. One of the vehicles we were in, it's an
10 unmarked car but it's frequently used so we figured
11 that whoever is in the vehicle may have recognized
12 us as law enforcement. So at that time Agent
13 Beckett, we let them know where we were at, the road
14 we were on. We had a patrol unit in the area along
15 with Sergeant Nida and Corporal Spears so we
16 activated our blue lights in attempt to make a
17 traffic stop on the car.

18 Q What happened when you did that?

19 A It began vehicle pursuit. The suspect vehicle
20 began to accelerate and tried to conduct evasive
21 maneuvering to outrun us.

22 Q Then what happened?

23 A It ended into a — there's a grassy kind of
24 pasture field on the east side of Florence. The
25 vehicle went in there. We pursued. There was a

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1 chain covering a gate. The vehicle being small went
2 under the chain. Of course, we're in a truck at the
3 time so we couldn't go and we -- Sergeant Nida and
4 Corporal Spears picked up the pursuit. We backed up
5 and backtracked, went back around to get back out on
6 National Cemetery Road.

7 Q All right. And then what did y'all do?

8 A Well, at this time when we arrived on the scene
9 the suspect had already fled from the vehicle. One
10 was already detained by Corporal Spears.

11 Q Do you know which one that was?

12 A Sir?

13 Q Do you know who it was?

14 A Rasheem Thomas.

15 Q Okay.

16 A And they alerted us that the other two in the
17 vehicle had gone towards the cemetery. We drove our
18 vehicles far into the cemetery as we could. There
19 was a wall. We exited our vehicle, went across the
20 wall, went through a little wooded area. Once we
21 arrived out the wooded area we had no visual on the
22 suspects at the time so we stopped, listened to see
23 if we could hear anybody in the woods. We heard
24 some dogs barking towards Irving court. We went
25 into that direction, myself, Agent Beckett, and

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1 Agent Fridley. We arrived at a trailer. If I'm not
2 mistaken it's 818 Irving Court. The homeowner, we
3 assume she came from the house; she was screaming,
4 frantic. She was kind of inaudible what she was
5 saying; but we assumed that, you know, might be
6 somebody in the back yard, you need to take a look
7 so. As I entered the backyard I observed Mr. Davis
8 going under the porch of the trailer. There was
9 another gentleman that was going towards a wooden
10 fence, like a privacy fence. He had his back to me.
11 Agent Fridley went to him. I observed Mr. Davis
12 going under the porch kind of pulling on the
13 underpinning. I went to grab him, pulled him. A
14 spree struggle ensued which I deployed my department
15 issued tazer tazing him one time at which he was
16 placed in handcuffs.

17 Q That was Mr. Davis, the defendant in this case?

18 A Mr. Davis, yes, sir.

19 Q And after you placed him in the handcuffs what
20 did y'all all do then?

21 A At that time marked units had arrived at the
22 scene give from radio dispatch from Gary Beckett.
23 He was escorted out and placed in one of the marked
24 patrol units.

25 Q All right. Did anybody come up to Davis at all

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1 at the scene?

2 A There was a young lady that was walking from —
3 she was at the scene with the homeowner. She was
4 walking from the residence and she made a comment
5 towards Ms. Davis.

6 Q And what did he say in response to that comment?

7 A He said he apologized quoting, I'm sorry, baby,
8 I'm sorry, baby. He asked for a drink of water and
9 then apologized again.

10 Q He never told you guys what he was apologizing
11 for, did he?

12 A No, sir, he never mentioned that to me. He
13 mentioned an asthma problem, said he was out of
14 breath, that he was thirsty.

15 Q All right. And the other individual that was
16 arrested there by that privacy fence —

17 A Yes, sir.

18 Q —the Fridley guy, was whom? Was it Michael
19 Davis — Michael Evans?

20 A Yes, sir.

21 Q Was it this individual that you see on State's
22 Exhibit 2?

23 A Yes, sir, it's believed to be the one that Agent
24 Fridley was walking him out as I was walking
25 Mr. Davis out.

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1 Q Okay. And Mr. Davis is in State's Exhibit 1,
2 correct?

3 A Yes, sir.

4 Q And that's the one you arrested going under the
5 porch?

6 A Yes, sir, he had — when we had gone into the
7 yard he had fled, had cut around the back side of
8 the porch, was attempting to go under and was
9 pulling at the underpinning.

10 Q Right. And State's Exhibit 3?

11 A As — that's the individual that Agent Spears
12 had. As I said, when we arrived on scene Agent
13 Spears was putting him into custody so I did go over
14 to where he was at. He alerted me they had —
15 direction they had traveled, fleeing, so I
16 immediately went in that direction.

17 Q All right. And did you see all three together
18 after the arrests?

19 A Just briefly other than Mr. Davis 'cause he was
20 out standing with him at the patrol car.

21 Q Was he the only one with dreadlocks?

22 A Yes, sir.

23 Q All right. At that point what else did you do?

24 A At that point he was just placed in the patrol,
25 car, and he was — they were taken back to the scene

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1 of the car where Sergeant Nida and Corporal Spears
2 had stopped the vehicle.

3 Q All right. And did you do anything in regards to
4 the Nissan Altima at all?

5 A No, sir, the County was arrived at scene at that
6 time.

7 Q All right. Did you do anything in terms of the
8 searching for any evidence?

9 A No, sir, I was not involved in that.

10 Q Okay, all right. Please answer any questions.

11 I'm done. Thank you.

12 A Yes, sir.

13 THE COURT: Mr. Strobел.

14 **CROSS-EXAMINATION**

15 BY MR. STROBEL:

16 Q I'm just trying to follow the facts here. I
17 asked this gentleman earlier who was it underneath
18 the house and you telling me that it was Mr. Davis?

19 A Yes, sir, that is the gentleman that I pulled
20 from the porch.

21 Q This gentleman right here?

22 A Yes, sir.

23 Q Did he not clearly say it was not him?

24 MR. JEPERTINGER: Your Honor, that would
25 call for pitting witnesses and I would object to

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1 that.

2 THE COURT: All right, sustained. You can
3 ask him to testify to what he knows.

4 BY MR. STROBEL:

5 Q Well, let me ask you, the individual that was
6 underneath the house who apologized to the lady who
7 was upset there, did he have dreadlocks?

8 A Mr. Davis, yes, sir.

9 Q Okay. And there's no question that it was him
10 underneath the house?

11 A Not for me, no, sir.

12 Q Not to you? Okay. And who was — and who do you
13 say the other individual was that was there in the
14 weeds?

15 A I was concentrating on Mr. Davis. I was actually
16 placing him in the handcuffs. Agent Fridley was on
17 the fence line along with some other officers that
18 had arrived on scene so I was not over there with
19 him at the time.

20 Q Okay.

21 A My attention was focused on Mr. Davis.

22 Q So is there any question your mind as to who was
23 underneath the house?

24 A No, sir, not for me.

25 Q Not to you?

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1 A No, sir. Mr. Davis is the one that was moved
2 from under the house by myself.

3 Q Was anybody else with you?

4 A When I was placing Mr. Davis into handcuffs —

5 Q No, seeing him underneath the house.

6 A The other agents that arrived.

7 Q Okay.

8 A I can't contest to what they sav. but I know that
9 for a fact I'm the one that removed Mr. Davis from
10 under the porch.

11 Q Did you see him there?

12 A Agent Fridley?

13 Q Yeah.

14 A Yes, sir, he was in the vehicle with me. He was
15 in pursuit with me through the woods.

16 Q Okay. But he was there at the house looking
17 underneath the porch?

18 A No, sir, he had went to the fence line where the
19 other gentleman was.

20 Q Did he see who came from underneath the porch?

21 A I can't attest to what Mr. Fridley saw. He was
22 at the scene and he went to the fence and his
23 attentions were focused on the suspect there and I
24 removed Mr. Davis from under the porch.

25 Q So who was the other individual that was arrested

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1 and taken off?

2 A I didn't walk him to the vehicle; I only walked
3 Mr. Davis. My attentions were focused on Mr. Davis.

4 Q So you didn't see anybody else?

5 A The gentleman was placed on the ground in
6 handcuffs, and he had his back to me. I was placing
7 Mr. Davis in handcuffs at the time.

8 Q How did you place him in handcuffs?

9 A I placed his hands behind his back and put the
10 handcuffs on.

11 Q Behind his back?

12 A Yes, sir.

13 Q And whose vehicle did you put him in?

14 A He was put in Officer Lindsey Hubble's patrol
15 car.

16 Q And what — is she a deputy sheriff?

17 A She's a city police officer.

18 Q City police officer?

19 A Currently assigned to the CAT team.

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

21 A Thank you.

22 MR. JEPERTINGER: That's all, Judge.

23 Thank you.

24 THE COURT: Thank you very much, sir.

25 You may step down.

1 MR. JEPERTINGER: I ask if he can be
2 excused.

3 THE COURT: Any objection to him being
4 excused?

5 MR. STROBEL: No, sir, not at all.

6 THE COURT: Thank you. You're free to go.
7 Why don't we just take a short recess.

8 MR. JEPERTINGER: Sure.

9 THE COURT: Ladies and gentlemen, I'm
10 gonna take a short break a ask you to step back into
11 the your jury room. If you need anything let Ms.
12 Joe know. Please have no conversation about the
13 case, but we'll get started after we take this short
14 break.

15 (WHEREUPON, the jury was removed from the
16 courtroom at 4:00 p.m., and the bailiff approached
17 the Bench for an off-the-record discussion.)

18 THE COURT: Ask him to step out and come
19 right up here to the Bench.

20 (Juror 130, Eric Montgomery was returned to the
21 courtroom and approached the Bench for an
22 on-the-record discussion.)

23 THE COURT: Mr. Montgomery, come on around
24 here, sir.

25 JUROR MONTGOMERY: Good morning, Judge. I

1 know the officers. I know it's late but I didn't
2 know until I sat on the jury and realized I know
3 each one of the officers personally. About a year
4 ago I had a simple possession charge. It was
5 expunged from my record. I don't think I can be
6 objective. I know —

7 THE COURT: The experience you had because
8 of the —

9 JUROR MONTGOMERY: Because of the
10 experience I had with them.

11 THE COURT: Okay, all right. Let me do
12 this. I need to put this on the record, but I'm
13 gonna get you to step back into the jury room but
14 don't have any conversation with anybody. And then
15 I'll probably get back out and excuse you for this,
16 okay? Just don't have any —

17 Ms. Joe, get Mr. Montgomery in the other
18 side and let him just be comfortable there while I
19 put this on the record. I'm going to be excusing
20 him.

21 (Juror Montgomery was removed from the courtroom.)

22 THE COURT: Mr. Davis is back in the room.
23 I need to put a matter on the record if we would
24 please. Gentlemen, during the — when we took a
25 break, when I sent the jury out, I mean, literally

1 they went out and on the way out juror number 130,
2 juror number 130, Eric L. Montgomery, Jr., stopped
3 Ms. Joe and said I need to speak to the judge
4 immediately if I can. She relayed that to me and I
5 brought Mr. Montgomery out and had the other jurors
6 go in the jury room. So he hasn't spoken to any of
7 the jurors but what he shared with me was that at
8 the time of going through jury qualifications he
9 didn't, nothing dawned on him but as he sat here —
10 and he didn't say which officers he said. But two
11 officers were involved in him he was arrested a year
12 or so ago on a I think a possession charge or
13 something like that and the case was eventually, I
14 can't remember if he pled to it or if it was
15 expunged.

16 MR. JEPERTINGER: PTI.

17 THE COURT: I think he might have said
18 expunged. Anyway, his — he shared with me that
19 based on that experience and what he went through on
20 that experience that he could not be an impartial
21 juror in this case based on his feeling with his
22 experience regarding those officers so, and he was
23 pretty emphatic about it.

24 MR. JEPERTINGER: Good.

25 THE COURT: So I asked him, I asked him if

1 he had any conversation with any other jurors. He
2 has not. I have him sitting back over here in the
3 other side of the jury room away from the other main
4 panel. But he is basically telling the Court that
5 he cannot be fair and impartial, and he wanted me to
6 be aware of that. So with that understanding and I
7 had him share that with me with Francis present.
8 I'm inclined -- or I think I have to excuse him from
9 the panel. State have any position on it?

10 MR. JEPERTINGER: I wish he would have
11 told us sooner, but at least he's being honest now.

12 THE COURT: He was apologetic until he sat
13 here and stared and looked at everybody face to face
14 and stuff it didn't hit him about that.

15 MR. JEPERTINGER: Well, Judge, we have one
16 alternate left.

17 THE COURT: We do have an alternate.

18 MR. JEPERTINGER: We'll utilize him.

19 THE COURT: Mr. Strobel, does Defense have
20 any position on it other than I think the Court
21 needs to remove him? Now that does take us down to
22 we're down to 12, which is fine, that's what we
23 need. I just -- we'll just hope that we have no
24 more attrition and we can get, move on to the end.

25 Ms. Joe, ask Mr. Montgomery to come around

1 please.

2 THE BAILIFF: All right, sir.

3 (Juror Montgomery is returned to the courtroom.)

4 THE COURT: All right, Mr. Montgomery, I
5 shared with the attorneys what you shared with me.
6 I'm going to excuse you from any further service in
7 this case. I just reiterate for the record you had
8 no conversation with any of the other jurors
9 regarding this issue; is that correct?

10 JUROR MONTGOMERY: No, sir, I was in a
11 separate room.

12 THE COURT: Okay. But I'm going to excuse
13 you from this case, sir.

14 JUROR MONTGOMERY: Thank you.

15 (Juror Montgomery was removed from the courtroom at
16 4:10 p.m.)

17 THE COURT: Now I kind of brought that to
18 y'all's attention as we were on a break, did
19 everybody take a break? Does anyone need to use the
20 restroom or do anything, or y'all ready to start
21 back?

22 THE BAILIFF: I do, Judge.

23 THE COURT REPORTER: I didn't take a
24 break, Judge.

25 THE COURT: Oh, that's right, Frances nor

1 Ms. Joe did. So we're gonna remain at ease and
2 we'll start back in just a moment.

3 (WHEREUPON, a recess was taken from the
4 proceedings.)

5 THE COURT: Ms. Joe, please ask the jury
6 to join us.

7 (WHEREUPON, the jury was returned to the
8 courtroom at approximately 4:24 p.m., and
9 the following proceedings commenced in
10 open court.)

11 THE COURT: All right, ladies and
12 gentlemen, Ms. Boston, you have really accelerated
13 the letter of success in amazing speed here today.
14 You went from earlier today being the second
15 alternate chosen to you are now on the main panel so
16 you do not have to occupy that chair. You can — I
17 don't want to run you out of it — but you are now
18 in the main panel. Ladies and gentlemen,
19 Mr. Montgomery who was on the panel with you as
20 you're aware, notified the Court of a conflict that
21 had developed that he was not aware of initially
22 when we went through the jury process, qualification
23 process, but that had since come up. And he
24 notified me of that as y'all went out on break.
25 That's why he wasn't in there when he took our

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1 break. I've spoken with him. I understand his
2 conflict and I granted it, his request to be excused
3 and he is excused. So we're down to the twelve of
4 you as the fact finders in this case. If you recall
5 when we took the break we were still on the State's
6 case and so at this point I'll recognize Mr.
7 Jepertinger for his next witness.

8 MR. JEPERTINGER: We call Keith Lutcken to
9 the stand.

10 THE COURT: All right. Officer Lutcken,
11 if you'd come around to be sworn, sir.

12 WHEREUPON,

13 **KEITH VON LUTCKEN,**
14 having been duly sworn by the Clerk of Court,
15 testified as follows:

16 THE CLERK OF COURT: Please be seated.
17 State your full name for the record.

18 THE WITNESS: My name is Lieutenant Keith
19 Von Lutcken.

20 **DIRECT EXAMINATION**

21 BY MR. JEPERTINGER:

22 Q Lieutenant Von Lutcken, can you tell the ladies
23 and gentlemen of the jury where do you work?

24 A Yes, sir, I work for the Florence County
25 Sheriff's Office.

SW - K. LUTCKEN - DIRECT

1 Q And I believe you're running for coroner; is that
2 correct?

3 A Yes, sir.

4 Q That had nothing to do with anything. Let me ask
5 you this, what are your responsibilities with the
6 Sheriff's Department?

7 A My responsibilities for the last 23 years as I
8 head up the forensics and crime scene unit for the
9 Sheriff's Office.

10 Q Can you just as quickly as possible tell them
11 what forensic crime scenes do, part of the
12 responsibilities.

13 A Well, forensics and crime scenes are broken down
14 in two sections. Number one, the forensics aspect
15 of it, is mainly the laboratory and the office
16 setting. We also oversee the evidence room. The
17 laboratory setting was running tests and performing
18 things on particular parts of evidence that we go
19 perform analytical tests on or send off to have
20 further analytical tests. As far as the crime scene
21 processing of it, we go out, we actually are the
22 ones that go out. We document the scenes, locate
23 evidence, and collect the evidence.

24 Q All right. Is it safe to say that you were
25 marginally involved in this present case we're

SW - K. LUTCKEN - DIRECT

1 talking about today?

2 A Yes, sir, marginally.

3 Q On April 6th, 2011, tell the jury how you got
4 involved in this.

5 A On April 6th, 2011, I heard the call go out over
6 the radio to Florence County central dispatch. Any
7 units that were in that area proceeded in that
8 direction. As standard protocol one of the guys
9 that works for me, Corporal Paul Bird, was also in
10 route to the scene and I went as a backup to him and
11 also supervise the scene.

12 Q Okay. And where did you head to first, if you
13 recall?

14 A The first place I headed to was the intersection
15 of Gilliard street and National Cemetery.

16 Q All right. And who did you meet there?

17 A When I arrived on scene there were numerous city
18 of Florence police officers and investigators on the
19 scene along with Florence County Sheriff's Office
20 deputies and also we had our investigators on the
21 scene and Corporal Paul Bird was on the scene as
22 well.

23 Q Okay. And when you got there did you speak with
24 them to find out what was going on?

25 A Yes, sir, I spoke with several of the city of

SW - K. LUTCKEN - DIRECT

1 part test consists of what we refer to as stubbies.
2 They come in little vials. There's a total of two
3 — there's a total of eight of them. There's a —
4 they pertain to the back of each hand and also the
5 palm of each hand. The second part of that test
6 involves swabs with a five percent nitric acid swab.

7 Q And you did that to Mr. Davis' hands?

8 A Yes, sir.

9 Q And after you did those tests to Mr. Davis' hands
10 what did you do with the objects that you tested his
11 hands with?

12 A Okay. After testing his hands, as I said, it's a
13 two part test and the gunshot residue kit has to be
14 sent off to another lab in order for it to be
15 analyzed. The actual components of the kit were
16 sealed tin a bag and they were subsequently sent to
17 the SLED laboratory in Columbia.

18 Q I'm gonna show you State's Exhibit 36. Can you
19 identify this object, if you need to open it up.

20 A (Opens exhibit.) Yes, sir. The envelope
21 contains three GSR kits, each one from each subject.

22 Q So there's a GSR test for Thomas Edward Davis, a
23 GSR test for Tyon Evans?

24 A Correct.

25 Q And for Rasheem Thomas; is that correct?

SW - K. LUTCKEN - DIRECT

1 A Yes, sir, that's correct.

2 Q All right. And the same way you tested
3 Mr. Davis' hands is standard protocol?

4 A Yes, sir, the standard protocol for everybody.

5 Q So Mr. Bird would have done it the same way for
6 the other two; is that correct?

7 A That's correct.

8 Q All right. And then it was all sent off to SLED
9 for analysis?

10 A Yes, sir, it was.

11 Q And after you did that test and got everything
12 bagged up to send off to SLED, what did you do in
13 this case?

14 A After that, Mr. Davis was placed in the car to be
15 transported to the Detention Center located at the
16 law enforcement center in Effingham. At that time
17 myself and Corporal Bird, when he finished a series
18 of photographs and collecting further evidence we
19 proceeded to Gilbert Drive and Smith and Smith
20 Mobile Home Park where the initial incident
21 occurred.

22 Q And did you find anything of interest there that
23 sets out in your mind?

24 A No, sir, I did not. Corporal Bird, at that time
25 the scene was secured. There was a couple of

SW - K. LUTCKEN - DIRECT

1 Florence officers and they relayed to me basically
2 what you've heard in the testimony; that a bolo came
3 out over the radio, shooting had taken place off of
4 Gilbert Drive at Smith and Smith Mobile Home Park in
5 Florence. They picked up the car as it was
6 traveling into Florence. A chase ensued. After
7 that the subjects bush-bonded from the vehicle and
8 were subsequently apprehended.

9 Q All right. Do you come in contact with one of
10 the individuals in this case, one of the three that
11 fled that Nissan Altima?

12 A Yes, sir. Yes, sir, I did.

13 Q Which one did you come in contact with?

14 A The defendant Mr. Davis.

15 Q Okay. And he was under arrest at the time?

16 A Yes, sir, he was in handcuffs at a patrol car.

17 Q Okay. Now can you tell the ladies and gentlemen
18 of the jury what your purpose was in dealing with
19 him?

20 A Well, as I said, my purpose marginally was to
21 assist Corporal Bird in to supervise the scene.
22 There was a lot of activities, as you can imagine.
23 A lot of police officers were on the scene from the
24 city and from the Sheriff's Office also. Corporal
25 Bird was in the process at that time of doing what

SW - K. LUTCKEN - DIRECT

1 we refer to as a GSR. It stands for a gunshot
2 residue kit on one of the other subjects. At this
3 time I took a GSR kit and proceed to perform a test
4 on Mr. Davis' hands also.

5 Q Okay. If I were an accused and you're looking to
6 see if I had gunshot residue on my hands, what would
7 be the first thing you do, Lieutenant Von Lutcken?

8 A First thing we do is examine the hands visually.
9 You know, gunshot residue is not -- we're not able
10 to visually look at it without a microscope.

11 Q Okay. And after you would examine my hands what
12 would you do?

13 A Well, after examining the hands the subject was,
14 you know, of course would be photographed. At that
15 time we'd go ahead -- if it's gonna be some time
16 period before we arrive on the scene the hands are
17 actually bagged in paper bags to preserve any
18 evidence that may be on the hands themselves. At
19 this particular point in time since I was there at
20 the scene, everything was under control at that
21 point. I went ahead and took the GSR kit to do the
22 test on his hands for gunshot residue.

23 Q Now the kit, is it like a Q-tip or something that
24 you swab over the hands or --

25 A Well, the GSR kit is a two part test. The two

SW - K. LUTICKEN - CROSS

1 deputies on scene. They had the scene secured that
2 was taped off with crime scene tape, and Corporal
3 Bird began his process of taking photographs and
4 looking for any evidence.

5 Q And had any evidence been found, it would have
6 been given to Corporal Bird at that point?

7 A Yes, sir, that's correct.

8 Q After that what did you do?

9 A At that time I cleared the scene.

10 Q Okay. So that was it, that was your involvement?

11 A Yes, sir, that was it.

12 Q Thank you so much. Please answer any questions
13 Mr. Strobel may have for you.

14 THE COURT: Mr. Strobel.

15 **CROSS-EXAMINATION**

16 BY MR. STROBEL:

17 Q Could you tell after you checked all three of the
18 defendants' hands that either one of them, any one
19 of the three had gunshot residue?

20 A No, sir, that has to be sent off to Columbia.

21 Q So you can't see it?

22 A No, sir, you cannot, not with the naked eye. It
23 has to be examined under a microscope.

24 Q So — well tell me, gunshot residue, can you look
25 at the residue and determine from which pistol it

SW - K. LUTCKEN - CROSS

- 1 came from?
- 2 A You can match it to certain cartridges, certain
3 manufacturers of cartridges.
- 4 Q So you have —
- 5 A Not, not pistols.
- 6 Q What?
- 7 A Not the pistol. The firearm themselves don't
8 create the gunshot residue.
- 9 Q Right?
- 10 A It's the actual cartridge that is being fired
11 that creates the residue.
- 12 Q So if there's a cartridge found at the scene the
13 gunshot residue can be matched to that cartridge?
- 14 A In some cases, yes, sir, it can.
- 15 Q Was it done in this one?
- 16 A I'm not aware of it, no.
- 17 Q You were not given any information back?
- 18 A No, sir.
- 19 Q So the gunshot residue comes from the firing of
20 the shell, right?
- 21 A That is correct.
- 22 Q Bullet, whatever you want to say it was.
- 23 A That is correct.
- 24 Q And if I shoot it and say some of the residue got
25 on this desk, could I get it on my hand?

SW - K. LUTCKEN - CROSS

1 A You could.

2 Q I could?

3 A If you come in contact with it, yes.

4 Q And the only way to determine whether it came
5 from that pistol would be to have an analysis done
6 to determine if it came from a certain pistol -- I
7 mean, excuse me, I'm sorry, I keep saying pistol, I
8 meant cartridge.

9 A Now let me explain a little bit about gunshot if
10 I can, the residue itself.

11 Q Yeah, go ahead.

12 A Gunshot residue is just a very fine powder and
13 just merely a ceiling fan can blow it away. It
14 doesn't last very long. We have a very short window
15 of opportunity in which to collect it. Usually that
16 window of opportunity is about three hours, anything
17 after three hours. If the person that we're wanting
18 to test is alive, anything past three hours the
19 laboratory will not accept it. If that person is
20 deceased, well they will accept it then because that
21 person has no movement; they haven't bothered it
22 any. What happens when you actually fire the
23 weapon, once they firing pins strikes primer and
24 ignites the gun powder, that's the explosion that
25 occurs to send that projectile down the barrel

SW - K. LUTCKEN - CROSS

1 whether it's a rifle, shotgun, or a pistol. Once
2 the projectile leaves the edge of the gun, which is
3 barrel or the muzzle, once it leaves that burning
4 gas comes out of the muzzle or the end of the gun
5 and it mushrooms. Now of course, on pistols you
6 have more of a chance of getting gunshot residue on
7 you and the reason for that is because it's a
8 shorter weapon. You know, on rifles and shotguns,
9 yeah, you can get it on you but you're not as prone
10 as you are with a pistol.

11 So in this case where a pistol was
12 actually fired, we would anticipate that the person
13 that we caught it, you know, would have it on them
14 due to the short period of time.

15 Q Have you examined the pistol?

16 A Yes.

17 Q You have?

18 A Yes, sir.

19 Q And what kind of pistol was it?

20 A It was a .45.

21 Q 45? And you had .45 casings?

22 A Yes, sir.

23 Q How many?

24 A Mr. Strobel, I believe it's two. I didn't collect
25 them myself but I believe it was two.

SW - K. LUTCKEN - CROSS

1 Q Two? And when you first saw Mr. Davis where was
2 he?

3 A He was at — he was one of the police officer's
4 patrol car, the City of Florence.

5 Q And you got him out of the back of the patrol
6 car?

7 A If I remember correctly I got him out of the back
8 of the patrol car. They assisted me. He was in
9 handcuffs. His hands were behind his back and at
10 that time —

11 Q And they said it was a city police officer?

12 A Yes, sir.

13 Q Do you know what his name is?

14 A I do not, no, sir, I'm sorry.

15 Q Do you see him in the courtroom?

16 A No, sir, I don't.

17 Q That's all.

18 MR. JEPERTINGER: Nothing further, Your
19 Honor, and ask if he can be excused.

20 THE COURT: Any objection?

21 MR. STROBEL: No, sir.

22 THE COURT: Thank you very much, sir. You
23 may step down. You're free to go.

24 THE WITNESS: Thank you.

25 MR. JEPERTINGER: Your Honor, I call

SW - G. BECKETT - DIRECT

1 Officer Beckett to the stand.

2 THE COURT: Mr. Beckett, if you'd please
3 come around to be sworn, sir.

4 THE CLERK OF COURT: Raise your right
5 hand.

6 WHEREUPON,

7 **GARY BECKETT,**

8 having been duly sworn by the Clerk of Court,
9 testified as follows:

10 THE CLERK OF COURT: Please be seated.
11 State your full name for the record.

12 THE WITNESS: Gary Beckett.

13 **DIRECT EXAMINATION**

14 BY MR. JEPERTINGER:

15 Q Officer Beckett, for whom do you work?

16 A City of Florence Police Department.

17 Q What are your current responsibilities?

18 A I'm currently assigned to the special
19 investigations unit which is narcotics.

20 Q Okay. And were you doing that last April, 2011?

21 A Yeah.

22 Q Okay. And on April 6th, 2011, who were you
23 riding with, or who was riding with you?

24 A I was driving and I had Agent Fridley and Agent
25 Collins in the vehicle with me.

SW - G. BECKETT - DIRECT

1 Q Okay. And we've just all heard about the bolo
2 that you received about the Nissan Altima. Did you
3 spot in this case a Nissan Altima?

4 A Yes.

5 Q Did you turn around on it?

6 A Yes.

7 Q Okay. When you followed it was the license tag
8 matching the bolo request?

9 A Yes, it was.

10 Q Okay. And after you followed it tell the ladies
11 and gentlemen of the jury what you did.

12 A Once we began following it, a short time later
13 the vehicle picked up speed. At that point we
14 assumed that they recognized the vehicle and knew
15 who we were so once I flipped the blue lights on the
16 chase ensued at that point.

17 Q All right. And we've heard about the chain so on
18 and so forth. Can you see the three get out of the
19 vehicle?

20 A No, sir.

21 Q What did you see?

22 A Once — we got blocked off because of the chain
23 that was going across the gate.

24 Q Sure.

25 A It was too low for the truck to go up under so by

SW - G. BECKETT - DIRECT

1 that time that's when Sergeant Nida and Corporal
2 Spears picked up the chase on the other side of the
3 chain. By the time we cut back around to get on
4 Gilliard Street that's when they advised us over the
5 radio that the three subjects had exited the vehicle
6 and fled on foot.

7 Q All right. Let me ask you this, did you — what
8 did you do then, where did you go?

9 A Sergeant Nida advised us that the direction that
10 two of the suspects had begin to flee towards the
11 cemetery which would have been northbound 'cause I
12 think Corporal Spears had got one just short. short
13 distance from the vehicle.

14 Q Okay. And where did you wind up?

15 A We ended up in the back yard of a mobile home off
16 of the dirt road portion of Ervin Court.

17 Q And did — were there two individuals there that
18 were of interest to you?

19 A Yes.

20 Q Okay. And one of the individuals, did Officer
21 Collins deal with him?

22 A Yes.

23 Q Which individual was that?

24 A Mr. Davis.

25 Q Okay. And where did Officer Collins find

SW - G. BECKETT - DIRECT

1 Mr. Davis?

2 A He was under the back porch of the mobile home.

3 Q All right. And the other individual?

4 A He was out in the yard towards the fence, and
5 that's the one that Fridley was handcuffing.

6 Q And I know you may not remember names. I'm gonna
7 show you State's Exhibit 2, which is a photo of
8 Michael Tyon Evans or Tyon Michael Evans; and three,
9 Rasheem Thomas. Which one did Fridley have?

10 A Number 2.

11 Q Which would be Tyon Michael Evans; is that
12 correct?

13 A That's correct.

14 Q All right. Are you aware if Corporal Spears had
15 anybody, at that point had caught anybody?

16 A The one with cornrows, I believe his first name
17 is Rasheem.

18 Q Okay. And that's the one that Spears caught,
19 correct?

20 A Yes, sir.

21 Q All right. After all that happened did you do
22 anything in terms of evidence collection or any of
23 that other business?

24 A No, sir.

25 Q Okay. Did -- were you there when Lieutenant Von

SW - G. BECKETT - CROSS

1 Lutcken and the sheriff's deputies got there at the
2 scene?

3 A There was a lot of people out there, and I'm not
4 sure if I was there when he was on scene or not.

5 Q Okay. From both agencies, the sheriff and the
6 city police?

7 A Yes, sir.

8 Q Okay. Is that all you did basically was aid in
9 the capture of Davis and Fridley — excuse me, Davis
10 — not Fridley. Fridley needs to be captured. And
11 Evans.

12 A Yes, sir.

13 Q Is that it?

14 A That's correct.

15 Q Thank you so much.

16 THE COURT: Mr. Strobel.

17 **CROSS-EXAMINATION**

18 BY MR. STROBEL:

19 Q I heard testimony earlier and you have too since
20 you've been here, that the medallion was found in
21 the car.

22 A I had no dealings with the car so I'm not sure
23 where it would have been located, not after they
24 bailed out.

25 Q Well, Mr. Van (ph) Lutcken also talked about a

SW - G. BECKETT - CROSS

1 .45 pistol, gun, whatever you want to call it. Did
2 you not hear that neither?

3 A I heard him testify to that, but I had nothing to
4 do with the .45.

5 Q You never saw it?

6 A No, sir.

7 Q Okay. So were you there when they arrested
8 Mr. Davis?

9 A I was coming into the back yard when Agent
10 Collins was pulling him from under the porch.

11 Q Did he have a .45 with him?

12 A Not to my knowledge.

13 Q Did Officer Collins have one in his hand that he
14 got off of him?

15 A I didn't see Agent Collins with one.

16 Q Never saw one at all?

17 A No, sir.

18 Q Did you ever check the car?

19 A I didn't go back to the vehicle. After they fled
20 on foot we went to look for them. I had nothing
21 else to do with the vehicle at that point.

22 Q That's all. Thank you.

23 MR. JEPERTINGER: Thank you. Nothing
24 further, and ask if he can be excused.

25 MR. STROBEL: No objection.

SW - K. SPEARS - DIRECT

1 THE COURT: All right. Thank you very
2 much, sir. You're free to go.

3 MR. JEPERTINGER: I would call Agent
4 Kendrick Spears.

5 THE COURT: All right. Agent Spears,
6 please, if you'd come around to be sworn.

7 WHEREUPON,

8 **KENDRICK THOMAS SPEARS,**

9 having been duly sworn by the Clerk of Court,
10 testified as follows:

11 THE CLERK OF COURT: Okay. Please be
12 seated. State your full name for the record.

13 THE WITNESS: Corporal Kendrick Thomas
14 Spears.

15 **DIRECT EXAMINATION**

16 BY MR. JEPERTINGER:

17 Q Okay, Agent Spears, can you tell the ladies and
18 gentlemen of the jury where you work.

19 A For the special investigations units with the
20 City of Florence Police Department.

21 Q All right. How long have you been with
22 narcotics?

23 A Six years.

24 Q Okay. And last April 6th, 2011, what information
25 did you receive to get you involved in this case?

SW - K. SPEARS - DIRECT

1 A We received information through the radio that
2 other agents were pursuing a vehicle that was
3 involved in a armed robbery shooting at a location
4 in Florence County.

5 Q All right. And what other information did you
6 get?

7 A That it was a white vehicle, the tag information,
8 and the location the vehicle was spotted.

9 Q Okay. And at that point was there any
10 communication or shortly thereafter between you and
11 either Fridley, Collins, or Beckett?

12 A They gave the location of where they were
13 pursuing the vehicle at which was a block from where
14 myself and Sergeant Nida was located.

15 Q So when you got that information from them a
16 block from where you and Nida were located what did
17 you guys do?

18 A We saw the vehicle enter the roadway directly in
19 front of us so we activated our blue lights in
20 attempt for the vehicle to pull, to pull over for
21 the vehicle pullover, which the vehicle didn't. It
22 continued traveling south on Gilliard Street. We
23 noticed that it was three individuals in it, a
24 driver, a front passenger, and a rear passenger, and
25 as they were traveling with our blue lights

SW - K. SPEARS - DIRECT

1 activated, as they were driving in front of us we
2 noticed a door was open on the vehicle as if they
3 were gonna jump out at any time.

4 Q Did they jump out at any time?

5 A It came to a stop at a location at Gilliard and
6 National Cemetery, abandoned house where the
7 individuals fled from it.

8 Q Okay. Well let me ask you this, when they opened
9 the door did they throw anything out of there?

10 A It appeared the rear passenger was throwing
11 items, some kind of plastic like small items out of
12 the door as the vehicle was opened.

13 Q All right. And you followed the vehicle of
14 course?

15 A Yes.

16 Q And when you saw the rear passenger throwing the
17 items out, how long was it before they jumped out of
18 the vehicle?

19 A After the items were thrown they traveled maybe a
20 block or so before they jumped out.

21 Q Okay. Did you see the individuals come out of
22 the vehicle?

23 A Yes, I did.

24 Q And it was -- is 2:23 a good approximation of the
25 time it was?

SW - K. SPEARS - DIRECT

1 A Yes, it was.

2 Q Or shortly thereafter?

3 A Yes.

4 Q What were the weather conditions like?

5 A It was clear, sunny.

6 Q Okay.

7 A Nice day.

8 Q About how far were you from them when they
9 bush-bonded or jumped out of the vehicle?

10 A Pretty close to them, pretty close. From me to
11 you I would say.

12 Q All right. At that point did you have a chance
13 to observe the individuals?

14 A Yes, I did.

15 Q Okay. What was the hairstyles of the three
16 individuals if you recall?

17 A The two individuals I pursued, the rear passenger
18 individual, he had long dreads that were tied in the
19 back. The front passenger who was running with him
20 also, he was tall with cornrows, braided cornrows to
21 the back, short length.

22 Q And did they run — the guy with the cornrows and
23 the long dreads, they ran in the same direction
24 would you say?

25 A Yes. They ran east on National Cemetery with the

SW - K. SPEARS - DIRECT

1 guy with the long dreads in front of the guy with
2 the comrows which was Mr. Davis in front of
3 Mr. Thomas.

4 Q All right. And how about the driver of the
5 vehicle, do you know which way he ran?

6 A I really didn't keep sight on him. I was
7 concentrating on the two individuals on my side
8 which were the passengers of the vehicle.

9 Q Okay. And at that point what did you do?

10 A Mr. Thomas was closest, was the closest
11 individual to me so I deployed my tazer striking him
12 when he fell to the ground. At that time Mr. Davis
13 continued running, jumping a wall, which led into
14 the cemetery on National Cemetery.

15 Q Did you get on the radio and tell people what was
16 going on?

17 A Yes. Agent Nida — Sergeant Nida was nearby. He
18 radioed the direction of Mr. Davis' travels.

19 Q All right. And once you tazed Thomas did you see
20 anything out of the ordinary in terms of evidentiary
21 value?

22 A Yes. As I looked up, within maybe two to five
23 feet there was a — I could see a barrel of a
24 handgun laying in the wood line area.

25 Q And was that the direction that the guy with the

SW - K. SPEARS - DIRECT

1 long dreads was running in?

2 A Yes. Yes, it was along that wood line, in the
3 front of the side.

4 Q And as well as Rasheem Thomas, correct?

5 A Yes.

6 Q Okay. Was the gun found in front of Rasheem or
7 behind Rasheem or near Rasheem?

8 A It was near, it would have been — it would have
9 been to the left of both subjects running It was
10 located to the left of them.

11 Q And you're saying the guy with the dreads was
12 running ahead of Rasheem?

13 A He was ahead of Rasheem.

14 Q All right. And did you pick up the gun at that
15 point, or what did you do with that gun?

16 A No, I kept sight on it. I was dealing with
17 Mr. Thomas at that time so all the individuals were
18 captured. I think Sergeant Nida and Officer Powell
19 stood by the handgun until it was recovered by to
20 the sheriff's office.

21 Q All right. After you subdued, after you subdued
22 Thomas what did you do with him?

23 A He was placed in a patrol vehicle.

24 Q All right.

25 A Handcuffed and placed in a patrol vehicle.

SW - K. SPEARS - DIRECT

1 Q And you told them that you were still looking for
2 the two other individuals; is that correct?

3 A Yes, they were still.

4 Q Now I'm gonna show you what's been marked in
5 evidence as State's Exhibit 40. It has a gun lock
6 on it. Can you identify this firearm for the jury.

7 A Yes. This was the handgun that was located in
8 the wood line whereby the two subjects were seen
9 running.

10 Q And what caliber is that? Can you tell the jury?

11 A It's a .45 Highpoint caliber.

12 Q Thank you. And I think the only addition to that
13 is my office put a gun lock on that, correct?

14 A Yes.

15 Q All right. And it did not have a gun lock on
16 that at the time when you saw it; is that correct?

17 A No, it didn't.

18 Q Okay, all right. And you informed — who is
19 it — Agent Nida, that you had seen a handgun?

20 A Yes, they walked across it searching the area.

21 Q All right. Now at that point did you go to the
22 scene after Collins pulled Davis from out under that
23 mobile home —

24 A No, I was never over there.

25 Q —underpinning? Did they bring him back to your

SW - K. SPEARS - DIRECT

1 general area afterwards?

2 A Yes. Yes, they did.

3 Q Now what can you tell the jury about the person
4 that you saw running with Rasheem Thomas and the
5 individual that they brought back to you? Was it
6 the same individual, was it a —

7 A Yes.

8 Q —different individual?

9 A It was the same individual, Mr. Davis, which I
10 feel to say during the pursuit he continued looking
11 back at us so he was positively identified as
12 Mr. Davis as he was.

13 Q And approximately how close were you to him when
14 he looked, turned back and looked at you while you
15 were chasing him?

16 A We were in the vehicle? In the vehicle or on
17 foot?

18 Q Both.

19 A Both in the vehicle. We were car length behind
20 on foot. Again, I would say from me to
21 Mr. Jepertinger.

22 Q Okay, all right. And did you do anything in
23 terms of collection of evidence at all?

24 A No, I didn't.

25 Q All right. After this point since the shooting

SW - K. SPEARS - CROSS

1 took place in the county, did you basically turn the
2 individuals over to County?

3 A Yes, we did.

4 Q All right. And was this your only involvement in
5 the case?

6 A That's it.

7 Q All right. Thank you. Please answer any
8 questions counsel has for you.

9 THE COURT: Mr. Strobel.

10 **CROSS-EXAMINATION**

11 BY MR. STROBEL:

12 Q You said you stayed with the .45 till others
13 came; is that correct?

14 A Yes, sir, within close proximity of it.

15 Q Who recovered the .45?

16 A Sergeant Nida walked up to it as well as Officer
17 Powell. They were by it.

18 Q And how did Nida recover the .45?

19 A I can't recall how he recovered it but they stood
20 by with it until it was recovered.

21 Q So they didn't pick it up?

22 A I can't recall if they picked it up or someone
23 else came by and picked it up but they —

24 Q You can't remember?

25 A They took — they pretty much surrounded the gun

SW - K. SPEARS - CROSS

1 to make sure it wasn't tampered with until it was
2 recovered.

3 Q Okay, that's what I'm trying to get at. They
4 stood around and waited till it was recovered. Who
5 recovered it?

6 A I can't recall who actually picked the handgun up
7 to make it safe.

8 Q That's all.

9 A But they stood by with it.

10 Q Thank you.

11 MR. JEPERTINGER: That's all the questions
12 I have, and I ask that Corporal Spears be excused
13 from his subpoena.

14 THE COURT: Any objection? All right.
15 That's fine.

16 Let me get y'all two to step up here real
17 quick.

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

20 THE COURT: All right, you may call your
21 next witness.

22 MR. JEPERTINGER: Joe Nida to the stand,
23 William.

24 WHEREUPON,

25 WILLIAM JOSEPH NIDA,

SW - W. NYDA - DIRECT

1 having been duly sworn by the Clerk of Court,
2 testified as follows:

3 THE CLERK OF COURT: Please be seated.
4 State your full name for the record.

5 THE WITNESS: William Joseph Nida.

6 **DIRECT EXAMINATION**

7 BY MR. JEPERTINGER:

8 Q Okay. Sergeant Nida?

9 A Yes, sir.

10 Q I would ask you to tell us, I take it you work
11 with the special investigations unit and —

12 A Sergeant with the units.

13 Q —with the narcotics unit; is that correct? I
14 know we've been through basically the same testimony
15 over and over again; but just briefly, can you tell
16 the ladies and gentlemen of the jury how you got
17 involved in this case, what you saw, and what you
18 did in terms of evidence collection or dealing with
19 evidence in this case.

20 A Yes, sir. As they stated, again, that you heard
21 numerous times there was an incident in the county.
22 They gave out the vehicle description. They gave
23 out the tag. At that point we heard on the radio
24 the other agents had observed this same vehicle,
25 same white vehicle, same tag, they gave their

SW - W. NYDA - DIRECT

1 location. We started heading that way to assist
2 with the stop. They weren't stopping. We finally
3 caught up with them when they went into Irving Court
4 which is a little dirt road portion. I observed a
5 white vehicle coming across the field. I observed
6 Agent Beckett behind the vehicle following across
7 the field. I was still on Gilliard Street so we
8 were coming towards me. At that point we figured
9 they were going to have to stop at the fence, and we
10 was gonna exit the vehicle then but they didn't.
11 They actually hit the chain that was cross the
12 driveway. The vehicle went under the chain, coming
13 up our vehicle, and then they turned and continued
14 to go southbound on Gilliard Street at that point in
15 time. Our blue lights and siren was going. We
16 pulled in behind the vehicle. We could plainly see
17 that the rear passenger door was open. Mr. Davis
18 was actually hanging out the vehicle; we could see
19 him clearly.

20 We followed the vehicle up to a house at
21 the corner of Gilliard and National Cemetery. The
22 car went behind the house there. At that point the
23 back rear passenger door remained open the whole
24 time; it was always open. When it went behind the
25 house that individual bailed out; and the other two

SW - W. NYDA - DIRECT

1 individuals, the driver and passenger, front
2 passenger, their doors came open also and all three
3 of them fled on foot leaving the vehicle in gear and
4 moving across the yard. At this point I was giving
5 out the direction of travel of one individual, the
6 driver which was Evans, took a left and went over to
7 the wood line area and was starting through the
8 woods so I gave out his direction of travel. Agent
9 Spears exited our vehicle and took off on foot
10 behind the other two individuals, was Mr. Davis and
11 I think his last name Thomas. So he was chasing
12 them which would have been going eastbound on
13 National Cemetery Road.

14 I was watching the lot going on with A-1
15 over here, 2 here, and the vehicle again was still
16 in gear was headed towards National Cemetery Road.
17 The vehicle went up and hit an embankment and
18 actually stopped blocking a lane of traffic, so it
19 was stopped there. I went on down to help Agent
20 Spears. Corporal Spears had one of the individuals
21 on the ground and had — was handcuffing him. So I
22 ran down to him; he was good. And I still keeping
23 eyes on the other individual which was Mr. Davis as
24 he went over a brick wall into the cemetery, and I
25 was still giving out his direction of travel that he

SW - W. NYDA - DIRECT

1 was going to be heading northbound. He went across
2 the cemetery, across another brick wall, and went
3 into the wood line at that point.

4 I then -- once Agent Spears was fine, I
5 ran back to the vehicle. The only thing I did with
6 the vehicle was place it in park for safety
7 purposes. I did not have any other connection with
8 it other than just securing it to let the County go
9 ahead and process it to do their crime scene
10 investigation on it. Went to Agent Spears again,
11 and we noticed that there was a firearm in close
12 proximity to the individual he had there. Myself
13 and Rowell, I advised him not to touch it. We did
14 not have any contact with that firearm whatsoever to
15 let the county recover it and process it and let
16 them, again, the case originated in the County, to
17 let them process everything and gather the evidence
18 on that behalf.

19 Q All right. And at that point, and I'll show
20 you -- it's State's Exhibit 40, the handgun. Is
21 that the gun that we're talking about here?

22 A Yes, sir.

23 Q All right. Now while this is all going on I
24 would suppose that there are agents from the City
25 police and the County?

SW - W. NYDA - DIRECT

1 A Yes, sir.

2 Q About every cop in Florence County is out there,
3 correct?

4 A Everybody's coming to assist, yes, sir.

5 Q Okay. Now at that point did you come in contact
6 with any deputy sheriff from Florence County?

7 A Yes. While I'm sitting there doing the paperwork
8 on our side for violations that could be issued,
9 Deputy Neal showed up with a wallet and handed it to
10 me, and also there was a ball cap that was brought
11 to me but he brought me a wallet at this point in
12 time while I was at my truck.

13 Q Okay. And I'm going to show you State's Exhibit
14 35. If you could look at State's Exhibit — I'm
15 showing the wallet that's in there. Look at that
16 and open it up.

17 A This is the —

18 Q Is that the same wallet that Deputy Neal brought
19 to you?

20 A Yes, sir, there was an I.D. card in it. There it
21 is. And this I.D. card was in it with Mr. Henicks',
22 Johnny Henicks' I.D. was in the wallet.

23 Q All right.

24 A At that point I was confused 'cause it didn't
25 match the individuals that we had so I wasn't aware

SW - W. NYDA - DIRECT

1 of what was going on at that point.

2 Q And you weren't aware that Johnny Henicks, the
3 name of the individual that got shot?

4 A The victim, I was not aware of that. It just
5 didn't match the three individuals that we had
6 detained.

7 Q And this ball cap, also in State's Exhibit 35,
8 that was brought to you?

9 A Yes, sir, it was.

10 Q Do you remember who brought that to you?

11 A I don't remember who brought that one to me. I
12 know Deputy Neal is the one that actually had the
13 wallet, brought that to me. That was dropped by one
14 of the individuals when they fled on foot after the
15 chase.

16 Q All right. And after Deputy Neal brought those
17 items to you or that item to you, what did you do
18 then?

19 A At that point I had the items and they stayed
20 with me in the truck. And then, like I said, there
21 was numerous investigators with the Florence County
22 Sheriff's Office that were there. I don't recall
23 which one I turned those items over to, but they
24 were given to the Florence County Sheriff's Office.

25 Q Would it have been possible — now listen to me,

SW - W. NYDA - DIRECT

1 would it have been possible for you to have given
2 that wallet to Bob Drulis?

3 A Yes.

4 Q And can you tell the ladies and gentlemen of the
5 jury who Bob Drulis is?

6 A Bob Drulis at the time was our supervisor with
7 our unit who showed up on scene after the fact after
8 we had everybody detained and all the chaos and
9 everything.

10 Q Okay. So it is possible that you may have given
11 him, given him that trifold wallet; is that correct?

12 A Yes, and the ball cap. That was the only two
13 items that were given to me.

14 Q And he would — with the instructions for him to
15 turn it over to the Sheriff's Department; is that
16 correct?

17 A Yes. It was part of their case or what have you
18 or evidence if they may need to it was going to be
19 turned over to them.

20 Q And at that point once you did that, what else
21 did you do?

22 A At that point we were finished and the county
23 went on with their investigation with the other
24 incident.

25 Q Right, okay. Now just very quickly, other than

SW - W. NYDA - CROSS

1 looking at the gun, was the gun loaded at that time?

2 A Did not touch it. It appeared to be. It was
3 laying again a few feet from us, advised them not to
4 touch it so they can be collected, didn't want to
5 destroy the possible evidence but appeared it could
6 have been.

7 Q You had someone else grab it, correct?

8 A I did not. I had Powell stand by with it. I
9 went on to do paperwork stuff. I know it was there
10 for actual custodial pick up and recovery of the
11 item.

12 Q Okay, very good. Thank you. Please answer any
13 questions Mr. Strobel might have.

14 **CROSS-EXAMINATION**

15 BY MR. STROBEL:

16 Q Did Mr. Powell tell you who picked up the gun?

17 A No, sir, he did not.

18 Q Have you ever asked him to this day?

19 A No, sir, I haven't talked to him about it.

20 Q Where is Powell?

21 A I don't know his schedule, sir. He's part of the
22 CAT team, Community Action Team, so I don't know if
23 they're working or what they're doing.

24 Q You hadn't seen him here?

25 A Not here, no, sir.

1 Q You say his last name was Powell?

2 A Powell, yes, sir.

3 Q It's not Alvin Powell?

4 MR. JEPERTINGER: No, it's number 13.

5 MR. STROBEL: Thank you.

6 THE COURT: Thank you very much, sir. You
7 may step down.

8 Ladies and gentlemen, I think we're gonna
9 recess for the afternoon. I'm going to expound a
10 little bit on what I shared with you earlier.
11 Earlier when you left here — well, first of all,
12 you hadn't heard any testimony or heard from anybody
13 so you didn't know anything about the case. You've
14 learned some — or you've at least heard some
15 testimony about the case so when you leave here to
16 go home it's a little bit different than when you
17 you went to lunch because now you're about to go
18 home. You're gonna be around friends, family, loved
19 ones or whatever; and obviously they're gonna be
20 curious as to whether or not you've been selected to
21 be on a jury, and if you have, what's it all about
22 and all that stuff, and that's just understandable.
23 However, as I told you earlier, you're not to have
24 any conversation about the case. So having said
25 that, when you do encounter anyone you can let them

1 know that you have been selected and that you are
2 serving on a jury but you're gonna have to tell them
3 that that's all you can let them know. Saying
4 something as innocent as, well, it's a fellow
5 charged with attempted murder or armed robbery or
6 something of that nature, something as innocent as
7 that could possibly elicit a response that may
8 affect your ability to be fair and impartial. So
9 what you need to tell folks is, I can't tell you
10 anything about the case, all I can tell you is that
11 when the case is over I'll tell you everything that
12 you want to know about it. Because once this case
13 is done, once you've done your job and were done
14 with the case, you can then talk about the case to
15 anyone you'd like. But until that time, you're
16 gonna have to ask folks to be patient, ask them to
17 not continue to push you on questions, just be
18 patient and that you'll talk to them when it's all
19 over. Try to, if you can, get a good night's rest.
20 You can see from your experience here today that
21 jury service is not taxing from a physical
22 standpoint muscularly, but it is physically taxing
23 from a mental standpoint so please try to get a good
24 night's rest if you can when you go home in this
25 evening. I'm gonna ask you if you would, to please

1 be back in the jury room at 9:30 in the morning. So
2 keep in mind, you need to allow for travel time and
3 parking, but I'd like to get everybody back so we
4 can start at 9:30. So when you come back, just like
5 you did today, come straight up here. Someone will
6 meet you to escort you back into the jury room. And
7 as soon as we have everybody reconvened we'll get
8 started, okay? So everyone else, please remain in
9 the courtroom. Ladies and gentlemen, you are
10 excused. We'll see you at 9:30 tomorrow.

11 **(WHEREUPON, the jury was removed from the**
12 **courtroom at 5:12 p.m., and the following**
13 **proceedings commenced in open court.)**

14 THE COURT: Anything else we need to take
15 up today before we adjourn, Mr. Jepertinger?

16 MR. JEPERTINGER: No, sir.

17 THE COURT: Anything from Defense, Mr.
18 Strobel?

19 MR. STROBEL: No, sir.

20 THE COURT: We'll then reconvene at 9:30.
21 Thank you, ladies and gentlemen.

22 **(WHEREUPON, the proceedings were concluded**
23 **for the day to be reconvened on June 19th,**
24 **2012.)**

25 THE COURT: Is there anything we need to

1 take up before we get started from the State?

2 MR. JEPERTINGER: No, sir.

3 THE COURT: Anything from Defense?

4 MR. STROBEL: No, sir.

5 THE COURT: All right, Ms. Joe, if you'd
6 please ask the members of the jury to join us.

7 (WHEREUPON, the jury was returned to the
8 courtroom at approximately 9:30 a.m., and
9 the following proceedings commenced in
10 open court.)

11 THE COURT: All right. Good morning,
12 everybody. Hope everyone had a good evening. I'm
13 in a mild state of depression. The Gamecocks
14 dropped a close one last night, but we shall come to
15 the losers bracket I'm confident. So Mr. Skipper
16 thank you for your willingness to serve as the
17 foreman of the jury. I appreciate that, sir. If you
18 would occupy that seat whenever you're — the jury
19 is out here. Ladies and gentlemen, everyone else
20 sit wherever you're comfortable. You don't have to
21 sit in the seat you're in now. Feel free to just
22 flow in and out as naturally occurs. If you recall
23 when we adjourned court yesterday, Mr. Jepertinger
24 was presenting the State's case, and we are still
25 in that process so I will recognize Mr. Jepertinger

SW - J. POWELL - DIRECT

1 for his next witness.

2 MR. JEPERTINGER: Good morning, Your
3 Honor.

4 THE COURT: Good morning, sir.

5 MR. JEPERTINGER: Your Honor, the State
6 would call Officer John Powell to stand.

7 THE COURT: Officer Powell, if you'd
8 please come around to be sworn, sir.

9 THE CLERK OF COURT: Place your left hand
10 on the Bible, raise your right hand.

11 WHEREUPON,

12 **JOHN POWELL,**

13 having been duly sworn by the Clerk of Court,
14 testified as follows:

15 THE CLERK OF COURT: Please be seated,
16 state your full name for the record.

17 THE WITNESS: Corporal John Powell,
18 Florence Police Department.

19 **DIRECT EXAMINATION**

20 BY MR. JEPERTINGER:

21 Q Corporal Powell, how long have you worked for the
22 police department?

23 A I've worked for the City of Florence for the past
24 seven years.

25 Q All right. And what are your responsibilities

SW - J. POWELL - DIRECT

1 for the police department?

2 A Right now I'm currently the supervisor for the
3 Community Action Team with the city.

4 Q Okay. And how long have you been the supervisor
5 for the CAT team as they call it?

6 A The — for the last three months I have been
7 supervisor at the CAT team.

8 Q And were you with the CAT team prior to that
9 three month period?

10 A No, sir. Prior to the last three months I was on
11 patrol as a training officer for the south region.

12 Q And how long were you training officer for the
13 south region of the Florence Police Department?

14 A For the last three years.

15 Q Okay. So on April the 6th, 2011, you were
16 training officer for the south region; is that
17 correct?

18 A Yes, sir.

19 Q I take you back to April 6th of 2011. Do you
20 recall that date or any incidence on that day?

21 A Yes, sir.

22 Q Around 2:23 in the afternoon on that day could
23 you tell us where you were and what you were doing?

24 A On that date I was working patrol. I did not
25 have a trainee on that day so I was just doing

SW - J. POWELL - DIRECT

1 normal patrol activities. I was on Church Street
2 when we received a call from central dispatch that
3 there had been an incident on Gilliard Street in the
4 county. At that point that —

5 Q Would that be Gilbert Street in the county? I
6 think you said Gilliard.

7 A Yes, sir, it was Gilbert Street at the mobile
8 home park.

9 Q Okay, I'm sorry, go ahead.

10 A At that time they advised that the suspects
11 involved in that incident were — left the scene in
12 a Nissan headed towards National Cemetery Road.
13 Then turned on to National Cemetery Road in attempt
14 to locate that vehicle for the county. The —
15 several of our narcotics agents advised on the radio
16 that they had spotted the vehicle down near Jeffords
17 Street which is still out in the county, and they
18 were in unmarked unit and they advised that they
19 started to follow that vehicle. I then stopped on
20 National Cemetery waiting for them to come on into
21 the city, and then the vehicle turned north on to
22 Gilliard. At that time the narcotics units
23 activated their blue lights, I activated mine, and a
24 short pursuit then happened. We went down Irving
25 Street into a grass lot to where the white Nissan

SW - J. POWELL - DIRECT

1 drove underneath a chain which was across the
2 driveway. At that point I could no longer pursue
3 them. The chain did not break so we had to turn
4 around and go back out. Several other narcotics
5 agents were on Gilliard, picked the vehicle up,
6 turned back on National Cemetery Road, and all the
7 occupants of that vehicle then bared. As I turned
8 on National Cemetery I observed Officer Spears on
9 the side of National Cemetery road with one of the
10 subjects on the ground after he had deployed his
11 tazer. I then stopped my vehicle and assisted him
12 in apprehension of that suspect.

13 Q Okay. And were you with — was investigator, not
14 investigator, Sergeant Nida on scene as well?

15 A Yes, sir, Sergeant Nida then came up to where we
16 were at with the subject with Spears.

17 Q And did you have an opportunity to view anything
18 out of the ordinary?

19 A Yes, sir. While we were — as soon as we got the
20 subject detained and was getting him off the ground,
21 I observed a couple of feet away the edge of the
22 wood line there was a handgun laying there. At that
23 time Sergeant Nida advised just to stand by with it
24 while they took care of the other suspects and wait
25 on County to arrive.

1 Q Did County arrive?

2 A Yes, sir. Sergeant Summerset then arrived. We
3 showed him the firearm, and at that time he took
4 possession of the firearm and I was relieved of that
5 duty.

6 Q Okay. Did you do anything else in this case?

7 A No, sir, at that point I was free to go.

8 Q All right, thank you so much. Please answer any
9 questions Mr. Strobel might have.

10 A Yes, sir.

11 THE COURT: Mr. Strobel.

12 MR. STROBEL: Yes, sir.

13 **CROSS-EXAMINATION**

14 BY MR. STROBEL:

15 Q You were standing there when Sergeant Summerset
16 took possession of the weapon?

17 A Yes, sir.

18 Q And how did he do that?

19 A He took a, I believe it was his pen, stuck it
20 through the trigger guard of the firearm and
21 retrieved it and took it to crime scene.

22 Q Took it where?

23 A Took it to crime scene or wherever. Once he
24 received it with his pen and left with it, the
25 County was already on scene. At that point I

SW - J. POWELL - CROSS

1 just — I cleared 'cause I was no longer needed.

2 Q And did he put it in his car?

3 A I have no idea where he took it once he left.

4 There was a lot of deputies there. Once he
5 retrieved it with the pen and it was clear from
6 where the scene I was at, I left.

7 Q Okay. Thank you.

8 A Uh-huh.

9 MR. JEPERTINGER: Those are all the
10 questions I have, Your Honor.

11 THE COURT: Thank you very much.

12 MR. JEPERTINGER: I ask if he can be
13 excused.

14 THE COURT: Any objection?

15 MR. STROBEL: No.

16 THE COURT: You're free to go, sir. Thank
17 you.

18 MR. JEPERTINGER: We call Sergeant Grant
19 Summerset.

20 THE COURT: Sergeant Summerset, please
21 come around.

22 THE CLERK OF COURT: If you will, sir,
23 place your left hand on the Bible, raise your right
24 hand.

25 WHEREUPON,

SW - K. SUMMERSETT - DIRECT

1 happen in this case to bring you out to the National
2 Cemetery/Gilliard area of Florence County?

3 A We received a call in reference to a 1075 victim
4 or a gunshot victim, and we saw — everybody started
5 heading that way and then the city came out and said
6 that they were behind the vehicle and that they were
7 in pursuit of it. We all kind of —

8 Q Were you getting that information via radio?

9 A Yeah. And we all kind of conjoined on National
10 Cemetery, all units, city and county.

11 Q All right. And you arrived to that scene,
12 correct?

13 A That's correct.

14 Q Okay. And did you have an opportunity to either
15 see Officer Powell or Officer Nida?

16 A I did. I was told that Officer Powell was
17 standing, standing by a weapon.

18 Q Right. And what did you do when you saw Officer
19 Powell?

20 A I went over there and — so he could clear I went
21 over there and retrieved the weapon.

22 Q Now how did you — did you pick it up with your
23 hand or how did you —

24 A No, I picked it up with my pen and took it over
25 to Paul Bird, which is our forensics.

SW - K. SUMMERSETT - DIRECT

1 Q And he works crime scene?

2 A Uh-huh.

3 Q Okay. Is that a yes?

4 A Yes. Yes, sir.

5 Q And after you gave him the gun that Paul was
6 standing by, did you do anything further in this
7 case?

8 A No, sir.

9 Q All right. Thank you. Please answer questions
10 that Mr. Strobels may have for you.

11 A Okay.

12 MR. STROBEL: I have none.

13 THE COURT: All right. Thank you very
14 much, sir. You may step down.

15 MR. JEPERTINGER: Your Honor, I would like
16 to take a witness out of order.

17 THE COURT: All right, sir.

18 MR. JEPERTINGER: I would like to call
19 Agent Parnell from SLED, and I'd ask if Sergeant
20 Summerset can be excused.

21 THE COURT: Any objection? All right,
22 thank you, sir. You're free to go.

23 WHEREUPON,

24 **IRA BYRD PARNELL,**

25 having been duly sworn by the Clerk of Court,

SW - I. PARNELL - DIRECT

1 testified as follows:

2 THE CLERK OF COURT: Please be seated and
3 state your full name for the record.

4 THE WITNESS: My name is Ira Bird Parnell,
5 Jr., P-A-R-N-E-L-L.

6 **DIRECT EXAMINATION**

7 BY MR. JEPERTINGER:

8 Q Special Agent Parnell, for who do you work?

9 A I work for the South Carolina Law Enforcement
10 Division, also known as SLED.

11 Q And how long have you worked at SLED?

12 A 39 years and 6 months.

13 Q Okay. And what do you do for SLED?

14 A I'm a forensic firearms examiner assigned to the
15 main laboratory in Columbia.

16 Q And how long have you done forensic firearm
17 examination?

18 A For 38 years.

19 Q What special training do you have or have you had
20 to be a forensic firearm examiner?

21 A When I first became assigned to the firearms
22 laboratory there was no college program that you
23 could pursue that taught the discipline of firearm
24 identification so once I got my college degree from
25 the University of South Carolina, in fact, during

SW - I. PARNELL - DIRECT

1 the latter part of my college career I was also
2 working at SLED and receiving training there. I
3 underwent a three year intensive internship program
4 study with three currently qualified firearms
5 examiners. During that time I was taught how to
6 properly prepare a case, to testify, or to test
7 fire, to retrieve bullets, microscopically examine
8 those specimens and to know what to look for when I
9 was looking through a microscope actually observing
10 fired bullets or cartridge casings. After that I
11 attended the FBI National Academy in Quantico,
12 Virginia where I received training in firearms
13 identification. I attended numerous additional
14 courses offered by the FBI in firearms
15 identification. I attended our state police academy
16 where I also received firearms training, and I've
17 attended many of the courses offered by the
18 association of firearm and tool mark examiners which
19 is an international organization of firearms
20 examiners that meet once a year for a week. We call
21 that the yearly seminar. I attended as many of
22 those as the budget would allow. And since that
23 time and during that time I've testified
24 approximately 640 times as a firearm and tool mark
25 examiner in South Carolina state court, federal

SW - I. PARNELL - DIRECT

1 district court, and North Carolina state court.

2 Q And you've been qualified as an expert in
3 forensic firearm examination in each of those cases,
4 sir?

5 A I have.

6 MR. JEPERTINGER: Your Honor, at this time
7 I would move to qualify Special Agent Parnell as an
8 expert in firearm examination.

9 MR. STROBEL: No objection.

10 THE COURT: All right, without objection.

11 BY MR. JEPERTINGER:

12 Q Okay. Agent Parnell, I'm gonna show you first of
13 all State's Exhibit 40 in this case that's admitted
14 without objection. Can you identify this, these two
15 objects that are in State's Exhibit 40 and tell the
16 jury what they are.

17 A Yes, sir. The State's Exhibit 40 contains a
18 Highpoint brand firearm. It is inscribed with my
19 case number, specimen number, and initials in three
20 different areas. And the other item in State's
21 Exhibit 40 is the magazine, the clip, that would fit
22 in this State's Exhibit 40, the pistol. This is a
23 .45 caliber firearm. It holds nine unfired
24 cartridges in the magazine, and if there's one
25 included in the chamber it will hold a total of ten

SW - I. PARNELL - DIRECT

1 cartridges when it's fully loaded and I did examine
2 these items.

3 Q The only difference is there's a trigger lock on
4 there that we placed on there?

5 A Yes, sir.

6 Q All right. Now let me for the ladies and
7 gentlemen of the jury that may not be familiar with
8 firearms, to shoot a .45 caliber handgun of this
9 make and model, can you tell the ladies and
10 gentlemen of the jury how this gun is shot, what you
11 would have to do to shoot it?

12 A Yes, sir. As we stated, State's Exhibit 40 is a
13 Highpoint brand .45 caliber semiautomatic pistol.
14 Semiautomatic simply means that you must pull the
15 trigger one time to make it fire. It's not fully
16 auto. In other words, you can't hold the trigger
17 back and it fires until it's empty. You have to
18 pull the trigger each time you want to fire. Prior
19 to doing all that, at least one cartridge or unfired
20 cartridge must be introduced into the magazine or
21 manually placed into the chamber, it's this opening
22 here. The slide must be let go to go forward, and
23 the safety must be removed or taken off and the
24 trigger pulled applying a certain amount of pressure
25 to it. And if you're shooting at something, then of

SW - I. PARNELL - DIRECT

1 course the gun needs to be pointed at what you're
2 intending to shoot.

3 Q If the gun is not racked back will it fire?

4 A No, sir.

5 Q If that magazine were in that gun without it
6 being racked back and it was dropped on the ground,
7 would it accidentally go off?

8 A No, sir. In my experience with State's Exhibit
9 40 there were no mechanical defects noted. No
10 safety or malfunctioning type of defects were noted
11 so this firearm in my opinion would not fire if he
12 dropped it on the ground.

13 Q Okay. So in order to shoot a bullet you have to
14 go through basically about a four or five step
15 process. You have to put the magazine in the gun,
16 correct?

17 A Yes, sir, correct.

18 Q You have to rack the gun back, correct?

19 A Correct.

20 Q You have to make sure that the safety is off?

21 A Correct.

22 Q And it has a safety; does it not?

23 A It does. There's a manual activated safety here.

24 Q And then you have to pull the trigger; is that
25 correct?

SW - I. PARNELL - DIRECT

1 A That is correct.

2 Q All right. Now, could you talk a little bit
3 about rifling that barrel please?

4 A What we're going to get into, ladies and
5 gentlemen, with the concept of rifling is a little
6 complicated, but I'm gonna make it as simple as I
7 can. Basically rifling is a — it can be either a
8 noun or a verb. If you're talking about what's
9 inside the barrel it is rifling. You're looking at
10 rifling inside the barrel of this gun and any other
11 rifle firearm. The noun — I mean, the verb version
12 of it, is the process of rifling or causing the
13 rifling to be put inside the barrel. That's done
14 when firearms are made. The purpose of rifling,
15 which if you would look down the bore of State's
16 Exhibit 40 or any other firearm that has rifling, it
17 would appear to you vaguely to be spiraling lines.
18 In actuality what's, what you're looking at is a
19 series of narrow and most cases areas metal has been
20 proved from the original bore size of the firearm so
21 you got like little ditches inside the barrel. The
22 raised places between these ditches are called
23 lands, and they actually grip the bullet as it's
24 fired out of the barrel and they impart a spin,
25 either a right spin or a left spin, much like a

SW - I. PARNELL - DIRECT

1 right-handed quarterback or left-handed quarterback
2 will throw a football. The purpose of this spinning
3 action is to stabilize the bullet to make it go
4 straight as opposed to throwing it sideways and it
5 wobbling everywhere. The rifling grip of the bullet
6 and during the manufacturing process, this barrel
7 would have been drilled prior to being rifled.
8 Drill marks inside this barrel are totally unique
9 and random, and during that process little
10 imperfections are inside the barrel on these lands
11 and when a bullet is fired down this barrel, these
12 little imperfections mark each bullet that's fired
13 through the barrel.

14 Now the same idea applies to cartridge
15 cases that are fired out of a gun. When it's
16 manufactured a firearm has many individual areas of
17 machine, and during the machining individual and
18 unique defects are left on various areas inside the
19 gun which mark cartridge cases just like they do
20 bullets making them unique to a particular gun.

21 Q Okay. Having said that, were you given a fired
22 CCI brand .40 auto-caliber cartridge case?

23 A Yes, sir, I was.

24 Q And by the way, the bullets that were in the
25 magazine, were they also unfired CCI brand .40

SW - I. PARNELL - DIRECT

1 auto-caliber cartridges?

2 A Yes, sir, should be 45.

3 Q All right. I'm going to show you State's Exhibit
4 37. If you could open that up — and I don't have a
5 knife with me.

6 (Witness opens State's Exhibit 37.)

7 THE WITNESS: This packet is marked
8 State's exhibit 37 and it also bears my case number,
9 specimen number, and sealing mark which break the
10 seal when I put on it. Interior box has the same
11 seals. And inside State's Exhibit 37 is a fired
12 .45 caliber CCI brand cartridge case.

13 Q And once again, that is the same type of casing
14 that would be in this magazine?

15 A It's the same caliber of cartridges that would be
16 fired in State's Exhibit 40 and used in State's
17 Exhibit 40's magazine, yes, sir.

18 Q All right. Now did you have a chance to analyze
19 the rifling that we just talked about in terms of
20 lands and grooves and imperfections on that fired
21 .45 auto-caliber cartridge case?

22 A As we discussed a few minutes ago the random
23 markings that were placed, or left rather — they
24 weren't placed there, they were inadvertently left
25 there during manufacturing — of State's Exhibit 40,

SW - I. PARNELL - DIRECT

1 these individual and unique and unintentional
2 markings occur on each fired cartridge case that is
3 fired, or that I fired, in State's Exhibit 40. And
4 the way I know this is I microscopically compared
5 the test cartridge cases which I fired in State's
6 Exhibit 40 into our water tank. The water tank is
7 mainly for bullets. It slows the bullet down
8 without damaging it; and as a result of firing, the
9 fired cartridge case also goes into the water tank
10 and settles into the cup in the bottom. Once I
11 retrieve those I compared the test, which I fired in
12 State's Exhibit 40 to each other, first of all, to
13 determine whether or not State's Exhibit 40 was
14 marking each cartridge case in the same way. I did
15 determine that State's Exhibit 40 was consistently
16 marked in each cartridge case that was fired through
17 it. I then microscopically compared the markings
18 left on the primer end for the case head of State's
19 Exhibit 37, this cartridge case, compared to the
20 test that I fired through State's Exhibit 40. I
21 found sufficient individual identifying
22 characteristics for me to conclude that in my
23 opinion State's Exhibit 37, this cartridge case, was
24 fired in State's Exhibit 40, this pistol, and no
25 other pistol.

SW - I. PARNELL - DIRECT

1 Q And you've reached that conclusion to a
2 reasonable degree of your expertise and certainty,
3 correct?

4 A Yes, sir, based on my experience and training and
5 the comparisons that I conducted.

6 Q All right. Now obviously you're in Columbia,
7 correct?

8 A I am.

9 Q And you don't know where this cartridge case was
10 found. It was presented to you with the handgun and
11 this cartridge case, correct, sir?

12 A That's correct.

13 Q So you would not know where this particular item
14 37 was found?

15 A No, sir, I don't.

16 Q All right. But no question in your mind this
17 cartridge was fired from this gun?

18 A In my opinion State's Exhibit 37 was fired by
19 State's Exhibit 40.

20 Q All right. Thank you so much, Agent Parnell.
21 Please answer any questions that counsel may have
22 for you.

23 THE COURT: Mr. Strobel.

24 **CROSS-EXAMINATION**

25 BY MR. STROBEL:

SW - I. PARNELL - CROSS

1 Q You said you only examined one cartridge?

2 A Yes, sir, one fired cartridge case.

3 Q There weren't two?

4 A I only received one.

5 Q We heard testimony earlier they thought there
6 were two cartridges

7 MR. JEPERTINGER: Objection, Your Honor.

8 BY MR. STROBEL:

9 Q But you only examined one?

10 MR. JEPERTINGER: Let me state my
11 objection. There's no way that Agent Parnell would
12 know about other testimony.

13 THE COURT: All right, sustained.

14 BY MR. STROBEL:

15 Q Did you check the gunshot residue?

16 A No, sir.

17 Q You don't do any of that in your laboratory?

18 A No, sir, not in my section. There are others
19 that do that.

20 Q Okay. So you just made a determination that the
21 cartridge that was presented to you to examine was
22 fired from that .45?

23 A That's correct, yes, sir.

24 Q That's all. Thank you.

25 MR. JEPERTINGER: I have nothing further

SW - I. SIMMONS - DIRECT

1 of Agent Parnell. I would ask if he could be
2 excused.

3 THE COURT: Any objection?

4 MR. STROBEL: Oh, no, sir.

5 THE COURT: Thank you very much, sir.

6 Good to see you. You're free to go, sir.

7 THE WITNESS: Appreciate it.

8 MR. JEPERTINGER: Your Honor, at this time
9 Your Honor, I would call Special Agent Ila Simmons
10 out of order still.

11 THE COURT: Mr. Simmons, if you'd please
12 come around.

13 WHEREUPON,

14 **ILA SIMMONS,**
15 having been duly sworn by the Clerk of Court,
16 testified as follows:

17 THE CLERK OF COURT: Please be seated and
18 state your full name for the record.

19 THE WITNESS: My name is Ila Simmons.

20 **DIRECT EXAMINATION**

21 BY MR. JEPERTINGER:

22 Q Ms. Simmons, where do you work?

23 A At the South Carolina Law Enforcement Division,
24 also known as SLED, in the forensic laboratory trace
25 evidence department.

SW - I. SIMMONS - DIRECT

1 Q Okay. Briefly please tell us what trace evidence
2 is, if you could.

3 A Trace evidence encompasses several areas of
4 forensics. We analyze gunshot residue. We perform
5 comparisons on fibers, paints, and glass, as well as
6 any fire debris or arson residues that may be found
7 at a scene.

8 Q All right. And do you have any special training
9 or education that you've received to be an examiner
10 in trace evidence?

11 A Yes, sir, I received a bachelors degree in
12 chemistry. After completing that I came to work at
13 SLED. My first three years at SLED I worked with a
14 court qualified trace evidence examiner. During
15 that time I have learned how to collect and analyze
16 trace evidence. I had to take written and practical
17 examinations during that time, complete each one
18 with one hundred percent efficiency. Each year I
19 have to take a proficiency test brought into our
20 agency by an outside company and also complete it
21 with one hundred percent efficiency. I'm a member
22 of the FBI gunshot residue symposium where each year
23 the FBI invites analysts from around the world who
24 analyze gunshot residue to come and discuss the
25 standards and practices that everyone will use. I'm

SW - I. SIMMONS - DIRECT

1 also a member of the Southern Association of
2 Forensic Science, and each year I attend seminars
3 and different courses to keep any up-to-date on all
4 the new findings in trace evidence.

5 Q All right. Have you ever had to testify in court
6 before?

7 A Yes, sir, over 200 times.

8 Q Okay. And have you been qualified as an expert
9 over 200 times?

10 A Yes, sir, in state and federal court.

11 Q In trace evidence examiners?

12 A Yes.

13 Q Both in state and federal court?

14 A Yes, sir.

15 MR. JEPERTINGER: Your Honor, I would ask
16 that Ms. Simmons be qualified as an expert in the
17 analysis of trace evidence.

18 MR. STROBEL: No objection.

19 THE COURT: All right, without objection.

20 BY MR. JEPERTINGER:

21 Q Ms. Simmons, before I show you an exhibit I would
22 like to ask you to tell the ladies and gentlemen of
23 the jury a little bit about gunshot residue.

24 A Gunshot residue is a mixture of microscopic
25 chemicals that come out of a gun when it's fired.

SW - I. SIMMONS - DIRECT

1 If you watch the old western movies you'll see a big
2 puff of smoke come out of the guns when they shoot
3 them. Well, the gunshot residue is mixed in with
4 the smoke from the gun powder. It can get on
5 anything in close proximity to the gun including the
6 hands of the person holding the gun and shooting the
7 gun. It's a mixture of metals, mostly barium, lead,
8 and antimony.

9 Q So it's a mixture of those three things. Now let
10 me ask you this, how long does gunshot residue, lack
11 of a better term, remain on the hands of a shooter,
12 of a — someone that's living?

13 A The longest that we've ever seen is six hours.
14 Gunshot residue has the consistency of flour so it's
15 very light, very easily removed. It is optimum that
16 if someone is believed to have shot a gun, that a
17 gunshot residue kit can be collected immediately
18 because everything that someone does with their
19 hands, handling a towel, putting clothes on, washing
20 their hands, showering, can remove gunshot residue.
21 So up to six hours gunshot residue can be found on a
22 living person. On someone who's deceased their
23 hands are no longer making contact with things,
24 their bodies are no longer sweating, they're not
25 absorbing things through the skin, so it can remain

SW - I. SIMMONS - DIRECT

1 on a decedent's hands indefinitely.

2 Q Obviously if somebody washes their hands it's
3 gone?

4 A Yes, sir.

5 Q All right. Now a question that I have is, can
6 gunshot residue be matched to a firearm?

7 A No, sir, it cannot.

8 Q It cannot?

9 A No, sir.

10 Q Now can you explain that to the jury why that
11 cannot be done?

12 A Yes, sir. When you put a cartridge in a gun and
13 you fire it, — you heard special Agent Parnell
14 talking about that a moment ago — the gunshot
15 resident comes from a primer cap, when Federal,
16 Remington, Winchester purchase a primer cap they all
17 purchase them from the same company so primer caps
18 are all the same, the chemicals are the same. So
19 you can't compare the gunshot residue found in this
20 gun to any cartridge because they all use the same
21 type primer cap. It would be like trying to take
22 green beans out of a can and saying did it come out
23 of a Delmonte can, did it come out of a, you know, a
24 Wal-mart can because it's all the same green bean.
25 You can't compare it back.

SW - I. SIMMONS - DIRECT

1 Q Okay. Now when you receive samples from a law
2 enforcement agency for analysis, what is the process
3 that you do to determine whether there's gunshot
4 residue or not?

5 A A standardized kit is generally submitted from an
6 agency; in this case it was from Florence. And the
7 standardized kit contains two components. It
8 contains a double sided sticky tape with a handle
9 that is dabbed over the hands of whomever is
10 believed to be in the vicinity of a gun when it's
11 discharged to see if gunshot residue is present on
12 their hands. The second portion of the test would
13 be q-tips with a small amount of nitric acid. These
14 two are swabbed over the areas of the hands of
15 anyone who may be in the vicinity of the gun when
16 it's fired. They come into our lab. They're
17 brought into our federal log-in area where all
18 evidence comes in. They're assigned a lab
19 identification number. Each piece of evidence is
20 assigned an item or specimen number, and then it is
21 brought into our lock-down area where it is locked
22 up, sealed by the agency at the time it's being
23 logged in, sealed with a piece of evidence resistant
24 tape so that if someone were to mess with it or try
25 and open it it'd be clearly evident. It's then put

SW - I. SIMMONS - DIRECT

1 into a locked area until I come down and I get the
2 evidence and take it to my custody. When I take it
3 into my custody I take it back to our laboratory
4 which is upstairs, and then I process it for
5 analysis to see if any gunshot residue is present.

6 Q All right. Now in this case I'm going to show
7 you what's in evidence without objection State's
8 Exhibit 36. The package has been opened already,
9 okay, during court. Can you tell the ladies and
10 gentlemen of the jury what that is please.

11 A Yes, sir, I can. State's Exhibit 36 contains, is
12 a Manila envelope that was submitted to SLED, and it
13 contains three gunshot residue collection kits from
14 three different persons.

15 Q Okay. And can you tell us the three individuals
16 that you received kits on?

17 A Yes, sir. I received one kit from Thomas Davis.
18 I received a kit from Tyon Evans and a kit from
19 Rasheem Thomas.

20 Q All right. Based on your analysis and within a
21 reasonable degree of certainty of your expertise can
22 you tell the ladies and gentlemen of the jury what
23 results that you found when analyzing the GSR kits
24 from all three individuals and let's do it one by
25 one.

SW - I. SIMMONS - DIRECT

1 A Okay. On the kit from Thomas Edward Davis I
2 found the metals were consistent with gunshot
3 residue on the palm of the right hand and on the
4 back of the left hand.

5 Q All right. And let me ask you this before we go
6 on, when you are shooting a what I would call,
7 consider a short barrel gun, as opposed to a rifle
8 or shotgun, what is the likelihood of getting
9 residue on your hands?

10 A It is more likely to get gunshot residue on your
11 hands from shooting a handgun, a small barreled gun
12 like this, than a rifle that you would hold like
13 this because the barrel is so much farther from the
14 hands of the person shooting the gun. In a
15 situation where you have a rifle and the gunshot
16 residue is going to be coming out, most of it is
17 going to come out the muzzle of the gun. So when
18 your hands are farther away from where the gunshot
19 residue is coming out, you're gonna get less on your
20 hands.

21 Q All right. So once again, and I think you
22 testified to this, that on the right palm the
23 quantities of metal found were consistent with
24 gunshot residue on Thomas Davis' right hand?

25 A Yes, sir.

SW - I. SIMMONS - DIRECT

1 Q And the right back, you did not find the presence
2 of gunshot residue?

3 A No, sir.

4 Q But on the left palm you did not indicate the
5 presence of gunshot residue; and on the left back,
6 it could be associated with gunshot residue?

7 A Yes, sir, that's correct.

8 Q Okay. So mostly on the right hand?

9 A Yes, sir. We found it on the palm of the right
10 hand and on the back of the left hand.

11 Q All right. Now, on the GSR kit that you took
12 from Tyon Evans?

13 A On the kit that was submitted labeled Tyon Evans
14 I did not find the presence of gunshot residue. The
15 metals that I found did not indicate the presence of
16 gunshot residue on any areas of the hands.

17 Q And that would include his right palm, his right
18 back, his left palm, and his left back, correct?

19 A That's correct.

20 Q So nothing on Tyon Evans that would indicate the
21 presence of gunshot residue?

22 A That's correct.

23 Q You also did a GSR kit from a Rasheem Thomas?

24 A Yes, sir.

25 Q What did your findings indicate there?

SW - I. SIMMONS - CROSS

1 A Quantities of metals found did not indicate the
2 presence of gunshot residue on any of the areas of
3 hands from Rasheem.

4 Q And that would be right palm?

5 A Yes, sir.

6 Q Right back?

7 A Yes, sir.

8 Q Left palm?

9 A Yes, sir.

10 Q And left back?

11 A Yes, sir.

12 Q Based on your findings of the three, which one
13 indicated the presence of gunshot residue?

14 A Only the kit that was labeled Thomas Edward
15 Davis.

16 Q All right, thank you. Please answer any
17 questions that counsel may have for you.

18 THE COURT: Mr. Strobel.

19 **CROSS-EXAMINATION**

20 BY MR. STROBEL:

21 Q I just wanted to clear up a few things. I
22 realize you weren't here yesterday; but we heard
23 some testimony from our local expert Mr. Von Lutcken
24 that the gunshot residue is really not from, doesn't
25 come from the gun but from the cartridge; is that

SW - I. SIMMONS - CROSS

1 correct?

2 A Yes, sir, that's where the chemicals are stored,
3 yes, sir.

4 Q Did you make a determination by chemical analysis
5 that the gunshot residue that you found present came
6 from that cartridge?

7 A No, sir, I did not compare it to the cartridge
8 case, no, sir.

9 Q Why didn't you do that analysis 'cause he said it
10 could be done?

11 A You cannot take the gunshot residue that is found
12 and compare it back to a particular cartridge case
13 because the chemicals that are used in each
14 cartridge are so similar, and they're the exact same
15 chemicals. It's the same lead, same barium, and
16 antimony. So if I were to shoot a cartridge through
17 this gun and I was to go out and shoot a cartridge
18 from another gun, it would be the same chemicals
19 because both cartridges would have the same
20 chemicals so you can't compare the gunshot residue
21 that you would find on someone's hands from shooting
22 back to a gun or back to a specific cartridge
23 because it's the same chemicals used in those
24 cartridges.

25 Q So it could have come — the gunshot residue

SW - I. SIMMONS - REDIRECT

1 could have come from any weapon?

2 A From a discharge of any weapon, yes, sir.

3 Q Thank you.

4 THE COURT: Anything on redirect?

5 MR. JEPERTINGER: Yes.

6 **REDIRECT EXAMINATION**

7 BY MR. JEPERTINGER:

8 Q Once again, in terms of time frame that window of
9 opportunity would only last for six hours if a
10 person does nothing with his hands?

11 A Yes, sir, at the most.

12 Q At the most?

13 A Yes, sir.

14 Q Thank you so much. I appreciate it.

15 THE COURT: All right. Thank you very
16 much, ma'am. Any objection to —

17 MR. STROBEL: No.

18 THE COURT: —the agent being dismissed?
19 You're free to go, ma'am. Thank you.

20 MR. JEPERTINGER: We call Deputy William
21 Neal to the stand.

22 THE CLERK OF COURT: Place your left hand
23 on the Bible, raise your right hand.

24 WHEREUPON,

25 **WILLIAM NEAL,**

SW - W. NEAL - DIRECT

1 having been duly sworn by the Clerk of Court,
2 testified as follows:

3 THE CLERK OF COURT: Please be seated and
4 state your full name for the record.

5 THE WITNESS: William Neal, N-E-A-L.

6 **DIRECT EXAMINATION**

7 BY MR. JEPERTINGER:

8 Q Deputy Neal, how long have you worked for the
9 Sheriff's Department?

10 A Almost 16 years.

11 Q Okay. Were you on duty last April the 6th, 2011?

12 A Yes, sir.

13 Q Okay. Did you have any reason to go out to the
14 National Cemetery/Gilliard Street area?

15 A I happened to be in that area when the call came
16 out.

17 Q And can you tell the ladies and gentlemen of the
18 jury what did you do, sir?

19 A I was actually at work 'cause I work here; I'd
20 been assigned to this courtroom. But it was so
21 close I was almost at a four way stop and I — so I
22 turned right on to National Cemetery. I noticed a
23 white car that the suspect were in rolling across
24 National Cemetery and stopping just short of the
25 fence at the Pee Dee Mental Health.

SW - W. NEAL - DIRECT

1 Q All right. And then what did you do when you saw
2 that?

3 A Then I proceeded on and then stopped t here on
4 the side of the road and got out, found out that
5 they had run into the woods but they had such a jump
6 on me I wasn't, ain't no need me running in the
7 woods. So I just checked the car physically and
8 then went across the road toward the wood line.

9 Q Okay. Did you see anything out of the ordinary
10 in the car itself?

11 A No, sir. I didn't search it. I just happened to
12 look in it to see if —

13 Q Okay. And then you say you went and searched the
14 wood line?

15 A Well, I went toward the wood line where the city
16 police. Me and a couple of deputies were in the
17 woods searching for the suspects.

18 Q Did you find anything unusual, out of the
19 ordinary?

20 A Yes, sir, as I was looking around, the car
21 actually came through the yard there, you know,
22 chasing it and they bush bonded in that yard. I
23 noticed a wallet just laying on the ground.

24 Q Okay. I'm going to show you what's in evidence
25 State's Exhibit 35. That's a bag containing a black

SW - W. NEAL - DIRECT

1 hat and a wallet. I would ask you to examine this
2 wallet, sir.

3 A Yes, sir, that's the wallet I found based on the
4 I.D. card.

5 Q And the I.D. card belongs to who?

6 A Johnny Henicks.

7 Q Okay. Did you come to learn that he's the victim
8 in this case?

9 A Yes, sir, I didn't know at the time but I found
10 the city police officer Joe Nida, and he already had
11 the hat that somebody found so I said this may help
12 you out. I don't know anybody's name but it's kind
13 of strange for a wallet to just be laying right
14 there.

15 Q All right. And you gave that wallet to Joe Nida?

16 A I did.

17 Q All right. After that did you do anything else?

18 A Left. I had to be back here. I only had a lunch
19 hour break and —

20 Q Okay, thank you very much. Please answer any
21 questions that the defense lawyer would have for
22 you.

23 THE COURT: Any questions?

24 MR. STROBEL: I have none.

25 THE COURT: Thank you very much, sir. You

SW - G. PARISH - DIRECT

1 may step down.

2 MR. JEPERTINGER: And I ask that he be
3 excused so he can sit here and provide security.

4 THE COURT: Any objection to him being
5 released from his subpoena?

6 MR. STROBEL: No.

7 MR. JEPERTINGER: If it please the Court,
8 Your Honor, we would call Deputy Greg Parish. I
9 think I have him listed as Gary Parish; his first
10 name is Greg.

11 THE COURT: Please, if you'd come around
12 to be sworn, sir.

13 WHEREUPON,

14 **GREG PARISH,**
15 having been duly sworn by the Clerk of Court,
16 testified as follows:

17 THE CLERK OF COURT: Please be seated and
18 state your full name for the record.

19 THE WITNESS: Greg Parish.

20 **DIRECT EXAMINATION**

21 BY MR. JEPERTINGER:

22 Q Okay. Deputy Parish, how long have you worked
23 for the Sheriff's Department?

24 A A little over four years.

25 Q And what are your responsibilities with the

SW - G. PARISH - DIRECT

1 Sheriff's Department?

2 A I work for the patrol division.

3 Q Okay, don't get scared, pull the microphone up.

4 Keep your voice up. Now what are your duties on
5 patrol?

6 A Just answer calls that came out on a daily basis.

7 Q All right. And were you given a call to respond
8 to anywhere on April the 6th, 2011, involving this
9 case?

10 A Yes, sir. A call came out through the central
11 dispatch that shots were fired, and there was a
12 victim at Smith and Smith Mobile Home Park.

13 Q Do you recall what time you got the call to go
14 out to Smith and Smith Mobile Home Park?

15 A Yes, sir, it was at 2:19 p.m.

16 Q 2:19 p.m. Could you write 2:19 on that
17 chalkboard behind you please.

18 A Yes, sir (complies).

19 Q Thank you. So at 2:19 you got the call to go out
20 there, correct?

21 A Yes, sir.

22 Q Did you get there quickly?

23 A Yes, sir. I was at the intersection of Third
24 Loop and Irby. I wasn't too far from it.

25 Q All right. And did you come up Freedom Boulevard

SW - G. PARISH - DIRECT

1 or how did you get there?

2 A Right up Freedom Boulevard.

3 Q And did you turn left on Gilbert Street I take
4 it?

5 A Yes, sir.

6 Q Okay. And when you pulled in to Smith and Smith
7 Mobile Home Park on Gilbert Drive on April 6th, 2011
8 shortly after 2:19, what did you find?

9 A As I came in there's a large group of people. As
10 I got out of the car I saw the victim Johnny Henicks
11 laying on the ground between two trailers with a
12 bullet wound in his abdomen.

13 Q All right. And what was his -- was he conscious,
14 unconscious?

15 A He was conscious, but I asked him a few
16 questions. He was unable to answer anything.

17 Q Okay, a cell phone was going off back there.
18 Could you repeat that please?

19 A He was conscious; but upon asking some questions
20 like his name or what happened, he wasn't able to
21 answer anything like that.

22 Q All right. At that point was anybody else on
23 scene from your department, or did they get there
24 shortly?

25 A Deputy Jay Watson who is sitting back there was

SW - G. PARISH - DIRECT

1 there with me.

2 Q Okay. Did he come in a separate vehicle or did
3 y'all —

4 A Yes, sir. I was right behind him as we were in
5 route to that location.

6 Q All right. And did Sergeant Jolly Hicks get
7 there as well?

8 A Lieutenant Hicks was there a little bit after
9 once I arrived.

10 Q Okay. And what did Lieutenant Hicks do when he
11 got there?

12 A Once he got there we established the crime scene
13 by putting crime scene tape around the area where we
14 found the victim.

15 Q And is that to prevent people from coming into
16 the area —

17 A Yes, sir.

18 Q —or leaving the area?

19 A Yes, sir, to prevent from coming in and
20 destroying any evidence that was inside the area.

21 Q Okay. Now did you — you spoke with Johnny
22 Henicks?

23 A Yes, briefly waiting for EMS to arrive.

24 Q Who called EMS, do you know?

25 A They were staging in an area close by and then we

SW - G. PARISH - DIRECT

1 came in to make sure it was safe for them, and we
2 called them there.

3 Q And you don't know if someone called the
4 ambulance? What I'm asking is did someone call the
5 ambulance directly or did you ---

6 A Oh, I imagine central dispatch dispatched them
7 out once they got the gunshot call.

8 Q All right. Now at that point, Deputy Parish,
9 after you spoke with him what did you do?

10 A Once I spoke to the victim, called EMS in, and
11 once they took him out or took him to the hospital,
12 we established crime scene by putting crime scene
13 tape up. I believe at that time the -- they -- the
14 city was out with the other, the suspects, and that
15 someone came over radio and said there was a
16 semiautomatic pistol which would mean there's a
17 shell casing in the area. Once we did that we
18 located the shell casing.

19 Q Now where did you find the shell casing?

20 A Deputy Watson actually found it. There was in
21 close proximity to where the victim was laying.

22 Q Okay. Now I'm gonna show you a picture, a
23 picture which is on State's Exhibit 4-A, and ask if
24 you recognize it.

25 A Yes, sir, that's a shell casing.

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1 MR. JEPERTINGER: Now, may he stand?

2 THE COURT: Yes, sir.

3 BY MR. JEPERTINGER:

4 Q You can come around, yeah. Now you're gonna have
5 to talk up, okay. You're a big, strong fellow,
6 stand on the other side. Speak up. Now obviously
7 you didn't place the ruler there?

8 A No.

9 Q Now someone is taking these photographs and
10 putting this one like you're at the meat market,
11 this marker here. You didn't do that either?

12 A No, sir.

13 Q Now you know who would have done that?

14 A I think Corporal Paul Bird from forensics.

15 Q He's from forensics, the crime scene guy?

16 A Yes, sir.

17 Q Okay. And that shell casing was found where?

18 A In close proximity to where the victim was laying
19 when I arrived.

20 Q Now did you see any blood out there?

21 A There was a small patch of blood, but there
22 wasn't very much.

23 Q Okay. And that small patch of blood, how close
24 or far was it from that shell casing?

25 A Going from memory, I'd say anywhere from 6 to

SW - G. PARISH - DIRECT

- 1 10-feet, not quite sure.
- 2 Q And I show you State's Exhibit 5-A. Is that the
3 small patch of blood you're talking about?
- 4 A Yes, sir.
- 5 Q All right. And 5-B, is that a, the mobile home
6 —
- 7 A Yes, sir.
- 8 Q —where, outside where it happened?
- 9 A Yes, sir.
- 10 Q All right, thank you so much. Have a seat.
- 11 A (Witness complies.)
- 12 Q Now once you found that shell casing did you pick
13 it up, or did you do anything, or you just let it
14 sit there?
- 15 A I believe we put a little marker there to mark
16 its location and just let it sit there.
- 17 Q All right. And did you inform anybody about
18 having found that shell casing?
- 19 A I believe we informed the investigator and crime
20 scene Corporal Paul Bird that was there.
- 21 Q And they would have picked that particular shell
22 casing up, correct?
- 23 A Yes, sir.
- 24 Q All right. And specifically, Corporal Bird?
- 25 A Correct.

SW - G. PARISH - DIRECT

1 Q All right. Now after you did that what did you
2 do? After you saw that shell casing and the patch
3 of blood and made sure that the perimeter was
4 secured and let EMS in, what did you do?

5 A There's a large crowd of people out there. I
6 walked up to them and asked if anyone saw anything.
7 I believe three witnesses came forward and said they
8 did. I got their information, asked them a few
9 questions.

10 Q All right. And at that point did an investigator
11 come on scene?

12 A Yes, shortly after that.

13 Q All right. Did you speak with him?

14 A Yes, I informed him of the three witnesses and he
15 talked to them after I did.

16 Q All right. And then what did you do?

17 A Then I filled out a crime scene log of all the
18 sheriff office personnel that was at the location,
19 what time they arrived.

20 Q All right, anything else?

21 A That's all I can recall.

22 Q All right. Beg the Court's indulgence one
23 second. I'm gonna show you this document and see if
24 you can identify it.

25 A Yes, sir, that's the crime scene log. I filled

SW - G. PARISH - DIRECT

1 out this personally.

2 MR. JEPERTINGER: I'd like to have this
3 marked.

4 MR. STROBEL: No objection.

5 MR. JEPERTINGER: Your Honor, we move
6 without objection State's Exhibit 38 into evidence.

7 THE COURT: All right, that's State's 38,
8 crime scene log in evidence.

9 MR. JEPERTINGER: Right.

10 **(WHEREUPON, State Exhibit No. 38 was**
11 **marked for identification and admitted**
12 **into evidence.)**

13 BY MR. JEPERTINGER:

14 Q And at that time you filled this sheet out on
15 that day shortly after the events happened, correct?

16 A Yes, sir.

17 Q And the time listed for you and for Watson
18 getting there was what?

19 A 2:19 p.m.

20 Q All right. Thank you so much. Please answer any
21 questions that Mr. Strobel may have for you.

22 **CROSS-EXAMINATION**

23 BY MR. STROBEL:

24 Q You say you spoke with three witnesses at the
25 scene?

SW - G. PARIS - CROSS

1 A That's correct.

2 Q We heard testimony earlier from Mr. Garrett.

3 Were you here when he testified?

4 A Yes, sir.

5 Q And you filed a report; did you not?

6 A That's correct.

7 Q Do you have a copy of that?

8 A Right here.

9 Q Okay. And what did he say the culprit was
10 wearing?

11 A Are you referring to Mr. Garrett?

12 Q Yes, Mr. Garrett.

13 A According to what he said to me that day, he said
14 he was wearing black pants and a white T-shirt.

15 Q A white T-shirt?

16 A Correct.

17 Q You later spoke with a Mr. Rush; is that correct?

18 A That's correct.

19 MR. JEPERTINGER: Your Honor, if he's
20 gonna ask about Mr. Rush that would be rank hearsay,
21 what Mr. Rush would have told him.

22 THE COURT: Well, if he gets there. He
23 just wanted to know did he speak to a Mr. Rush so
24 I'll allow that question, and we'll see where we go
25 from there.

SW - G. PARIS - CROSS

1 BY MR. STROBEL:

2 Q Did Mr. Rush likewise give you a description?

3 A That's correct.

4 Q As to what he was wearing?

5 A Right.

6 Q And you later spoke with Keshia Godbolt?

7 A Yes, sir.

8 Q Did she also tell you as to how many gunshots
9 were fired?

10 MR. JEPERTINGER: That would be hearsay,
11 Your Honor.

12 MR. STROBEL: I didn't say how many.

13 MR. JEPERTINGER: You said tell them.

14 THE COURT: That would be hearsay.

15 Sustained.

16 (Attorneys confer.)

17 MR. STROBEL: That's all. Thank you.

18 THE COURT: Anything further of this
19 witness?

20 MR. JEPERTINGER: No, sir, and ask if he
21 can be excused.

22 THE COURT: Any objection?

23 MR. STROBEL: No, sir.

24 THE COURT: You're free to go, sir. Thank
25 you.

SW - J. WATSON - DIRECT

1 MR. JEPERTINGER: I would call Jay Watson
2 to the stand.

3 WHEREUPON,

4 JEFFEREY GREG WATSON, SR.,

5 having been duly sworn by the Clerk of Court,

6 testified as follows:

7 THE CLERK OF COURT: Please be seated,
8 state your full name for the record.

9 THE WITNESS: Jefferey Greg Watson,
10 Senior.

11 **DIRECT EXAMINATION**

12 BY MR. JEPERTINGER:

13 Q Deputy Watson, how long have you worked for the
14 Sheriff's Department?

15 A Sixteen years.

16 Q Okay. And what are your responsibilities?

17 A Criminal assigned to patrol division, same as
18 Deputy Parish. At the time of the incident I was
19 assigned to warrants division.

20 Q Okay. And without having to go into basically
21 what the warrants division does and it's different
22 than patrol?

23 A Yes, it is. The warrants division gets
24 outstanding warrants and we go looking for them,
25 pick them up, take them to jail.

SW - J. WATSON - DIRECT

1 Q All right. Now since you were not on patrol back
2 on April 6th, 2011, how in the world did you wind up
3 at Gilbert Drive?

4 A I was on Freedom Boulevard in front of Lowes when
5 the call went out.

6 Q Where were you?

7 A In front of Lowes on Freedom Boulevard.

8 Q Okay. Approximately how far is that from Smith
9 and Smith Mobile Home Park?

10 A A mile-and-a-half.

11 Q All right. When you got to the scene what did
12 you find?

13 A I got hung up at the light, and Deputy Parish
14 caught up with me from his, you know, when he
15 answered the call so we both entered the trailer
16 park at the same time, both parked. I noticed the
17 same crowd of people around the victim laying on the
18 ground. We both went up there and saw the victim.
19 I instructed Deputy Parish to handle the victim, and
20 I'd start securing the area and removing people that
21 were not pertinent to the situation. In upon doing
22 that I turned the corner of the trailer away from
23 the victim and noticed the casing laying on the
24 ground. And at that time I notified Deputy Parish
25 that we did have a casing; and I marked the ground,

SW - J. WATSON - DIRECT

1 marked the area where the casing was.

2 Q All right. Then what did you do?

3 A Lieutenant Hicks arrived shortly after that. I
4 informed him of what we had, of the casing. I then
5 helped Deputy Hicks — Lieutenant Hicks secure the
6 crime scene, the crime scene tape, and continued to
7 assist him until he relieved me and I went back to
8 my other detail on the warrant division.

9 Q All right. Thank you very much. Please answer
10 any questions Mr. Strobel may have for you.

11 MR. STROBEL: None.

12 THE COURT: All right. Thank you very
13 much, sir. You may step down. Any objection to his
14 being excused?

15 MR. STROBEL: No, sir.

16 THE COURT: You're free to go, sir. Thank
17 you.

18 MR. JEPERTINGER: Your Honor, I would call
19 Corporal Paul Bird to the stand.

20 THE COURT: Corporal Bird, if you'd please
21 come around to be sworn, sir.

22 WHEREUPON,

23 **PAUL BIRD,**
24 having been duly sworn by the Clerk of Court,
25 testified as follows:

SW - P. BIRD - DIRECT

1 THE CLERK OF COURT: Please be seated and
2 state your full name for the record.

3 THE WITNESS: Paul Bird, B-I-R-D.

4 **DIRECT EXAMINATION**

5 BY MR. JEPERTINGER:

6 Q Corporal Bird, can you tell us who you work for?

7 A I'm employed with the Florence County Sheriff's
8 Office.

9 Q How long have you been employed with the Florence
10 County Sheriff's Office?

11 A Approximately ten years.

12 Q And what are your duties at the Florence County
13 Sheriff's Office?

14 A I presently work with the crime scene unit. I
15 respond to major crime scenes followed by deputies,
16 investigators to process anything from burglaries to
17 car thefts to shooting and homicides.

18 Q Would it be safe to say that you'd be our CSI guy
19 in the county?

20 A That would be safe to say, yes.

21 Q Okay, all right. Now how long have you worked
22 for crime scene investigation or forensics?

23 A Approximately eight years in crime scene.

24 Q All right. I take it you were on duty on
25 April 6th, 2011?

SW - P. BIRD - DIRECT

1 A Yes, sir.

2 Q Okay. Did you receive any calls to go out to any
3 particular areas after 2:19 on April 6th, 2011?

4 A Yes, sir, I did. I actually responded to the
5 call. I heard it come out on the radio that there
6 was a shooting incident off of Gilbert Drive.

7 Q That's Florence County, correct?

8 A Yes, sir. And that's where Smith and Smith
9 Mobile Home Park, where the incident took place, and
10 I think the actual address is Gilbert Drive. I
11 wasn't too far away from it so I notified the
12 dispatch that I would be in route. While I was in
13 route to that particular scene I also heard over the
14 radio that Florence City police officers, how far
15 out three suspects National Cemetery Road which is
16 right near the National Cemetery, in that particular
17 area. I advised dispatch that I would be in route
18 to that particular scene, first being; that it's a
19 high traffic area I felt like I needed to process it
20 before I did the other.

21 Q Okay. When you talk about processing a crime
22 scene what does that consist of, what does that
23 entail?

24 A Well, it can entail a lot of things depending on
25 a particular scene; but on all scenes, of course,

SW - P. BIRD - DIRECT

1 generally the first thing you always do is take
2 photographs. After taking photographs and while
3 taking photographs you observe your surroundings and
4 try to locate any type of physical or trace evidence
5 that you can possibly collect for the scene.

6 Q Did you do that processing here at the Gilbert
7 Drive scene?

8 A I did.

9 Q Okay. Now after you took photographs at the
10 Gilbert Drive scene — and I'm just gonna deal with
11 the photographs at this point, did you take
12 photographs at any other location on that date?

13 A I did. Like I said, I first responded to the
14 area on National Cemetery Road. I rode where
15 Florence City was out with some suspects and there
16 was a vehicle involved with that and I stopped there
17 first and photographed the area where I was advised
18 the suspects had jumped from the vehicle. And the
19 vehicle remained in motion and crossed National
20 Cemetery Road and came to rest in an embankment, and
21 I stopped and photographed that as well.

22 Q So both locations you went to, correct?

23 A Yes, sir.

24 Q All right.

25 MR. JEPERTINGER: Now may he get off the

SW - P. BIRD - DIRECT

1 stand, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. JEPERTINGER:

4 Q We're just going to go over a series of
5 photographs that you took.

6 A All right.

7 THE COURT: Just please keep your voices
8 up so the court reporter can hear.

9 BY MR. JEPERTINGER:

10 Q Yes, please. I'm gonna have you stand over there
11 so you can talk loud, that way.

12 A Okay.

13 Q All right. I'm gonna show you State's Exhibit
14 4-A and 4-B. Can you tell us what those objects
15 are.

16 A Exhibit 4-A would be the photograph with the
17 marker number 1 that I used, as well as a scale to
18 the shell casing found off of Gilbert Drive.

19 Q Who gave you that shell casing?

20 A No one gave me the shell casing. It was on the
21 ground when I arrived.

22 Q Who pointed it out to you?

23 A One of the investigators or deputies on scene.
24 I'm not certain because I have several people out
25 there.

SW - P. BIRD - DIRECT

1 Q All right. And 4-B?

2 A 4-B is another area in the grassy area at the —
3 off of Gilbert Drive and appeared to be some blood
4 stain in the grass.

5 Q 5-A.

6 A 5-A once again appeared to be some blood stains
7 in the grass with ants.

8 Q 5-B?

9 A 5-B is the mobile home that — there were two
10 mobile homes. One was closest to the roadway or
11 drive that went around the back of Gilbert Drive of
12 the mobile home park. And then the area that I'm
13 photographing where the possible blood or and the
14 shell casing was actually between these two mobile
15 homes so.

16 Q 6-A and 6-B?

17 A 6-A is the photograph of a camera mounted up on
18 one of the mobile homes pointed at the doorway.

19 Q Did you try to see what was on that camera or try
20 to —

21 A It wasn't operating from my understanding.

22 Q All right. 6-B?

23 A Just a further off shot of the same camera under
24 the mobile home.

25 Q All right. 7-A and -B?

SW - P. BIRD - DIRECT

1 A 7-A is a photograph of the gold medallion located
2 in the front passenger floorboard of the Nissan
3 Altima. And 7-B is just a closer-up shot of that
4 particular medallion.

5 Q 8-A?

6 A Once again, a close-up shot of the gold
7 medallion.

8 Q All right. And that medallion we're talking about
9 is that medallion that is in evidence, correct?

10 A It is in evidence, yes.

11 Q All right. 9-A and 9-B?

12 A 9-A is a side photograph of the white Nissan
13 Altima, and 9-B would be a rear shot with a tag
14 number.

15 Q Okay. And is that photo taken at the scene or at
16 your impound lot?

17 A These were taken at the impound lot. I didn't
18 put — actually process the car at the scene. I had
19 it towed and put into impound to process it at a
20 later time.

21 Q 11-A and —B, the same thing?

22 A Yes, sir. 11-A is a front shot of the Nissan
23 Altima at the impound, and 11-B is of the driver's
24 door open.

25 Q 12?

SW - P. BIRD - DIRECT

1 A 12 is the photograph of the door open on the
2 front passenger side.

3 Q Let's skip ahead a little bit here. I'm gonna —
4 14-A and 14-B.

5 A 14-A is a photograph of the vehicle where it came
6 to rest across the road on National Cemetery, the
7 first scene I responded to, and 14-B as well from
8 the left-hand side.

9 Q And did you see that medallion in the front
10 passenger seat at that scene?

11 A I don't recall seeing it. Like I said, I did not
12 process the car at the scene. I basically just
13 secured the vehicle and had it towed and impounded.

14 Q Okay, 15-A and -B?

15 A 15-A is a photograph of a jacket hanging out of
16 the door on the left-hand side. This is at the
17 scene on National Cemetery of the white Altima, and
18 also some type of bag or piece of clothing there.

19 Q On both photos, correct?

20 A Yeah, of -B is just a closeup shot of the jacket
21 hanging out of the door.

22 Q 19-A and -B?

23 A 19-A was a photograph of some mail found inside
24 the vehicle with a name and address on it and —

25 Q Of — who is the name on it?

SW - P. BIRD - DIRECT

1 A The name is Latisha Elizabeth Thomas.

2 Q All right. And 19-B?

3 A 19-B is a — I'm standing on the opposite side or
4 the side where the actual vehicle came to rest. I'm
5 taking a photograph of the yard area where I was
6 advised that the suspect was actually bailed out of
7 the vehicle.

8 Q 20-A and -B?

9 A 20-A will be the — once again, I'm standing on
10 the side where the vehicle came to rest, taking some
11 shots back towards a wooded area where I was advised
12 that the suspects ran into. And -B is the same shot
13 but happened to get some power guys in there having
14 nothing to do with the crime scene.

15 Q We'll skip to 21-B.

16 A 21-B, I'm just moving in a little closer as I go
17 to the scene area. This is the area that I was
18 advised that the pursuit was taking place at and
19 that the suspect actually jumped out of the vehicle.
20 There appeared to be an abandoned house to me. It
21 was in a yard.

22 Q 23-A and -B?

23 A 23-A, once again, this is behind the — I'm gonna
24 go with abandoned house; I'm not hundred percent
25 certain on that. But this is behind the house where

SW - P. BIRD - DIRECT

1 the vehicle circled around, and this is the corner
2 of the house on -B here, and the vehicle actually
3 came around and I was trying to get a shot at the
4 tire impressions in the grass.

5 Q 24-A and 24-B?

6 A 24-A is, once again, tire impressions in the
7 grass behind the house; and -B is another angle of
8 the yard shooting across to show where the vehicle
9 came to rest at.

10 Q 26-A and 26-B?

11 A 26-A is the left-hand side of the house off
12 National Cemetery where I was advised the vehicle
13 made entry into that property, and 26-B is a shot
14 out at the crime scene on Gilbert Drive actually
15 between the two mobile homes.

16 Q I show you 30-A and 30-B.

17 A 30-A is, once again, this is -- I'm taking the
18 shot of the actual scene before I actually enter the
19 barricaded area which is barricaded with crime scene
20 tape, and -B is another angle from that same type of
21 shot.

22 Q Thank you very much. You can have a seat.

23 A (Witness complies.)

24 Q Okay. Officer, we went through all the
25 photographs and I'm sorry for belaboring you with

SW - P. BIRD - DIRECT

1 that officer, and I apologize to the jury as well,
2 Your Honor. However, after you took all those
3 photographs that we went through, that's not all you
4 did, correct? I mean, there was — when you
5 processed the vehicle, when you processed the crime
6 scene tell us a little bit about the shell casing.
7 A Okay. The shell casing was actually located by a
8 deputy. It was pointed out to me within the crime
9 scene off of Gilbert Drive. When I say within the
10 crime scene I mean within the roped off area so to
11 speak with the crime scene tape. The shell casing
12 was on the ground toward the corner of the mobile
13 home. I removed the markings that they used.
14 Sometimes they'll scratch the dirt a little bit
15 beside it or put a business card down or something
16 of that nature. I removed that and put my own
17 markers down which would have numbers on them and we
18 always use a scale so we can get an idea of the size
19 of things that sometimes it's misleading in a
20 photograph. And I did locate the shell casing. It
21 was a one .45 caliber OCI shell casing that was
22 spent meaning it had already been fired. That's the
23 only one that was located on the scene and I did
24 collect it.
25 Q There were — I know Officer Lutcken may have

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1 testified about two, but was there only one that you
2 found?

3 A I only found one shell casing that was spent,
4 yes.

5 Q I'm gonna show you State's Exhibit 37. Can you
6 identify that please.

7 A This is the shell casing that was collected off
8 of Gilbert Drive. It has -- it's in the box I
9 placed it in with my writing and my markings where I
10 got it sealed.

11 Q All right. Now approximately how far is Gilbert
12 Drive from National Cemetery area of all those
13 photographs you were taking?

14 A I would say approximately a mile.

15 Q All right. Now after you found that or saw that
16 shell casing and retrieved it and you boxed it, what
17 else did you do at Gilbert Drive?

18 A That's all that was done at Gilbert Drive. Like
19 I said, it was in a yard way and the grass, wasn't a
20 whole lot to that particular scene. Sometimes there
21 is; sometimes there isn't. I collected the shell
22 casing after taking the photographs and the scene.

23 Q Now let's go to National Cemetery area, okay?
24 Did you have an occasion to receive a weapon from
25 anybody there?

SW - P. BIRD - DIRECT

1 A I did. Initially when I arrived on the scene on
2 National Cemetery the first thing we want to try to
3 do any time that we have any type of report of any
4 shots fired or a shooting incident, we try to
5 determine who was on the scene at the time of the
6 shooting and then we want to do the GSR or gunshot
7 residue kits on the people that were present. And I
8 was advised when I arrived on National Cemetery that
9 there were three suspects that had been apprehended
10 by Florence City Police. They were each in
11 individual separate police cars. I asked for each
12 one of them one at a time to perform gunshot residue
13 on them because we do have a time frame that we need
14 to -- it's a very delicate test that's very easy to
15 destroy the gunshot residue so we try to do that as
16 soon as possible. And after, while performing the
17 gunshot residue kits Sergeant Summersett with the
18 Sheriff's Office approached me with a handgun where
19 he actually had it with a pen through the trigger
20 guard holding it upside down and presented it to me,
21 or I took possession of it.

22 Q Did you list the serial number of the gun that he
23 gave you?

24 A List it or -- I'm sorry?

25 Q Did you write it down anywhere?

SW - P. BIRD - DIRECT

1 A Yes.

2 Q The serial number?

3 A Yes.

4 Q Could you tell the ladies — what number you
5 wrote down and what serial number he gave you.

6 A The serial number was X, as in x-ray, 4138137.

7 Q That was the gun that Summersett gave you,
8 correct?

9 A That's correct.

10 Q Could you look at State's Exhibit 40 and read off
11 the serial number on that gun please.

12 A X, as in x-ray, 4138137.

13 Q Is that the same serial number you just read off
14 on your report?

15 A It is.

16 Q All right. Now what did you — what did you do
17 with that gun once you got it?

18 A The first thing I did with the weapon was clear
19 it, secure it, make sure that it was safe. As I did
20 so I found one live CCI .45 round bullet in the
21 chamber, as well as seven more were also in the
22 magazine.

23 Q Now I think we just heard from Special Agent
24 Parnell that these magazines carry nine bullets,
25 correct?

SW - P. BIRD - DIRECT

1 A He did testify to that, yes.

2 Q Okay. So you found one live round in the
3 chamber, correct?

4 A Correct.

5 Q You had seven in the magazine?

6 A Correct.

7 Q Okay, all right. At that point after you
8 collected the gun what did you do then? Not with
9 the weapon, I mean after, what was the next process
10 that you did? Did you do the GSR test or what did
11 you do?

12 A I did — I continued after — excuse me. After
13 receiving the weapon and clearing it, I secured it
14 in my vehicle, then I continued to perform the GSR
15 on the next suspect.

16 Q Okay. Now you didn't do the GSR test on all
17 three individuals, correct?

18 A Correct.

19 Q In fact, you only did it on two individuals; is
20 that right?

21 A That's correct.

22 Q Now which two individuals did you do it on?

23 A Mr. Thomas and a Mr. Evans.

24 Q And did you do those tests per your standard
25 protocol that Officer Von Lutcken testified to about

SW - P. BIRD - DIRECT

1 yesterday?

2 A I did.

3 Q All right. And once you received those, and I'm
4 gonna show you State's -- strike that. I'm gonna
5 show you State's Exhibit 36. Okay, can you -- can
6 you identify the two kits that you did?

7 A Yes, I can. It would be Mr. Evans and
8 Mr. Thomas.

9 Q How do you know those are the kits you did?

10 A Well, I know it's my handwriting as well, but we
11 also have to sign on chain of custody on the front.

12 Q And did you do that?

13 A I did.

14 Q All right. Okay, thank you. And all the objects
15 in State's Exhibit 36 were collected and sent to
16 SLED?

17 A That's correct.

18 Q And tested by Ms. Simmons, correct?

19 A Correct.

20 Q All right. Now after you did the GSR kit after
21 you collected the weapon and cleared it, what did
22 you do then?

23 A At that point just before I left the scene I
24 actually received from Investigator Powell with the
25 Sheriff's Office a black in color ball cap with an A

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1 on the front, as well as a tri-fold wallet. It also
2 had the IDs in it from Mr. Johnny Henicks, as well
3 as Visa debit card and also three stolen discover
4 discount cards.

5 Q I'm gonna show you State's Exhibit 35. Are those
6 the items that you received?

7 A Yes, it is.

8 Q All right. And what did you do with those
9 objects?

10 A I secured them in that particular package, placed
11 them in my vehicle before I cleared the scene.

12 Q And after you cleared the scene and they were
13 secured in your vehicle, what did you do with them
14 then?

15 A Well, when I left the scene on National Cemetery
16 that's when I actually responded to Gilbert Drive.
17 After completing the scene on Gilbert Drive that's
18 when I transported all the evidence back to the
19 Sheriff's Office and secured it in the evidence
20 room.

21 Q So you went to National Cemetery first. Correct?

22 A Correct.

23 Q And then you went to Gilbert?

24 A Then I went to Gilbert.

25 Q Okay, got you. All right. And you put them in

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1 evidence at the Sheriff's Department, correct.?

2 A Correct.

3 Q And they've been there since yesterday's trial
4 starting, right?

5 A With the exception of items that were sent to
6 SLED, yes.

7 Q Okay. Now after you left Gilbert Drive did you
8 make any provision to have the car towed as you were
9 talking about?

10 A Well, I did, yes, that's before I actually left
11 National Cemetery Road I'd already radioed dispatch
12 to send the next wrecker on rotation to impound the
13 vehicle where I could actually process it at a later
14 time. It was a high traffic area; school was
15 letting out. It was an area that I just didn't feel
16 comfortable with trying to process a vehicle at, and
17 I also had another scene to respond to.

18 Q All right. And did a wrecker take it out to your
19 impound lot in Effingham?

20 A Yes.

21 Q Okay. Did you have a chance to process that
22 vehicle?

23 A I did. I processed the vehicle. This will be on
24 the 7th which will be the next day. I did it the
25 following morning. At approximately 9:00 in the

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1 morning I did respond to the impound. I
2 photographed the vehicle once more, and that's at
3 the time that I started looking for any type of
4 weapon or guns or anything of that nature that may
5 be of evidentiary value to us. That's when I
6 located the gold medallion that was in the
7 floorboard in the right front passenger.

8 Q All right. And that's — is that the object
9 State's Exhibit 34?

10 A Yes, it is.

11 Q All right. Did you find anything else while you
12 were processing that vehicle?

13 A Nothing more that I could find related to the
14 scene. There were clothing, child seat, things of
15 that nature. I wasn't able to access the trunk. It
16 was — the trunk release was broken, and I had a
17 valid key to it. At this time I was not able to
18 gain access there.

19 Q All right. I'm gonna show you State's Exhibit
20 39. Can you tell us what significance that has
21 there?

22 A Yes. These would be the projectiles of the
23 bullets that were actually removed from the magazine
24 of the .45.

25 Q All right. One of them would have been in the

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1 chamber as well, correct?

2 A Yes, there was one in chamber and seven in the
3 magazine.

4 Q So how many bullets are there in State's Exhibit
5 39?

6 A There are eight bullets.

7 Q What other processing of the vehicle did you do.

8 A That was all the processing done.

9 Q Okay. Was there any reason that you would have
10 or would not have taken fingerprints?

11 A At this particular case there was witnessed
12 several officers of the suspects jumping out of the
13 moving vehicle at the time. At that point there was
14 no reason to try to prove that they were or were not
15 within the vehicle since I had eyewitness accounts
16 on that.

17 Q All right. In terms of the handgun, is there any
18 reason why you thought you should not fingerprint
19 this grip?

20 A There is the — this — a lot of times these are
21 called like a pachmayr type grip. It's actually a
22 rubber finger groove stud or sleeve that slides up
23 over the magazine and it's a texture type finish.
24 This type of material does not do well for
25 developing latent prints. It's pretty much

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1 impossible.

2 Q Is that why you would have ordered a gunshot
3 residue test?

4 A Well, we always do a gunshot residue test on any
5 suspects that are present at any type of shooting
6 scene. That would have standard procedure, period.
7 As far as these particular guns, the Highpoint, it
8 is in my experience very difficult if not impossible
9 to get any type of latents because of the type of
10 material that it is. It's a type of texture type
11 material; it's not smooth.

12 Q All right. And that was your reason for not
13 conducting the test?

14 A That's correct.

15 Q All right. Now what else did you do after you
16 processed the vehicle and found what you found?

17 A After all the processing was done I did actually
18 notify Investigator Powell of finding the gold
19 medallion in the vehicle, and he had received
20 information I believe that it actually belonged to
21 the victim in this particular case. Aside from
22 sending off the firearm the — and the GSR kits to
23 SLED for analysis, that was pretty much the
24 conclusion of this case.

25 Q Thank you. Please answer questions counsel may

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1 have for you.

2 THE COURT: Mr. Strobel.

3 MR. STROBEL: Yes, sir.

4 **CROSS-EXAMINATION**

5 BY MR. STROBEL:

6 Q You said that the reason you didn't do any
7 fingerprints on the vehicle in that federal agents
8 had seen them get out of the car?

9 A Federal agents? I don't believe I said that.

10 Q What did you say?

11 A There were police officers behind the vehicle at
12 the time, and they witnessed the vehicle — the
13 suspects jumping from the vehicle during their
14 pursuit and apprehended them. At this point I
15 didn't feel like there was anything to prove with
16 the print, trying to fingerprint at that point.

17 Q Well, who was driving?

18 A I don't know.

19 Q Well, that person took everybody on a wild ride
20 through here and then it looks like to me the driver
21 of that car committed some crimes, did he not, with
22 his driving alone?

23 A I couldn't witness that, I wouldn't know.

24 Q Well, you heard about it; did you not?

25 A Somewhat, they were in that chase, yes.

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1 Q And it doesn't matter to the police department or
2 Sheriff's Department as to who was driving?

3 A Well, at that point that would be a Florence city
4 case as far as the traffic violations go; and if
5 they had anything they needed to do with that, that
6 would be something that they would take care of.

7 Q Oh, so you let the car that you had pulled in,
8 you turned that over to the city?

9 A Negative. We took possession of the vehicle.

10 Q Okay.

11 A Okay? I was there in response to the shooting
12 incident.

13 Q Okay. Can you pick up that pistol again please,
14 that's right there to your left.

15 A (Complies.)

16 Q The magazine that's put in the bottom, can you
17 take that out? Oh, I'm sorry, I thought it was with
18 the pistol.

19 A There it is.

20 Q Okay. Would you hold that up please?

21 A (Complies.)

22 Q Now that special rubber covering that was on the
23 handle of the pistol, you said it's made in such a
24 way that you can't get fingerprints?

25 A Correct.

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1 Q Is the magazine made the same way?

2 A No, the magazine is a type of a — I don't know
3 how to explain it.

4 Q Let's explain it. Could you have gotten
5 fingerprints off of that?

6 A It's possible to get —

7 Q Why didn't you do that it?

8 A Well, there weren't any on it.

9 Q How do you know?

10 A Because I examined it, sir.

11 Q You what?

12 A I examined it, sir.

13 Q Okay?

14 A Any firearm that I get in, you can actually see
15 the fingerprint on one whether or not you have one
16 to actually lift. When it's on this type of metal
17 you can see it.

18 Q Do you have a report saying that's been examined
19 and that there were no fingerprints? On the
20 magazine?

21 A I don't have that listed in my report.

22 Q So are we led to believe that the individual who
23 loaded the pistol was wearing gloves?

24 A Well, it's possible. A fingerprint is very
25 fragile. It doesn't take much to destroy one. You

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1 can just brush against it and it's gone.

2 Q I see.

3 A It's a hit and miss with any type of gun or
4 weapon of that nature whether you get it or don't
5 get it. Sometimes you do; sometimes you don't.

6 Q Okay. Now the cartridges that were inside that
7 magazine, did you take them out individually and
8 check those for fingerprints?

9 A No. Those particular cartridges were made out of
10 aluminum type. It's a disposable shell casing and
11 they will not hold fingerprints.

12 Q So this aluminum does not hold fingerprint?

13 A No, sir.

14 Q Okay. So how about the medallion, did you check
15 fingerprints for that?

16 A Do you mind if I — can you get the medallion? I
17 need to explain it.

18 Q Your report doesn't show —

19 MR. JEPERTINGER: I'll get it.

20 BY MR. STROBEL:

21 Q —whether you did or you didn't?

22 MR. JEPERTINGER: Excuse me, Mr. Strobel.

23 (Document tendered to the witness.)

24 MR. JEPERTINGER: That's I believe — I
25 believe, Mr. Strobel is referring to State's Exhibit

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1 34.

2 MR. STROBEL: I didn't ask that he look at
3 it. I just wanted to know if he did any fingerprint
4 analysis.

5 THE WITNESS: The reason I wanted to wait
6 to show this, so the jury could understand this,
7 once company, is a textured metal with lots of
8 little detail on it. Once again, will not hold a
9 fingerprint.

10 BY MR. STROBEL:

11 Q Sir, did you check it for fingerprints?

12 A No, sir, I did not.

13 Q That's all I wanted to know.

14 A Very good.

15 Q You took some pictures of blood that were in the
16 grass I heard you testify?

17 A Yes, sir.

18 Q Did you do any DNA analysis of that blood?

19 A I did not. The blood area that I suspected to be
20 blood area was out in the middle of the grass was
21 covered in fire ants.

22 Q So you were afraid the fire ants were going to
23 bite you?

24 A No, that destroys the DNA and also the sunlight.

25 Q Oh, fire ants destroy DNA?

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1 A Yes, sir, they eat it.

2 Q Oh, so the blood that they saw really wasn't
3 there. It had already been eaten by the fire ants?

4 A They were on the area that I suspected to be
5 blood, piled up.

6 Q And where did you graduate from college?

7 A Devry University.

8 Q Where?

9 A Devry.

10 Q Devry? All right.

11 MR. JEPERTINGER: Your Honor, I would
12 move — I don't see where he went to school as being
13 he's not qualified as an expert in this area. Where
14 he went to school is irrelevant. I would object.

15 THE COURT: Overruled, that's on cross.

16 MR. STROBEL: That's all. Thank you.

17 THE COURT: Anything further?

18 MR. JEPERTINGER: No, sir.

19 THE COURT: Redirect? Thank you very
20 much, sir. You may step down.

21 MR. JEPERTINGER: May we approach.

22 THE COURT: Yes, sir.

23 (WHEREUPON, counsel approached the Bench
24 for an off-the-record discussion.)

25 THE COURT: Ladies and gentlemen, we're

1 going to take a short break here. And please, let
2 me say this before I release you out. If at any
3 time y'all are out here, if anyone needs a break
4 before I get ready to take one, raise your hand and
5 let me know and we'll — 'cause we are more inclined
6 to make you comfortable. So if you're uncomfortable
7 and you need a break, you let me know and we'll take
8 one. So we're gonna take about a 15 minute break.
9 Please have no conversation about the case.

10 (WHEREUPON, the jury was removed from the
11 courtroom at 11:12 a.m., and a recess was taken from
12 the proceedings.)

13 THE COURT: Ms. Joe, if you would ask the
14 members of the jury to join us please.

15 MR. JEPERTINGER: Your Honor.

16 THE COURT: Ms. Joe, hold on just a second
17 please.

18 MR. JEPERTINGER: That's my bad. Just
19 very quickly.

20 THE COURT: Yes, sir.

21 MR. JEPERTINGER: Yes, sir, very quickly,
22 I provided a copy of the NCIC of this next witness
23 to the Defense. I do not see any convictions on his
24 NCIC.

25 THE COURT: Anything that would be open

1 for discussion?

2 MR. JEPERTINGER: There are no
3 convictions, Your Honor, plain and simple on the
4 NCIC. Now the other thing, too, is a co-defendant,
5 Your Honor. I — and there is no deal with the
6 co-defendant who's going to testify so. And under
7 any jugula information that I'd have to provide
8 there's been no deal offered to this individual —

9 THE COURT: All right.

10 MR. JEPERTINGER: —for his testimony.
11 He is present. He also has his attorney Scott Floyd
12 present. I want the record to reflect that as he
13 offers testimony, Your Honor.

14 THE COURT: All right.

15 MR. JEPERTINGER: And by testifying he
16 understands he'll be giving up his Fifth Amendment
17 right against self-incrimination.

18 THE COURT: All right. Mr. Strobel,
19 you — have you reviewed the NCIC report that
20 Mr. Jepertinger —

21 MR. STROBEL: I have.

22 THE COURT: And would you concur that
23 there's nothing that would indicate impeaching type
24 testimony —

25 MR. STROBEL: I concur.

1 THE COURT: ---as far as his record?

2 MR. STROBEL: Yes, sir.

3 THE COURT: All right. All right,

4 Ms. Joe, have them join us please.

5 (WHEREUPON, the jury was returned to the
6 courtroom at approximately 11:40 a.m., and
7 the following proceedings commenced in
8 open court.)

9 THE COURT: All right. Ladies and
10 gentlemen, we will now resume with the State's case
11 and recognize Mr. Jepertinger for your next witness.

12 MR. JEPERTINGER: Yes, sir. If it please
13 the Court, the State would call Tyon Michael Evans.

14 THE COURT: Mr. Evans, if you would please
15 come around to be sworn, if you would, sir. Thank
16 you.

17 THE CLERK OF COURT: If you will, sir,
18 stop right there. Place your left hand on the
19 Bible, raise your right hand.

20 WHEREUPON,

21 **TYON MICHAEL EVANS,**
22 having been duly sworn by the Clerk of Court,
23 testified as follows:

24 THE CLERK OF COURT: Please be seated in
25 the witness chair. And state your full name for the

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1 record.

2 THE WITNESS: Tyon Michael Evans.

3 **DIRECT EXAMINATION**

4 BY MR. JEPERTINGER:

5 Q Mr. Evans, how old are you?

6 A 24.

7 Q Please pull up and speak into the microphone.

8 A 24.

9 Q All right. And you are accused in this case
10 along with Thomas Edward Davis of attempted murder,
11 armed robbery, and possession of a weapon during the
12 commission of a violent crime; are you not?

13 A Yes, sir.

14 Q And you are testifying for the State today; is
15 that correct?

16 A Yes, sir.

17 Q Have I offered you any sort of deal for your
18 testimony here?

19 A No, sir.

20 Q So you are still facing penalties for attempted
21 murder, armed robbery, and possession of a weapon
22 during the commission of a violent crime; is that
23 correct?

24 A Yes, sir.

25 Q I want to take you back to April 6th, 2011. Can

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1 you tell me where you were living back on that date?

2 A Mount Zion Apartments.

3 Q Mount Zion Apartments. Once again, I'm gonna ask
4 you to pull this thing up and put your mouth right
5 there.

6 A Mount Zion Apartments.

7 Q All right. And who were you living with?

8 A My girlfriend.

9 Q And what is her name?

10 A Latisha Thomas.

11 Q And what type of car does she have?

12 A A white Altima.

13 Q All right. And were you there — was Latisha at
14 home that day with you?

15 A Yes, sir.

16 Q Were you working at the time?

17 A No, sir.

18 Q All right. And Mount Zion Apartments, what
19 street is that on, if you know?

20 A Jarrott Street.

21 Q Excuse me?

22 A Jarrott.

23 Q Is Irving Court around there anywhere?

24 A Yes, sir.

25 Q Mount Zion also intersect with Irving Court?

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1 A Yes, sir.

2 Q All right. And did anyone come over to your
3 apartment that afternoon or that morning?

4 A Yes, sir.

5 Q Who came over to the apartment that morning or
6 afternoon?

7 A Rasheem Davis and — oh, Ra Ra and Tom Tom.

8 Q Now Ra Ra is who?

9 A Rasheem Thomas.

10 Q Okay. And Tom Tom is who?

11 A Thomas Davis.

12 Q All right. Now I'm going to show you State's
13 Exhibit 2. Do you recognize this individual on
14 State's Exhibit 2?

15 A Yes, sir.

16 Q Who is that?

17 A That's me.

18 Q All right. I see a patch on your neck. How'd
19 you get that?

20 A I got into a fight three days, about two days,
21 two or three days ago.

22 Q Ago, or before this happened?

23 A Yeah, before this happened.

24 Q Okay. So if this was April the 6th, 2012, it
25 happened on April the 3rd or April the 4th that you

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1 got into a scruff with someone?

2 A Yes, sir.

3 Q It wasn't Johnny Henicks who you got into a
4 scruff was with?

5 A No, sir.

6 Q Do you know who it was?

7 A Not — I don't know his name.

8 Q Okay. But it wasn't him?

9 A No, sir.

10 Q All right. Now I'm gonna show you State's
11 Exhibit 3. This gentleman with the cornrows, who is
12 that?

13 A Rasheem Thomas.

14 Q And what's his nickname?

15 A Ra Ra?

16 Q And how is he — if you're related to him or have
17 a friendship with him, how are you connected to
18 Rasheem Thomas?

19 A He talk to my girlfriend. I mean, he's my
20 girlfriend brother.

21 Q That's your girlfriend's brother. Her name is
22 Latisha Thomas, correct?

23 A Yes, sir.

24 Q All right. I'm gonna show you State's Exhibit 1.
25 Who is this individual?

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- 1 A Thomas, Thomas Davis.
- 2 Q And you called him Tom Tom. How do you know him?
- 3 A How I do know him?
- 4 Q Sure?
- 5 A I know him through Ra Ra.
- 6 Q Are Ra Ra and him friends?
- 7 A Yes, sir.
- 8 Q About what time did they come over to your
9 apartment over on Mount Zion Apartments?
- 10 A I don't really remember.
- 11 Q All right. Were they walking or riding, or how'd
12 they get over there, do you know?
- 13 A Walking.
- 14 Q All right. And how long did y'all stay over at
15 the Mount Zion Apartments?
- 16 A About 30 minutes.
- 17 Q All right. After — what were you doing while
18 you were sitting there talking at Mount Zion
19 Apartments?
- 20 A I was playing a game.
- 21 Q Were they — was Thomas Davis talking about
22 anything?
- 23 A No, sir.
- 24 Q At that stage of your conversation while you're
25 playing the game did he show you a .45 semiautomatic

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- 1 —
- 2 A No, sir.
- 3 Q —gun?
- 4 A No, sir.
- 5 Q All right. Did Rasheem Thomas show you a .45
- 6 semiautomatic gun?
- 7 A No, sir.
- 8 Q What happened after that 30 minute period while
- 9 you're playing and they're talking?
- 10 A We was about to go to Smith — we was going to go
- 11 Smith and Smith Trailer Park.
- 12 Q I didn't understand a word you said.
- 13 A We was about to go to Smith and Smith Trailer
- 14 Park.
- 15 Q Why were you going to go to Smith and Smith
- 16 Trailer Park?
- 17 A Go to the bootlegger.
- 18 Q To go to a bootlegger's. All right. Now how
- 19 were you going to get over to Smith and Smith Mobile
- 20 Home Park?
- 21 A In my girl car.
- 22 Q Your girl's car. Who was driving the vehicle to
- 23 go to the bootlegger's home at Smith and Smith
- 24 Mobile Home Park?
- 25 A I was.

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1 Q Who was the front seat passenger?

2 A Rasheem Thomas.

3 Q And who was the back seat passenger?

4 A Thomas Davis.

5 Q And do you see Thomas Davis in the courtroom
6 today?

7 A Yes, sir.

8 Q Would you point him out to the jury.

9 A (Indicates by pointing.)

10 Q Is he the individual in the black shirt sitting
11 between Mr. Strobel and Mr. Strobel's assistant?

12 A Yes, sir.

13 MR. JEPERTINGER: Let the report reflect
14 he's identified the defendant —

15 THE COURT: All right, sir.

16 MR. JEPERTINGER: —in this case, Thomas
17 Davis.

18 BY MR. JEPERTINGER:

19 Q How did you get over there?

20 A The car.

21 Q I understand that, but I mean, what route did you
22 take? Did you drive there directly, did you stop
23 anywhere beforehand?

24 A No, I drove there directly.

25 Q You weren't working at the time, were you?

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1 A No, sir.

2 Q Who had money to go see a bootlegger?

3 A Rasheem and Thomas Davis.

4 Q All right. Who suggested going over to the
5 bootlegger's place?

6 A Rasheem.

7 Q All right. So you drove over there, you knew
8 exactly where to go?

9 A Yes, sir.

10 Q Did you know where Smith and Smith was?

11 A Yes, sir.

12 Q How did you get there from Mount Zion? Tell the
13 jury how, the roads you took.

14 A National Cemetery all the way down, turn on
15 Gilbert.

16 Q All right. And then when you got there did you
17 pull into the mobile home park?

18 A Yes, sir.

19 Q All right. When you got to the mobile home park
20 did you park the car?

21 A Not at first. I went to see if my cousin was
22 home, but he wasn't so I drove around.

23 Q All right. How did you check to see if your
24 cousin was there or not?

25 A He stay in the back.

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- 1 Q Well, how — did you get out car to knock on his
2 mobile home door?
- 3 A No, I just beat — I — his car wasn't home so I
4 figured he wasn't home. His car wasn't home so I
5 figured he wasn't home.
- 6 Q Okay. So you drove around and then what did you
7 do?
- 8 A Went to the bootlegger.
- 9 Q Okay. At the bootlegger's house what happened?
- 10 A Thomas got out the car and he —
- 11 Q Okay, Thomas got out of the car. Did Rasheem get
12 out of the car?
- 13 A No, sir.
- 14 Q Did you get out of the car?
- 15 A No, sir.
- 16 Q At that point did you see a .45 caliber handgun?
- 17 A No, sir.
- 18 Q Did you see Johnny Henicks —
- 19 A No, sir.
- 20 Q —there?
- 21 A No, sir.
- 22 Q Why couldn't you see Johnny Henicks there?
- 23 A 'Cause I was parked up a little closer behind the
24 trailer.
- 25 Q Did you see Shaheem Henicks there?

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1 A No, sir.

2 Q All right. Did you see anybody out there?

3 A It was about like six other people out there, but

4 I don't know 'em.

5 Q All right. Now Thomas got out of the car you're
6 saying?

7 A Yes, sir.

8 Q What did you think he was going to do?

9 A Go buy something from the bootlegger.

10 Q All right. What did you see or hear next after
11 he left the rear passenger seat of that Nissan

12 Altima that belonged to your girlfriend?

13 A I heard something go pop, so I was about to drive
14 — I was about to drive off.

15 Q What do you mean pop?

16 A Huh?

17 Q Pop of —

18 A No, like a gun pop.

19 Q Like a gunshot?

20 A Yes, sir.

21 Q All right. Did you know what had happened?

22 A No, sir.

23 Q How long was it from the time that Thomas Edward
24 Davis left the car to the time you heard the gun
25 shot?

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- 1 A About five minutes.
- 2 Q All right. After you heard the gunshot how long
3 was it, how long did it take for Thomas Davis to get
4 back to the vehicle?
- 5 A Not long I don't think, sir.
- 6 Q When he was coming back to the car did you see
7 anything in his hand?
- 8 A No, sir.
- 9 Q All right. Did he get back into the vehicle?
- 10 A Yes, sir.
- 11 Q When he got back into the vehicle did you see
12 anything in his hand?
- 13 A Not at the time.
- 14 Q Not at that time. Did he say anything to you?
- 15 A No, sir.
- 16 Q Not at all?
- 17 A Besides go.
- 18 Q Just go?
- 19 A Yes, sir.
- 20 Q At that point where did you go to?
- 21 A Back to the projects.
- 22 Q All the way?
- 23 A Not all the way. I couldn't 'cause the police
24 was behind me.
- 25 Q Well, at that point — now you said you didn't

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1 see a gun in his hand at that time. Can you tell
2 the jury what you mean "not at that time"?

3 A I didn't see it until when I looked in the
4 rearview mirror I seen the policeman.

5 Q And then what did you see?

6 A The gun.

7 Q Where was the gun?

8 A In the back seat.

9 Q All right. Did he show you any sort of gold
10 medallion?

11 A No, sir, I was paying attention to the road.

12 Q The police — let me ask you this, when you left
13 Smith and Smith Mobile Home Park to go back to the
14 projects how did you go?

15 A I took Freedom and Turner and National.

16 Q Well, National doesn't intersect with Freedom.
17 Did you turn on Turner Drive?

18 A I took Freedom and and I took Turner and I took
19 National.

20 Q Okay. So what you did was you turned right on
21 Freedom Boulevard, correct?

22 A Yes, sir.

23 Q Drove down to Turner Drive, correct?

24 A Yes, sir.

25 Q Turned right on Turner, correct?

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- 1 A Yes, sir.
- 2 Q Turned left on National Cemetery, correct?
- 3 A Yes, sir.
- 4 Q And then you drove?
- 5 A Yes, sir.
- 6 Q Correct?
- 7 A Yes, sir.
- 8 Q And the police got behind you —
- 9 A Yes, sir.
- 10 Q —in an unmarked vehicle; is that correct?
- 11 A Yes, sir.
- 12 Q And you say you looked up into the rearview
13 mirror and saw a gun?
- 14 A Yes, sir.
- 15 Q At that point why did you not stop for the
16 police, the vehicle?
- 17 A Because I was scared, didn't want to stop.
- 18 Q Why were you scared at that point?
- 19 A Sir?
- 20 Q Why were you scared at that point?
- 21 A I don't know. I was just scared.
- 22 Q Scared of the police or scared of Thomas Davis?
- 23 A I say both.
- 24 Q Did you question Davis why he had a gun in the
25 back of your vehicle?

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1 A No, sir.

2 Q Okay. You didn't stop, correct?

3 A No, sir.

4 Q You ran the blue light, correct?

5 A Yes, sir.

6 Q All right. Then you went driving that Altima

7 even under a chain; is that correct?

8 A Yes, sir.

9 Q Okay. Then you decided to jump out of the
10 vehicle; is that correct?

11 A Yes, sir.

12 Q Did you have any conversation, oh lord, the
13 police are behind us, let's bail?

14 A No, sir.

15 Q How did y'all three know to jump out of the car?

16 A I jumped out. I didn't know about the rest of
17 them. I know I jumped out.

18 Q After you jumped out what did you do?

19 A I ran, try to get as far as away as I can from
20 them.

21 Q Did you run in the same direction that Davis and
22 Thomas ran in?

23 A No, sir.

24 Q Where did you wind up?

25 A Behind a dirt road.

SW - T. EVANS - DIRECT

- 1 Q Okay. Do you know where the dirt road was?
- 2 A On Gilliard.
- 3 Q Okay. And is that where the police caught you?
- 4 A Yes, sir.
- 5 Q Did they catch Davis as well in that general
- 6 area?
- 7 A Yes, sir.
- 8 Q And what was he doing at the time that the police
- 9 caught him, if you could see?
- 10 A Lying on the ground.
- 11 Q Was he near the underpinning of a mobile home?
- 12 A Yes, sir.
- 13 Q And at that point what did you do?
- 14 A At what point?
- 15 Q After you saw him, did you try to jump another
- 16 wall, or how — did you try and get away from the
- 17 cops?
- 18 A No, sir, I laid down.
- 19 Q And is one of the officers arrested you?
- 20 A The one, he ain't here. The one that arrested me
- 21 was blue and white.
- 22 Q Excuse me.
- 23 A He was blue and white.
- 24 Q Okay. All right, now at that point after you got
- 25 arrested did you have an opportunity to speak with

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1 Alvin Powell, the investigator in this case?

2 A Yes, sir.

3 Q And have you told us the same thing you told

4 Alvin Powell?

5 A Yes, sir.

6 MR. JEPERTINGER: Beg the Court's
7 indulgence. That's all I have, Judge. Thank you.

8 THE COURT: Mr. Strobel.

9 **CROSS-EXAMINATION**

10 BY MR. STROBEL:

11 Q You say that the only time you saw the .45 pistol
12 was you saw it lying on the back seat of the car
13 that you were driving?

14 A Yes, sir.

15 Q And how did you see it?

16 A In the rearview mirror.

17 Q Through the —

18 A Rearview mirror.

19 Q This mirror?

20 A Yes, sir.

21 Q Is it a special kind of a mirror?

22 A No, I had clothes in the back seat. It was like
23 on top of the clothes or something like that.

24 Q Oh, must have been a lot of clothes back there,
25 right?

SW - T. EVANS - CROSS

- 1 A Yes, sir.
- 2 Q So really, it was on a tall pile of clothes?
- 3 A Yes, sir.
- 4 Q Okay. 'Cause I have personally a difficult time
5 looking down on the seat.
- 6 A Uh-huh.
- 7 Q Okay, and you hadn't seen the pistol there
8 before?
- 9 A No, sir.
- 10 Q And when you finally came to a halt who left the
11 vehicle first?
- 12 A Thomas Davis.
- 13 Q Thomas Davis left?
- 14 A You talking about when I went to the trailer
15 park?
- 16 Q Beg your pardon?
- 17 A When I went to the trailer park?
- 18 Q Yeah, well — no, no, no, when you were being
19 chased?
- 20 A Oh, I left the vehicle first I think.
- 21 Q You left first?
- 22 A Yes, sir.
- 23 Q Okay. And is it my understanding that you said
24 you never saw the medallion, the gold medallion?
- 25 A No, sir, I didn't saw it till the cops showed me.

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1 Q And was it still in the front seat when they
2 showed it to you?

3 A No, I was outside the car.

4 Q Do you know how it got up there with you?

5 A No, sir.

6 Q Okay. And you didn't see the other two leave the
7 vehicle?

8 A No, sir.

9 Q Now you say that you were the first one to run
10 because you were scared?

11 A Yes, sir.

12 Q And tell me again, you were scared of what?

13 A The police catching, police catching me.

14 Q Were you wanted by the law then?

15 A I didn't know.

16 Q You didn't know?

17 A Yeah.

18 Q Okay. And you say from the time that you picked
19 up Mr. Davis you drove straight to S and S Trailer
20 Park?

21 A I never did pick up Mr. Davis.

22 Q Okay. But how did he — I'm sorry, how did he
23 get in the car?

24 A He came to the house. I didn't pick him up.

25 Q Well, I meant when y'all three got into the white

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- 1 automobile you were driving?
- 2 A Yes, sir.
- 3 Q Okay. And you drove from there to straight —
- 4 A To Smith and Smith.
- 5 Q Huh?
- 6 A To Smith and Smith Trailer Park.
- 7 Q Yeah, Smith and Smith Trailer Park. You drove
- 8 straight there?
- 9 A Yes, sir.
- 10 Q Okay. You said you had an injury that you, that
- 11 had occurred to you earlier; is that right?
- 12 A Yes, sir.
- 13 Q And where was that?
- 14 A On the side of my neck.
- 15 Q What?
- 16 A On the side of my neck.
- 17 Q I know that, but where did it occur?
- 18 A Oh, Smith and Smith Trailer Park.
- 19 Q Where?
- 20 A Smith and Smith Trailer Park.
- 21 Q Is that a park?
- 22 A It's a trailer park.
- 23 Q Trailer park?
- 24 A Yes, sir.
- 25 Q Did you go by there on the way to Smith and

SW - T. EVANS - CROSS

1 Smith?

2 A Go by where?

3 Q The trailer park where you got hurt?

4 A Did I go by?

5 Q Yeah.

6 A What you mean?

7 Q Well, did you stop off there on the way to Smith
8 and Smith Trailer Park?

9 A Stop where?

10 Q The park?

11 A What park? The trailer park is a park.

12 Q And who did you say beat you up again?

13 A I don't remember -- I don't know his name.

14 Q Does he have a street name?

15 A No.

16 Q And that was the same place that this incident
17 took place?

18 A Yes, sir.

19 Q How long had you known Mr. Davis prior to this?

20 A I probably know Davis probably about three
21 months.

22 Q Three months?

23 A Yes, sir.

24 Q Did you ever handled the .45?

25 A No, sir.

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1 Q Had you ever seen it before?

2 A No, sir.

3 Q Do you know where it came from?

4 A No, sir.

5 Q And you heard only one shot?

6 A Yes, sir.

7 Q Did you see anybody else other than Mr. Davis
8 there at the park?

9 A I seen -- there was like six other people at
10 there, but I don't know who they was.

11 Q You saw six other people where?

12 A Outside the trailer park at the bootlegger's
13 house.

14 Q You keep calling him a bootlegger. Does he have
15 a name?

16 A Um, his --

17 Q I just want a yes or no.

18 A His name -- I think his street name is Batman.

19 Q Batman?

20 A Yes, sir.

21 Q So a lot of people go there for alcohol?

22 A Alcohol, like, candy, all kind of stuff.

23 Q Candy?

24 A Yeah, they sell all kind of stuff. It's like a
25 neighborhood store.

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1 Q Oh, I see. And that's where -- did you see
2 Mr. Davis there at the store?

3 A No, sir.

4 Q Just six other people there?

5 A Yes, sir.

6 Q And y'all were going there, right?

7 A Yes, sir.

8 Q Well, why didn't you get out of your car and go
9 there, that's what you intended to do?

10 A I didn't have no money.

11 Q Well, you said Mr. Davis did, right?

12 A Yes, sir, him and Rasheem.

13 Q Didn't you go over there with him?

14 A Yes, sir.

15 Q You did?

16 A Yes, sir.

17 Q What did he buy for you?

18 A He didn't buy nothing for me.

19 Q What did he buy?

20 A What did he buy? He didn't come back to the car
21 with nothing.

22 Q So am I led to believe that he went to the store
23 by himself?

24 A He went in the store by himself, yes, sir.

25 Q He did go in the store?

SW - T. EVANS - CROSS

- 1 A Yes, sir, it's not a — it's a trailer.
- 2 Q It's a trailer?
- 3 A Yes, sir.
- 4 Q Did anybody go in the trailer with him?
- 5 A I couldn't see.
- 6 Q How about the other six people?
- 7 A They was on the outside.
- 8 Q They were on the outside?
- 9 A Yes, sir.
- 10 Q Did anybody come out of the trailer with Mr.
- 11 Davis?
- 12 A I couldn't see.
- 13 Q But you saw him?
- 14 A I see him got out the car.
- 15 Q I'm talking about the store, the bootlegger's
- 16 store, the trailer?
- 17 A Yes, sir, I was behind the trailer.
- 18 Q Yes, sir, but did you see Mr. Davis?
- 19 A Did I see him do what?
- 20 Q You said earlier you saw him go in the store,
- 21 right?
- 22 A I didn't say he went in the store. I said he got
- 23 out the car to go to the store. I don't know if he
- 24 went in the store or not.
- 25 Q Oh, he got — so he told you he was going to the

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1 store?

2 A Yes, sir.

3 Q And knowing that he was going to the store and he
4 had the money and y'all went there to go to see the
5 bootlegger, you didn't see it imperative that you
6 should go with him?

7 A No, sir, I didn't have no money so I didn't need
8 nothing.

9 Q Well, we understand that but he had money, right?

10 A Yes, sir.

11 Q Well, didn't you want to be with him when he went
12 in the store if he had the money?

13 A No, sir.

14 Q Why?

15 A Because I didn't have no money so there wasn't no
16 purpose for me going —

17 Q He has the money.

18 A Why — I don't spend somebody else's money.

19 Q Beg your pardon?

20 A I said I make my own money. I don't spend
21 anybody else's money.

22 Q Oh, so you had no intentions of buying anything
23 from the bootlegger even if somebody else is going
24 to pay for it?

25 A Yes, sir.

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1 Q So you were just providing transportation?

2 A Yes, sir.

3 Q And whose car again was it?

4 A My girlfriend's car.

5 Q Your girlfriend?

6 A Yes, sir.

7 Q That's all.

8 MR. JEPERTINGER: Nothing further. I ask
9 that he will be excused, Your Honor.

10 THE COURT: Thank you very much, sir.
11 You're free to go.

12 MR. JEPERTINGER: Your Honor, I believe
13 that's the State's case.

14 MR. STROBEL: I have some motions.

15 THE COURT: All right, I'm going to —
16 ladies and gentlemen, let me do this — well, let me
17 first get the attorneys to step up here real quick.

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

20 THE COURT: All right, ladies and
21 gentlemen, we're gonna take a break for lunch at
22 this time. It's about ten minutes after two, but
23 I'm gonna give you a little bit of an extended
24 lunch break and ask you be back at 2:30, okay. So
25 that gives you almost two hours for lunch — excuse

1 me, almost two-and-a-half hours for lunch. We'll
2 have some matters that I need to take up during
3 lunch that don't have anything to do with this case
4 so if you would, please again as always, have no
5 conversation about the case, do not allow anyone to
6 talk to you about the case. Just kind of put your
7 minds in neutral and go enjoy your lunch, okay, and
8 I ask that you please be back in your jury room at
9 2:30. We'll start back at that point.

10 (WHEREUPON, the jury was removed from the
11 courtroom at 12:08 p.m., and the following
12 proceedings commenced in open court.)

13 THE COURT: All right. At this time I'll
14 take up motions at the close of the State's case.

15 * MR. STROBEL: I make a motion for directed
16 verdict of not guilty in that the State has not
17 presented sufficient evidence on these three
18 individual counts to go any further with the trial
19 of this case.

20 THE COURT: All right, I'm gonna
21 respectfully deny the motions. Again, I think that
22 at this point the Court is only concerned about
23 existence of evidence and does not give any weight
24 or credibility to that evidence as the jury's role,
25 and I think there is evidence that is in the record.

1 whereby depending on how the jury views the evidence
2 they could find in this case so I'm gonna
3 respectfully deny that motion.

4 MR. STROBEL: And I want the record to
5 reflect and note my motion.

6 THE COURT: All right, yes, sir.

7 MR. STROBEL: Thank you.

8 THE COURT: That is noted. Mr. Strobel,
9 have you had an opportunity to for you and Mr. Davis
10 to talk about —

11 MR. STROBEL: No, sir, I'll let you know
12 at 12:30.

13 THE COURT: All right, that sounds good.
14 Well, let me ask this before we get away. I've
15 prepared a charge, a proposed charge. If you have
16 any specific requests to charge I would ask that you
17 submit that to me. If you have anything that you
18 specifically would want charged by the jury and let
19 me have that so that I can look at that and
20 determine whether or not incorporate it —

21 MR. JEPERTINGER: Judge, can you do us a
22 favor. Can you let us know what you're going to
23 charge and —

24 THE COURT: Well, I tell you what I can
25 do. I'll print out a copy of what I have prepared.

1 It's a proposed draft.

2 MR. JEPERTINGER: Sure.

3 THE COURT: I'll let y'all look at it and
4 then y'all can let me know if you need to — if we
5 need to change it, if you need to add to it or take
6 away from it or whatever.

7 MR. JEPERTINGER: Yes, sir.

8 THE COURT: And I'll do that.

9 Mr. Strobel, how can I get that to you or during the
10 lunch break, just —

11 MR. STROBEL: Email or fax.

12 THE COURT: All right. If you would,
13 before you go if you'd give my law clerk your email
14 and I'll do that and I'll email it as soon as I get
15 it together and it'll go to your office then.

16 John?

17 MR. JEPERTINGER: I'm here. I'll be
18 eating lunch here so that will be fine, Your Honor.
19 Just one more thing, I know we're gonna discuss
20 whether he's going to testify or not testify later
21 and I understand that. There was a recent case that
22 our courts just passed, State v. Christopher Hellar
23 filed June 13th, 2012, about State versus Colf
24 analysis of prior convictions. This defendant does
25 have a prior conviction for robbery, and I would ask

1 that obviously we'll have to conduct the Colf
2 analysis should he testify.

3 THE COURT: What's the recent case you
4 just cited?

5 MR. JEPERTINGER: I have a copy for you,
6 Judge.

7 THE COURT: Okay, great.

8 MR. JEPERTINGER: And I'm sorry,
9 Mr. Strobel, we can make a copy for you after lunch.

10 THE COURT: All right.

11 (Document tendered to the Court.)

12 THE COURT: Anything else before we break?

13 MR. JEPERTINGER: No, sir, thank you very
14 much.

15 THE COURT: All right. 2:30 we'll be
16 back. Start back at 2:30. Okay.

17 (WHEREUPON, a lunch break was taken.)

18 THE COURT: All right. Mr. Strobel,
19 have you had a chance to talk over with Mr. Davis
20 the intention of the defense?

21 MR. STROBEL: I have.

22 THE COURT: Does — well first let me ask
23 you, do you intend to put up a case?

24 MR. STROBEL: I wanted to argue to the
25 jury but he won't let me, and it's his case so I'll

1 let him do as he wants to do.

2 THE COURT: All right.

3 MR. STROBEL: Which means that he wants to
4 tell his side of the story.

5 THE COURT: All right, so he does he
6 intend to testify?

7 MR. STROBEL: He does.

8 THE COURT: Mr. Davis, let me get you to
9 stand. I'm gonna just go over some things with you.
10 Mr. Strobel has indicated you wish to testify; is
11 that correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. And you certainly
14 have that right, but let me go over some things with
15 you. And after I go over these things, if that's
16 still your desire I certainly will honor that. You
17 understand, of course, that you do have the right to
18 testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You also have the right to
21 remain silent. You understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And I tell all defendants
24 this. This is a right that we all have, and if you
25 were to exercise that right -- and I'm just gonna

1 use this as a hypothetical now because you indicated
2 you wish to testify. But if you decided that you
3 did not want to testify, then I would instruct the
4 members of the jury that they could not hold that
5 against you in any way. I would tell the members of
6 the jury that the burden of proof rests on the State
7 and that a person charged with a criminal offense is
8 never required to prove themselves innocent. I
9 would instruct the jury that you have no burden to
10 prove anything, that the burden of proof rests
11 solely on the State, and that if you did choose to
12 exercise your right to remain silent, I would
13 instruct them that they could not in any way
14 consider that in their deliberations. I would
15 instruct them that the fact that you chose to remain
16 silent could not enter into their discussions in the
17 jury room at all; that that's not a factor for them
18 to consider. You understand I would instruct them
19 that when I gave them the charge on the law?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Now if you do decide to
22 testify and you indicated you wish to, you
23 understand that obviously you would answer questions
24 from your lawyer, but that you would also be
25 required to answer questions from the State's

1 attorney?

2 THE DEFENDANT: I do.

3 THE COURT: All right, sir.

4 Now at this time, Mr. Jepertinger, are
5 there any prior convictions that you believe would
6 be open to impeachment?

7 MR. JEPERTINGER: Yes, sir. I would ask
8 that obviously we'd have to conduct a Colf analysis,
9 Your Honor, based on what Hellar teaches, but he has
10 a conviction verdict date of 5/31/2002 in the State
11 of Connecticut for robbery.

12 THE COURT: All right. Anything else
13 other than that conviction?

14 MR. JEPERTINGER: Your Honor, I do not —
15 well, he has a simple assault and battery in 2002
16 but I can't use it and I understand that.

17 THE COURT: Right, okay. Now Mr. Davis,
18 you understand that — of course, we're gonna have a
19 hearing to determine to what extent the State could
20 get into that. In other words, I will tell you
21 this, the worse case scenario would be as if the
22 State was allowed to ask you if you were, in fact,
23 convicted of a robbery in 2002. They'd be allowed
24 to ask that; and of course, you'd be obligated to
25 respond, but that's all they can ask. They can't go

1 into details about it. They can't go into any
2 discussion about what type of sentence you received
3 or anything like that, okay? They can simply ask,
4 is it true that you've received that conviction. So
5 you understand that?

6 THE DEFENDANT: Understood.

7 THE COURT: All right. Now understanding
8 all of these things do you still wish to testify?

9 THE DEFENDANT: I do.

10 THE COURT: All right, sir. And you
11 understand the rights that I've gone over with you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. Thank you very much.

14 You may have a seat.

15 Now Mr. Jepertinger, let me hear from the
16 State as to the prior conviction and what your
17 position is as far as what you would be able to do
18 on cross-examination.

19 MR. JEPERTINGER: Well, Your Honor, my
20 position is I think I should be allowed to ask if he
21 has a conviction out of the State of Connecticut for
22 robbery in 2002.

23 THE COURT: All right.

24 MR. JEPERTINGER: I would point out, Your
25 Honor, that even though it is similar to one of the

1 offenses listed, I would make this distinction, Your
2 Honor, that it is not an armed robbery. And to be
3 honest with you, I don't know what constitutes a
4 robbery in the State of Connecticut.

5 THE COURT: Right.

6 MR. JEPERTINGER: I mean, it has the same
7 nomenclature, —

8 THE COURT: Right.

9 MR. JEPERTINGER: —but I could not tell
10 you what the elements are.

11 THE COURT: Does your NCIC —

12 MR. JEPERTINGER: It has —

13 THE COURT: —the NCIC reflect the —

14 MR. JEPERTINGER: It has the sentence.

15 THE COURT: —sentence?

16 MR. JEPERTINGER: Yes, it was eight year
17 jail minimum, seven year special parole, concurrent.

18 THE COURT: All right. I'm confident that
19 would qualify as a felony in any state. In looking
20 at the Colf factors, the impeachment value of the
21 prior crime at the point and time of the conviction
22 and the witness, the subsequent history, both of
23 those, I mean, I know this occurred in 2002. The
24 concern that I have is, and as far as the importance
25 of the defendant's testimony I, you know, I don't

1 know that I can sit and weigh that or what is
2 important to a defense. I know that there's no
3 other testimony that the Defense is offering so that
4 if they intend to put up any defense it would have
5 to come from the defendant's own testimony.

6 The concern I have with is with three and
7 five of those five factors; and that is, the
8 similarity between the past crime and the crime
9 charged and the centrality of the credibility issue.
10 Well, I think clearly any time a defendant takes the
11 stand — and in this case where there's no other
12 testimony other than that of the defendant — that
13 that credibility is a central issue. I don't know
14 what that robbery charge, what the extent of that is
15 either. The concern I have here, though, is that
16 this case, even though — and I understand what
17 you're saying — it does involve armed robbery here
18 and that one may or may not have involved the use of
19 a weapon; but it is still, in fact, a robbery. And
20 the concern that I have is that the jury would or
21 could take that as, take that piece of testimony and
22 view it as being used to offer that he is acting in
23 conformity with his prior conduct and that I think
24 is dangerous. I think that the prejudicial value of
25 that outweighs any probative value] so I will not

1 allow you to ask if he has been convicted of a
2 robbery. But I do think you would be — I think it
3 would be appropriate and you could ask, if you chose
4 to, that is basically something along the lines of,
5 isn't it true that you were convicted of a felony
6 offense back in 2002. And I think you can ask that
7 question which is, I think, appropriate under the
8 Colf test. And then of course, the simple charge
9 would not be open.

10 MR. JEPERTINGER: Yes, sir. Could I
11 extend that just to — and I understand the Court's
12 ruling, extend that to a felony that carries more
13 than one year?

14 THE COURT: Yes, sir. Yes, sir. I think
15 that would be appropriate.

16 MR. JEPERTINGER: All right.

17 THE COURT: Anything further from the
18 State before we —

19 MR. JEPERTINGER: Not in terms of that
20 issue. I did have a chance to review the charge and
21 I know based on what's just occurred and your
22 initial charge you're gonna have to redact part of
23 it.

24 THE COURT: Absolutely. Absolutely, yeah.

25 MR. JEPERTINGER: But I, since it's going

1 to take some time, Your Honor, at the appropriate
2 time, Your Honor, there were two issues that I had
3 in terms of the charge and I would ask you to
4 review. The first one was your charge on assault
5 and battery high and aggravated nature. That
6 language that you had is completely out of State
7 versus Jones, the old common law language for
8 assault and battery. It was, you know, different
9 genders and sizes and I have to prove a serious
10 injury accompanied with circumstances of
11 aggravation. Your Honor, the -- I would tend to
12 think that that section of law has been superceded
13 and replaced by 16-3-600(b).

14 THE COURT: Okay.

15 MR. JEPERTINGER: And there's language in
16 that, (b)(1), (b)2, and (b)3; but there is a
17 language of the current assault and battery of high
18 and aggravated nature which is a lesser included
19 offense per that statute 16-3-600 as being lesser
20 included offense of attempted murder.

21 THE COURT: Okay.

22 MR. JEPERTINGER: The language is there.
23 I'd ask you to review that language, and I would ask
24 you from the State's perspective to substitute that
25 language.

1 THE COURT: Okay.

2 MR. JEPERTINGER: Further, in the
3 possession of a weapon during the commission of a
4 violent crime, the language — I think the last
5 sentence, armed robbery is a violent crime. Well,
6 attempted murder is also a violent crime. And also
7 ABHAN under 16-1-600, they're also listed as violent
8 crimes.

9 THE COURT: Okay.

10 MR. JEPERTINGER: Other than that, it was
11 okay, Judge.

12 THE COURT: All right. And of course,
13 we'll go over it in greater detail and certainly
14 we'll hear from Mr. Strobel regarding any of those
15 issues.

16 Mr. Strobel, is there anything?

17 MR. STROBEL: No, sir.

18 THE COURT: Anything further?

19 MR. STROBEL: No, sir.

20 THE COURT: Okay, all right. Ms. Joe, if
21 you would see if the members of the jury are ready
22 and ask them to join us please.

23 (WHEREUPON, the jury was returned to the
24 courtroom at approximately 2:51 p.m., and
25 the following proceedings commenced in

1 open court.)

2 THE COURT: Ladies and gentlemen, if you
3 recall before we took the lunch break the State had
4 rested their case at the end of the State's case.
5 In every trial the Court takes up matters of law
6 which we did that during the time you were away at
7 lunch, and we've taken up those matters and now
8 we're ready to proceed. And so at this point I
9 would recognize Mr. Strobel on behalf of the Defense
10 for your first witness.

11 MR. STROBEL: We call Mr. Davis.

12 THE COURT: All right. Mr. Davis, sir, if
13 you'd please come around to be sworn.

14 THE CLERK OF COURT: Sir, place your left
15 hand on the Bible, raise your right hand.

16 WHEREUPON,

17 **THOMAS EDWARD DAVIS, II,**
18 having been duly sworn by the Clerk of Court,
19 testified as follows:

20 THE CLERK OF COURT: Please be seated and
21 state your full name for the record.

22 THE WITNESS: Thomas Edward Davis, II.

23 **DIRECT EXAMINATION**

24 BY MR. STROBEL:

25 Q How old are you, Mr. Davis?

DW - T. DAVIS - DIRECT

1 A 28.

2 Q 28? Did you go to school in this area?

3 A Yes, sir.

4 Q Where was that?

5 A Wilson, Williams, Lester.

6 Q And there are two co-defendants in this case
7 charged with the same thing that you are, attempted
8 murder, armed robbery, and the possession and use of
9 a dangerous weapon, Mr. Evans and Mr. Thomas. Do
10 you know these two individuals?

11 A Yes, sir.

12 Q You have to speak a little louder, I want the
13 jury to hear you.

14 A Yes, sir.

15 Q How long have you known Mr. Evans? I think he
16 testified earlier.

17 A I knew Mr. Evans give or take 16 years.

18 Q I believe he said three months; did he not?

19 A Yes, sir.

20 Q When did you — how did you first know him?

21 A Well, his uncle is named Moo Moo. You know, we
22 used to chill back in the days and that's his
23 nephew. That's how he became acquaintance with me,
24 not through Rasheem.

25 Q You said not through Rasheem?

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- 1 A Yeah, he said earlier he knew me through Rasheem.
- 2 Q Okay.
- 3 A I knew him through his uncle Moo Moo.
- 4 Q So you've known him about 16 years I say?
- 5 A Yes, sir.
- 6 Q Have y'all ever been together or hung out
7 together prior to the three months?
- 8 A Yeah, we — his baby mamma house, that's Rasheem
9 sister. That's where we go to all the time.
- 10 Q That's whose car y'all were driving?
- 11 A Yes, sir.
- 12 Q And so you've been with him over there a lot?
- 13 A Every day.
- 14 Q Every day. How about Mr. Thomas?
- 15 A We was next door neighbors since I moved about,
16 9, 8 years old.
- 17 Q 9 or 8 years old?
- 18 A Yes, sir.
- 19 Q So Mr. Thomas lives then next to you?
- 20 A 609, and he lives in 607.
- 21 Q And does Mr. Evans know Mr. Thomas as well?
- 22 A Yes, sir, he got a baby by his sister.
- 23 Q He dated your sister?
- 24 A You said did Mr. Evans know Mr. Thomas?
- 25 Q Yeah.

DW - T. DAVIS - DIRECT

1 A Yeah, he dated his sister. He got a baby by her.

2 Q Okay. Now tell me the version of facts that took
3 place as you recall them on this particular day?

4 A Well, it all started that night, that night
5 before that day. I got a text from Mr. Evans
6 stating it was urgent, he want to see me.

7 Q Who is that?

8 A Mr. Evans.

9 Q Edmonds?

10 A Evans, Tyon Evans, the co-defendant.

11 Q Oh, Evans. Okay, go ahead.

12 A He text me and said it was urgent. He want to
13 holler at me, but I had text him back, said I'm with
14 my girl right now 'cause she was going to a funeral
15 in the morning. So I said, I'll holler at you
16 tomorrow when I come out. So the next day come,
17 that morning, he text me again, like yo, what's, up,
18 I need to holler at you. So I'm like, I'm coming
19 out, I'll be out after noon, you know what I'm
20 saying, my girlfriend had to go to a funeral at 1.
21 And I'm coming from Darlington. So as that place my
22 girl dropped me off in Mount Zion projects. That's
23 when Rasheem Thomas called me and was like, yo, I'm
24 coming through right now, bro, I'm coming from
25 Sealtest so we, meet me at my sister house. So I

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1 waited from outside. Tyon was already, I guess, he
2 ain't know I was outside. Me and Rasheem Thomas
3 walked inside the house. That's when I see
4 Mr. Evans bandaged up. The back of his head is all
5 bandaged up.

6 Q And is that the way he looked in that picture
7 that was shown earlier?

8 A Yes, sir.

9 Q Okay, go ahead.

10 A So as a matter of fact, his girl was just
11 changing the old gauze he had in the back of his
12 head 'cause he had glass stuck in — he had just
13 came out the hospital. They had —

14 Q Okay. I sometimes get confused so let's go back
15 for one minute. What is the name of your
16 girlfriend?

17 A No, his girlfriend was —

18 Q Your girlfriend?

19 A Oh, Randelle Dixon.

20 Q Randelle Dixon?

21 A Yes, sir.

22 Q And what's the name of his girlfriend?

23 A Tesa (ph).

24 Q Keshia?

25 A Thomas.

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1 Q Tesa Thomas?

2 A Yes, sir.

3 Q Okay, go ahead.

4 A So Tesa Thomas was in there bandaging him up like
5 the back of his — fixing his gauze up. I'm like,
6 bro, what happened to you. He like, that's what I
7 was texting you about last night, some dudes had
8 pistol whip me.

9 Q Do we know who the dude is?

10 A He ain't had — he ain't know the dude name at
11 all. He ain't know the dude name at all. He just
12 said some dudes pistol whip him. I said for what,
13 bro. He said, I played my music out loud at Smith
14 and Smith Trailer Park, and they jumped out and
15 pistol whip him. So I'm like, bro, you going out
16 like that, you know what I'm saying, like, you
17 letting these dudes handle you like that over some
18 music? He was like, yeah them dudes, they handled
19 me like, like that. So I'm like word, I'm not, I
20 wasn't feeling that situation so me and Thomas,
21 Rasheem Thomas, we started smoking a blunt, you know
22 what I'm saying.

23 Q By that, that means marijuana?

24 A Yes, sir.

25 Q So that's a illegal drug?

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1 A Yes, sir.

2 Q Okay, go ahead.

3 A So you know, we started smoking a blunt. So as
4 we smoking a blunt -- okay, so as we smoking a
5 blunt, you know -- it kind of echoing. As we
6 smoking the blunt we step out on the hall way.
7 That's when he come out was like, yo, ride with me,
8 bro. I'm like yeah, any --

9 Q Who is he?

10 A Tyon Evans came out the house after he finished
11 getting gauzed up, was like, ride with me, y'all two
12 ride with me. So I'm like, beck. So we about to go
13 to his car. He was like naw, we can't use my car.
14 I like, it's good. He's like naw, man, they know my
15 car from yesterday when they pistol whip me, you
16 know what I'm saying. So I'm like, all right, say
17 no more. So we get in his girl car. As we getting
18 into his car girl car I say stop by BP, let me get
19 some dutches. So we stopped by BP over here by on
20 Palmetto Street, and we went the back way to go to
21 National Cemetery to go towards Smith and Smith
22 Trailer Park. So when we get to Smith and Smith
23 Trailer Park I didn't even -- he ain't had no
24 indication of no gun was even present. He just told
25 me to ride with him. So as we ride -- as we riding

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1 into Smith and Smith Trailer Park he — we did a
2 whole lap around like, 'cause it's the area of Smith
3 and Smith Trailer Park it goes all the way around.

4 Q You talking about Mr. Evans?

5 A Yes, he was the driver. He told us to get in the
6 car, me and Rasheem. So I'm in the back seat, I'm
7 playing musician, the car tinted up. So ain't
8 nobody can see in it 'cause it's level five tint on
9 the car. You can't even see inside the car, you
10 know what I'm saying. So I'm sitting back, I'm
11 chillin, you know, I'm on my chill mode. We ride
12 around. As we ride around, we don't see nobody. So
13 I'm like, bro, what we out here for? He like, y'all
14 might try show the dude that pistol whip me. Now so
15 I was like, man, ain't nobody out here, 'cause it
16 like two something, you know what I'm saying. Ain't
17 nobody out here. Smith and Smith don't pop off till
18 nighttime. So I'm like, all right, you know what
19 I'm saying, come back later. He was like, naw, one
20 more loop, one more loop around, so we did another
21 loop around. And then that's when Rasheem Thomas
22 seen the victim right here, and him and the victim
23 got in a prior fight before that. I never seen this
24 man —

25 Q How long prior?

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1 A Prior to the fight like — Rasheem told me it was
2 like a week, a week prior they had fought or
3 something like that, got in a ring, they did some
4 rounds. They did some rounds, you know what I'm
5 saying. Rasheem say he got the best of him, but he
6 ain't like the fact how the situation took place.
7 So as we in the car I'm looking at home boy, I don't
8 even know him. I never seen this dude a day in my
9 life, don't know this dude so why would I go and hit
10 this man. I don't know this dude, you know what I'm
11 saying. So Rasheem embedded in my head like, yo,
12 this dude right here done came out of nowhere like,
13 and they got in a fight. So Rasheem like, man, I'm
14 about to show y'all niggers this is what I do, you
15 know what I'm saying. So as we pulling up like
16 making a full loop, we see him walking. Now he go
17 sit in front of the store, right in front of the
18 store, so if I was going to go like as Tyon Evans
19 say, if I'd had went inside the store he would have
20 seen me 'cause he's sitting at the store. So as we
21 make the loop around like to go in front of the
22 store, that's when Rasheem was like, yo, I'm gonna
23 show you what I do. That's when the gun was
24 exposed. When —
25 Q Y'all were in the car?

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1 A Yes, the gun was exposed in the car 'cause I was
2 gonna get out with him like, yo, I'm about to go
3 out, you know what I'm saying, this my man, I'm
4 gonna go with my man, you know what I'm saying. So
5 in the same process of I'm saying that's my man, the
6 gun was exposed. So now I fell back like, man, you
7 got that by yourself, you know what I'm saying.

8 Q Who exposed the gun?

9 A Tyon Evans, that was his gun.

10 Q Mr. Evans?

11 A Yes, sir.

12 Q The driver?

13 A The driver, that was his gun. He had the gun for
14 protection from somebody hitting him in the back of
15 the head with the pistol whipping him for playing
16 his music loud at Smith and Smith Trailer Park so.
17 Now they keep talking about GSR on my hand and they
18 keep talking about this and this and this, all that,
19 that's crazy man 'cause the gun was wrapped up in —
20 when the police found the gun they found the gun
21 beside Rasheem Thomas. They found the gun wrapped
22 up in a shirt. This man already identified me as
23 having a black shirt on and a black durag on. A
24 durag makes it look like you got hair from the
25 ponytail in the back of it. I had a white shirt on.

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1 When I was arrested the police can tell you my
2 identifier. I was in white. All — I was in white.
3 How can he say he seen a black man with a black
4 shirt and a black — and a durag. I was in white.
5 This is crazy, this my life on the line.
6 Q Yeah, but what I'm trying to — let's go back
7 to — did you see any of the shooting take place?
8 A No, this is actually what I seen, like. I'm in
9 the back of the car, like I'm saying it got tints on
10 there. I'm in the back of the car I'm chilling in
11 tints, right. I'm sitting in the tints. Rasheem —
12 no, Evans — that's Tyon Evans — pull out the
13 burner. He pull out — that's the gun. Pull out
14 the gun. He pull out the gun. Rasheem like, I'm
15 gonna show you this is the dude right here, I'm
16 gonna show you how to handle it so you won't, so you
17 won't get i misconstrued, people might stop playing
18 with us like we some suckers, you know what I'm
19 saying. Got out. We in front of the trailer. The
20 trailer is like this. We in front of the trailer
21 now. The store is right here and the front of the
22 store. It's X — lot one is the front of the store.
23 So he was — as we riding through we see him sitting
24 right beside the — I can't call it a patio 'cause
25 it's like a little walkup. You know how you walk up

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1 the stairs and go inside of the store, like you walk
2 up like four or five steps and you go inside the
3 store, that's where he was sitting right beside
4 that. Pull up, got out. Next thing you know, I'm
5 sitting, I'm chilling, I see it take place. Hit him
6 in the back of the head, boom, boom, boom, hit him
7 with the burner, next thing you know ran —

8 Q Who hit him?

9 A Rasheem Thomas.

10 Q Okay. So Evans had the gun and Rasheem Thomas
11 was the one that hit him?

12 A Yes, that was his prior beef. That was his —

13 Q Is Rasheem Thomas in the courtroom?

14 A No, sir.

15 Q Was he here earlier?

16 A No, sir.

17 Q Was he here yesterday?

18 A No, sir.

19 Q And he's a co-defendant in this case?

20 A Yes, sir.

21 Q Okay, go ahead.

22 A So he get in the car and we left. I'm like, wow,
23 okay, I understood. So he going through the man
24 wallet. He going — he got the man chain. That's
25 why all the stuff was in the front seat. I'm in the

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1 back seat. Everything was in the front seat. So
2 once we get down Freedom and we turn off towards
3 going towards McLaurin, next thing you know I see a
4 unmarked car knowing that it's a unmarked car
5 because for one, I'm a street dude. That means I'm
6 in the streets; I know the cars. I see the titan.
7 I was like, yo, boy, that's the titan right there.
8 So I ain't know that they had the ABB on us, I ain't
9 know that went over the airways. I ain't know none
10 of this yet, you know what I'm saying. So I'm just,
11 like, yo, that's the titan right there, get right,
12 you know what I'm saying. The next thing you know
13 he like, yeah, took his shirt off, started wiping
14 the gun down for fingerprints.

15 Q Who did that?

16 A Rasheem Thomas. So after he did that he try to
17 hand the gun back to Tyon. Tyon was like, naw bro,
18 naw bro, I'm driving, I'm driving, naw, I'm driving,
19 I'm driving. So he looked at — I'm like bro, I
20 ain't gonna, we out, you know what I'm saying, we
21 out. So next thing you know, I'm not trying to get
22 caught — I'll gonna be real with you. These my
23 boys, I'm not trying to tell on them, but I'm not
24 trying to get caught either, you know what I'm
25 saying, especially with something like this,

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1 conspiracy. I'm not trying to go down for that. So
2 we shot off. We drive down and turn down National
3 Cemetery. They hit the lights on us. I guess they
4 know that we knew it was them. They hit the lights
5 on us, boom. When they hit the lights on us I'm
6 like, bro, I'm like, bro, get to the hood, just get
7 to the hood, we bail out in the hood. We bail out
8 in the hood, just get to the hood. We too for one
9 on National Cemetery, ain't no way to get out, let's
10 get to the hood. So as soon as we got down Gilliard
11 Street I see a blue and white come behind us, a blue
12 and white come behind us, another titan come,
13 another — they was coming from everywhere, you know
14 what I'm saying. So I'm like brother, hit off on
15 the dirt road, I know the path right here. So Tyon
16 was like, man, where the path at. The queen ditch
17 path end up on the other side of the hill. If we
18 hit through the path we go through the hill we all
19 get above the head, you know what I'm saying. We
20 call the car in stolen, whatever, however. He like,
21 man, I'm gonna re-loop it. He re-looped it and went
22 back up National Cemetery. He was like on a count
23 of three we out, bro. One, not like he — one, two,
24 three, we all bailed. As soon as we bailed Rasheem
25 fell. They hit him with the tazer I guess. Rasheem

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1 Thomas, he fell. When they hit him with the tazer I
2 shot straight down National Cemetery, jumped across
3 the little grave yard, jumped across the other
4 graveyard. I was trying to make it to my people's
5 house, I was. Well, I seen the police on that side
6 so when I seen the police on that side I jumped the
7 other gate. I end up at my other people's crib, the
8 one that he testified earlier I was saying baby,
9 baby, I'm sorry. Naw, I wasn't saying like that.
10 I'm saying I'm sorry for bringing attention to your
11 house like this, you know what I'm saying, 'cause
12 she's a street person too, you know what I'm saying.
13 So I'm like, I'm sorry for bringing attention to
14 y'all. That's why I'm basically saying sorry, like,
15 you know what I'm saying, I'm making your grandma
16 cry like this. So that's why I was saying sorry
17 for.

18 So when he fell, when Rasheem fell on
19 National Cemetery where the gun was present, I'm all
20 the way all the way over here underneath somebody
21 house trying to hide from these police. They come
22 and find me, they shot me with the tazer, shot me
23 with the tazer. They kept hitting me with the
24 tazer, kept hitting me with the tazer. I'm laying
25 on the ground, they hitting me with the tazer like

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1 six times. I mean well, not like literally six
2 times but you know, they keep squeezing it. Every
3 time I like move, they squeezing the trigger on me
4 'cause I guess they electronic active or whatever, I
5 don't know. They keep sending waves through me, you
6 know what I'm saying.

7 So next thing you know they caught me,
8 send me, put me in a police car, had my hands behind
9 my back, you know what I'm saying. Then they ship
10 me over to National Cemetery, got me out of that
11 car, brought me up. Then the dude come and do
12 analyze on my hand. Okay, he analyze my hand. Next
13 thing you know he ship me off to Effingham. They
14 put me — they took my phone, took my I.D., and send
15 me on to Effingham. And that's the story. That's
16 the honest truth.

17 Q Did you shoot anybody?

18 A I ain't shoot nobody.

19 Q Did you arm rob anybody?

20 A Nobody. The victim didn't see me shoot him.

21 Q I realize there's no fingerprints on the gun but
22 did you have the gun in your hand?

23 A I never had touched that gun.

24 Q Well, tell me, was this big pile of clothes next
25 to you in the back seat?

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1 A It was — it was like a laundry but like a
2 little, you know, the little laundry, then little
3 laundry joints where you go, you know what I'm
4 saying. You go, laundry bags man. You know, like,
5 and it was like shirts in there and stuff like that,
6 like you know what I'm saying, like pants and all
7 that stuff in there.

8 Q Did you ever see a .45 on top of that?

9 A How can it be a .45 on top of it when the gun was
10 in the front of the seat.

11 Q That's all. Thank you.

12 THE COURT: Mr. Jepertinger.

13 MR. JEPERTINGER: Yes, sir. Please the
14 Court.

15 CROSS-EXAMINATION

16 BY MR. JEPERTINGER:

17 Q You say that you have known Tyon Evans for 16
18 years; is that correct?

19 A Roughly 16 years.

20 Q Okay. And you have lived in Florence County your
21 whole life?

22 A No, sir.

23 Q Okay. In fact, you have lived in the State of
24 Connecticut; haven't you?

25 A No, sir.

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1 Q Okay. Then tell me how you have a record in the
2 state of Connecticut for felony that carries more
3 than one year.

4 A Visiting.

5 Q Okay. So visiting, and you commit a felony that
6 carries more than one year in the State of
7 Connecticut?

8 A Yes, sir.

9 Q All right. Now you say when you got over to Tyon
10 Evans' place in Mount Zion Apartments that Tesha
11 Thomas was putting gauze on his neck?

12 A Yes, sir.

13 Q Did you say that she putting gauze on his neck
14 because he had glass in his neck? Did I
15 misunderstand you?

16 A I say he was putting gauze on his neck. His neck
17 was bleeding like he had glass from the pistol
18 whipping.

19 Q So you're saying he got glass in his neck from
20 the pistol whipping?

21 A No, I did not say that.

22 Q Okay. Maybe I misunderstood?

23 A Yes, you did.

24 Q You're gonna have to help me out here because I'm
25 a little confused too. You went over to Smith and

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1 Smith Mobile Home Park, and you would agree with me
2 that it was about 2:19 in the afternoon?

3 A You got the time.

4 Q You were there.

5 A I ain't had no watch.

6 Q All right. Now — excuse me one second, sir.

7 You say that Tyon Evans drove around and that both
8 Tyon and Rasheem got out of the car, correct?

9 A Never said that.

10 Q What did you say?

11 A I say Rasheem got out the car.

12 Q Rasheem got out.

13 A You got it right in your Rule 5, the same
14 statement in your Rule 5 when he say he went around
15 twice. The same statement that he did not say on
16 the stand when he was here.

17 Q That Tyon Evans went around twice is what you're
18 saying?

19 A He drove around twice. That's what he says in
20 your Rule 5.

21 Q Are you saying Rasheem — my question is, did
22 Rasheem — you're saying Rasheem Thomas got out of
23 the car?

24 A That's what I said.

25 Q And you'd agree with me that Rasheem Thomas had

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1 comrows in his hair and not his hair in a ponytail?

2 A I do not agree with you.

3 Q You don't agree with me?

4 A That picture is three days old. After we had got

5 booked in three days later. That picture is took on

6 the 9th, we got locked on the 6th. And you seen —

7 we got locked up on the 6th and that picture is on

8 the 9th. We was booked in on the 9th.

9 Q Okay. That's what you're saying?

10 A That's what I said.

11 Q Okay.

12 A All right.

13 Q Can you tell me the date on this picture

14 underneath his picture?

15 A That says —

16 Q What date does it say?

17 A April 6th. It say April 6th.

18 Q All right. And you'd agree with me on April

19 the 6th according to this picture —

20 A Yeah.

21 Q —he's got comrows?

22 A Yeah, it appears to be. Let's see if that's the

23 right day, but it's not the right day 'cause that

24 picture was taken on the 9th.

25 Q Uh-huh.

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1 A I was right there when he took it.

2 Q So when you were -- was your picture taken on the
3 9th?

4 A Yes, sir.

5 Q And when you get into the Florence County
6 Detention Center they don't allow you to wear
7 regular clothing, do they?

8 A For -- yes, until you get booked, until you get
9 booked.

10 Q So you're saying that you got -- it took from
11 April the 6th to April the 9th to book you into the
12 jail?

13 A Yes, it did.

14 Q Hum.

15 A They was waiting for charges. They wouldn't let
16 me use the phone or nothing. They had me in the
17 back of the booth, back of booking in the little
18 holding cells back in the booking. Had him in room
19 three, had -- and Tyon in room five. They would not
20 let us go down the hall until after we see the
21 judge. We did not see the -- you can't go down the
22 hall unless you see the judge. We did not go down
23 the hall to see the judge until April 9th or
24 something like that. They were waiting for warrants
25 from the county.

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1 Q Or something like that, was it April the — are
2 you sure it wasn't April 6th?

3 A All right. Yeah, I'm positive it wasn't. You
4 can check. Go check, check your records.

5 Q All right. And normally the process of booking
6 is you get booked into the jail and they took — did
7 they take you down to a cell that day?

8 A No, they didn't. They left me in booking.

9 Q For three days?

10 A For three days. Until we went to see in front of
11 the judge.

12 Q All right. Now where was the car parked when
13 Rasheem Thomas got out of the car with the burner as
14 you say?

15 A In front of lot one. In front of the store. So
16 how can he see me go inside the store if I never
17 was — if Tyon Evans said I went inside the store
18 how could we be in front of the — see me go inside
19 the store if the car was parked in the front, the
20 very front of the store? I mean, the trailer right
21 here, the car was parked right here in the front of
22 the store. You come in through the store on this
23 side of the trailer, not the backside. We was on
24 the backside of the trailer.

25 Q Did you see — did you see Johnny Henicks out

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- 1 there?
- 2 A Yes, I did.
- 3 Q You saw Shaheem Henicks out there?
- 4 A Yes, I did.
- 5 Q All right. And of course, you being a great,
6 someone that doesn't like this type of thing, you
7 immediately came to the aid of a three year old
8 while his father was getting pistol whipped and
9 shot?
- 10 A No, I did not.
- 11 Q Okay, you didn't do that. Now is there any
12 explanation, is there any explanation that you would
13 have of why you would have gunshot residue on your
14 hands?
- 15 A Yes, sir, I got plenty of explanation. I stay in
16 the country.
- 17 Q Darlington?
- 18 A Four acres of land.
- 19 Q Okay.
- 20 A In Darlington.
- 21 Q Uh-huh.
- 22 A Four acres of land.
- 23 Q Okay. When you got up that morning did you wash
24 your hands?
- 25 A I wasn't shooting that morning.

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1 Q You weren't shooting that morning?

2 A No, not that morning. That afternoon I was
3 shooting.

4 Q At 2:00?

5 A Naw, probably like 12:30, 1:00.

6 Q Uh-huh.

7 A Before I came downtown after my girl dropped me
8 off.

9 Q Uh-huh. All right. Well, when -- why did you
10 jump from the car?

11 A Because I wasn't going to try and go to jail.

12 Q For what, you did nothing?

13 A That ain't how South Carolina work.

14 Q Uh-huh.

15 A And you can tell by the way all three of us
16 charged for one bullet being shot. Three people
17 charged with hand of one is the hand of all they say
18 one shot.

19 Q They do that; don't they?

20 A Yeah, that what you doing right now, hand of one
21 hand of all.

22 Q Uh-huh. Well, thank you, Mr. Davis, for that
23 education, I appreciate it.

24 MR. JEPERTINGER: I have no questions for
25 this guy.

1 THE COURT: Mr. Strobel, anything further?

2 THE WITNESS: Thank you.

3 MR. STROBEL: No.

4 THE COURT: Mr. Davis, thank you, sir.

5 You may step down.

6 Any other witness, Mr. Strobel?

7 MR. STROBEL: Let me just talk to him one
8 second.

9 THE COURT: Yes, sir.

10 (Pause.)

11 MR. STROBEL: We rest, Your Honor.

12 THE COURT: All right, thank you very
13 much, sir.

14 Ladies and gentlemen, the Defense has
15 rested their case. Now what occurs in all trials is
16 upon the Defense resting, the Court then has to take
17 up matters of law at the end of all the evidence,
18 which is where we're at this point; but however, let
19 me first inquire of the State.

20 Mr. Jepertinger, is there any reply?

21 MR. JEPERTINGER: I don't believe so, Your
22 Honor.

23 THE COURT: All right. So we're at the
24 conclusion of the evidence, and I now have to take
25 up motions at the close of all the evidence. So

1 what happens typically is that I'll take up those
2 motions; and then depending on the ruling on those
3 motions, we will then move into the phase of the
4 trial where you would hear from the attorneys with
5 regards to their closing remarks. And then after
6 they've completed their closing remarks I will
7 charge you on the law. Then once you have all of
8 that, you are then ready to make, begin your
9 deliberations. It is about 3:24 this afternoon, and
10 it's gonna take me some 20 minutes or so to take up
11 matters of law with the lawyers. Then I have to
12 review with them the charge on the law so our best
13 case scenario would be they wouldn't be able to
14 begin their closing remarks to you till about 4:00.
15 And then after they finish I would charge you on the
16 law; and before you know it, we're past 5:00 and
17 arrange you haven't gotten the case yet.

18 So what I'm gonna do is, this is going to
19 be one of those days that we're gonna actually --
20 well, you're gonna actually get off early today
21 because I don't, I don't like to keep a jury -- I
22 don't like to get a case to the jury late in the
23 afternoon when people are concerned about, you know,
24 'cause I want your deliberations when you do get
25 ready to consider the case. I don't want you to

1 have any restrictions or feel any pressure regarding
2 time and home and supper and all those type of
3 things. I want to eliminate all that for you. So
4 what I think we'll do is, we'll recess at this time
5 for the balance of the day. I'll get you to come
6 back in the morning and we'll start in the morning
7 with the closing arguments of the attorneys. I'll
8 charge you on the law, and then you'll have the case
9 by mid-morning for your review and your
10 deliberations, okay? So I think that's what we're
11 gonna do. I think that's the most efficient use of
12 our time and your time.

13 Now having said that, you're gonna be
14 leaving and going back home as you did last night.
15 You can let your friends, family, or loved ones know
16 that you do have to be back in the morning. You
17 really, you can't talk to them about anything that's
18 gone on today. But what you can do is you can ask
19 them to be patient for one more evening and you can
20 let them know that at some point tomorrow you
21 anticipate that you will be able to share with them
22 everything you know about this case because as I
23 told you, once the case is concluded and you've
24 completed your deliberations, then you can talk
25 about the case to anyone you'd like to talk to. So

1 please ask your folks in your life who might be
2 curious or interested in what's going on to be
3 patient for one more day. Try to get a good night's
4 rest tonight, and I'm gonna ask you to be back in
5 your jury room at 9:30 in the morning. So when we
6 reconvene, we have everybody back at 9:30, we will
7 go ahead and begin at that point, okay? So everyone
8 please remain in the courtroom. Remain seated,
9 ladies and gentlemen. We'll see you back at 9:30
10 tomorrow.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 3:26 p.m., and the following
13 proceedings commenced in open court.)

14 THE COURT: At this time I'll take up
15 motions at the close of the evidence.

16 Mr. Strobel.

17 ~~X~~ MR. STROBEL: Yes, sir. Your Honor,
18 again, I would at the conclusion of the plaintiff's
19 case and the defense that was presented, I would
20 again renew my motion for directed verdict of not
21 guilty as to the armed robbery, as to the attempted
22 murder, and as to the pistol charge.

23 THE COURT: All right, sir. I'm gonna
24 respectfully deny those motions at this time. I
25 think it's an issue for the jury. I think it's a

1 factual issue for the jury to decide as to the
2 conflicting testimony, and I think that's a job for
3 them; but I'll certainly note your exception to that
4 ruling and your motions that have been made. All
5 right.

6 Now for purposes of the charge — I tell
7 you, and let me let me do this, let's just take a
8 short break. And for, ladies and gentlemen, those
9 of you who are here, I'm gonna enter into some
10 informal conversations with the attorneys regarding
11 the jury charge. For purposes of the trial we won't
12 be — we're in recess now. We won't be conducting
13 anything substantive or material, so if you want to
14 hang around for these discussions on the charge
15 you're welcome to, but that's what we're gonna be
16 doing. Basically we're gonna still be on the record
17 so that those discussions can be part of the record,
18 but it is gonna be more informal because we're
19 outside the presence of the jury and for purposes of
20 the case we are at ease right now. So let me —
21 let's just take a short break, give y'all an
22 opportunity to gather your thoughts regarding the
23 charge, and then we'll get back together and discuss
24 that, okay?

25 (WHEREUPON, a recess was taken from the

1 proceedings.)

2 THE COURT: I reviewed the ABHAN charge.
3 Mr. Jepertinger, I did — I agree with what you had
4 stated regarding the — let me tell you what I came
5 up with using the relevant portions of the statute.
6 I have included within the offense of attempted
7 murder is the lesser offense of assault and battery
8 of a high and aggravated nature. A person commits
9 the offense of assault and battery of a high and
10 aggravated nature if the person unlawfully injures
11 another person and: (a) great bodily injury to the
12 one person results; or (b) the act is accomplished
13 by means likely to produce death or great bodily
14 injury. South Carolina law defines great bodily
15 injury to mean bodily injury which causes a
16 substantial risk of death or which causes serious
17 permanent disfigurement or protracted loss or
18 impairment of the function of a bodily member or
19 organ. And I — that's what I have as a charge
20 regarding the ABHAN charge. Does that comport with
21 the relevant portions of the statute?

22 MR. JEPERTINGER: Yes, sir.

23 THE COURT: All right. And then as far as
24 at the conclusion of the possession of a weapon, I
25 put for purposes under South Carolina law attempted

1 murder, assault and battery of a high and aggravated
2 nature, and armed robbery are considered violent
3 crimes. Anything further from the State with regard
4 to — and of course, I removed the language about
5 the defendant's failure to testify because clearly
6 Mr. Davis did, in fact, testify so that is not
7 relevant or that's not appropriate in this case.

8 MR. JEPERTINGER: Your Honor, I think
9 based on the defendant's testimony and his testimony
10 alone, of course, he brought up the issue that
11 another co-defendant did the shooting, did the
12 injury to the victim, Your Honor. I think he would
13 have raised the issue of hand of one being the hand
14 of all which he mentioned to me pursuant to a
15 question in response to me during my
16 cross-examination.

17 THE COURT: You sure you want that
18 charged?

19 MR. JEPERTINGER: Your Honor, I'm just
20 saying that —

21 THE COURT: If you were trying all three
22 of them as co-defendants.

23 MR. JEPERTINGER: I'm just saying he
24 raised, he raised that issue.

25 THE COURT: Well, I mean, are you

1 requesting the hand of one?

2 MR. JEPERTINGER: Sure.

3 THE COURT: Mr. Strobel, do you have any
4 position on that?

5 MR. STROBEL: I'm not gonna object.

6 THE COURT: I don't blame you. I think
7 you're instilling in this case an issue that's not
8 here, but I'll need to look at the charge I've got
9 unless you have something you want me to consider.
10 Let me look at the charge that I've got.

11 Mr. Strobel, is there anything about the
12 charge that you wish to add or subtract or —

13 MR. STROBEL: No, sir.

14 THE COURT: All right. Let me, if y'all
15 will just give me a moment I'll see what I've got on
16 that and see if there's anything.

17 (Pause.)

18 THE COURT: All right. I will include
19 that charge and I'll let y'all, let you look at that
20 before first thing in the morning, if you would,
21 'cause I've got to incorporate in and do that. And
22 then I'll let you look at it in the morning and then
23 we can discuss it further if you've got any changes
24 you want to make to the charge itself. All right,
25 anything else regarding the charge?

1 MR. JEPERTINGER: No, sir.

2 THE COURT: All right.

3 MR. JEPERTINGER: Your Honor, can I bring
4 up a point that has nothing to do with this case but
5 the solicitor came up —

6 SOLICITOR CLEMENTS: I was gonna wait till
7 you finished.

8 MR. JEPERTINGER: All right. And it has
9 nothing to do with this case, Your Honor.

10 THE COURT: All right, well, let me just
11 go off the record then. Well, let me ask this
12 before I do that, on the proposed — I don't recall
13 on the verdict form that I gave y'all as a proposed
14 form if I included the lesser included charge of
15 assault and battery, I think I did. I did? Okay.
16 That's just a proposed charge that I have used in
17 the past when I've had multiple charges and lesser
18 included. I think it simplifies it when you just
19 put that you've got three options being either —
20 give you three options of either not guilty, guilty
21 of attempted murder or guilty of assault and battery
22 of a high and aggravated nature, rather than trying
23 to put guilty or not guilty of attempted murder and
24 if you don't find on attempted murder you may
25 consider that. And then, I mean, that's just —

1 it's a lot, real wordy, and confusing to a jury so I
2 propose that form that I gave y'all. Any objection
3 to that?

4 MR. JEPERTINGER: No, sir.

5 THE COURT: Mr. Strobel?

6 MR. STROBEL: Oh, no, I've had this
7 before. As you notice the foreman of the jury only
8 signs solely by himself on the last page. I was
9 wondering if it's at all possible we could have him
10 to maybe initial the other pages as well.

11 THE COURT: You know, I thank you for
12 mentioning that. I have never —

13 MR. STROBEL: I had that problem before.
14 They said oh, we need to do that for all three.

15 THE COURT: I got you.

16 MR. STROBEL: Yes, sir.

17 THE COURT: Okay. I will — that's a good
18 point. When you have a verdict form that goes
19 beyond one page something to indicate that they —

20 MR. STROBEL: Yes, sir.

21 THE COURT: All right. I'll put that on
22 the first page as well, a signature block. Okay, so
23 for purposes of this trial then we'll reconvene at
24 9:30; and if y'all want to look at that hand of one
25 charge, just come by the office before we get

1 started and I'll show you what I got, okay?

2 (WHEREUPON, the proceedings were concluded
3 for the day to be reconvened on 4:14 p.m.
4 20, 2012.)

5 THE COURT: Mr. Jepertinger, is the State
6 ready to proceed?

7 MR. JEPERTINGER: State's ready, Your
8 Honor.

9 THE COURT: Mr. Strobel, is the Defense
10 ready to proceed, sir?

11 MR. STROBEL: We're ready.

12 THE COURT: All right. Now ladies and
13 gentlemen, we're getting ready to bring the jury
14 out. I have heard all the motions at the close of
15 all the evidence and so now we're at the portion of
16 the trial for closing arguments. What I do is
17 not — it's not a rule; it's just kind of what I do.
18 I have the bailiff and the deputies lock the doors.
19 So once the attorneys begin their closing remarks
20 nobody is allowed in or out of the courtroom, and I
21 do that because if you'll notice during the trial as
22 people would come in the back door they were quiet
23 but when that door opens the members of the jury
24 instinctively look back there to see what's going
25 on. And so I lock the door so that the lawyers are

1 not disturbed and that the jury can focus on the
2 attorneys and not be, have their attention taken.
3 So if you need to use the restroom or if you don't
4 want the sit here for all the closing arguments, you
5 need to — it's kind of all or nothing, you're
6 either in or you're out. Once we start nobody comes
7 in, nobody goes out. All right? So everybody is
8 understanding that.

9 Understanding that, Ms. Joe, if you'd ask
10 the members of the jury to join us please.

11 **(WHEREUPON, the jury was returned to the**
12 **courtroom at approximately 10:10 a.m., and**
13 **the following proceedings commenced in**
14 **open court.)**

15 **THE COURT:** Ladies and gentlemen, thank
16 you for your patience. I had scheduled a matter
17 that was supposed to take just a few minutes, and it
18 didn't take terribly long, but it took longer than I
19 thought it would take and we didn't get started
20 until a little bit late so I had to clear that up.
21 It was a matter unrelated to this case, and it was
22 another case that I had heard about a year ago. So
23 anyway, we got that cleared up and we're ready to
24 proceed now. If you remember from yesterday, the
25 Defense had rested their case and so all of the

1 evidence in the case is in. The case is closed as
2 far as the submission of evidence, but now it is an
3 op— now is a time in the trial where the attorneys
4 are going to have an opportunity to address you with
5 what we call closing arguments or their final
6 remarks.

7 Ladies and gentlemen, just like I told you
8 with regards to their opening statements, what the
9 lawyers tell you in their closing remarks is not
10 evidence. The evidence is closed. The evidence in
11 this case came from the witness stand and then the
12 exhibits which came in during the course of the
13 trial, and these exhibits will be back in the jury
14 room with you when you retire to deliberate. But
15 this is a time that the lawyers have an opportunity
16 to talk to you about what they believe the evidence
17 has shown so it's important that you give them your
18 undivided attention as they address you with their
19 closing remarks.

20 Once they've concluded their remarks I
21 will then give you the law that is applicable to
22 this case; and once you have that, you will then be
23 in a position to go back into the jury room and to
24 begin your deliberations, okay? So if you would,
25 please give the attorneys your undivided attention

1 as they address you with their closing arguments.

2 Mr. Strobel.

3 MR. STROBEL: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. STROBEL: Mr. Jepertinger.

6 MR. JEPERTINGER: Yes, sir.

7 MR. STROBEL: Mr. Foreman, ladies and
8 gentlemen of the jury. You know, I suppose I spend
9 a lot of my time in the evenings watching
10 television. I like these murders that take place
11 that really happened and watching the
12 investigations. And I've been doing this pretty
13 much my entire life. I just have always enjoyed it,
14 the thrill and the excitement of catching somebody
15 for having committed a murder, whatever. And you
16 get a certain pattern, a certain feeling for
17 evidence and for a particular case that you're
18 involved with. Now Mr. Davis and the other two —
19 there are three defendants in this case. They are
20 choosing to bring forth one of the three, and then
21 they're going to say that the hand of one is the
22 hand of all so if they can prove it on one then they
23 proved it on everybody. Well, that's not the way
24 things operate.

25 This case of murder is one in which they

1 went there with the intent to murder someone and to
2 kill them. There had to be thought; there had to be
3 planned. It's premeditation. They have presented
4 no evidence to show that there was a plot and a plan
5 to kill that gentleman there. In fact, just the
6 opposite. As I told you in the first part of the
7 trial that if they went there with the intent to
8 kill him, then it appears that they would not only
9 shot him in the head from the back instead of
10 hitting him in the head, but that he shot him in the
11 heart or whatever. I do notice from the testimony
12 when he was on the ground they said that this
13 individual pointed the pistol at him and reached
14 down and jerked the chain away and got — well, if
15 he went there with the intent to kill him and he's
16 still alive he would have shot him in the head,
17 there is no murder. There's no evidence of any
18 intent to kill anybody.

19 Now they're gonna argue to you that he was
20 shot, I believe, in the side and it came out the
21 back end, and there is a possibility he could have
22 died from that shot. Yes, that's true. In fact, I
23 had a case years ago where they shot someone in the
24 leg and hit a major artery, and they bled to death
25 before he could get to the hospital. So even though

1 you may not intend to shoot somebody the person may
2 die anyway, but there was no intent to commit
3 murder. And I relay to you that that is not the
4 situation in this case.

5 What you're really looking for is who
6 fired the gun. That's the only thing I'm interested
7 in, who shot the gun. Well, this is a case in which
8 they try to prove it through gunshot residue and the
9 fact that Mr. Davis has long hair. Incidentally,
10 remember, this happened well over a year ago. Well,
11 we know that the worst evidence — and I'm gonna
12 talk about identification first — is the worst of
13 all evidence to present because we all make
14 mistakes. We all see things one way and it actually
15 occurred another. You have a prime example of that
16 in this particular case, couldn't ask for a better
17 example. Their chief investigator, the one who
18 looks like Santa Claus, clearly stated, and I was
19 looking right at the porch when he came from
20 underneath the porch and it was not Mr. Davis. I
21 asked him again. He said, no, it was not him, it
22 was not him. But yet, you get the opposite here. I
23 believe his name was Collins — was that correct? —
24 who went under the porch and pulled him out and he
25 said, yes, it was him. Now isn't this something?

1 We're talking about professionals who were right
2 there. And one said it was him and one said it
3 wasn't. So we all misidentify when we're dealing
4 with what somebody looks like or who was where. So
5 that's why it's so doggone important to have
6 fingerprint analysis on today, 20th and 21st
7 century, DNA testing, because there are no mistakes.
8 And it's important that we have that type of
9 investigation going forth to prevent us from sending
10 this young man to prison for a long period of time.
11 It's uncalled for and unjustified. We want to do
12 the right thing.

13 Now you probably want to know why I asked
14 particular questions and I'm real brief because I
15 like to get right to the point of what this case is
16 about. When he was taken from underneath the house
17 he was handcuffed and placed by Agent Jason Collins
18 into — he was handcuffed from the back and placed
19 into Officer Leslie Hubble's, H-U-B-B-L-E-'S patrol
20 car. Now why did I want that? They know why. In
21 fact, they even made a movie about this situation
22 and wrote a book out of Los Angeles. When you
23 arrest someone and you handcuff them to the back,
24 you don't conduct that test if you put that
25 individual in the back of a patrol car because

1 those, within six hours prior to that who's placed
2 in the back of the officer's car, will have gunshot
3 residue possibly on the hand that was in the back
4 seat of the car. And then they put Mr. Davis in the
5 back seat of that patrol car, the gunshot residue
6 transfers to him. Remember when I asked the lady,
7 if I were to shoot a pistol in the courtroom and
8 gunshot residue was out here on this table and I rub
9 my hand like this, do I get it? Yes, you do. I get
10 it, the gunshot residue. So that is never done.
11 Remember, Van [sic] Lutcken said he took him out of
12 the patrol car and then conducted this test. Well,
13 that's not the way it's done, and it's never the way
14 it's done because we know that we're dealing with
15 someone's life here when it comes to gunshot
16 residue.

17 Now when you have a case where you didn't
18 have him envision — well, no one saw him,
19 identified him as the shooter. But if you have him
20 envision the whole time, say, from there to the car
21 and to where he was eventually caught might be one
22 thing, but this — but they lost vision. Remember
23 when they went there and the chain was crossed and
24 had to go around to the other side and hopefully
25 pick up on the same ones. We don't what he touched

1 or what he did. In fact, he even testified to you
2 that he had even fired another weapon prior to this
3 taking place within that six hour period. Is that
4 possible? Yes, it's possible. I asked the lady, I
5 said, is it possible — now remember what Van
6 Lutcken said. Van Lutcken said that you can take
7 that casing and analyze it in the laboratory to
8 determine if that gunshot residue came from that
9 particular cartridge. She didn't conduct that test.
10 In fact, it was funny what she said. She said you
11 could shoot five different case shellings and all of
12 them will have a different gunshot residue. So why
13 wasn't that test done to determine if that casing?
14 I even asked him this, I asked the Van Lutcken —
15 no, Paul Bird, your crime scene investigator, about
16 fingerprints. Now I'm from the old school that says
17 when you find a handgun or a weapon — it was picked
18 up correctly by Nida. You take a pen and you pick
19 it up because there's fingerprints that's on that
20 weapon and we want to know who had that weapon just
21 prior to it ending up on the ground. Well, they
22 went through all of that, carried it down to be
23 processed like they processed the automobile at the
24 Sheriff's Department, took no fingerprints. I asked
25 him, what were the fingerprints determination made,

1 Mr. Bird, on the pistol? I didn't do any
2 fingerprints. You didn't do any fingerprints? No,
3 no, didn't test it because it's made with a plastic
4 around the grip that you can't get fingerprints
5 from. I said, I see, but I knew one thing, they
6 could test the cartridge that was put inside it
7 'cause I could see from here smooth as there was no
8 plastic on that. And he had an answer for that one.
9 He said, oh, I looked at it and I could see that it
10 didn't have any fingerprints. You could look at it?
11 Isn't that funny? All the murder pictures I've seen
12 they've always dusted everything, then it becomes
13 visible. But here we have an individual who doesn't
14 have to dust things; he can just look at it and tell
15 it, whether it's fingerprints or not. Doesn't even
16 try. Then I asked him about the cartridge, did you
17 take any fingerprints from the cartridge? And he
18 said something about it being made of cardboard or
19 something. By the way, he also said you can't get
20 fingerprints from aluminum which is beyond me, but
21 anyway. Every picture I've ever seen in cases I've
22 been involved, they can get fingerprinted —

23 MR. JEPERTINGER: Your Honor, I would
24 object to other cases that would be going on and I
25 have to object if he's talking about what's happened

1 in other cases. I allowed him to go on a little bit
2 about that, Your Honor, but I must object.

3 MR. STROBEL: I'm talking about the paper.

4 THE COURT: Come on up real quick.

5 (WHEREUPON, counsel approached the Bench
6 for an off-the-record discussion.)

7 THE COURT: All right, I sustain that.

8 You can go on with your lineup. All right, you may
9 continue, Mr. Strobel.

10 MR. STROBEL: You can get fingerprints
11 from a letter, envelope. It doesn't matter whether
12 it's made out of paper or compressed cardboard, as
13 testified to. It just wasn't done, and he knows
14 that it wasn't done. So then I see the pictures
15 from a distance -- and y'all can look at them up
16 close -- two pictures made of blood that was found
17 in the grass, and I said, why wasn't there a DNA
18 analysis done of the blood, and he says the fire
19 ants ate it. You know, I didn't see any fire ants
20 on the pictures, and I'm sure that I thought he
21 meant the fire ants -- I thought he meant that he
22 was afraid to reach down and touch the blood to get
23 an analysis because he's going to get stung by the
24 fire ants or bitten or whatever; but he said, no,
25 they ate them. So all the -- all the blood, all the

1 evidence was eaten by ants? That's bull. He didn't
2 do it. He didn't do any DNA analysis. He didn't do
3 any fingerprint analysis on nothing; but yet, they
4 want to put him away for a long period of time and
5 the others too through the hand of one the hand of
6 all theory. It's just not right and it's not fair.
7 We need a better system in Florence County than what
8 we've got. That is just not the way to conduct an
9 investigation. You know, we had this back in the
10 20th century, and it's the 21st century. We do a
11 proper investigation. You cannot always rely on who
12 saw what, what saw where, because we all make
13 mistakes. Fingerprints doesn't make mistakes. DNA
14 doesn't make mistakes.

15 If you are firmly convinced that they have
16 not proven their case to you beyond a reasonable
17 doubt, then you must find him not guilty. There has
18 to be a real possibility that he may be not guilty.
19 There is a real possibility, and we cannot continue
20 on with this archaic investigation. We have to use
21 the tools that we have, our smarter tools we have,
22 to make determination where that is present. And I
23 ask you to give that due consideration and find this
24 young man not guilty. Thank you.

25 THE COURT: Thank you, Mr. Strobel.

1 Mr. Jepertinger.

2 MR. JEPERTINGER: Yes, sir. If it please
3 the Court, Mr. Strobel, Mr. Foreman, and ladies and
4 gentlemen of the jury. First of all, I do want to
5 thank you for your service this week. It is often
6 said that other than service in the military during
7 time of war that the American citizen does no
8 greater honor to his country by doing his
9 responsibility in terms of jury service. At the
10 beginning of this trial when I spoke to you last, I
11 used the phrase that Wednesday is here but Sunday is
12 coming. How ironic, ladies and gentlemen, that
13 today is Wednesday as well. And we are in a few
14 minutes gonna put this case in your hands for you to
15 weigh the facts and evidence against this defendant,
16 and we're going to ask you to render a verdict that
17 speaks the truth.

18 Seneca, the Roman stoic philosopher and
19 poet, once said that all cruelty springs from
20 weakness. In this case, where does the weakness lie
21 with this defendant. There is no doubt that it's
22 surely cruel. The pistol whipping, the shooting in
23 the back of an individual who moments before was
24 holding a three year old infant with a bullet
25 traversing the length of his abdomen and exiting his

1 belly, the further threatening of this individual of
2 the .45 pointed towards his head, the rank theft at
3 gun point of his jewelry and wallet, where does the
4 weakness lie? The weakness lies in that he believes
5 that you, the jury, will not find him guilty; that
6 you in your common wisdom will nullify, negate,
7 reject all the proof that's against him; that you
8 will fail to believe that Johnny Henicks was shot by
9 him, pistol whipped by him, that he robbed Johnny
10 Henicks. He's expecting you to disbelieve Arentheus
11 Garrett. Arentheus Garrett, you remember Arentheus,
12 the young man with the cast on his arm who went to
13 do a phone transfer and was in the trailer, the
14 mobile home doing that, expecting to go back to 204
15 East Marlboro Street to pick up his kids when they
16 were getting out of school and was going to only be
17 there a few minutes. He wants you to discount that
18 testimony that he is the shooter, the beater, the
19 robber. What did Arentheus tell you? I heard a
20 gunshot explosion, I looked out the window, I was
21 right by the refrigerator and what did I see? I saw
22 a guy with ponytail. I made a big deal about a
23 ponytail, if you recall. He has a ponytail, dreads,
24 with a person that resembled him. His back was
25 turned to me. What was he wearing? He had a white

1 T-shirt on. White T-shirt, ah. See, Mr. Strobel
2 doesn't want you to look at this evidence because
3 look at this. On State's Exhibit 1 we've got a
4 white T-shirt. Who's got a white T-shirt? Why
5 would Arentheus make up a white T-shirt? Now who
6 else had a white T-shirt? Tyon Michael Evans, but
7 it couldn't have been him; hair was too short, hair
8 was too short. Rasheem Thomas, what color is that
9 T-shirt? It's black. Now, oh, they didn't take
10 those photographs then? No, no, sir, no, huh-uh.
11 You remember that yesterday. Look at the date
12 stamp. Look at the time stamp on the photographs.
13 Tyon Michael Evans, April the 6th, 2011, at 20:59
14 military time, right? What would that be? 8:59 in
15 the evening. Rasheem Thomas, April the 6th, 2011,
16 20:36, 8:36 in the evening. Thomas Edward Davis,
17 April the 6th, 2011, 22:16. What is that, 9:16 in
18 the evening? All on April 6th. Who fits the
19 description of the shooter? Arentheus Garrett.

20 By the way, think about this, do you
21 remember when the defendant was testifying yesterday
22 and he said, I was right there in the front, saw
23 everything. Didn't go try to help the kid or the
24 man? No, no, no. Parked right there in the front.
25 Then why in the world would Arentheus Garrett have

1 to run the distance inside the trailer to go see
2 that car on the back side if that car was parked in
3 the front. There was no reason to do that.
4 Arentheus Garrett was credible, white T-shirt,
5 braids, resembled the man. And what did he call
6 out? Think about what he called out. What did the
7 individual do? Ripped the chain off of him. What
8 do you find missing in the car? The cookie monster
9 medallion. Went and saw him get the wallet. What
10 did Deputy Neil find? The wallet. Where? Not too
11 far from where they were caught. Saw the man run to
12 the where? The back passenger seat. Called out the
13 license tag number. What did Arentheus Garrett win
14 or lose by doing this? Nothing. He was the casual
15 observer that saw what he saw. That's his weakness.
16 He wants you to nullify that, negate that, not
17 believe that.

18 The hair style, oh, they didn't book us
19 in, they didn't book us into jail until April
20 the 9th, even though the time stamp on the
21 photograph said something different. Yeah, he had
22 cornrows there, but he had dreads. Well, folks,
23 that's why I had them do the time on the board.
24 Think about it. The crime happens at 2:19, or
25 that — or shortly before that because the police

1 get there at 2:19 based on their crime scene log,
2 correct? 2:19. So say it happened at 2:15, when
3 did Fridley say he spotted them? 2:23, 2:23. At
4 2:23, according to this defendant, Rasheem Thomas
5 decided somewhere to cornrow his hair, had to. And
6 you know why that's not true? You know why that
7 rings false? Think of what Kendrick Spears, the
8 narcotics officer, the African American officer that
9 came and testified, the one that tazed Rasheem
10 Thomas. How did he describe him? The individual
11 with cornrows. Why would he make that up? He has
12 no reason to. He has no reason. And you know why,
13 folks? Because the truth lies in the fact that the
14 person you see in those photographs, the one with
15 the long hair who wore his hair the same way on
16 Monday morning, is the one that beat this man with a
17 gun and shot him.

18 Now, Mr. Strobel I think misspoke a little
19 bit when he said to you you get a feeling for
20 evidence in this case that there was no murder. I
21 agree with him, there's no murder. This isn't a
22 murder case. We have a living soul here. He's been
23 charged with attempted murder. Now the judge is
24 going to explain to you the elements of attempted
25 murder; but at its core, at its core, he's going to

1 say that in these type cases to be charged with
2 attempted murder a person must — look here — with
3 intent to kill, attempt to kill another person with
4 malice. Now how do we define malice? I kind of
5 mentioned it in my opening statement, that malice is
6 hatred, ill will, hostility towards another. It
7 is — listen here, it is the intentional doing of a
8 wrongful act without just cause or excuse with the
9 intent to inflict an injury or under circumstances
10 that the law will infer an evil intent. And you
11 don't have to have malice existing for hours before,
12 minutes before. It must exist before but there's no
13 particular time. Malice must exist in the mind of
14 the defendant just before and at the time the act is
15 committed. Mr. Strobel wants to ride two horses.
16 He didn't do the shooting. Rasheem Thomas did the
17 shooting, even though that's contrary to the
18 testimony in this case. How did he know what's in
19 Rasheem Thomas' heart? Well, if he did do the
20 shooting, if he did do the shooting, it was without
21 malice.

22 You remember what Ira Parnell told you
23 about State's Exhibit 40? Of course, I can't get it
24 open now. I'm not going to point it at anybody, all
25 right? But you got a .45 caliber semiautomatic

1 handgun. You're talking about, well, there's no
2 malice, he didn't shoot anybody. Well, this is not
3 like a revolver where you just point and shoot.
4 What do you got to go? You remember, it is
5 basically a four step process; is it not? You take
6 this magazine and jam it right here in the handle,
7 correct? Step number one. Step number two, got a
8 gun lock in here. Normally the gun goes forward
9 like this. You rack it back. Step number three,
10 you take the safety off. You push the button to
11 take the safety off. Step number four, you point
12 and shoot. Folks, in order, remember these things
13 carried nine rounds according to SLED Agent Ila
14 Parnell who testified over 640 times, been qualified
15 as an expert over 640 times, and what did he say?
16 Nine bullets in here. You got eight bullets in
17 evidence. Where is that ninth bullet? It's the one
18 that coursed through his body. And in order to fire
19 this weapon this man had to do all four things.

20 Now when he was — when Mr. Strobel was
21 cross-examining Johnny Henicks, the man that got
22 beaten and shot, he said, well, he didn't say
23 anything about I'm going to kill you, I'm going to
24 shoot you. The judge is going to tell you when we
25 talk about malice, there are two types of malice.

1 There's expressed malice where, yes, a language is
2 used like that, I'm going to shoot you, I'm going to
3 do this, I'm going to do that. But there's also
4 implied malice, malice for which you can infer a
5 person's ill will from their very actions. As I
6 like to say and you've heard your whole life,
7 actions speak louder than words. When he did those
8 four things and he beat this man — think about
9 this, folks, think about this. He is sitting there
10 with a child, a three year old child on his lap, and
11 he's getting beaten. That shows a cold, brutal
12 heart that would do that in front of a child to the
13 point after he gets shot. And forgive the
14 profanity, what does the little child tell him, you
15 shot my damn daddy. You think, that's malice,
16 folks? That's malice. That tells you a little bit
17 about that man. But they don't want you to believe,
18 they don't want you to consider that. They don't
19 want you to consider Arentheus Garrett's testimony.
20 They want you to discount what Tyon Evans said.
21 Yeah, Tyon was driving that vehicle. Tyon, you
22 know, Tyon put himself right there. Is Tyon being
23 somewhat self-protected? Morally, no, I got him
24 charged with the same things as I got this character
25 charged with. Maybe, but he puts himself right

1 there. Who else puts him there, the police, as he
2 runs from the vehicle.

3 Now, Mr. Strobel talked about Los Angeles
4 and something case. I don't know what he's talking
5 about. I haven't — did you hear anything from the
6 stand about Los Angeles? I didn't hear a thing from
7 that stand. When you look at the exhibits you see
8 if the word Los Angeles pops up in any of those
9 exhibits. I didn't see it. You've had Ila Simmons,
10 the other SLED agent, who testified over two hundred
11 times, has been qualified as an expert, the one that
12 got her degree in chemistry, talk to you about
13 gunshot residue. Now this was the classic line, we
14 are beyond archaic investigation. I agree. Guess
15 what gunshot residue is. It's cutting line 21st
16 century investigation. That's what they did. He
17 doesn't want you to believe that. Oh, you shouldn't
18 do that. She didn't say that. She didn't say that
19 at all. He didn't ask her about Los Angeles and the
20 back of police cars. Guess who else was arrested?
21 Tyon Evans and Rasheem Thomas. What we did hear
22 from her was this, gunshot residue is made up of
23 three basic parts: Barium, antimony, and lead. It
24 can only be seen microscopically. You tested the
25 hands of these individuals and you look at the stuff

1 under the microscope and then you make a
2 determination of the substance being there or not
3 being there. They tested all three individuals.
4 The right palm of Thomas Edward Davis consistent
5 with gunshot residue. The right back, no gunshot
6 residue. If they were making this up, oh, they
7 could say it was all over his hands. Nothing here,
8 here, not here. Left palm, not here; left back,
9 maybe associated with gunshot residue.

10 Rasheem Thomas, the one he said did
11 everything, the one that while the police were
12 chasing him had time to do his braids, the one who'd
13 been sitting in the front passenger seat. Arentheus
14 Garrett once again, told you back passenger seat.
15 No gunshot residue anywhere. Tyon Michael Evans, no
16 gunshot residue anywhere. You got to understand,
17 Mr. Jepertinger, I fired a gun, I'm from Darlington
18 County, I fired a gun earlier in the day. It stayed
19 there. Well think about everything he did after he
20 fired this gun. And by the way, who is the only
21 person that said that? He was. No one else to
22 corroborate that he fired a gun in Darlington County
23 earlier that day. No. He rolled a blunt. Gunshot
24 residue still on his hand. Now you think about this
25 too. He's running from the cops, jumping walls,

1 getting pulled from the underpinning of a house and
2 the stuff is still on his hands. You know, I was
3 expecting, I was expecting him to say, well, you
4 know Rasheem Thomas. You know, he ran from the cops
5 and, you know, he did all this stuff and all the
6 gunshot residue fell off his hands. Folks, it's not
7 me saying it and it's not what I think, it's not
8 what the victim thinks, it's not what Mr. Strobel
9 thinks, it's what the evidence shows. He had that
10 residue on his hands. He fit the description of the
11 shooter.

12 Mr. Strobel brings up the fact that they
13 didn't check for fingerprints. They did check for
14 fingerprints. What did it say? I looked at the
15 hand of the gun. We couldn't do that because of the
16 material the hand of the gun is made out of. The
17 cartridge, the magazine, didn't see a visible one
18 there. Here's a man that works crime scene. He's
19 the one that would dust for fingerprints if he saw
20 something visible there. Folks, cutting edge
21 technology was used; it was used.

22 Now in this case, as in all cases, the
23 judge is going to instruct you that the State —
24 that's me — has to prove this defendant guilty
25 beyond a reasonable doubt. That, as I told you at

1 the beginning of this trial is not a matchable term.
2 It's not a made up term. It is a term of law. But
3 what it is not, I do not have to provide evidence to
4 you to remove all or any doubt. Sometimes I hear
5 this on television and it upsets me because it's
6 unrealistic where they say, well, you haven't proved
7 it to me beyond a shadow of a doubt. We are not
8 required to prove things beyond a shadow of a doubt.
9 You know, you can doubt anything. You know, if I
10 came in here and said you're not sitting here this
11 morning. Oh, I got a doubt whether I'm sitting
12 here. You know, we can get some philosophical type
13 thing whether we're present or not. It's not beyond
14 all doubt; it's beyond a reasonable doubt. And
15 folks, here, this evidence, the testimony given,
16 should leave you firmly convinced of his guilt.

17 And in determining whether we have proven
18 that case beyond a reasonable doubt, the judge is
19 going to ask you to consider the credibility or the
20 demeanor of the witnesses. Who had something to
21 gain? Who had something to lose? Folks, this young
22 man when he got up and testified, he could have --
23 if he wanted to just get this guy, oh yes, he told
24 me who he was before he -- he didn't do that, did
25 he? If Arentheus Garrett wanted to really stick it

1 to this guy, oh yes, I knew exactly who it was, I
2 knew him from the streets, man, I, you know, I've
3 seen him out there at Smith and Smith Mobile Home
4 Park where — as in his words — things really pop
5 at night. Did he say that? Did he say that?
6 Contrast those witnesses. All the officers that
7 testified in this case. Even the co-defendant,
8 Evans, in the car with how he portrayed himself on
9 the stand. He had an answer for everything and
10 everybody was wrong. The date stamp on the
11 photograph is wrong. The GSR kit done, tested,
12 wrong. Who's got a lot to lose today in this case?
13 This gentleman.

14 Now, you are going to look at this
15 evidence and I cannot tell — I can tell you to
16 scrutinize the witnesses, and I'm sure you're going
17 to scrutinize the evidence. But I cannot tell
18 looking at you what's coursing through your mind
19 right now; I wish I could. If I knew what people
20 were thinking or what was gonna happen in the
21 future, I probably would not be a lawyer. In one of
22 the photographs, in one of the photographs you're
23 gonna see that cookie monster medallion. Folks,
24 it's in the front seat. You're a smart jury; you
25 spot that. Now, how did it get in the front seat?

1 How did it get in the front seat? Maybe Rasheem
2 Thomas did grab it off him. I don't think that's
3 what happened, folks. I think this guy came around
4 his back. Maybe he did pass the machine. Maybe
5 when he bailed they bush bonded as they called it
6 and threw it although I think he took the wallet.
7 He got rid of the .45. He wanted to put everything
8 behind him that would link him to this crime.
9 That's what I think happened. But maybe he did pass
10 the machine. But if you're not satisfied with that,
11 and like I said, I can't tell looking at you — that
12 it is a true principal that the judge is going to
13 tell you to do that. And I didn't make this up, I
14 didn't write it, I didn't pass it, I didn't think of
15 it; but there is a principal under the law. And
16 under your oath you will apply the law to the facts
17 in this case. There's a principal called the hand
18 of all being the hand of all, the acts of one being
19 the acts of all. You think about it. Think about
20 it.

21 According to him, according to this
22 defendant, what was their purpose in going over
23 there? Well, one guy got pistol whipped over there,
24 Evans. That he said, even Evans said, he told Smith
25 and Smith Mobile Home park, or he got into it

1 rather. And then there was the other situation
2 Rasheem had based on what the victim just testified
3 to that he had a squabble with Rasheem Thomas
4 sometime before this incident. What was — how did
5 Davis react to that? How did Davis react to that?
6 This is what — this is what he said. I wrote it
7 down so I got it just right. He said, don't, ain't
8 gonna misplace like we're some suckers. We're gonna
9 go on, we're gonna go in there and we ain't gonna
10 make a sink that we're a bunch of suckers. Hey,
11 guess what, Davis wants to make you guys a bunch of
12 suckers today. He wants you to discount all this
13 evidence that points conclusively to his guilt as
14 the robber, attempted murderer that he is.

15 In 1841 Ralph Waldo Emerson who I had to
16 suffer through when I was a sophomore in high
17 school, wrote something. I wanted to bring a little
18 bit of Emerson later in life when I got a little
19 older and lost all my hair. He said, commit a crime
20 and the earth is made of glass. Commit a crime and
21 it seems as if a coat of snow fell on the ground
22 such as reveals into the woods and track of every
23 partridge and fox and squirrel and mole. You cannot
24 recall the spoken word. You cannot wipe out the
25 foot track. You cannot draw out the ladder so as to

1 leave no end or clue. Some damning circumstance
2 always transpires. The laws and substances of
3 nature and waters come to an end. Gravitation
4 becomes penalties that to the evidence in this case
5 is a penalty to this man.

6 I'm going to ask you to do a difficult
7 thing — and I say this and hear me out. I say
8 this — I'm gonna ask you to find him guilty. And
9 in a way, to tell you the truth, after he testified
10 yesterday I feel sorry for him. I feel sorry for
11 him that the only solace, the only place that he can
12 find protection is what did he say, in the hood.
13 But my feeling sorry for him for his ignorance in
14 terms of that lifestyle falls short when I consider
15 what he did to this man. Justice under your oath
16 cries out for one verdict and that verdict is guilty
17 on attempted murder, armed robbery, and possession
18 of a weapon during the commission of a violent
19 crime.

20 I'm gonna say one thing further because I
21 know the judge is going to instruct you on a fourth
22 crime which he views as a lesser included offense.
23 If you feel that there was no malice in the
24 shooting, which I disagree with, I believe this
25 shooting was done with malice, that you may find him

1 you have a choice between the greater offense of
2 attempted murder and the lesser included offense of
3 assault and battery of a high and aggravated nature.
4 Ladies and gentlemen, I thank you for listening to
5 me. Thank you so much.

6 THE COURT: Ladies and gentlemen, I come
7 around here to give you the charge on the law. When
8 the case started, as I told you when we started this
9 trial, that you are the judges of the facts in the
10 case and I'm not to have any influence over you
11 regarding those facts. So it's been appropriate
12 that I've been away out of the area here where the
13 lawyers present the evidence. But you are — you
14 and I are now in this together. We've reached that
15 portion of the trial where you are the judges of the
16 facts and I'm the judge of the law. And I'm gonna
17 give you the law and then you'll take that law and
18 apply it to the facts as you find the facts to be.
19 So I think it's appropriate for me to come down and
20 be with you as we do that.

21 This charge that I'm going to give you,
22 ladies and gentlemen, I'm going to read it from my
23 notebook here so that I don't leave anything out or
24 omit anything. I will send this notebook back into
25 the jury room with you so you'll have that during

1 your deliberations should you need it.

2 Mr. Foreman, and members of the jury, you
3 have heard all the evidence. You have heard the
4 arguments of both parties. I will now explain to
5 you the law which applies to this action. The
6 indictment charges the defendant Thomas Edward Davis
7 with the charges of attempted murder, armed robbery,
8 and possession of a weapon during the commission or
9 attempted commission, of a violent crime. I remind
10 you that the fact that the defendant was arrested,
11 charged, and indicted in this case is not evidence
12 in this case and it cannot be considered by you as
13 evidence of guilt in this case, nor does it create
14 any presumption or inference of guilt. The
15 indictment is simply the formal written instrument
16 which contains the charges made against the
17 defendant. It is the form of document by which this
18 case is brought into court. Now I will, as I said,
19 I will give you a copy of these instructions in
20 written form to have with you in the jury room.
21 During your deliberations you may refer to the
22 instructions to guide your decision making. You
23 must, however, consider the instructions as a whole
24 and not follow some and ignore others.

25 Now the defendant has pled not guilty to

1 the charges in the indictment, and that plea puts
2 the burden on the State to prove the defendant
3 guilty. A person charged with committing a criminal
4 offense in South Carolina is never required to prove
5 him or herself innocent. I charge you that it is an
6 important rule of law that the defendant in a
7 criminal trial, no matter what the seriousness of
8 the charges may be, will always be presumed to be
9 innocent of the crime for which the indictment was
10 issued unless guilt has been proven by evidence
11 satisfying you of that guilt beyond a reasonable
12 doubt. This presumption of innocence does not end
13 when you begin your deliberations, but it
14 accompanies the defendant throughout the trial until
15 you reach a verdict of guilt based on evidence
16 satisfying you of that guilt beyond a reasonable
17 doubt. The presumption of innocence is not a mere
18 legal theory. It is not just a legal phrase; but it
19 is a substantial right to which every defendant is
20 entitled unless you, the jury, are satisfied from
21 the evidence of the defendant's guilt beyond a
22 reasonable doubt.

23 Now the State has the burden of proving
24 the defendant guilty beyond a reasonable doubt.
25 Some of you may have served as jurors in civil cases

1 where you were told that it is only necessary to
2 prove that a fact is more likely true than not true
3 such as by the greater weight or the preponderance
4 of the evidence. In criminal cases the State's
5 proof must be more powerful than that. It must be
6 beyond a reasonable doubt. Proof beyond a
7 reasonable doubt is proof that leaves you firmly
8 convinced of the defendant's guilt. There are very
9 few things in this world that we know with absolute
10 certainty, and in criminal cases the law does not
11 require proof that overcomes every possible doubt.
12 If based on your consideration of the evidence you
13 are firmly convinced that the defendant is guilty of
14 the crimes charged, you must find the defendant
15 guilty. If on the other hand you think that it's a
16 real possibility that the defendant is not guilty
17 then you must give the defendant the benefit of that
18 doubt and find him not guilty.

19 I remind you that during this trial you
20 and I have certain duties to perform. As the trial
21 judge it is my responsibility to preside over the
22 trial of this case, and I also have the duty to rule
23 on the admissibility of the evidence that's offered
24 during this trial. You are to consider only the
25 competent evidence that is before you. You are to

1 consider only the testimony which has been presented
2 from the witness stand and any exhibits which may
3 have been made a part of the record in this case and
4 any stipulations or agreements of counsel. I have
5 the additional duty to charge you the law that is
6 applicable to this case. As the presiding judge I
7 am the sole judge of the law in this case, and it is
8 your duty as jurors to accept and to apply the law
9 as I now state it to you. If you already have an
10 idea as to what the law is or what the law ought to
11 be and it does not agree with what I now tell you
12 the law is, you must abandon your idea because you
13 are sworn to accept the law and to apply the law
14 exactly as I state it to you.

15 In every case tried in this court before a
16 jury the jury becomes the sole and the exclusive
17 judges of the facts in a case. A trial judge cannot
18 intimate, state, comment on or make any statement to
19 a trial jury about the facts in a case. Since you,
20 the jury, are the sole judge of the facts you are
21 not to infer from what I have said during the
22 progress of this trial and ruling on the
23 admissibility of the evidence or otherwise or
24 anything that I say now during the course of this
25 instruction to you, that I have any opinion about

1 the facts in this case. The law does not allow me
2 to have an opinion about the facts in this case.
3 That is a matter solely for you, the jury, to
4 determine. As jurors it is your duty to determine
5 the effect, value, weight, and truth of the evidence
6 that is presented during the course of this trial.

7 Now during every trial or during almost
8 all trials, there's usually two types of evidence
9 that are presented during a course of a trial.
10 There's direct evidence and there's circumstantial
11 evidence. Direct evidence is the testimony of a
12 person who claims to have actual knowledge of a
13 fact, such as an eyewitness. It is evidence which
14 immediately establishes the main fact to be proven.
15 Circumstantial evidence is proof of a chain of facts
16 and circumstances which indicate the existence of a
17 fact. In other words, it is evidence which
18 immediately establishes collateral facts from which
19 the main fact may be inferred. In other words,
20 circumstantial evidence is based on inference and
21 not on personal knowledge or observation.

22 Now the law makes absolutely no
23 distinction between the weight or the value to be
24 given to either direct or circumstantial evidence;
25 nor is there any greater degree of certainty

1 required of circumstantial evidence than of direct
2 evidence. You should weigh all of the evidence in
3 this case; and after weighing all of the evidence if
4 you are not convinced of the guilt of the defendant
5 beyond a reasonable doubt, you must find him not
6 guilty. However, after weighing all of the
7 evidence, if you are convinced of the defendant's
8 guilt beyond a reasonable doubt, then you would find
9 the defendant guilty. Necessarily, you have to
10 determine the credibility of the witnesses who have
11 testified in this case. And ladies and gentlemen,
12 credibility simply means believability. It becomes
13 your duty as jurors to analyze and to evaluate the
14 evidence and to determine which evidence convinces
15 you of its truth. In determining the believability
16 of witnesses who have testified in this case, you
17 may believe one witness over several or several
18 witnesses over one. You may believe a part of a
19 witness' testimony and reject the remaining part of
20 that same testimony. You may believe the testimony
21 of a witness in its entirety or reject it in its
22 entirety. You may consider whether any witness has
23 exhibited to you any interest, bias, prejudice, or
24 other motive in this case. You may also consider
25 the appearance and the manner of a witness while on

1 the witness stand. You have the right to consider
2 anything in this record that will help you in
3 judging the credibility and the believability of the
4 witnesses.

5 Now the rules of evidence ordinarily do
6 not allow or permit a witness to testify as to
7 opinions or conclusions. There's an exception to
8 this rule that exists for witnesses that we call
9 expert witnesses. A witness who by education and
10 experience has become an expert in some art,
11 science, profession, or calling, may state an
12 opinion as to relevant and material matter in which
13 that witness claims to be an expert and may also
14 state the reasons given for that opinion. You
15 should consider any expert opinion received in
16 evidence in this case and like any other evidence
17 give it the weight that you think it deserves. An
18 expert witness' testimony is to be given no greater
19 weight than that of any other witness simply because
20 that witness is an expert. Further, you're not
21 required to accept an experts' opinion even though
22 it is not contradicted. Now a person who has a past
23 criminal record is competent to testify during a
24 trial. A past record does not affect the ability of
25 that witness to testify. The past record may only

1 be considered by you, if at all, in determining the
2 witness' believability. Remember, you are the sole
3 judges of the facts in this case and of the
4 believability and credibility of any and all
5 witnesses.

6 Now the defendant is charged with the
7 crime of attempted murder. A person who with intent
8 to kill attempts to kill another person with malice
9 aforethought either expressed or implied commits the
10 offense of attempted murder. Malice is hatred, ill
11 will, or hostility toward another person. It is the
12 intentional doing of a wrongful act without just
13 cause or excuse and with the intent to inflict an
14 injury or under circumstances that the law will
15 infer an evil intent. Malice aforethought does not
16 require that malice exist for any particular time
17 before the act is committed, but malice must exist
18 in the mind of the defendant just before and at the
19 time that the act is committed. Therefore, there
20 must be a combination of a previous evil intent and
21 an act. Malice aforethought may be expressed or
22 implied. These terms expressed and implied do not
23 mean different kinds of malice, but merely the
24 manner in which malice may be shown to exist; that
25 is, either by direct evidence or by inference from

1 facts and circumstances which are proved. Expressed
2 malice is shown when a person speaks words which
3 express hatred or ill will for another, or when the
4 person prepares beforehand to do the act which was
5 later accomplished. For example, lying in wait for
6 a person or any other acts of preparation going to
7 show that the deed was within the defendant's mind
8 would be expressed malice. Implied malice may be
9 found to exist when circumstances demonstrate a
10 wanton or a reckless disregard for human life or
11 when a reasonably prudent person would have known
12 that according to common experience there was a
13 plain and strong likelihood that death would follow
14 the contemplated act.

15 Now an attempt is an effort to accomplish
16 a crime which does not succeed. An attempt includes
17 a specific intent to do a particular criminal act
18 along with an act falling short of the act intended.
19 The State must show more than a mere preparation and
20 an intent. There must also be some overt act that
21 is committed in the effort to commit the crime.
22 Intent means intending the result which actually
23 occurs, not accidentally or involuntarily. Intent
24 may be shown by acts and conduct of the defendant
25 and other circumstances from which you may naturally

1 and reasonably infer intent.

2 Now included within the offense of
3 attempted murder is the lesser offense of assault
4 and battery of a high and aggravated nature. A
5 person commits the offense of assault and battery of
6 a high and aggravated nature if the person
7 unlawfully injures another person and either: A,
8 great bodily injury to the other person results; or
9 B, the act is accomplished by means likely to
10 produce death or great bodily injury. South
11 Carolina law defines great bodily injury to mean
12 bodily injury which causes a substantial risk of
13 death or which causes serious permanent
14 disfigurement or protracted loss or impairment of
15 the function of a bodily part or organ.

16 Now the defendant is charged also with the
17 charge of armed robbery. In order to prove this
18 offense the State must first prove beyond a
19 reasonable doubt that the defendant took personal
20 property from the person or presence of another
21 person. Property is in the presence of a person if
22 it is within the person's reach, inspection,
23 observation, or control, so that the person could,
24 if not overcome with violence or prevented by fear,
25 could keep possession of that property. The State

1 must also prove beyond a reasonable doubt that the
2 defendant carried the property away intending to
3 permanently deprive the owner of the property and to
4 keep the property for the defendant's own use. The
5 slightest removal of property or the complete
6 possession of the property even for an instant by
7 the defendant is sufficient to show a taking and
8 carrying away of the property. The taking and
9 carrying away of the property must have been done
10 with violence or by putting the owner of the
11 property in fear of violence.

12 Finally, the State must prove beyond a
13 reasonable doubt that the defendant was armed with a
14 deadly weapon during the robbery. A deadly weapon
15 is any article, instrument, or substance which is
16 likely to cause death or great bodily harm. Whether
17 an instrument has been used as a deadly weapon
18 depends on the facts and circumstances of each case.
19 The following are examples of instruments which may
20 be deadly weapons: A pistol, a shotgun, a rifle, a
21 dagger, a knife, metal knuckles, a razor, gasoline,
22 a fire bomb, and lighter fluid. A gun may be a
23 deadly weapon even if it is not operational.

24 Now the defendant is charged also with
25 possession of a weapon during the commission of or

1 attempt to commit a violent crime. The State must
2 prove beyond a reasonable doubt that the defendant
3 was in possession of a firearm or visibly displayed
4 what appeared to be a firearm during the commission
5 of a violent crime. A firearm means any machine
6 gun, automatic rifle, revolver, pistol, or any
7 weapon which will, and is designed to, or may
8 readily be converted to expel a projectile. In
9 order to find the defendant guilty of possession of
10 a weapon during the commission of a violent crime,
11 you must first find the defendant has been found
12 guilty of either committing a violent crime or
13 attempting to commit a violent crime. For purposes
14 of South Carolina law, attempted murder, assault and
15 battery of a high and aggravated nature, and armed
16 robbery are considered violent crimes.

17 Now if a crime is committed by two or more
18 people who are acting together in committing a
19 crime, the act of one is the act of all. A person
20 who joins with another to commit an unlawful act is
21 criminally responsible for everything that is done
22 by the other person which happens as a probable or
23 natural consequence of the acts done in carrying out
24 the common plan and purpose. For example, two
25 people can be guilty of killing another person when

1 only one of the two people had a gun, there was only
2 one bullet, and only one of the two fired the shot
3 that caused the death. If two or more people are
4 together, acting together, assisting each other in
5 committing the offense, the act of one is the act of
6 all, or as it is sometimes said, the hand of one is
7 the hand of all. Prior knowledge that a crime is
8 going to be committed without more is not sufficient
9 to make a person guilty of that crime. Guilt as a
10 principal is shown by actual or constructive
11 presence at the scene as a result of a prior
12 arrangement; therefore, a finding of a prior
13 arranged plan or common scheme is necessary for a
14 finding of guilt as a principal. The State must
15 prove beyond a reasonable doubt by competent
16 evidence the theory of the hand of one is the hand
17 of all.

18 A principal in a crime is one who either
19 actually commits the crime or who is present aiding,
20 abetting, or assisting in committing a crime. When
21 a person does an act in the presence of and with the
22 assistance of another the act is done by both.
23 Where two or more acting with a common plan or an
24 intent are present at the commission of a crime, it
25 does not matter who actually commits the crime, all

1 are guilty, the hand of one is the hand of all.
2 Present at the commission of a crime means to be
3 sufficiently near to aid and abet and to assist in
4 the commission of the crime; however, mere presence
5 at the scene of a crime is not sufficient to convict
6 one as a principal on the theory of aiding and
7 abetting. Intent is also a necessary element for
8 there must have been a common design or an intent to
9 commit the crime and then the crime must have been
10 committed pursuant thereto with the person aiding
11 and abetting by some overt act. Intent may be shown
12 by acts and conduct of the defendant and other
13 circumstances from which you may naturally and
14 reasonably infer intent. The State must prove these
15 elements beyond a reasonable doubt.

16 Now Mr. Foreman and ladies and gentlemen
17 of the jury, as you retire to begin your
18 deliberations I want to express to you the hope that
19 each of you will be mindful of the importance of
20 your responsibility. You're not called upon to
21 serve as jurors very often, and the proper
22 performance of the duty requires each of you to
23 reach the height of freeing your mind of all
24 improper influences. You and I are acting for the
25 community and that is why we must see to it that

1 this trial is fair and that the verdict is just.
2 You observe that the presiding officer of this court
3 is always addressed as Your Honor. Well, the reason
4 is not because of the person wearing this robe, but
5 that this Court is entrusted with the honor of this
6 community, the honor of this state, and the honor of
7 this country in seeking that every case tried here
8 receives fair and impartial justice.

9 Do not get the idea that I'm trying to
10 intimate to you how I might think you should decide
11 this case. As I've already told you, under the laws
12 of the State of South Carolina you, the jury, are
13 the sole judge of all questions of fact. It would
14 be highly improper for me to influence you in the
15 performance of that duty; but, as the presiding
16 officer of this court I am vitally concerned that
17 whatever verdict you find will be as a result of
18 your going into the jury room and confining your
19 consideration to the evidence and to the law that
20 you have heard in this courtroom, weighing it fairly
21 and impartially as I have every confidence you will
22 do. Your verdict in this case cannot be based on
23 sympathy, compassion, prejudice, or emotion, or some
24 other consideration that's not found in the
25 evidence. The Court is of the confirmed opinion

1 that whatever verdict you reach will represent truth
2 and justice for all parties involved. And remember,
3 ladies and gentlemen, your verdict in this case must
4 be unanimous. You must all agree on the verdict.

5 Now Mr. Skipper, the verdict form is in
6 the front of this notebook so this is the verdict
7 form, ladies and gentlemen. I'm gonna review it
8 briefly with you. It's fairly self-explanatory.
9 You'll take each charge and consider it separately.
10 As to the first count attempted murder, you actually
11 have three options based on your decision based on
12 the facts as you find the facts and the law. You
13 would either find the defendant is either not guilty
14 or you could find that he's guilty of attempted
15 murder, or you can find that he's guilty of assault
16 and battery of a high and aggravated nature. Those
17 are the three options you would consider on that
18 charge of attempted murder. And then on the armed
19 robbery charge you would simply consider whether or
20 not the defendant is guilty or not guilty of that
21 charge. And then, of course, on the third charge,
22 the possession of a weapon during the commission of
23 a violent crime, of course, again, there's only two
24 options; he's either guilty or not guilty. And of
25 course, on that, as I told you in the instruction,

1 you can only find someone guilty of that offense if
2 you have previously determined that he is guilty of
3 the violent crime. So you would consider count
4 three in that light.

5 Once the jury has reached a unanimous
6 decision, Mr. Skipper, if you would on the verdict
7 form there's a place on the first sheet, once you
8 completed it to initial and then your signature on
9 the back sheet, okay. Once the jury has reached a
10 unanimous verdict you'll knock on the door and let
11 the bailiff know you have a verdict. We'll then
12 bring you out and receive your decision. Now I'm
13 gonna send you to the jury room for just a minute
14 and ask that you not begin the deliberations. I'm
15 gonna confer with the attorneys to make sure I
16 haven't left anything out. If I've left anything
17 out, if I've missed anything, I'll bring you out and
18 correct that. If everything is good we will collect
19 the evidence and this notebook and send that back
20 into the jury room. When you receive these items
21 that's the queue to begin deliberations. Now I will
22 tell you this, not just in this case, but in no
23 case, do I ever send a weapon back into the jury
24 room. If you need to see this or want to see it up
25 closer, if you will let us know we'll bring you out

1 and let you view it out here, but this will not be
2 going into the jury room but it is in evidence so if
3 you need look at it you let us know, we'll bring you
4 out and let you do that. Everything else will be
5 back in the jury room with you, okay. So please
6 retire to your jury room and do not begin till you
7 receive these items.

8 (WHEREUPON, the jury was removed from the
9 courtroom at 11:34 a.m., and the following
10 proceedings commenced in open court.)

11 THE COURT: Are there any exceptions or
12 objections to the charge from the State?

13 MR. JEPERTINGER: No, sir.

14 THE COURT: Anything from Defense?

15 MR. STROBEL: No objections or exceptions
16 on behalf of the defendant, but I wanted to make
17 sure I understood what you said. The magazine will
18 — they'll be allowed to examine the magazine,
19 correct, not the pistol?

20 THE COURT: The magazine can go back. The
21 pistol we're going to have here.

22 MR. STROBEL: And that's part of my case.
23 I want them to see that magazine.

24 THE COURT: Yes, that can go back, not the
25 pistol or the ammunition.

1 MR. STROBEL: Right, okay.

2 THE COURT: Will y'all get with Frances
3 and make sure everything is here that should be
4 here. I'm going to leave the pistol here and let
5 the magazine go back.

6 (Attorneys review exhibits.)

7 THE COURT: Let them know that the live
8 ammunition is not going back, but the cartridge is
9 there, the spent cartridge.

10 THE BAILIFF: All right, sir.

11 (WHEREUPON, a break was taken and the jury
12 began their deliberations at 11:35 a.m.)

13 THE COURT: Mr. Strobel, the jury has sent
14 out a question and the question they sent out is,
15 could we have a transcript of Mr. Garrett's
16 testimony. And all I say I could do is to bring
17 them out to tell them I can let them listen to that
18 testimony, I can't produce a transcript, and give
19 them the option of what they want to do. Are you —
20 do you have it up yet?

21 THE COURT REPORTER: No, I need to upload
22 it.

23 THE COURT: I told Frances at least to
24 find that testimony on her recorder thing. I don't
25 know whether or not they're going to listen to it.

1 I'll send their food and let them truck on if they
2 do want to listen to it. I'm probably still going
3 to send them back because the food will get cold,
4 but I'm going to at least get them out here to
5 answer their question. So Ms. Joe, if you would
6 please have the jury come out.

7 THE BAILLIFF: All right.

8 (WHEREUPON, the jury was returned to the
9 courtroom at approximately 12:56 p.m., and
10 the following proceedings commenced in
11 open court.)

12 THE COURT: All right. Ladies and
13 gentlemen, I have received your inquiry or your
14 question. And just for the record, it is: Could we
15 have a transcript of Mr. Garrett's testimony. I
16 cannot produce for you a written transcript of that
17 testimony. I can have Madam Court Reporter play
18 back the testimony so she can actually play back the
19 audio, but we cannot provide a transcript. So
20 here's what I'm gonna do. I'm gonna let you retire
21 back to your jury room and discuss whether or not
22 you want to listen to the audio of the testimony.
23 If you don't, then just continue your deliberations.
24 If you do, then I'll bring you out, I'll play it for
25 you. However, your lunch is here so what I'm gonna

1 do is I'm gonna get you to go back into the jury
2 room and decide whether or not you want to hear it
3 or whether you want to just proceed on with your
4 deliberations. If you decide that you do want to
5 hear it though, I'm gonna let you eat your lunch
6 first 'cause I don't want it to get cold. And then
7 once you've finished lunch, then if you want to hear
8 it I'll bring you out and play it for you, okay. So
9 do that for me, go back and talk about what you want
10 to do. But in the meantime, I'm gonna send your
11 lunch back because you're gonna have that regardless
12 of what you decide, okay?

13 (WHEREUPON, the jury was removed from the
14 courtroom at 1:00 p.m., and the following
15 proceedings commenced in open court.)

16 THE COURT: Any objections or exceptions
17 to the Court's response to the jury's question?

18 MR. JEPERTINGER: Not from the State.

19 THE COURT: Anything from the Defense?

20 MR. STROBEL: No, sir.

21 THE COURT: All right, Frances, if you
22 would please mark this we will —

23 THE BAILLIFF: He handed me another note,
24 Judge.

25 THE COURT: All right. This question

1 which was passed out says: Why was Mr. Rasheem
2 Kevin Thomas not called to testify. Clearly, that
3 question, all I can respond I think — and I'll hear
4 from y'all if y'all have a different response. All
5 I can respond I think to that question is that the
6 parties call the witnesses they intended to call,
7 and that's what you've heard. I don't know that I
8 can tell them anything else. I'm happy to consider
9 another response if you have another one.

10 MR. JEPERTINGER: Tell them enjoy their
11 lunch. Seriously.

12 THE COURT: I will. Doris, if y'all could
13 go ahead and take their lunch in.

14 MR. JEPERTINGER: That's — we can't
15 answer that question.

16 THE COURT: I can't answer that question.
17 As a matter of fact, maybe the response, the
18 appropriate response would be I can't answer that
19 question.

20 MR. JEPERTINGER: That is the appropriate
21 response.

22 THE COURT: You agree, Mr. Strobel?

23 MR. STROBEL: (Shakes head.)

24 THE COURT: I am going to write that
25 response. I'm gonna let y'all look at what I write,

1 and I'm going to send that back in, okay. While
2 we're doing that if y'all will go ahead and start
3 taking them their lunch.

4 (Court's Exhibit Number 1 and 2, notes,
5 from the jury, were marked and made a part of the
6 record.)

7 THE COURT: All right, if y'all want to
8 look at that. That's what I propose to send back.
9 If it meets with y'all's approval I'll just send
10 that back. Is that good?

11 MR. STROBEL: Yeah.

12 THE COURT: Ms. Joe, if you would please,
13 will you send this back.

14 MR. STROBEL: Your Honor, I — I thought a
15 deputy sheriff was going back there with them, and I
16 —

17 THE COURT: No, Mr. Propps and Ms. Joe
18 take care of that. Tell the foreman to not throw
19 this away, we need to have that back.

20 THE BAILIFF: Yes, sir.

21 THE COURT: All right.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: Ms. Joe, if they're done
24 eating and then I need to know their decision as to
25 the testimony.

1 THE BAILIFF: Yes, sir.

2 (Pause.)

3 THE BAILIFF: Judge, they would like to
4 hear it.

5 THE COURT: All right. Are they ready to
6 do that or still eating?

7 THE BAILIFF: They're finished.

8 THE COURT: Ms. Joe, if they're ready tell
9 them to come on out.

10 (WHEREUPON, the jury was returned to the
11 courtroom at approximately 1:48 p.m., and
12 the following proceedings commenced in
13 open court.)

14 THE COURT: All right. Ladies and
15 gentlemen, pursuant to your request we're prepared
16 to play that testimony now. You're in charge, okay?
17 So if — we're prepared to play all of, as much of
18 it as you want to hear, you just need to let us
19 know. If you want to hear it all we'll play every
20 bit of it. If you've heard whatever it is your
21 question is and you want us to stop it, we'll do
22 that. You just need to let us know.

23 (The testimony of Arentheus Garrett was played for
24 the jury.)

25 THE COURT: Is that all you need?

1 THE FOREMAN: Yes, sir, thank you.

2 THE COURT: If you will please retire to
3 your jury room. You may continue your
4 deliberations.

5 (WHEREUPON, the jury was removed from the
6 courtroom at 1:55 p.m., and the following
7 proceedings commenced in open court.)

8 THE COURT: We'll remain at ease while the
9 jury continues to work.

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

12 THE COURT: All right. Ladies and
13 gentlemen, I tell all folks this in all my cases
14 whether it's civil, whether it's criminal, and that
15 is, that the jury -- I don't know what the jury's
16 verdict is; but whatever it is, they deserve to have
17 it received in a professional manner so I don't ever
18 ask anybody to agree with a jury's verdict, I just
19 ask that they show respect and give the jury the
20 respect they deserve by receiving it in a
21 professional manner. So if you don't know or don't
22 know whether or not you're gonna be able to receive
23 the jury's verdict without having a disturbing
24 display of emotions and that you need to leave the
25 courtroom and find out what the verdict was outside

1 the courtroom because if there's any disturbance or
2 any outbursts with the jury present, then I'm going
3 to have that person removed and placed in custody.
4 So I've never had to do that and I don't want to do
5 that, but I certainly will. So please try to keep
6 that in mind that, as I said, the jury's verdict, it
7 just needs to be received respectfully whether or
8 not you agree with it.

9 So is the State ready to receive the
10 verdict?

11 MR. JEPERTINGER: It is.

12 THE COURT: Defense ready?

13 MR. STROBEL: Yes.

14 THE COURT: All right. Ms. Joe, if you
15 would ask the jury to join us please.

16 (WHEREUPON, the jury was returned to the
17 courtroom at approximately 2:12 p.m., and
18 the following proceedings commenced in
19 open court.)

20 THE COURT: All right, Mr. Skipper, has
21 the jury reached a unanimous verdict, sir?

22 THE FOREMAN: We have, Your Honor.

23 THE COURT: If you would please pass that
24 to Ms. O'Hara for me, sir.

25 (Verdict form tendered to the Court.)

1 THE COURT: Ms. O'Hara, if you would
2 please publish the jury's verdict.

3 THE CLERK OF COURT: The State of South
4 Carolina versus Thomas Edward Davis, indictment
5 2011-GS-21-1371, count one, attempted murder: We,
6 the jury, find the defendant Thomas Edward Davis
7 guilty of assault and battery of a high and
8 aggravated nature. We, the jury, find the defendant
9 Thomas Edward Davis, guilty of armed robbery. Count
10 three, possession of a weapon during the commission
11 of a violent crime: We, the jury, find the
12 defendant Thomas Edward Davis guilty of possession
13 of a weapon during the commission of a violent
14 crime. Signed Phillip Skipper, foreperson, dated
15 June 20th, 2012. Members of the jury, if this is
16 your verdict please raise your right hand.

17 (All jurors complied by raising their hand.)

18 THE CLERK OF COURT: That's it, Judge.

19 THE COURT: Ladies and gentlemen, I want
20 to thank you for your service. I want to thank you
21 for your service this week. I'll tell you, I try a
22 lot of cases, and I was very impressed with the
23 way — you would think this would happen in every
24 case but it doesn't always happen this way — but
25 y'all were very attentive to the testimony, to the

1 witnesses, to the lawyers, and I didn't see anyone
2 acting bored or nodding off or whatever. Everybody
3 seemed to be very into the case, and I appreciate
4 that. You have earned an exemption so that if you
5 get called for jury duty in the next balance of this
6 year and all of 2013 and all of 2014, if you receive
7 a notice for jury service here in circuit court you
8 can exercise that exemption and be excused from
9 service.

10 I will tell you, you worked on this case,
11 you've heard this case, you certainly have the right
12 to be present for the ending of the case. In just a
13 little bit we're gonna proceed to impose sentence
14 with regard in compliance with your verdict and so
15 you're entitled to be present for that if you're
16 interested in doing so but you're also free to go.
17 So I don't ever make anybody stay; I don't ever make
18 anybody leave. I leave that up to you. If you want
19 to remain for sentencing you certainly can do that.
20 If you are ready to leave and go, you are certainly
21 welcome to do that as well. So thank you again for
22 your service and you can just discard those stickers
23 or whatever, the jury badges, as you leave. Thank
24 you very much, ladies and gentlemen.

25 (WHEREUPON, the jury was removed from the

1 courtroom at 2:20 p.m., and the following
2 proceedings commenced in open court.)

3 THE COURT: Mr. Strobel, is Defense
4 ready to proceed to sentencing, sir?

5 MR. STROBEL: I am.

6 THE COURT: Mr. Jepertinger, is the State
7 ready to proceed?

8 MR. JEPERTINGER: Yes, sir. We've
9 prepared the sentencing sheet. I'm having a little
10 difficulty bringing my hand on his prior record but
11 I do recall —

12 THE COURT: I think I recall from our
13 earlier conversation we had the robbery in
14 Connecticut, or somewhere like that, and then a
15 simple assault and battery.

16 MR. JEPERTINGER: Assault and battery, I
17 think simple assault and battery was in 2002. I'm
18 not sure in terms of — yes, he had a simple assault
19 and battery in 2002, and of course, out of the state
20 of Connecticut the felony for which he received a
21 conviction more than one year. Verdict date on that
22 was May 31st, 2002. There was for robbery, Your
23 Honor, and he had eight year jail, minimum seven
24 year special parole, concurrent, however they
25 determined that, Your Honor. I do have the

1 sentencing sheets, Your Honor. I was under the
2 impression that ABHAN was a most serious offense. I
3 had Mr. Ozment check it. It is only serious. I
4 initialed and crossed out the most serious, and I
5 blocked serious and put my initials there.

6 THE COURT: All right, sir.

7 MR. JEPERTINGER: Your Honor, that's for
8 the ABHAN. Here's the sentencing sheet for the
9 armed robbery.

10 THE COURT: That is most serious; is that
11 correct?

12 MR. JEPERTINGER: That is most serious.

13 THE COURT: Yes.

14 MR. JEPERTINGER: And of course, here's
15 possession of a weapon during commission of a
16 violent crime. And since none of these sentences
17 carry life, the five years would not subsume into
18 the greater sentence. Your Honor, before you
19 proceed to sentencing I would like to point out and
20 it dawned on me during the last colloquy with
21 Mr. Suggs earlier today, I've known him for a long
22 time, I think he's a compassionate individual. I
23 really feel though in this case, Your Honor, and I
24 speak the truth, I feel sorry for this young man
25 because I think he's throwing his life away. But

1 what he did to Johnny Henicks on that day was
2 completely uncalled for. His attitude on the stand,
3 Your Honor, I can just say that it's years of
4 ignorance and violence have turned him into the
5 individual he's become, Your Honor, and I'm sorry
6 for that. However, based on what he did and just
7 the sheer horror of having this man shot in front of
8 a three year old just, it beggars description for
9 me. I would ask that you consider consecutive
10 sentences in this case, Your Honor.

11 THE COURT: All right, sir. Is there
12 any — does the victim in the case wish to address
13 the Court?

14 MR. JEPERTINGER: I don't know if the
15 victim or his father or mother would like to address
16 the Court. Mr. Johnny Henicks, Senior, would
17 address the Court, Your Honor.

18 THE COURT: All right, I'll be more than
19 happy to hear from you.

20 MR. JEPERTINGER: And Mr. Henicks, all I
21 would ask you do. If you can sit here please, keep
22 your comments directly to the Court, not to the
23 individual please. State your name for the record.

24 MR. HENICKS, JR.: Johnny Henicks, Jr.

25 THE COURT: All right, Mr. Henicks.

1 MR. HENICKS, JR.: Your Honor, if it
2 pleases the Court, the day when my son was shot I
3 was in Williamsburg County, and that's an hour away
4 from Florence. And to get a phone call while I'm at
5 work, and driving home for that hour seemed like it
6 was more worse than when I was in the army and
7 flying over to Desert Shield Desert Storm, and
8 that's a long flight. Just driving home for that
9 hour and to hear over the phone that my son was shot
10 is devastating.

11 THE COURT: Sure.

12 MR. HENICKS, JR.: Devastating, especially
13 holding my grandson, three years old. By the way of
14 the good master and we prayed, prayed, and prayed
15 and we still are praying, that we are with him here
16 today and luckily he's not wearing a colostomy bag
17 for life. I speak for my family and him, and we
18 thank the good master and we thank the State.

19 THE COURT: Well, thank you, sir. I can't
20 imagine what you went through. I have a son. He's
21 not, he's still a little boy but I can just imagine
22 what you felt and I'm sorry you had to go through
23 that. But I thank you for your support and for
24 being here throughout this proceeding.

25 MR. HENICKS, JR.: Yes, sir.

1 THE COURT: Anything further,
2 Mr. Jepertinger?

3 MR. JEPERTINGER: No, sir.

4 THE COURT: Mr. Strobel, I'll be to happy
5 hear from you and anyone else who may would like to
6 address the Court on Mr. Davis's behalf.

7 MR. STROBEL: Your Honor, if I read the
8 verdict correctly they did not convict Mr. Davis of
9 intending to murder anybody.

10 THE COURT: Correct.

11 MR. STROBEL: And there's no intent to
12 kill. It was assault and battery of a high and
13 aggravated nature.

14 THE COURT: Sure.

15 MR. STROBEL: And basically there's not
16 much that I can say other than the fact that his
17 family has been here to support him throughout this
18 matter; and in fact, she had to leave the courtroom
19 for the verdict because she was, she pretty much
20 knew what it was going to be. And but he
21 understands he's got to go off and serve some time;
22 but again, I was upset about the murder but luckily
23 that's no longer there, and I ask the Court to take
24 that in consideration. Now Mr. Davis has asked that
25 he could address the Court.

1 THE COURT: Sure, I'm happy to hear from
2 Mr. Davis. And if there's anyone else who would
3 like to address the Court I'll be happy to hear from
4 them as well.

5 Mr. Davis.

6 THE DEFENDANT: Well, first of all, I'm
7 28. I don't have no kids so I don't know how you
8 felt when you was around. So in consideration of
9 that I am sorry for what you did feel. Like, if my
10 son would have got shot I would have felt the same
11 way too. So all I can say is I put my life in the
12 mercy of you, Your Honor, and ask for forgiveness
13 for my action and my parts and doing into this whole
14 ordeal. And I don't hate nobody for what this, for
15 what happened. I mean, maybe this was God plan, I
16 mean, I don't know, I'm saying. Like I said, I
17 don't got no family and maybe that's a good thing,
18 maybe that's a bad thing. I just know like I would
19 like to have one eventually one day, and consecutive
20 sentences will definitely take all chances of that
21 away from me. And I just feel like, I mean, I'm in
22 a state of shock right now, like, this is serious,
23 I'm gone. But at the same time, like, I feel sorry
24 for you and your family for what y'all been through;
25 but most of all, I feel sorry for my mama for what

1 she about to go through. Like, I love her. That's
2 why I didn't want to see her in here 'cause I know
3 she's going to go crazy and that would make me go,
4 like, just off 'cause she crying. That's why I told
5 them please take my mama out of here. So I'm her
6 only son, I'm the provider, and I took that away
7 from her. So like I say, once again, sorry to you
8 Mr. Hendricks, sorry to you, Senior — I mean,
9 Junior, and you Miss, like, that's all I can say.

10 THE COURT: All right, thank you, sir.
11 Anything else, Mr. Strobel?

12 MR. STROBEL: No, sir.

13 THE COURT: There's a question in my mind
14 which I would think would be in everyone's mind,
15 why?

16 THE DEFENDANT: This —

17 THE COURT: Why was this guy shot?

18 THE DEFENDANT: This God honest truth,
19 that was Rasheem beef. God honest truth, we — only
20 reason we went there was because Tyon Evans had got
21 pistol whipped out there the day before, and he
22 texted my phone and said, you know, come do it,
23 urgent, you know what I'm saying. So I'm like, I
24 ain't saying no more. And then next thing you know
25 Rasheem Thomas seen him —

1 THE COURT: Here's the thing that I can't
2 — it's hard for me to understand. This is a tough
3 time and I know from Mr. Henicks and for your
4 family, like you said. I was in Columbia last week,
5 had a young man who pled guilty to voluntary
6 manslaughter. He was the youngest of four boys in
7 his family. His whole family was there. And the
8 victim who of course was killed, his family was
9 there. It was a guilty plea. It wasn't a trial but
10 it was still, everybody there. And this is the way
11 these folks had to live or chose to live. The
12 mother got up and addressed the Court for the
13 defendant who pled guilty. She has four sons. She
14 has one son who is permanently paralyzed from the
15 waist down and is in a wheelchair for the rest of
16 his life. Her other three sons, including the one
17 that was standing before me. All four of her sons
18 had been shot on the street, all four of them.
19 That's not the end of it.

20 I heard from the victim. That mama stood
21 up. She's got three boys. All three have been
22 murdered. It's this — it is the society we live in
23 today. And you know what, it doesn't matter if
24 you're black, white, Asian, Hispanic. It doesn't
25 matter what race or sex you are, boy, girl.

1 Everybody is carrying guns now. Everybody's
2 settling their differences by shooting each other.
3 That's not the way we're supposed to live.

4 I'll tell you would have happened in this
5 case where I grew up. If somebody — well, first of
6 all, nobody would have been pistol whipped. But if
7 somebody would have whipped one of my buddies, we
8 might have gone over there but we'd have gone over
9 there and it would have been up to my buddy to
10 either whip him back or we do nothing about it. In
11 other words, you stand up for yourself. I'll stand
12 with you but we're not gonna jump a guy with two or
13 three of us, and there's no way we're ever gonna
14 pull a gun on anybody. It's a whole different world
15 now. Now everybody is shooting everybody. I don't
16 know — I don't understand it. We don't have any
17 respect for life.

18 Mr. Henicks, as he sat there with his son.
19 You know what, I know you take the position that
20 Mr. Thomas shot him. The evidence in this case
21 would indicate that you shot him; but regardless,
22 he's sitting there and somebody comes up and puts a
23 bullet in him. It's just, it's just ridiculous;
24 it's ridiculous. It's not the way a civilized
25 society operates. I don't understand it. I just

1 don't understand it.

2 The sentence of the Court on indictment
3 2011-GS-21-1371, on the charge of armed robbery the
4 sentence of the Court is that you be committed to
5 the State Department of Corrections for a period of
6 30 years. On count one of the indictment which was
7 a conviction for assault and battery of a high and
8 aggravated nature, the sentence of the Court is that
9 you be committed to the State Department of
10 Corrections for a period of 20 years. Those
11 sentences are to run concurrent with each other.

12 On count three of the indictment,
13 possession of a weapon during the commission of a
14 violent crime, the sentence of the Court is that you
15 be committed to the State Department of Corrections
16 for a period of five years. That sentence is to run
17 consecutive to the armed robbery and to the ABHAN.
18 You're to be given credit for any time that you have
19 served. Good luck to you, sir.

20

21 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

22

23

24

25

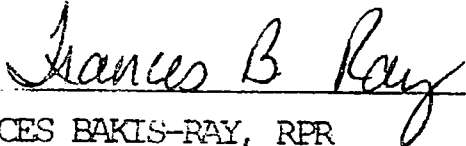
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 24th day of September, 2013.


FRANCES BAKIS-RAY, RPR

386

FORM 5

STATE OF SOUTH CAROLINA)

County of Florence)

Thomas E. Davis #351299)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-21-844

2013 MAR 27 PM 12:07
COUNTY CLERK
FLORENCE COUNTY, SC

FILED

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to particular question on the reverse side of the page or on an additional page. Applicant shall make clear which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution, 4460 Broad River Rd., Columbia, SC. 29210
2. Name and location of Court which imposed sentence Florence County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Tyon M. Evans and Rasheem K. Thomas
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-21-1371 (attempt murder, armed robbery and possession of a weapon during the commission of violent crime)

CERTIFIED TRUE COPY
Clerk of Court
FLORENCE COUNTY, SC

(b) _____
(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:
(a) June 21, 2012 (30-years, 20-years) concurrent, and
(b) 5-years consecutive for the weapons offense
(c) _____

6. Check whether a finding of guilty was made:
(a) after a plea of guilty _____
(b) after a plea of not guilty not guilty
(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
no

8. If you answered "yes" to (7), list:
(a) the name of each Court to which you appealed:
i. n/a
ii. _____
iii. _____

(b) the result in each such Court to which you appealed:
i. n/a
ii. _____
iii. _____

(c) the date of each such result:
i. n/a
ii. _____
iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. n/a
ii. _____
iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:
(a) counsel failed to file an appeal

(b) _____
(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ineffective assistance of counsel
- (b) denial of due process
- (c) Applicant will amend the application at a later date.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) counsel failed to investigate
- (b) counsel failed to file notice of appeal
- (c) reserved under 10(c) to be amended

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. n/a
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. n/a
 - ii. _____
 - iii. _____

iv. _____

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. n/a

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) first filing for post conviction relief
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Richard Strobel, Esquire
Florence County Bar
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. trial and sentencing
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

grant a belated appeal or in the alternative vacate
sentences and convictions and remand for new trial

20. Are you now under sentence from any other court that you have not challenged?

no

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Richland)

I, Thomas E. Davis, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Thomas E. Davis II

SWORN to and subscribed before me this

25th
2013.

day of March
Susan H. Inge (L.S.)
Notary Public

My Commission Expires
March 5, 2016

My Commission Expires: _____

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Thomas E. Davis, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Thomas E. Davis II
Applicant

SWORN or affirmed to and subscribed before me this
25th day of March, 2013.

Jessica H. Frye
Notary Public

My Commission Expires

My Commission Expires: March 2018

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Thomas E. Davis #351299,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

C/A No.: 2013-CP-21-0846

**MEMORANDUM IN SUPPORT OF
 APPLICANT'S APPLICATION FOR
 POST CONVICTION RELIEF**

The Applicant, by and through his undersigned counsel, hereby submits this Memorandum In Support of Applicant's Application for Post Conviction Relief.

I. PROCEDURAL BACKGROUND

The Applicant filed his application for post-conviction relief March 27, 2013 following his conviction following a trial that started June 18, 2012. Applicant was indicted during the September 2011 term of the Florence County Grand Jury for attempted murder, armed robbery, and possession of a weapon during the commission of a violent crime (2011-GS-21-1371). Applicant was found guilty as indicted of armed robbery and possession of a weapon during the commission of a violent crime and of the lesser included offense of assault and battery of a high and aggravated nature.

The Honorable Thomas A. Russo sentenced Applicant to concurrent terms of thirty (30) years imprisonment for armed robbery and twenty (20) years imprisonment for assault and battery of a high and aggravated nature and to a consecutive sentence of five (5) years imprisonment for the

possession of a weapon during the commission of a violent crime charge. Following the trial, neither Applicant nor his trial counsel, Richard Strobel, filed an appeal from his convictions.

Applicant made claims of "Ineffective assistance of counsel" and "Denial of due process" in his Application, stating specifically that "counsel failed to investigate" and "counsel failed to file notice of appeal." Applicant also contends that evidence elicited during the PCR hearing, held October 9, 2014, supports further instances of ineffective assistance of counsel.

II. SUMMARY OF TESTIMONY

At an evidentiary hearing held October 9, 2014 at the Florence County Courthouse, both Applicant and trial counsel, Richard Strobel testified as to the facts and circumstances surrounding Mr. Strobel's representation of Applicant. At the beginning of Applicant's testimony, he testified that prior to the beginning of the trial, Mr. Strobel had visited with him only one (1) time while he was housed in the Florence County Detention Center and that during that meeting, Applicant signed a fee agreement to officially retain Mr. Strobel. Applicant also testified that he and Mr. Strobel had multiple phone conversations but that 4-5 of those phone conversations were about a potential bond hearing.

Applicant testified that he and Mr. Strobel did not go over, in detail, the evidence that the State would present at trial and that he didn't know of certain pieces of evidence, namely the testing done by SLED, until the trial commenced. Applicant testified that he and Mr. Strobel did not discuss the testing of the gun that was done by SLED or Florence County nor did they discuss the possibility or necessity of retaining an expert of their own for these issues.

Applicant further testified that he and Mr. Strobel did not discuss the procedures that would take place during a trial. Applicant testified that once the trial began, he and Mr. Strobel had no

communication. Applicant testified that he did not have a pad and paper and that during breaks in the proceeding, Mr. Strobel would not discuss the case with him. Additionally, Applicant testified that he was unaware that his testimony would potentially change the order that closing arguments would be presented to the jury. Applicant testified that he was not aware of what took place during the charge conference but that he had an issue with the charge of "hand of one, hand of all" being charged because it was his understanding that the State's theory of the case was that he was the lone co-defendant who actually fired a shot that injured the victim.

Applicant testified that after the trial, he contacted Mr. Strobel about filing an appeal on his behalf and that the response he received was "I don't do appeals." Applicant then testified that he attempted to file an appeal on his own but was unable to do so because he was in the Reception and Evaluation Institution of the Department of Corrections.

Following Applicant's testimony, the State called Richard Strobel to testify. On cross examination, Mr. Strobel was asked how many times that he had met with his client prior to the trial. He testified that they had met "(a) dozen" yet when asked follow up questions regarding the dates of those meetings, he testified that his secretary takes the notes and that he didn't know the dates, despite testifying that he had reviewed his file prior to the evidentiary hearing.

Mr. Strobel testified that he did not consider retaining an expert in this case or having any independent testing done of the gun itself or the fingerprint evidence, or lack thereof, obtained from the weapon. When asked why he did not have any testing done or retain an expert, Mr. Strobel responded that he didn't want an expert to find his client's fingerprints on the weapon. When asked whether the defense's position would have changed prior to trial had either his

client's fingerprints or some other person's fingerprints been found on the weapon, Mr. Strobel was unable to provide an answer.

Mr. Strobel was asked about some pre-trial matters that were taken up by the court. He testified that a hearing was held to determine the admissibility of some 609 impeachable conviction evidence regarding several of the witnesses. One witness in particular, Arentus Garrett, had several prior convictions that he would be subject to questioning about. When asked what was his trial strategy regarding failing to attempt to impeach the witness regarding those prior convictions when Mr. Garrett later testified for the State, Mr. Strobel responded, "to win." Additionally, Mr. Strobel, when asked what the trial strategy behind State's exhibits 1-37, 39, and 40 being admitted into evidence, pre-trial, without objection or foundation, responded by asking Applicant's PCR Counsel, in a believed sarcastic manner, "I don't know, what are they?" When Mr. Strobel ultimately answered the original question, his response to the question of trial strategy was "to win."

Mr. Strobel testified that once the trial commenced, he elected to not give an opening statement, but to address the jury at a later time, but that ultimately he never did address the jury until closing arguments. Mr. Strobel testified that he did not have any objection to the State's proposed jury charges at either of the two charge conferences or when the full charge was read to the jury. He testified that in his view, the State's theory of Applicant's role in the crimes was as the sole shooter.

Additionally Mr. Strobel testified that the trial strategy behind failing to object to the Solicitor's questioning of Applicant was "to win." Mr. Strobel testified that he did not object to comments made during the Solicitor's closing arguments because he thought it was "rude" to

object during a closing argument. Finally, Mr. Strobel testified that he did not file an appeal following the conviction of Applicant because he didn't feel that there were issues to appeal, despite the fact that he had been overruled on several objections during the course of the trial.

III. LEGAL AUTHORITY

Where ineffective assistance on counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decision in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S.Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the

proceeding would have been different.” Cherry, 300 S.C. at 117-118, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)).

IV. ARGUMENT

Applicant contends that Mr. Strobel was ineffective in his representation of Applicant and that Applicant can and will meet his burden of proof in establishing both that Mr. Strobel’s performance was deficient on many grounds and that his deficient performance was such that it prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, Id.

Mr. Strobel testified that he met with his client, Applicant, a “dozen” times leading up to Applicant’s trial, yet was unable to produce any notes from those meetings nor could he provide the dates that those meetings occurred. He testified that his secretary takes notes of those meetings and, despite the fact that he testified that he reviewed his file prior to the evidentiary hearing, he was unable to produce any answer as to when those “dozen” meetings took place. Applicant’s testimony, however, was quite different from Mr. Strobel’s regarding their meetings in preparation. Applicant testified that he had met with Mr. Strobel one time, in which they had entered into a fee agreement, and that he had spoken with Mr. Strobel on the phone several times but 4-5 of those calls were discussing a bond hearing. While “brevity of time spent in consultation, without more, does not establish that counsel was ineffective,” Applicant contends that one meeting with his client is insufficient for Mr. Strobel to adequately prepare this case for

trial given the seriousness of the charges and the complexity of the evidence in this case. See Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980).

Mr. Strobel failed to retain or even consult an expert in either fingerprint analysis or in the analysis of the weapon used to commit this crime. Beginning on P. 237 of the Transcript of Record, Mr. Strobel conducts a cross examination of Paul Bird, Florence County Sheriff's Office. Record, at 237. Mr. Strobel asks several questions of Mr. Bird about him not testing certain part of the gun for fingerprints, including the bullets and magazine. Mr. Strobel seems surprised that Mr. Bird testifies that bullets won't hold a fingerprint. Id. at 240. When asked whether Applicant's position would have changed if his fingerprints were found or if another individual's fingerprints were found, Mr. Strobel was unable to give an adequate answer.

Applicant contends that Mr. Strobel failed to conduct a proper investigation into the forensic testing in this case. Mr. Strobel was unable to know whether an expert was necessary or helpful to Applicant's case because he didn't consult one. While an expert may not have been necessary, Mr. Strobel was ineffective because without consulting an expert, or conducting his own independent research into fingerprint analysis of the different parts of a handgun, he was unable to challenge the State's evidence regarding the gun. Even if he had not been deficient in failing to retain an expert to testify, Mr. Strobel was deficient in his preparation because he unable undertake a vigorous cross-examination of the State's expert witness and the accuracy of that evidence. Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991). Additionally, Applicant contends that Mr. Strobel's failure to rebut State's evidence presented by an expert shows a lack of preparation and is deficient. McKnight v. State, 661 S.E.2d 354 (S.C. 2008)

There were two charge conferences held during the course of this trial. The first occurred following the State resting its case, Record, at 281., and the second following the Defense resting its case, Record, at 313. The strategy of the State's case had, throughout the course of the entire trial, been that defendant alone was the shooter and main perpetrator of these crimes. During the course of his testimony, the defendant (Applicant), on his own and not in direct response to a question, brought up the "hand of one, hand of all" theory. Based upon that statement, the Solicitor asks the Judge to charge the jury on "hand of one" or accomplice liability. Record, at 314. Despite the Judge questioning the Solicitor's request of this charge, Mr. Strobel failed to object to that portion of the charge, telling the Judge, "I'm not gonna object." Record, at 315. Additionally, Mr. Strobel failed to later object to the charge when it was ultimately presented to the jury. Record, at 364.

Applicant contends that the evidence presented during trial was not such that a charge of accomplice liability was warranted or proper because the evidence presented was clear that the State believed that Applicant was the shooter and not an accomplice. Barber v. State, 712 S.E.2d 436 (S.C. 2011); also State v. Funchess, 267 S.C. 427, 229 S.E.2d 331 (1976). The circumstances surrounding this case are quite similar to those of Wilds v. State, 756 S.E.2d 387 (S.C.App. 2014). In that case, there were four (4) co-defendants all charged with armed robbery and murder, with the evidence presented all pointing to Wilds. "In contrast, no evidence in the instant case indicated anyone other than Wilds was the shooter. The only evidence presented was that Wilds was the shooter, and Simmons and Dungee joined in the robbery after Wilds pulled the gun on Rumph. Although the jury may have had doubts about Simmons' and Dungee's testimony, an alternate theory of liability, such as accomplice liability, " may not be charged

merely on the theory the jury may believe some of the evidence and disbelieve other evidence.””
Id., at 390 (citing Barber v. State, 712 S.E.2d 436 (S.C. 2011)). The Court of Appeals in Wilds
went on to say, “Accordingly, because no evidence in the instant case indicated anyone other
than Wilds was the shooter, we find the PCR court correctly determined the trial court erred in
charging the jury on accomplice liability.” Id., at 391.

Additionally, Mr. Strobel allowed all but one (1) of the State’s exhibits to be admitted into
evidence without any foundation being laid and without his objecting. Applicant contends that
this decision was deficient in that the State no longer had to lay a proper foundation for any of
these exhibits to be admitted into evidence. Mr. Strobel did not have a valid trial strategy for
allowing these exhibits to be admitted, instead sarcastically asked Applicant’s PCR counsel what
the trial strategy behind that decision was.

Mr. Strobel, when offered the opportunity to present his opening statement to the jury, chose
to address them at a later time. Record, at 67. While a criminal defendant has no burden to
present anything at all to a jury, when counsel informs the court that he will address the jury, and
fails to do so, it not only causes the defendant and his counsel to lose credibility with the jury, it
also demonstrates a lack of preparation on behalf of the defendant’s counsel.

State’s witness, Arenthus Garrett, testified as an eyewitness. Although he was unable to
make a positive identification, he testified as to the clothing and hairstyle of the alleged shooter,
and also as to the vehicle that the defendant and his co-defendant were in. Mr. Garrett was the
subject of a pre-trial hearing on whether his prior convictions would be allowed as impeachment
evidence. Record, at 43. Despite convictions, or sentences, within 10 years of the trial date, of
Criminal Domestic Violence of a High and Aggravated Nature, Lewd Act on a Minor, Burglary -

2nd degree, and Possession of Methamphetamine or Cocaine Base - 2nd Offense, Mr. Strobel failed to ask any questions or attempt to impeach Mr. Garrett's credibility. When asked what the trial strategy behind his decision not to ask any questions regarding Mr. Garrett's credibility, Mr. Strobel replied, "to win." Applicant contends that while there may be any number of valid trial strategies that could excuse a defendant's counsel from asking, or failing to ask, certain questions, Mr. Strobel's repeated answer of "to win" is not one of them.

Applicant testified in his own defense in this case. The cross examination of Applicant by the Solicitor can only be described as "contentious." Record, at 300-307. Mr. Strobel did not make a single objection during the Solicitor's cross, despite several questions being objectionable. One question in particular was particularly objectionable with the Solicitor asking, "All right. And of course, you being a great, someone who doesn't like this type of thing, you immediately came to the aid of a three year old while his father was getting pistol whipped and shot?" Record, at 306, L. 5. Applicant contends that this question impermissibly brings the defendant's character into question. When asked what the trial strategy behind not objecting to this or any other question during the Solicitor's cross examination, Mr. Strobel, yet again, replied, "to win." Applicant contends that this is not a valid trial strategy for failing to object to this type of question.

Additionally, Mr. Strobel had no objection to the State's closing argument. During the closing, the Solicitor made the following comment regarding the Defendant, stating, "And in a way, to tell you the truth, after he testified yesterday I feel sorry for him. I feel sorry for him that the only solace, the only place that he can find protection is what did he say, in the hood. But my feeling sorry for him for his ignorance in terms of that lifestyle..." Record, at 345, L. 8-14.

When asked what the trial strategy behind failing to object to that comment, Mr. Strobel responded that he believed it was rude to object during a closing argument. Applicant contends that guarding against being "rude" is not a valid trial strategy when objectionable statements are made during a closing argument.

Finally, following the jury returning a verdict of guilty and Judge Russo sentencing Applicant, Mr. Strobel failed to file an appeal of Applicant's conviction. Applicant testified that he asked Mr. Strobel to do so and received the response of, "I don't do appeals." Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal. White v. State, 263 S.C. 110, 208, S.E.2d 35 (1974). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Id. Applicant contends that Mr. Strobel was required to file an appeal on his behalf and that he should be granted a belated appeal based upon this error by his counsel.

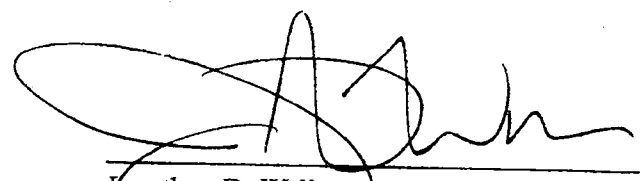
VI. CONCLUSION

Trial counsel was deficient in his representation of Applicant that resulted in Applicant's conviction. Applicant contends that, but for counsel's errors, there is a reasonable probability that the outcome of his trial would have been different. Applicant has presented several instances of deficiencies which, each on their own, would show ineffective assistance of counsel. Applicant also contends that the cumulative effect of these errors was such that the trial cannot be relied on as having produced a just result. Due to these errors and deficiencies, Applicant submits that his convictions and sentences for these charges should be vacated and/or

that he should be granted the right to petition the Supreme Court for review of his Direct Appeal issues.

WHEREFORE, the Applicant prays this Court grant his application for post conviction relief and vacate his convictions and sentences and/or grant him the right to petition the Supreme Court to review any direct appeal issues from his trial.

Respectfully submitted,



Jonathan D. Waller
1720 Main Street - Suite 104
Columbia, South Carolina 29201
Telephone: 803-256-0011
Email: jonathanwallerlaw@gmail.com
South Carolina Bar ID No.: 76290

ATTORNEY FOR THE APPLICANT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Thomas E. Davis,)
 S.C.D.C. No. 351299,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2013-CP-21-0846

RETURN

2013 DEC 17 PM 12:09
 COURT REPORTER
 FLORENCE

In response to the post-conviction relief application filed March 27, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. The Applicant was indicted at the September 2011 term of the Florence County Grand Jury for attempted murder, armed robbery, and possession of a weapon during the commission of a violent crime (2011-GS-21-1371). Richard W. Strobel, Esquire represented the Applicant.

The State proceeded to trial on June 18, 2012, and the jury found the Applicant guilty as indicted on the armed robbery and weapon possession charges. As to the attempted murder charge, the jury found the Applicant guilty of the lesser included offense of assault and battery of a high and aggravated nature. The Honorable Thomas A. Russo sentenced the Applicant to concurrent terms of thirty (30) years imprisonment for armed robbery and twenty (20) years imprisonment for assault and battery of a high and aggravated nature. Judge Russo also sentenced the Applicant to a consecutive five (5) year prison term for possession of a weapon

during a violent crime. The Applicant did not appeal,

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

- 1. "ineffective assistance of counsel"
 - a. "counsel failed to investigate"
- 2. "denial of due process"
 - a. "counsel failed to file notice of appeal"

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441,

442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Applicant further alleges due process violations. However, Applicant's due process claim centers around trial counsel's failure to file an appeal. Therefore, Respondent submits Applicant has failed to make a *prima facie* showing of a due process violation. Accordingly, Respondent interprets this allegation as one of ineffective assistance of counsel.

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

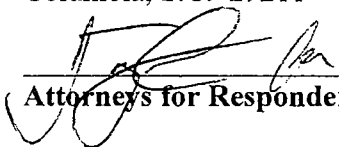
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
Bar No. 100777

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

12/16, 2013

409

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
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 THOMAS E. DAVIS, #351299)
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 Applicant,)
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 vs)
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 STATE OF SOUTH CAROLINA,)
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 Respondent.)
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IN THE COURT OF COMMON PLEAS

2013-CP-21-0846

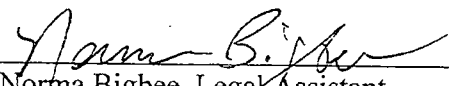
AFFIDAVIT OF SERVICE BY MAIL

2013 DEC 17 PM 12:09
 FILED
 CLERK OF COURT
 FLORENCE COUNTY, SC

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan Waller, Esquire
1720 Main St., Suite 104
Columbia, SC 29

DATED this 16TH day of December, 2013.



 Norma Bigbee, Legal Assistant

State of South Carolina)	Court of Common Pleas
)	Twelfth Judicial Circuit
County of Florence)	Case No. 2013-CP-21-00846
)	
Thomas E. Davis,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
State of South Carolina,)	
)	
Defendant.)	
)	

October 9, 2014
 Florence, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge

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

Jonathan Waller, Esquire
 Attorney for the Plaintiff

Croom Hunter, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Court Reporter

I N D E X

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

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OCTOBER 9, 2014

(WHEREUPON, the proceedings began at 11:50 a.m.)

THE COURT: Who's next?

MR. HUNTER: Your Honor, the next case will be Thomas Davis.

THE COURT: Okay. All right. Mr. Hunter?

MR. HUNTER: Your Honor, this is Thomas Davis versus the State of South Carolina, 2013-CP-21-0846. Mr. Davis is currently incarcerated with SCDC pursuant to Florence County Clerk of Court's orders.

He was indicted at the September 2011 term of the Florence County Grand Jury for attempted murder, armed robbery, possession of a weapon during the commission of a violent crime. He was represented by Mr. Richard Strobel.

The State proceeded to trial on June 18th, 2012. The jury found Mr. Davis guilty as indicted on the armed robbery and weapons possession charges. He was also found guilty of a lesser-included offense of assault and battery of a high and aggravated nature. The Honorable Thomas A. Russo sentenced Mr. Davis to concurrent terms of 30 years' imprisonment for armed robbery and 20 years' imprisonment for ABHAN. He also sentenced the applicant to a consecutive five-year term for possession of a weapon.

He did not file an appeal. He filed this application for post-conviction relief on March 27th, 2013, and he is

THOMAS DAVIS - DIRECT BY MR. WALLER

1 represented today by Mr. Waller.

2 THE COURT: All right. Mr. Waller?

3 MR. WALLER: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 MR. WALLER: May it please the Court. I would call
6 Thomas Davis to the stand.

7 THE COURT: Mr. Davis.

8 THE CLERK: Please stop at the Bible. Place your left
9 hand on the Bible and raise your right hand. Do you swear or
10 affirm that the testimony that you are about to give is the
11 truth, the whole truth, and nothing but the truth, so help you
12 God?

13 THE APPLICANT: So help me God.

14 THE CLERK: Please take your seat and state your name for
15 the record.

16 THE APPLICANT: My name is Thomas Edward Davis.

17 THE COURT: Thank you, Mr. Davis. All right. Mr.
18 Waller, your witness.

19 MR. WALLER: Thank you, Your Honor.

20 THOMAS DAVIS, being first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. WALLER:

24 Q: Mr. Davis, how are you this morning?

25 A: I'm doing fine.

THOMAS DAVIS - DIRECT BY MR. WALLER

1 Q: Mr. Davis, where are you from?
2 A: Florence County.
3 Q: Okay. Where in Florence County?
4 A: Off Pine Street, East Florence.
5 Q: Is that in the town of Florence?
6 A: Yeah, in the town of Florence.
7 Q: Where did you go to high school?
8 A: Wilson.
9 Q: Okay. How far did you go in high school?
10 A: Well, I graduated, but not from Wilson.
11 Q: Okay. Where did you graduate from?
12 A: Department of Corrections.
13 Q: Okay. I want to -- to fast-forward from your high school
14 to April 6th, 2011. Do you remember that day?
15 A: Yes, sir.
16 Q: Who were you with that day?
17 A: Rasheem Kevin Thomas and Tyon Michael Evans.
18 Q: Okay. And did you get arrested that day?
19 A: Yes, sir.
20 Q: Okay. What were you charged with?
21 A: I was charged with attempt murder, high -- with attempted
22 murder, armed robbery, and possession of a firearm during a
23 violent crime.
24 Q: Okay. Was every -- was everyone with you arrested?
25 A: Everyone with me was arrested.

THOMAS DAVIS - DIRECT BY MR. WALLER

1 Q: Okay. Was everyone charged with the same crimes?

2 A: Everyone was charged with the same crimes.

3 Q: Okay. Was everyone charged with the weapons charge?

4 A: No. I was the only one.

5 Q: Okay. What was your bond set at?

6 A: I was denied a bond.

7 Q: Okay. You were denied a bond. How about -- and only if

8 -- if you know. How about your codefendants? Did they have

9 bonds?

10 A: Yes. One -- I think Tyon Michael Evans was 175,000 and

11 Rasheem Thomas was 175,000 at first, but then he came back and

12 got it reduced, like, six months later.

13 Q: Okay. And who was your attorney on these three charges?

14 A: Richard Strobel.

15 Q: Okay. Was he your first attorney?

16 A: My first and only attorney.

17 Q: Okay. How did you -- how did Mr. Strobel come to be your

18 lawyer?

19 A: Well, I was in the county and I was talking -- talking

20 about good lawyers and they was, like, Richard Strobel and

21 Hank Anderson. So I just said, okay. We picked Richard

22 Strobel.

23 Q: Okay. And when did you -- when did you first meet with

24 Mr. Strobel?

25 A: I got arrested April 6th. They kept me in there April 9th.

THOMAS DAVIS - DIRECT BY MR. WALLER

1 Probably about April 12th, somewhere up in that area.

2 Q: And where did y'all meet?

3 A: In Florence Detention Center, in the county.

4 Q: Okay. What did y'all talk about that first meeting?

5 A: That he was going to represent me. My mama hired him and

6 that was basically it.

7 Q: Okay. Did y'all go over anything?

8 A: He just told me he was representing me, he'll come back

9 to see me, and that was basically it.

10 Q: Did he bring you any paperwork?

11 A: He didn't bring me no paperwork.

12 Q: Did you sign anything?

13 A: I signed the thing saying he was going to be my lawyer.

14 Q: Okay. How many other times did you meet with Mr. Strobel

15 before you got to court to go to trial?

16 A: I never seen this man again.

17 Q: Okay. Did you talk to him on the phone?

18 A: I talked to him on the phone.

19 Q: Okay. How many times did you talk to him on the phone?

20 A: Probably about four or five times due to the fact that I

21 was asking for a bond hearing.

22 Q: Okay.

23 A: And he tried to charge me \$1,500 again.

24 Q: Did you -- did you meet with anybody else that may have

25 worked in his office?

THOMAS DAVIS - DIRECT BY MR. WALLER

1 A: Did I meet with anybody else? No.

2 Q: He didn't send anyone else to meet with you?

3 A: No.

4 Q: Okay. When y'all talked in your initial meeting and on
5 the phone, did y'all discuss the State's case against you?

6 A: No.

7 Q: Did you discuss the evidence the State would present at a
8 potential trial?

9 A: No.

10 Q: Okay. Did y'all discuss any potential defenses that you
11 might have?

12 A: No.

13 Q: Okay. Did you have any documents of the -- of any of the
14 evidence that the State was going to -- intended to present
15 against you?

16 A: The only thing I had was the Rule 5 and that was it.

17 Q: Okay. Do you remember what was in it?

18 A: A statement from Tyon Michael Evans.

19 Q: I'm just asking do you remember what individual pieces.
20 I'm not asking you to name them.

21 A: Oh.

22 Q: Do you remember what was in it? Do you have a
23 recollection of what was contained in there?

24 A: Sort of.

25 Q: Okay. Was any documents in there from SLED?

THOMAS DAVIS - DIRECT BY MR. WALLER

1 A: No, sir.

2 Q: Okay. Was there any documents about testing in there in
3 the stuff that you had?

4 A: No, sir.

5 Q: Okay. Did you know SLED was involved in this case before
6 you went to trial?

7 A: No, sir.

8 Q: Okay. Do you now know that SLED was involved?

9 A: Yes, sir.

10 Q: Okay. Do you know what SLED's involvement was?

11 A: Yes, sir.

12 Q: Okay. What was that?

13 A: Tested GSR on my hands. I had wrote the SLED people and
14 got the GSR paperwork from them.

15 Q: Okay. Did they -- did SLED do any testing on the gun?

16 A: No, sir.

17 Q: Okay. Did -- did you have anything about any testing of
18 fingerprints?

19 A: No, sir.

20 Q: Okay. When did you first realize that there was tests
21 done on the gun and/or fingerprints?

22 A: Say that one more time?

23 Q: When was the first time you realized that testing had
24 been done on the gun or fingerprint testing had been done?

25 A: The day of my trial.

THOMAS DAVIS - DIRECT BY MR. WALLER

1 Q: Okay. So you and Mr. Strobel never talked about any of
2 the testing?

3 A: We never talked about nothing.

4 Q: Okay. Did you all ever discuss possibly retaining an
5 expert for any portion of your trial?

6 A: No, sir.

7 Q: Okay. Did you provide Mr. Strobel with any -- excuse me.
8 Let me back up. Did y'all talk about the -- the witnesses
9 that the State was going to potentially call to testify?

10 A: No, sir.

11 Q: Did you know what witnesses the State was going to
12 potentially call?

13 A: No, sir.

14 Q: Did y'all -- did you provide Mr. Strobel with the names
15 of any potential witnesses that would assist you in your
16 defense of the case?

17 A: I did.

18 Q: Okay. What did you tell him?

19 A: I told him I had a witness that could prove that I was
20 under her house instead of being in National Cemetery.

21 Q: Where at?

22 A: Where the gun was located on National Cemetery and I was
23 underneath somebody else's house.

24 Q: Okay. Did you and Mr. Strobel talk about the merits of
25 her testifying to that?

THOMAS DAVIS - DIRECT BY MR. WALLER

1 A: No, sir.

2 Q: Other than the co-defendant who testified against you at
3 your trial, did you know or know anything about any of the
4 other witnesses that testified?

5 A: No, sir.

6 Q: Okay. Did you and Mr. Strobel discuss the procedures
7 that would take place during a trial?

8 A: No, sir.

9 Q: Okay. Going into this trial, what was your understanding
10 of what the State said your role was?

11 A: They said I was the one that shot.

12 Q: Okay.

13 A: Shot -- shot the victim.

14 Q: Okay. Did you and Mr. -- Mr. Strobel ever discuss what
15 that meant?

16 A: No, sir.

17 Q: Did you and Mr. Strobel ever discuss what -- the fact
18 that three people charged with the same crime and the
19 differences -- the differences in y'all's positions?

20 A: He never talked to me.

21 Q: Okay. Once the trial started, did you and Mr. Strobel --
22 were y'all able to communicate?

23 A: No. Actually, we got in an altercation when -- pardon
24 self. We got into an argument right here in the courtroom
25 during a break --

THOMAS DAVIS - DIRECT BY MR. WALLER

1 Q: Okay.

2 A: -- because he ain't know what to say or ask. He didn't

3 have no strategy.

4 Q: Did y'all meet prior to the trial some to prepare?

5 A: No.

6 Q: Okay.

7 A: He ain't never talked to me.

8 Q: Once the trial started, you said that you didn't have any

9 conversation except for an altercation?

10 A: Yes. The only time I even --

11 Q: Where -- where was the altercation?

12 A: Inside the courtroom when the jury stepped out.

13 Q: Okay. In this courtroom?

14 A: Whatever floor we was on in the courtroom with Russo.

15 Q: Okay. Was it -- was it bigger than this or was it --

16 A: No. I know it was in Russo's courtroom.

17 Q: Okay. Did you have any information about any of the

18 witnesses once you received the State's witness list?

19 A: No.

20 Q: Okay. What about your codefendant?

21 A: Say that --

22 Q: Did you -- did you have any information about your

23 codefendant?

24 A: No. I ain't have nothing.

25 Q: Did you know -- did you know your codefendant?

THOMAS DAVIS - DIRECT BY MR. WALLER

1 A: Oh, yes, I knew my codefendant.
2 Q: Okay. Did you know any information about him that you
3 provided to Mr. Strobel?
4 A: Oh, yes. I mean I tried to -- no, I never told Mr.
5 Richard Strobel nothing about nobody.
6 Q: Okay. Why not?
7 A: Because he never asked me.
8 Q: Okay. Only one codefendant testified at your trial;
9 correct?
10 A: Yes.
11 Q: Okay. Did you and Mr. Strobel discuss the -- both
12 codefendants?
13 A: I never talked to this man.
14 Q: Okay. Did y'all discuss -- I believe his name is Rasheem
15 Thomas, who did not testify at your trial?
16 A: I never talked to him.
17 Q: Okay. You testified during your trial in your own
18 defense?
19 A: Yes, sir.
20 Q: Okay. What, if any, conversation did you and Mr. Strobel
21 have leading up to you testifying?
22 A: The first time I talked to Mr. Strobel was in the
23 courtroom.
24 Q: Why did you decide to testify?
25 A: Because he wasn't asking the right questions.

THOMAS DAVIS - DIRECT BY MR. WALLER

1 Q: Okay. Did y'all discuss the implications of you
2 testifying and how it might affect your trial?
3 A: No, sir.
4 Q: Did y'all discuss how it might affect the procedure of
5 the trial?
6 A: No, sir.
7 Q: Did Mr. Strobel go over your constitutional rights with
8 you in advance of you deciding to testify?
9 A: No, sir.
10 Q: Okay. Did you discuss with Mr. Strobel prior to or
11 during the trial any potential other witnesses that might have
12 been beneficial to your defense?
13 A: No. Only one, Kia, I said.
14 Q: Okay. Was that witness called?
15 A: No, sir.
16 Q: To your -- to the best of your knowledge, was that
17 witness subpoenaed?
18 A: No, sir.
19 Q: Okay. So to the best of your knowledge, what was your
20 understanding of why she was not called?
21 A: Because he don't know who to ask. I mean I just told him
22 and he never asked me where she stayed at. He never came to
23 see me. Nothing. He never talked to me, period.
24 Q: Okay. During the -- during the trial once the trial is
25 nearing conclusion, did Mr. Strobel ever discuss with you what

THOMAS DAVIS - DIRECT BY MR. WALLER

1 the attorneys and judge talked about about the jury charge?

2 A: No, sir.

3 Q: Did you hear the judge give -- charge the jury on the
4 law?

5 A: On what charge?

6 Q: The whole thing.

7 A: Yeah. I heard the judge charge the jury.

8 Q: Okay. Did you have any -- any issues with that jury
9 charge?

10 A: Yes, sir.

11 Q: Okay. What were those issues?

12 A: The hands of one is the hands of all theory. I felt like
13 I was surprised because that wasn't in my indictment. I felt
14 like I was charged as the principal, but yet all of a sudden
15 now you're giving the jury more than one way to convict me
16 through a theory that didn't have no -- no common ground. You
17 mean the whole time I'm charged as being the one who did the
18 shooting. Now, you're just going to -- at the end of my
19 trial, you're going to say the hands of one is the hands of
20 all.

21 Q: Okay. Did you -- did you have those issues then or have
22 you since come to understand that concept?

23 A: No. I just -- I just -- I just came to understand it.

24 Q: Okay. Did you -- were you concerned when the judge
25 charged that aspect of it?

THOMAS DAVIS - DIRECT BY MR. WALLER

1 A: Yes. I asked Mr. Strobel. I said what are you doing.
2 He said, chill, the victim -- I mean he said they're saying
3 the whole time you shot the victim. Now, all of a sudden,
4 they're saying it's the hands of one is the hands of all.
5 They need help. So that's why I'm not going to object.
6 Q: Okay. So you did bring that issue up to Mr. Strobel?
7 A: Yes. Yes, sir.
8 Q: And then the jury came back and found you guilty?
9 A: Found me guilty.
10 Q: Okay. What happened after that?
11 A: I had went to Kirkland for -- I went to Kirkland and,
12 when I came out of Kirkland, I tried to contact Richard
13 Strobel. I got in contact with him one or two -- one or two
14 times in Kirkland. I started studying because I was waiting
15 on an appeal.
16 Q: Okay. Did you -- what happened immediately after --
17 after the jury came back with the guilty verdict? Walk me
18 through it.
19 A: I was stunned because I was charged as a principal and I
20 don't even know what I was actually charged with. They hit me
21 with a lower -- a lower-included offense and the next thing
22 you know they sent me back to Effingham County and that was
23 it. I walked out of here and went straight in the back.
24 Richard Strobel ain't even talked to me or nothing. He ain't
25 said nothing about nothing.

THOMAS DAVIS - DIRECT BY MR. WALLER

1 Q: Okay. Where did they send you from the courtroom? Where
2 did you go right when you left this courtroom?

3 A: To the back in the -- that back holding cell back there.

4 Q: Okay. How long were you there?

5 A: Actually, they -- it's kind of funny, but actually, they
6 left -- court closed at 5:30, but I didn't leave until about
7 seven.

8 Q: Okay. So you were here until 7 o'clock that night?

9 A: Yeah. The cleanup crew had to come and get me out.

10 Q: Okay. Where did you go from there?

11 A: To Effingham County into the box.

12 Q: Okay. How long were you at Effingham?

13 A: My whole entire stay?

14 Q: Just when you left court.

15 A: About two days.

16 Q: Two days?

17 A: Probably only two days, yeah.

18 Q: Where did you go from Effingham?

19 A: R & E.

20 Q: Okay. You said -- well, let me back up real quick. You
21 said you were at Effingham you said in the box. What does
22 that mean?

23 A: SMU, solitary confinement.

24 Q: Okay.

25 A: Because I had lost trial.

THOMAS DAVIS - DIRECT BY MR. WALLER

1 Q: Okay. What -- describe that, if you will, what -- what
2 --

3 A: Well, you is not in general population. You -- you're
4 being caged in a box -- well, hold in a box that can't have no
5 --

6 MR. HUNTER: Your Honor, I would object to the relevance
7 of this. This is after the trial, after he had been found
8 guilty.

9 THE COURT: Just out of curiosity, why are we going into
10 this, Mr. Waller?

11 MR. WALLER: Your Honor --

12 THE COURT: What relevance does it have to the PCR
13 application?

14 MR. WALLER: Sure. Your Honor, I'm trying to establish
15 his ability to have communications with his attorney. An
16 appeal was not filed in this case.

17 THE COURT: Okay. Okay. And one of the things he wants
18 is an appeal?

19 MR. WALLER: Yes, sir, Your Honor.

20 THE COURT: Okay.

21 MR. WALLER: That's all it is. I'm not trying to --

22 THE COURT: Okay.

23 MR. WALLER: -- get into --

24 THE COURT: Okay.

25 MR. WALLER: -- any other --

THOMAS DAVIS - DIRECT BY MR. WALLER

1 THE COURT: Well, I'll let him go. I'll let him. Go
2 ahead, Mr. Waller.
3 BY MR. WALLER:
4 Q: What's the communication -- or can you have visitors?
5 A: Yes. You can have visitors in the box.
6 Q: Okay. Did anybody come visit you?
7 A: No, sir.
8 Q: Okay. Can you write letters?
9 A: Yes, sir.
10 Q: Did you write any letters?
11 A: No, sir. Because they don't get -- well, I wasn't held
12 that long. They sent me straight to Kirkland.
13 Q: Okay. Can you make phone calls?
14 A: Yes, sir.
15 Q: Did you make any phone calls?
16 A: No, sir.
17 Q: Okay. Where did you go after you left Effingham?
18 A: Kirkland.
19 Q: Okay. Tell me about when you got -- how long were you at
20 Kirkland?
21 A: 28 days.
22 Q: Okay. What was Kirkland like for those 28 days?
23 A: You get biscuits every day. That's it.
24 Q: Are you allowed visitors at Kirkland?
25 A: After you do a month.

THOMAS DAVIS - DIRECT BY MR. WALLER

1 Q: Okay.

2 A: But legal -- you can get legal -- legal visits.

3 Q: Okay. Did you have any legal visits?

4 A: No, sir.

5 Q: Did you -- are you allowed to write any letters?

6 A: Yes, sir.

7 Q: Did you write any letters?

8 A: No, sir.

9 Q: Are you allowed phone calls?

10 A: Yes, sir. Once a week.

11 Q: Did you make any phone calls?

12 A: Yes. To my mama and them. That was about it.

13 Q: Okay. Just family members?

14 A: Yes.

15 Q: Okay. Prior to you being convicted and prior to the

16 sentencing, had you and Mr. Strobel ever discussed what your

17 next step was if things went bad at trial?

18 A: No. I never even knew nothing about an appeal.

19 Q: Okay.

20 A: I never even knew nothing about an appeal.

21 Q: Did you -- did you request that he file an appeal?

22 A: I never knew nothing about it.

23 Q: Okay. Did he ever discuss with you the appeal process?

24 A: No.

25 Q: Okay. To the best of your knowledge, was an appeal filed

THOMAS DAVIS - DIRECT BY MR. WALLER

1 in this case?

2 A: No, sir. I even asked Richard Strobel. When I came to
3 Broad River Correctional, I said -- when I called him, he
4 accepted the call and I said, why you didn't file my appeal?
5 He said, I don't file appeals unless you ask.

6 Q: Okay. When -- when was that?

7 A: About August, around about August.

8 Q: Okay. Were you -- while you were in either Effingham or
9 Kirkland, did you have the ability to file an appeal for
10 yourself?

11 A: I wouldn't know how to do it.

12 Q: Okay. Mr. Davis, I've asked all the questions that I
13 have. Is there anything that you feel that I have left out or
14 any issues that you want brought before the Court so the Court
15 is aware of it?

16 A: Yes, sir. I just -- I just want the Court to know that
17 since the beginning, I told this -- I told Richard Strobel I
18 wanted to go to trial and when he corresponds to me through
19 letters or when I do, he do answer about a bond hearing, he
20 say cop out to a plea bargain.

21 And I'm telling him I want him to -- I want him to go to
22 trial and pushing for trial. I'm pushing for trial because I
23 ain't do this crime. I wanted to go on. And ever since then,
24 he never came to see me, never came to talk to me. He never
25 told me what was going on. I've been in the county for 16

THOMAS DAVIS - DIRECT BY MR. WALLER

1 months. This man never came to see me but one time and that
2 was for me to sign saying that he's my lawyer. When my mama
3 gave him the check, sign and say he's my lawyer. He never
4 came to see me ever.

5 Q: Let me ask you this. Did you -- how many visitors total
6 did you have while you were in the county before?

7 A: I had a lot.

8 Q: You had a lot of visitors?

9 A: I had a lot of visitors.

10 Q: Okay.

11 MR. WALLER: No further questions.

12 THE COURT: Okay.

13 MR. WALLER: Please answer any questions that Mr. Hunter
14 has.

15 THE COURT: Mr. Hunter, anything on cross?

16 MR. HUNTER: Yes, Your Honor.

17 THE COURT: Okay.

18 CROSS-EXAMINATION

19 BY MR. HUNTER:

20 Q: So, Mr. Davis, your testimony today is that you were
21 arrested on the 6th and Mr. Strobel came and met with you on
22 the 12th of April; is that correct?

23 A: I mean around that time. Yes, sir.

24 Q: Okay. And you said that was the only time that Mr.
25 Strobel met with you?

THOMAS DAVIS - CROSS BY MR. HUNTER

1 A: Yes, sir.

2 Q: Okay. But you say y'all had four or five telephone
3 conversations?

4 A: Yes. That's for bond hearing.

5 Q: Okay. And so all -- all of those conversations, all four
6 or five of them, were only related to the bond hearing?

7 A: Basically. Yes, sir.

8 Q: Okay. So y'all never at any point prior to your trial
9 discussed any of the evidence against you?

10 A: No, sir.

11 Q: Okay. And you said that the only way you got the SLED
12 paperwork as far as the gunshot residue test was because you
13 wrote SLED and they sent it to you?

14 A: No, I paid for it.

15 Q: Okay. And was that prior to your trial?

16 A: No, sir. That was after my trial.

17 Q: Okay. So prior to your trial, you had no idea there was
18 any kind of SLED test out there?

19 A: No. Because when I talked -- when we was at a bond
20 hearing in June and I was talking to Mr. Richard Strobel and
21 he had Jepertinger, the solicitor, in the back and he was
22 about to try to give me a deal and I was, like, I ain't taking
23 no deal and he was, like, why you ain't taking no deal and
24 then the next thing you know the judge was, like, come back in
25 June and that's when he was, like, oh, I seen the victim in

THOMAS DAVIS - CROSS BY MR. HUNTER

1 the elevator and he's talking about he's going to positively
2 identify you and -- and they got your fingerprints and they
3 got your DNA. And when we go to trial, they ain't got no
4 fingerprints or no DNA.

5 Q: So your testimony is that you're innocent, that you
6 weren't the shooter?

7 A: Yes.

8 Q: Okay. But do you deny that you were in the vehicle that
9 day?

10 A: I mean I don't deny that.

11 Q: Okay. I believe -- I believe you testified that you were
12 in the backseat of the car; is that right?

13 A: Yes, sir.

14 Q: The backseat?

15 A: Yes, sir.

16 Q: Okay. Do you recall Orentheus Garrett's testimony during
17 the trial?

18 A: Yes, sir.

19 Q: Do you recall him testifying that he saw the shooter get
20 into the backseat of the car after the victim was shot?

21 A: I also heard him testify saying that he didn't see -- he
22 didn't see me. He say similarities. Similarities are not a
23 positive identification, sir.

24 Q: Okay. Well, you look a little different today than you
25 did at your trial?

THOMAS DAVIS - CROSS BY MR. HUNTER

1 A: Yes. Because they made me cut my hair.

2 Q: Okay. So you had dreadlocks at the time of your trial?

3 A: Yes, sir.

4 Q: And there was testimony from multiple witnesses at your

5 trial that --

6 A: No, it wasn't. It was only one witness, State witness,

7 and the rest was codefendants and the rest was expert

8 witnesses and the victim, and nobody positively identified me.

9 Q: Okay.

10 A: Nobody said I did nothing.

11 Q: But all those people are witnesses --

12 A: Okay.

13 Q: -- and they all did say that the shooter had dreadlocks?

14 A: No, they did not, sir.

15 Q: They did not?

16 A: No, they did not, sir.

17 Q: Okay.

18 A: The victim say the man had a do rag with a black shirt.

19 I was -- I had a white shirt. The victim say the man was six

20 something. I was -- I'm 5'9" -- 5'10". That fits one of my

21 codefendants.

22 Q: You had -- you had a white shirt on when you got

23 arrested, didn't you?

24 A: Yes, sir.

25 Q: Okay. Well, didn't Orentheus Garrett testify that the

THOMAS DAVIS - CROSS BY MR. HUNTER

1 shooter had a light-colored shirt on?

2 A: Light-colored shirt and a white shirt are two different
3 things, sir.

4 Q: Okay. Now, let's go back to the gunshot residue test.
5 You were the -- according to these SLED experts that testified
6 at your trial, you were the only -- of your three -- of you
7 and your two codefendants, you were the only one who tested
8 positive for gunshot residue; is that correct?

9 A: And I still can't understand how I did that.

10 Q: Okay. And it was your testimony that you had been
11 shooting guns out in Darlington County earlier that day?

12 A: Yes, sir.

13 Q: Okay. Well, wasn't it also your testimony that earlier
14 that day you have been to a funeral?

15 A: No, sir.

16 Q: And that's why --

17 A: No, sir. That was not my testimony.

18 Q: That was not your testimony?

19 A: No, sir.

20 Q: Okay. Let's move along here. Now, you say you never had
21 a discussion of any kind of expert witnesses with Mr. Strobel;
22 is that right?

23 A: Yes, sir.

24 Q: Okay. Do you have any experts here today testifying on
25 your behalf?

THOMAS DAVIS - CROSS BY MR. HUNTER

1 A: No, sir.

2 Q: Okay. And you say you provided Mr. Strobel with a
3 witness that you wanted to have testify in your case; is that
4 right?

5 A: Yes, sir.

6 Q: Okay. Is she here today?

7 A: No, sir.

8 Q: Okay.

9 MR. HUNTER: I beg the Court's indulgence.

10 THE COURT: Take your time.

11 MR. HUNTER: Okay.

12 BY MR. HUNTER:

13 Q: Now, you say that other than those four or five times you
14 spoke with Mr. Strobel on the phone about your bond hearing
15 that you never spoke to him ever again before the trial?

16 A: I never talked to this man ever.

17 Q: Okay. Well, did you ever attempt to call him?

18 A: Yes, sir.

19 Q: Okay. Do you know how many times you tried to call him?

20 A: Numerous times.

21 Q: Okay. Did you send him any letters?

22 A: Numerous letters.

23 Q: Okay. Do you have copies of those letters?

24 A: I mean I wasn't -- I wasn't never thinking I had to keep
25 copies.

THOMAS DAVIS - CROSS BY MR. HUNTER

1 Q: Okay.

2 A: And then it's not like you can copy them in the county.

3 Q: Okay. Now, let's talk about your decision to testify.

4 Now, you're saying you chose to testify because you felt like
5 Mr. Strobel had done such a bad job that was the only way you
6 were going to get off?

7 A: No. I ain't say no such thing about me getting off. I
8 said I wanted the truth to come out basically. That's why I
9 testified.

10 Q: Okay.

11 A: I never said about me getting off.

12 Q: Okay. So -- but would you agree it was your decision to
13 testify?

14 A: It was my decision to testify.

15 Q: Okay. And your testimony now is that, before you decided
16 to testify, Mr. Strobel never discussed any of the
17 consequences of you testifying?

18 A: That's word. He never -- I mean that's word on
19 everything I love. He never told me anything about nothing.

20 Q: Okay. So basically, you just said, Mr. Strobel, I want
21 to testify and he said okay?

22 A: Basically, that's what it went down. That's just how it
23 went down.

24 Q: Okay.

25 A: After me and him got in an argument, he was just, like,

THOMAS DAVIS - CROSS BY MR. HUNTER

1 done with me basically.

2 Q: Okay. Now, you testified a few minutes ago that you had
3 some issues with the solicitor or with the judge charging the
4 hand of one/hand of all to the jury?

5 A: Yes, sir.

6 Q: Okay. Well, didn't you in your testimony at trial bring
7 up the hand of one/hand of all?

8 A: Sir, when I brought that up, it was because I said -- he
9 asked me why did I run. I said because in the State of South
10 Carolina they charge people with the hands of one/hands of
11 all. That's all I said.

12 Q: Okay. But prior to that, had anyone spoken to you about
13 hand of one/hand of all?

14 A: No. I just -- that's just what happened.

15 Q: Okay.

16 MR. HUNTER: Your Honor, that's on page 307 of the
17 transcript.

18 THE COURT: Okay.

19 BY MR. HUNTER:

20 Q: All right. Let's talk about after you were convicted.
21 Well, let's talk about your conviction for a minute. Now, you
22 were found guilty of assault and battery of a high and
23 aggravated nature; that's right?

24 A: Yes, sir.

25 Q: Okay. But you were charged with attempted murder?

THOMAS DAVIS - CROSS BY MR. HUNTER

1 A: Yes, sir.

2 Q: Okay. So Mr. Strobel did -- did manage to get you -- you

3 know --

4 A: I wouldn't say --

5 Q: He didn't get you off, but he didn't get you convicted of

6 attempted murder either?

7 A: I didn't get convicted of attempted murder, but I don't

8 think he got me off.

9 Q: Okay.

10 MR. HUNTER: I beg the Court's indulgence.

11 BY MR. HUNTER:

12 Q: Now, I believe you testified earlier -- and I may be

13 mistaken, but did you testify earlier that SLED never -- never

14 tested the gun?

15 A: You're talking about in the trial?

16 Q: In the trial.

17 A: I never knew nothing about SLED testing -- testing no

18 gun. No, sir.

19 Q: Okay. But I must have misunderstood your testimony. I

20 thought you testified that SLED did not test the gun at all.

21 A: No, I did not say that, sir.

22 Q: Okay. That's my fault. So is it your testimony that

23 when y'all went to the bootlegger's you never got out of the

24 car?

25 A: Say that again, sir?

THOMAS DAVIS - CROSS BY MR. HUNTER

1 Q: Y'all never got -- is it your testimony that you never
2 got out of the car?

3 A: Are you talking about when I was in trial?

4 Q: No. I'm talking about on April -- on the -- on the day
5 of this crime.

6 A: And on that last question --

7 MR. WALLER: Objection, Your Honor. I don't -- he's
8 asking him I guess about a question that's in the transcript.
9 I don't know.

10 MR. HUNTER: I can keep going, Your Honor. It's not --

11 THE COURT: Okay.

12 MR. HUNTER: -- that important.

13 THE COURT: All right.

14 BY MR. HUNTER:

15 A: And can -- can I reiterate on that last question about
16 SLED? Now, you say in my last testimony in like April 6th,
17 that trial?

18 Q: No. I was talking about earlier this afternoon.

19 A: No. I found out that SLED never tested the gun through
20 the paperwork I had received on trial when they had Richard
21 Strobel ask me did they ever do the fingerprints and they
22 said, no, they never did. They could just look at that gun
23 and see that they ain't need no fingerprints.

24 Q: Okay. Mr. Davis, after you were convicted and before the
25 judge sentenced you, didn't you apologize?

THOMAS DAVIS - CROSS BY MR. HUNTER

1 A: Yes. Yes, sir.

2 Q: Okay.

3 A: But I did not apologize for shooting nobody. I

4 apologized for being there and didn't stopping it. That's

5 what I apologized for. I did not apologize for having my

6 hands in nothing.

7 Q: Okay.

8 A: Okay.

9 Q: But your hands did have gunshot residue on them?

10 A: I mean I still to this day don't understand how.

11 Q: Okay. And your testimony earlier was that you -- now,

12 did you -- you never asked Mr. Strobel to file an appeal;

13 correct? Because you said that you didn't know how to do

14 that. You didn't know you should have filed it?

15 A: I never asked him.

16 Q: Okay.

17 A: But when I did ask him, he said he don't do it because

18 unless you ask him. I mean I'm not -- how I know?

19 Q: When did you ask him that?

20 A: When I was in Broad River Correctional.

21 Q: Okay.

22 A: As soon as I got out of R & E, I called him.

23 Q: Okay. But that was -- what? A month and a half after

24 your trial?

25 A: Like, 28 days. Like, 29 days. Somewhere up in there.

THOMAS DAVIS - CROSS BY MR. HUNTER

1 Q: Okay.

2 A: Somewhere up in that area, 29 -- 30 days. He'll testify
3 to it. I know he should know that I asked him. He said I
4 ain't do it in 40 years.

5 Q: Okay.

6 A: That's what he said.

7 MR. HUNTER: Thank you, Mr. Davis. That's all I have.

8 THE APPLICANT: Yes, sir.

9 THE COURT: Anything on redirect?

10 MR. WALLER: Thank you, Your Honor. Just briefly.

11 REDIRECT EXAMINATION

12 BY MR. WALLER:

13 Q: Mr. Davis, you testified that you and Mr. Strobel had
14 four or five phone conversations about a bond hearing?

15 A: Yes, sir.

16 Q: Okay. Did you -- did you have a bond hearing?

17 A: I had -- I had -- yes, sir, I did.

18 Q: Okay. Did you have more than one?

19 A: The first time I got denied. Then I came back and, when
20 I came back, the judge told me if my case don't be heard in
21 June, then he's going to give me a bond, and they heard me in
22 June.

23 Q: Okay. Did Mr. Strobel file a motion for a bond hearing
24 in your case?

25 A: I don't know how that work, but I mean if I got a bond, I

THOMAS DAVIS - REDIRECT BY MR. WALLER

1 think so.

2 Q: Okay. Do you know if he filed more than one?

3 A: I don't know. I don't know. I can't -- I don't know.

4 Q: Did you go in front of a judge for more than one bond

5 hearing?

6 A: The first time I went, I asked him for the bond. He

7 talking about there's no need for you to have a bond because

8 Connecticut got a hold on you and I'm going to need 1200 --

9 the first time it was \$1200. I'm going to need \$1200 for you

10 to get a bond to take you up in front of the judge and then --

11 so I'm up here struggling trying to get this money up together

12 for him and trying to get it together. He gets mad about the

13 bond hearing, about me not giving him -- my mama didn't give

14 him the money on time or something. I don't know. He just

15 blow -- he -- he kept saying this is -- this is law work.

16 This takes money to do and all this. That's all he kept

17 screaming on me. I just -- I just --

18 Q: Did you go in front of Judge Russo in June of 2011?

19 A: Yes.

20 Q: Did you go in front of Judge Russo in April of 2012 also

21 for a bond?

22 A: No. Say that one more time?

23 Q: Did you go --

24 A: June?

25 Q: June of 2011.

THOMAS DAVIS - REDIRECT BY MR. WALLER

1 A: I thought it was a month before June that I went. I
2 don't know what exact date it was, but I know he told me in
3 June when I went for my bond hearing -- I mean they was going
4 to hear my case in June. When I did go, it was probably May.
5 May or June, somewhere up in that area.

6 Q: Okay. You testified earlier that you wrote -- you wrote
7 SLED about the testing that they had done?

8 A: Yes, sir.

9 Q: Okay. Did you -- why did you have to write SLED?

10 A: Because I was just trying to figure out how can a gun --
11 a .45 caliber gun don't have fingerprints and why was it not
12 -- why didn't my lawyer do it.

13 Q: Did you have copies of the SLED reports prior to your
14 trial?

15 A: No, sir.

16 Q: Did you have copies of the SLED reports after your trial,
17 but not that you got from SLED on your own?

18 A: No, sir.

19 Q: Okay. Did you ask Mr. Strobel for copies of any
20 documents in your case at all?

21 A: No, sir.

22 Q: Okay. Mr. Davis, you don't have any -- you haven't been
23 to law school?

24 A: No, sir.

25 Q: Do you -- do you know the procedures of how a trial goes

THOMAS DAVIS - REDIRECT BY MR. WALLER

1 and how certain decisions might affect trial?

2 A: No, sir. Just the little stuff that I've been reading
3 since I've been incarcerated.

4 Q: Do you understand what happens when a defendant testifies
5 and how that affects the case?

6 A: No, sir.

7 Q: Do you know how that might affect the procedure of how a
8 trial functions, the order things go in?

9 A: No, sir.

10 Q: Okay. Did Mr. Strobel talk to you about any of that
11 before you decided to testify?

12 A: No, sir.

13 MR. WALLER: No further questions.

14 THE COURT: Anything on recross?

15 MR. HUNTER: Just very briefly, Your Honor.

16 RECROSS-EXAMINATION

17 BY MR. HUNTER:

18 Q: You testified just a minute ago that Mr. Strobel told you
19 you didn't need to worry about having a bond hearing because
20 Connecticut had a hold on you?

21 A: Yes. He said I have a hold in Connecticut.

22 Q: Okay. What -- what was that for?

23 A: I just -- well, I had maxed out eight years up there. I
24 did eight years and I was under -- they don't got it down
25 here, but it was called special parole and you've got to be

THOMAS DAVIS - RECROSS BY MR. HUNTER

1 supervised, but you ain't -- like, you maxed your time out.

2 You done did your whole eight years, like, but you've just got

3 to be supervised.

4 Q: Okay.

5 A: So they still had me supervised for seven years.

6 Q: Okay. And you said you didn't understand how the gun

7 couldn't have any fingerprints on it; is that correct?

8 A: Yeah. Because I know I ain't have it. I just wanted to

9 make sure that it was not -- I wanted -- if they had did

10 fingerprints, it would have showed that it was not my

11 fingerprints.

12 Q: Okay. Well, didn't the -- didn't the SLED gun expert

13 testify that that gun had rubber grips that don't show

14 fingerprints?

15 A: No. He said --

16 MR. WALLER: Objection.

17 A: No, he did not, sir. Oh.

18 THE COURT: He's already answered the question. So --

19 MR. HUNTER: Yes, sir, Your Honor.

20 THE COURT: Okay. But I'll note your objection.

21 MR. WALLER: Thank you.

22 MR. HUNTER: I don't have any further questions.

23 THE COURT: Okay. All right. You may step down. Thank

24 you, sir. I appreciate it. All right. Mr. Waller, who is

25 your next witness?

RICHARD STROBEL - DIRECT BY MR. HUNTER

1 MR. WALLER: Your Honor, I have no further witnesses.

2 THE COURT: Okay. Any witnesses for the State?

3 MR. HUNTER: Yes, sir. Your Honor, the State would call

4 Richard Strobel.

5 THE COURT: Mr. Strobel.

6 THE CLERK: Step up to the Bible. Place your left hand

7 on the Bible and raise your right hand. Do you swear or

8 affirm that the testimony you are about to give is the truth,

9 the whole truth, and nothing but the truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Please take your seat and state your name for

12 the record.

13 THE WITNESS: Richard W. Strobel.

14 THE COURT: Hey, Mr. Strobel. How are you?

15 THE WITNESS: Fine.

16 THE COURT: Okay. Mr. Hunter?

17 RICHARD STROBEL, being first

18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. HUNTER:

21 Q: Good afternoon, Mr. Strobel. Do you recall representing

22 Mr. Davis in this matter?

23 A: I do.

24 Q: Okay. Have you had an opportunity to review the file in

25 preparation for this hearing today?

RICHARD STROBEL - DIRECT BY MR. HUNTER

- 1 A: Very briefly.
- 2 Q: Okay. Now, were you retained in this case?
- 3 A: I was.
- 4 Q: Okay. Do you recall the number of times that you met
5 with Mr. Davis?
- 6 A: Too many to talk about.
- 7 Q: Okay. Do you have a ballpark number?
- 8 A: A dozen.
- 9 Q: Okay. Now, where were they? Where did those meetings
10 take place?
- 11 A: Effingham.
- 12 Q: Okay. Did y'all also talk on the phone?
- 13 A: Yes.
- 14 Q: Okay. Did you feel like you needed -- you needed to meet
15 with Mr. Davis anymore?
- 16 A: No.
- 17 Q: Okay. Now, in preparation for trial, did you go over the
18 charges and the elements of those charges that Mr. Davis was
19 accused of?
- 20 A: I did.
- 21 Q: Okay. Did you file Rule 5 and Brady motions in this
22 case?
- 23 A: I did.
- 24 Q: And were you able to get all of the discovery from the
25 Solicitor's Office?

RICHARD STROBEL - DIRECT BY MR. HUNTER

1 A: I did.

2 Q: Did you get SLED reports from the Solicitor's Office as
3 well? The gunshot test residue?

4 A: Oh, yes.

5 Q: Okay. Did you go over the discovery with Mr. Davis?

6 A: I did.

7 Q: Okay. Did he ever ask you for a -- for a copy of
8 everything?

9 A: No.

10 Q: Okay. How would you characterize the State's evidence
11 against Mr. Davis? Was it strong? Do you feel like the State
12 had a good case?

13 A: Well, the jury convicted him. You know, I'm always one
14 wanting to win. So I -- I suppose so.

15 Q: Did you -- did you discuss his version of the facts of
16 what happened that day with him?

17 A: Yes.

18 Q: Okay. Did the State give Mr. Davis any plea offers in
19 this case?

20 A: Nothing I'm aware of.

21 Q: Okay. So it was -- it was always going to be a trial?

22 A: Yes.

23 Q: Okay. And so throughout your representation of Mr.
24 Davis, you were preparing to go to -- were you preparing to go
25 to trial?

RICHARD STROBEL - DIRECT BY MR. HUNTER

1 A: Yes. The prosecutor in that case was John Jupertinger
2 and he was the one that testified with you just prior to this.

3 Q: Yes. Yes, sir. And as you said, he didn't -- he didn't
4 give Mr. Davis any plea offers that you are aware of?

5 A: Not that I'm aware of.

6 Q: Okay. Now, Mr. Davis brought up in his testimony that --
7 that he never saw any -- any fingerprint evidence or any
8 gunshot evidence or basically anything from SLED. Did you go
9 over all that with Mr. Davis?

10 A: Thoroughly, yes.

11 Q: Okay. And there was no DNA testing in this case, was
12 there?

13 A: No. And I argued that to the jury.

14 Q: And, Mr. Strobel, did you -- did you move for a directed
15 verdict in this case?

16 A: I did.

17 Q: And did you renew that motion?

18 A: I did.

19 Q: Okay. Now, when it came time for Mr. Davis to decide
20 whether or not he was going to testify, did you give him any
21 advice before he chose to testify?

22 A: I've been at this game a long time and you never like to
23 see your client take the stand and testify, but he was adamant
24 that he wanted to testify and, of course, I told him, you
25 know, you have all that stuff in Connecticut. You have a

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1 prior criminal record. You know, they can bring out all that
2 stuff against you. He says I want to tell the truth. I said,
3 well, this is your time.

4 Q: So is it fair to say that he testified against your
5 advice?

6 A: Oh, yes.

7 Q: Okay. Prior to his testimony, did you go over his
8 constitutional rights with him?

9 A: Yes. And I think the judge did too.

10 Q: Okay. Now, a little bit was talked about the jury
11 charge, the hand of one/hand of all jury charge?

12 A: He was the one that brought that up. I don't remember
13 the judge saying it, but he probably did.

14 Q: Well, Mr. Strobel, do you recall when Mr. Jepertinger
15 asked for the hand of one charge, you -- you agreed that --
16 did you -- did you see any problem with the hand of one
17 charge?

18 A: No.

19 Q: And did the judge actually in this case say that he
20 agreed with you on that?

21 MR. WALLER: Objection.

22 THE COURT: I'm just curious. What's the objection?

23 MR. WALLER: Your Honor, he's just reading the judge's
24 response out of the transcript.

25 MR. HUNTER: Your Honor, I don't even have the

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1 transcript.

2 MR. WALLER: Well, I'll withdraw my objection, Your
3 Honor.

4 THE COURT: Okay. All right. Go ahead, Mr. Hunter.

5 BY MR. HUNTER:

6 A: I don't understand the question. You're saying that the
7 judge charged the hand of one/hand of all?

8 Q: Yes, sir. Mr. Jepertinger asked the judge to charge hand
9 of one/hand of all.

10 A: Okay. And I just didn't have any problem with that.

11 Q: Correct. And did the judge in conversation say that he
12 thought that was probably good for the defendant? Not in
13 those words, but more or less?

14 A: I don't recall.

15 Q: Okay.

16 MR. HUNTER: And, Your Honor, just to expedite this --

17 THE COURT: Okay.

18 MR. HUNTER: The testimony or the part of the transcript
19 I'm speaking of is on page 315.

20 THE COURT: 315?

21 MR. HUNTER: Yes, Your Honor.

22 THE COURT: Of the transcript? Okay. Thank you, sir.
23 I'll refer to that.

24 BY MR. HUNTER:

25 Q: Mr. Stobel, Mr. Davis was charged with attempted murder

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- 1 in this case; correct?
- 2 A: That's correct.
- 3 Q: Okay. And -- but the -- did the jury find him guilty of
4 attempted murder?
- 5 A: I believe it was assault and battery of a high and
6 aggravated nature.
- 7 Q: Okay. So they did find him guilty of a lesser included?
- 8 A: Yes, sir.
- 9 Q: Okay. Did Mr. Davis ever ask you to file an appeal in
10 this case?
- 11 A: No.
- 12 Q: Okay. Did you file an appeal in this case?
- 13 A: No.
- 14 Q: Okay. Did you think Mr. Davis had good -- a likelihood
15 of success on appeal?
- 16 A: No.
- 17 Q: There's been a lot of talk about bond hearings. Did you
18 file a motion to have a bond hearing for Mr. Davis?
- 19 A: I think I did. As he said, he came up here a couple of
20 times.
- 21 Q: Okay.
- 22 A: But I bet you every time he came to court I was with him.
- 23 Q: Okay.
- 24 A: Wait a minute. And if that is, in fact, true, then how
25 is he saying that he never saw me from the first time I saw

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1 him until the trial of the case? I think that he --

2 Q: That's a good question.

3 A: -- answered that himself on that one.

4 Q: Did he ever provide you with the names of any witnesses
5 he wanted --

6 A: No.

7 Q: -- to testify? If he had, would you have contacted those
8 witnesses or attempted to?

9 A: I would have contacted them and I would make a decision,
10 which is called trial strategy, as to whether that witness
11 would be in my best interest and -- but I didn't contact
12 anybody because I wasn't told of anybody. But that doesn't
13 necessarily mean that, if I did contact them, I would call
14 them for the trial of the case.

15 Q: So is it fair to say that the decisions you made in
16 trying this case and preparing for this case pretty much
17 boiled down to trial strategy?

18 A: That's correct.

19 Q: Okay.

20 A: But did he ever tell us who the witness was he wanted
21 there?

22 Q: I don't believe he gave a name today.

23 A: Okay. Thank you.

24 Q: Did -- did you tell Mr. Davis that he had a right to file
25 an appeal?

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1 A: Yes.

2 Q: Okay.

3 A: He knew that before the trial.

4 MR. HUNTER: Your Honor, I believe that's all the

5 questions that I have for Mr. Strobel.

6 THE COURT: Okay.

7 MR. HUNTER: Thank you, Mr. Strobel.

8 THE COURT: Anything on cross, Mr. Waller?

9 MR. WALLER: Yes, sir, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. WALLER:

12 Q: Mr. Strobel, you -- you were retained to represent Mr.

13 Davis?

14 A: I was.

15 Q: And when -- you said you briefly reviewed the file. Did

16 you bring that with you today?

17 A: Yes.

18 Q: Do you have any notes in there in your file?

19 A: Yes.

20 Q: Okay.

21 A: I've got a letter from him too.

22 Q: Okay. You testified earlier that you met with him a

23 dozen times. Okay. Do you have in your notes the dates of

24 those meetings? No?

25 A: No.

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1 Q: Okay. Do you have the dates of any of the meetings with
2 you?

3 A: Yes. I saw some notes in there.

4 Q: Do the notes tell --

5 A: Yeah. I saw -- I don't go in there without a secretary
6 to take notes and they write it.

7 Q: Okay. Would those notes contain what y'all discussed --

8 A: Yes.

9 Q: -- in a particular meeting on a particular day?

10 A: Yes.

11 Q: Okay. Are those notes in your file?

12 A: Yes.

13 Q: Okay. And you reviewed that?

14 A: Yes.

15 Q: Okay. When would you and Mr. Davis -- if you recall,
16 when would you and Mr. Davis have discussed the evidence that
17 the State had against him?

18 A: I always wait until I get my Rule 5 and Brady in. I
19 don't go talk to them until I get it in because they ask me
20 questions about things that I don't know until I get the
21 information from the Solicitor's Office.

22 Q: Okay.

23 A: So it would have been probably a couple months later.

24 Q: Okay. And you -- you would have met with Mr. Davis after
25 that and you have notes in the file as to what y'all discussed

1 and when?

2 A: Right.

3 Q: But you don't recall what the dates were?

4 A: No.

5 Q: Okay. SLED was involved in some testing in this case;
6 correct?

7 A: What?

8 Q: SLED was involved in some testing?

9 A: I didn't hear you.

10 Q: SLED was involved in some testing?

11 A: Oh. Yeah. Uh-huh.

12 Q: GSR tests? Gunshot residue?

13 A: Yes. We had gunshot residue in this case. I know you
14 saw the movie, but I told the jury about it. The -- it was a
15 neat case where the police arrested someone and put their
16 handcuffs on the back -- on the back and put them in the
17 patrol car. And this guy was arrested and put him in the same
18 patrol car and that's how his gunshot residue from the -- from
19 the other arrest was still in the backseat of the car and how
20 it was transferred. And he wrote me a letter concerning it in
21 September of '11 and I brought that to the Court's --

22 Q: Who wrote you a letter?

23 A: He did.

24 Q: About?

25 A: There's two things he wanted.

RICHARD STROBEL - CROSS BY MR. WALLER

1 Q: About the -- hold on. About the movie, he wrote you a
2 letter?

3 A: Well, he wrote me about the facts that gunshot residue
4 can be on a criminal put into the backseat of the patrol car
5 and then he's put in the same seat later and the gunshot
6 residue can rub -- can go off the seat of the patrol car onto
7 him and that's why patrol cars need to be cleaned after each
8 arrest that involve gunshots.

9 Q: And you mentioned that to the jury?

10 A: Yes.

11 Q: Yes? Did you --

12 A: And that ain't all.

13 Q: Did you discuss the gunshot residue testing with Mr.
14 Davis?

15 A: The testing?

16 Q: The test that was done. You did not discuss it with him?

17 A: How it's done? No. I just told him that they found
18 gunshot residue on him.

19 Q: Did you -- were you aware before he brought it to your
20 attention that it can come from the back of the police car
21 other than the movie you're referencing?

22 A: No.

23 Q: Okay. Did you talk to the SLED analyst that did the
24 test?

25 A: No.

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1 Q: Did you talk to the SLED analyst that tested the gun?

2 A: No.

3 Q: Did you talk to the analyst that did the fingerprint?

4 A: There were no fingerprints.

5 Q: Did you -- did you talk to the Florence County -- the
6 Florence County crime scene investigator prior to the trial?

7 A: No.

8 Q: I am going to show you -- have you reviewed the
9 transcript?

10 A: I think I did, yes.

11 Q: Okay. On page 237 -- and I don't know that you will
12 remember this. You are --

13 MR. WALLER: May I approach, Your Honor?

14 THE COURT: Yes, you may.

15 BY MR. WALLER:

16 Q: You are conducting cross-exam of Paul Byrd, the
17 fingerprint analyst, the person from Florence County. Do you
18 recall that?

19 A: No. But I'll listen to you.

20 Q: Okay. You asked him several questions about not testing
21 certain parts of the gun for fingerprints.

22 A: Okay.

23 Q: Do you recall that?

24 A: No. But it's here.

25 Q: Okay. You asked him about the testing of the magazine,

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1 why didn't they test it. You asked him about the bullets
2 themselves. Did you do any independent investigation
3 beforehand as to -- he testified that those things didn't have
4 fingerprints on them?

5 A: That's correct.

6 Q: Did you do any independent testing to see if those things
7 would hold fingerprints? Because that was one of his answers
8 that the bullets would not hold a fingerprint.

9 A: If my client --

10 Q: Mr. Strobel --

11 A: Can I answer the question?

12 Q: I wouldn't intentionally --

13 A: Why would I want to find fingerprints? If there weren't
14 any fingerprints, they can't accuse my client of shooting the
15 gun other than the gunshot matter. I don't care about having
16 the gun retested. They didn't find anything.

17 Q: Mr. Strobel, I didn't ask you about it being retested. I
18 asked if you did any investigation to see if what he said they
19 wouldn't told a fingerprint was accurate. Did you do any
20 independent testing or consult?

21 A: No.

22 Q: Okay.

23 A: I never have.

24 Q: Okay. Did you consult an expert about anything else in
25 this case?

RICHARD STROBEL - CROSS BY MR. WALLER

- 1 A: No.
- 2 Q: Okay. Did Mr. Davis provide you with any information
3 about any other witnesses or any -- about the incident when
4 you were preparing for trial?
- 5 A: No.
- 6 Q: Okay. He never told you anything about it?
- 7 A: About a witness?
- 8 Q: Or the incident.
- 9 A: Well, I tried to tell you earlier what he wanted, but you
10 wouldn't let me.
- 11 Q: Okay. Did he tell you what happened that day?
- 12 A: Yes.
- 13 Q: Okay. When y'all were getting ready for trial, did you
14 -- did you meet with Mr. Davis and discuss the incident and
15 what the State was going to say was the incident?
- 16 A: I don't recall.
- 17 Q: Okay.
- 18 A: But more than likely, I did.
- 19 Q: Okay. Now, let me -- let me hand you the other portion
20 of the transcript.
- 21 THE COURT: What page were you on, Mr. Waller?
- 22 MR. WALLER: This is 41, Your Honor.
- 23 THE COURT: Page 41?
- 24 MR. WALLER: Yes, sir, Your Honor.
- 25 THE COURT: Okay.

RICHARD STROBEL - CROSS BY MR. WALLER

1 BY MR. WALLER:

2 Q: Mr. Strobel, y'all picked the jury with no problem; is
3 that right? There were no issues with the jury?

4 A: I don't think so.

5 Q: Okay. And then on page 41 of the transcript, y'all take
6 up some pretrial matters. Okay? Do you recall that?

7 A: No. But go ahead.

8 Q: Okay. Y'all had a hearing on some Rule 609, impeachable
9 evidence, against some witnesses. Do you recall that?

10 A: No.

11 Q: Okay. Will you please refer to the transcript and
12 refresh your memory?

13 A: Okay. The victim had a prior criminal record.

14 Q: Okay. Another witness had a prior criminal record also;
15 is that correct?

16 A: I think so.

17 Q: Okay. If you would, flip forward to page 49?

18 A: Okay.

19 Q: State's Exhibits 1 through 37, 38 -- excuse me -- 39 and
20 40 were all admitted into evidence without objection prior to
21 the commencement of the trial.

22 A: Okay.

23 Q: There hadn't been any foundation laid for any of those
24 exhibits at that point; is that correct?

25 A: I don't know.

RICHARD STROBEL - CROSS BY MR. WALLER

1 Q: The trial hadn't started. Had there been any foundation
2 laid that you were aware of?

3 A: Usually when I try a case, they come to me with the
4 evidence that they intend and want it marked and put into
5 evidence before the trial of the case to save time. I look at
6 it. If I don't see any problem with it, I say that suits me
7 fine. If it was evidence that needed a foundation, then I
8 would not approve for it to be put into evidence before the
9 trial of the case.

10 Q: Okay. Do you know -- do you recall if that was the case
11 here?

12 A: No, not that long ago.

13 Q: Okay. What was your trial strategy behind allowing those
14 to be admitted?

15 A: I don't know. What were they?

16 Q: I'm asking you, sir.

17 A: No. I'm asking you. What were they?

18 Q: Mr. Strobel --

19 A: Well, I don't know what they are.

20 Q: Okay. You didn't make any motions; is that correct?

21 A: No.

22 Q: Okay. No motion to sequester any witnesses?

23 A: For the State, no.

24 Q: Okay. Why did you not make a motion to sequester any of
25 the witnesses?

RICHARD STROBEL - CROSS BY MR. WALLER

- 1 A: Trial strategy.
- 2 Q: What was that trial strategy?
- 3 A: To win.
- 4 Q: Okay. Fast-forward to page 67, if you would?
- 5 A: Okay.
- 6 Q: The State has given their opening and -- and you elect to
7 address the jury and give your opening at a later time; is
8 that correct?
- 9 A: Yes.
- 10 Q: Did you ever do that?
- 11 A: Well, I suppose I did. When I made my final argument, I
12 addressed the jury.
- 13 Q: Did you -- did you --
- 14 A: And I made a final argument.
- 15 Q: Yes, sir, you did. Did you address the jury before the
16 start of the defense case?
- 17 A: No.
- 18 Q: Why not?
- 19 A: Trial strategy.
- 20 Q: Okay.
- 21 A: I don't want to let certain things out until I got them
22 straight.
- 23 Q: Okay. If you would, flip to page 95, please?
- 24 A: Okay.
- 25 Q: That's -- you begin your cross-examination of Orentheus

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1 Garrett, one of the witnesses -- State's witnesses in this
2 case; correct?
3 A: Down at the bottom?
4 Q: Yes, sir. I believe so.
5 A: Okay. Go ahead.
6 Q: Now, he was the subject of the -- one of the pretrial
7 motions about prior criminal -- criminal record; is that
8 correct?
9 A: I suppose so. I can't remember.
10 Q: Okay. You never asked him any questions about his prior
11 criminal record. You never attempted to impeach him; is that
12 correct?
13 A: That's correct.
14 Q: Why did you not attempt to impeach him on his prior
15 criminal history?
16 A: Trial strategy.
17 Q: Okay. What was -- what was the trial strategy behind
18 that?
19 A: To win.
20 Q: Okay. Again, I think it's in the other -- other
21 transcript, page 261.
22 A: This one?
23 Q: Yes, sir. It's split up into halves.
24 A: Okay.
25 Q: That's Mr. Tyon Evans, one of the codefendants,

RICHARD STROBEL - CROSS BY MR. WALLER

1 testifying. Okay? Had he given a prior statement to law
2 enforcement that you recall?

3 A: I don't recall.

4 Q: Okay. But it was your understanding he was cooperating
5 with law -- with law enforcement and the Solicitor's Office by
6 testifying?

7 A: Yes.

8 Q: Okay. You said you don't recall if he gave a statement
9 before?

10 A: No.

11 Q: Would you have had notes on any potential statement?

12 A: It would have to be in my Rule 5 and Brady if he made a
13 statement.

14 Q: Okay. Do you recall if he did or not?

15 A: No.

16 Q: Would you have made notes in your file about his
17 statement?

18 A: I would have if he made a statement.

19 Q: Okay. And you reviewed your file before you came today?

20 A: Yes.

21 Q: Okay. Do you recall anything about the statement,
22 whether one existed at all?

23 A: Well, if I asked for Rule 5 and Brady and they're
24 obligated to give it to me and he testified from a prior
25 statement that he has given to them, I would ask for a

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1 mistrial right then. I would have raised the devil. So I
2 don't know what you're after.

3 Q: Well, let me try asking my question --

4 A: Go ahead.

5 Q: Do you recall -- and you said you didn't -- whether he
6 gave a statement prior to the trial to law enforcement?

7 A: I don't know.

8 Q: Okay. I'll move on. What did you and Mr. Davis talk
9 about when he intended to testify?

10 A: He was going to deny it.

11 Q: Okay.

12 A: He didn't do the shooting.

13 Q: Okay. What -- did you counsel him on his constitutional
14 rights to remain silent?

15 A: Yes. He knew he had the right to remain silent, but he
16 was overbearing that he wanted to testify and that was it.

17 Q: Okay. And no other witnesses were called?

18 A: No.

19 Q: No evidence was put in?

20 A: No.

21 Q: Okay. Did you inform Mr. Davis that him testifying would
22 change the order of closing arguments, for instance?

23 A: I don't know.

24 Q: Okay. If you would, flip to page 300, please?

25 A: Okay.

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- 1 Q: And Mr. Jupertinger begins his cross-examination of Mr.
2 Davis; is that correct?
- 3 A: Yes. I see it.
- 4 Q: Okay. That can be characterized as contentious I guess?
- 5 A: What?
- 6 Q: It wasn't a very polite cross, was it?
- 7 A: I wouldn't -- I don't know.
- 8 Q: Okay. If you'll flip to page 306, line 5, please?
- 9 A: Line 5?
- 10 Q: Yes, sir. Mr. Jupertinger asked the question:
11 All right. And of course, you being a great someone who
12 doesn't like this type of thing, you immediately came to the
13 aid of a three-year-old while his father was getting pistol
14 whipped and shot.
- 15 Do you see that?
- 16 A: Did I what?
- 17 Q: Did you see that question?
- 18 A: Yes, I see it.
- 19 Q: Okay. You didn't object to that question or any other
20 questions made by Mr. Jupertinger; is that correct?
- 21 A: No. Because he said he didn't do it. If he was there,
22 then he could have helped the three-year-old, but he wasn't
23 even there.
- 24 Q: Okay.
- 25 A: In fact, I think he testified he never got out of the

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1 car.

2 Q: Okay. But you didn't object to the question?

3 A: No.

4 Q: Okay.

5 A: It would appear to mean I'm trying to hide something and
6 I'm not.

7 Q: If you would, fast-forward to page 313? That's the
8 charge conference.

9 A: Okay, 313.

10 Q: The solicitor wants to add the charge of hand of one/hand
11 of all to the charge and he even says it's based solely on the
12 defendant's mentioning it in his testimony. You tell the
13 judge on page 315 that you're not going to object to that.
14 Okay? At this point -- at that point in the trial, the
15 State's case had all pointed to Mr. Davis being the shooter;
16 correct?

17 A: That's correct.

18 Q: Okay. The indictment -- he was the only one charged with
19 the weapons charge; correct?

20 A: That is correct.

21 Q: Okay. What was the trial strategy behind not objecting
22 to that charge?

23 A: To win.

24 Q: Okay. Did you object -- that was in the trial
25 conference. Did you object when the judge read the trial --

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1 excuse me -- read the jury charge to the jury?

2 A: No.

3 Q: Okay. If you would, flip to page 345, line 6?

4 A: Six?

5 Q: Yes, sir. That whole paragraph right there.

6 A: Okay. I've read it.

7 Q: Okay. You didn't object to Mr. Jepertinger saying he

8 felt sorry for the defendant's ignorance?

9 A: No.

10 Q: Why?

11 A: That's his opinion; right? He thinks my client is

12 ignorant. I don't see what right he has to say that, but I'm

13 not objecting to it.

14 Q: Okay. You just said you don't see what right he has to

15 say it, but why do you not feel that you should have objected

16 to it?

17 A: It's not worth it.

18 Q: Why is it not worth it?

19 A: Trial strategy.

20 Q: Okay. You said you did not file an appeal in this case

21 because Mr. Davis didn't ask you to?

22 A: That's correct.

23 Q: Okay. You -- you had several objections during this

24 trial that were overruled by the judge; correct?

25 A: I reckon. I can't remember.

RICHARD STROBEL - CROSS BY MR. WALLER

1 Q: Nothing that you recall that you thought merited an
2 appeal?

3 A: No.

4 Q: Okay.

5 A: I don't have -- if the judge did something wrong that I'm
6 aware of, I don't ask my client to appeal. I appeal myself.

7 Q: But you didn't feel the need in this case?

8 A: No.

9 Q: Okay.

10 MR. WALLER: I beg the Court's indulgence for one second,
11 please.

12 THE COURT: Take your time, Mr. Waller.

13 MR. WALLER: No further questions, Your Honor.

14 THE COURT: All right. Thank you, sir. Anything on
15 redirect?

16 MR. HUNTER: Very briefly, Your Honor.

17 THE COURT: Okay.

18 REDIRECT EXAMINATION

19 BY MR. HUNTER:

20 Q: Mr. Strobel, you testified that it was your trial
21 strategy to not hire an expert with regards to having the gun
22 tested for fingerprints?

23 A: That's correct.

24 Q: Because the only --

25 A: There wasn't any fingerprints.

RICHARD STROBEL - REDIRECT BY MR. HUNTER

- 1 Q: And would -- if an expert had found your client's
2 fingerprints on the bullets?
- 3 A: Then it's worth checking it.
- 4 Q: Okay. But that would be -- that would hurt your client;
5 correct? If his fingerprints were on the bullets?
- 6 A: That's correct.
- 7 Q: Okay. So did you feel there was any need to -- to
8 consult with an expert?
- 9 A: No.
- 10 Q: In any aspect of this case?
- 11 A: No.
- 12 Q: Would you -- would you say it was your trial strategy not
13 to bring out the victim's prior criminal history?
- 14 A: That's correct.
- 15 Q: And I believe there was some talk earlier about the
16 exhibits that were admitted into evidence prior to the
17 beginning of the trial?
- 18 A: Yes.
- 19 Q: You did object to -- to Exhibit Number 38, didn't you?
- 20 A: If you say. I can't recall.
- 21 Q: Well, if the record reflects that Exhibits 1 through 37
22 and then Exhibits 39 and 40 were let in, but Exhibit 38 was
23 not let in --
- 24 A: Okay.
- 25 Q: Did you feel like an opening statement would help your

RICHARD STROBEL - REDIRECT BY MR. HUNTER

1 client's case?
2 A: No, no.
3 Q: Why is that?
4 A: Because of what I would be saying that he was going to
5 say and then he changes his mind and decides -- Mr. Strobel,
6 I've decided not to testify, and yet I've let it out to the
7 jury that he was going to show that he didn't have anything to
8 do with it and then not testify, then that's going to hurt my
9 case.
10 Q: So were you worried about painting an inconsistent story
11 to the jury?
12 A: That's correct.
13 Q: Did you feel there was any need to try and impeach Mr. --
14 Mr. Garrett, his testimony, based on his prior record?
15 A: No. He was a victim.
16 Q: And he actually witnessed the shooting?
17 A: Yes.
18 Q: Is that correct?
19 A: Okay.
20 Q: And again, you testified that -- that you thought Mr.
21 Jepertinger's request of Judge Russo to charge hand of one/
22 hand of all was beneficial to your client?
23 A: Yes.
24 MR. HUNTER: I beg the Court's indulgence.
25 THE COURT: Take your time.

RICHARD STROBEL - REDIRECT BY MR. HUNTER

1 BY MR. HUNTER:

2 Q: Mr. Strobel, do you generally object to the solicitor's
3 comments during the closing arguments?

4 A: No. I think it's rude unless it's really bad, but no, I
5 don't do that.

6 Q: Aside from it being rude, do you think it can negatively
7 affect the jury's perception of your client?

8 A: It could, yes.

9 Q: And again, you didn't feel like there was anything that
10 merited an appeal in this case?

11 A: No.

12 Q: And Mr. Davis never asked you to file one?

13 A: No.

14 Q: Okay.

15 MR. HUNTER: No further questions, Your Honor.

16 THE COURT: Anything on recross?

17 MR. WALLER: Just very briefly, Your Honor.

18 RE-CROSS-EXAMINATION

19 BY MR. WALLER:

20 Q: Mr. Strobel, if someone else's fingerprints were on the
21 magazine of the gun or on the bullets of the gun, would that
22 have improved your position?

23 A: If somebody else's fingerprints were on the gun?

24 Q: Yes, sir.

25 A: Whose fingerprints? I don't know.

1 Q: Okay. If Mr. Davis' fingerprints had been on the gun,
2 would that have changed your position there?

3 A: No.

4 Q: Would it have affected your advice to -- your counsel to
5 him?

6 MR. HUNTER: Your Honor, I'm going to object because Mr.
7 Davis' fingerprints were not on the gun. So it's kind of a --

8 THE COURT: I understand, but he's asking trial
9 strategies. I'm going to let him ask it. Go ahead, Mr.
10 Waller.

11 BY MR. WALLER:

12 A: All right. If he -- if it's -- all right. He had gun
13 residue, but if his fingerprints were found on the gun, would
14 it have what?

15 Q: Would it have changed your counsel to him?

16 A: No.

17 Q: Would it change y'all's position?

18 A: No.

19 Q: Okay. But you didn't know that because you didn't -- you
20 didn't inquire before trial?

21 A: I didn't what before trial?

22 Q: You didn't inquire as to if there were any fingerprints
23 on the gun or on the bullets before trial; correct?

24 A: It would have been on Rule 5 and Brady and it wasn't. It
25 didn't show any fingerprints.

RICHARD STROBEL - RECROSS BY MR. WALLER

1 Q: You didn't consult with any independent experts or do any
2 independent testing, did you?

3 A: No.

4 Q: You testified -- and I'm almost done -- that you think
5 it's rude to object during someone's closing argument unless
6 it's something major?

7 A: That's right.

8 Q: Okay. And you didn't see anything major here?

9 A: No.

10 Q: Okay.

11 MR. WALLER: No further questions.

12 THE COURT: All right. Thank you, sir. You may step
13 down.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Thank you, sir. Any other witnesses on
16 behalf of the State?

17 MR. HUNTER: No, Your Honor.

18 THE COURT: All right. What I'm going to do -- Mr.
19 Waller, I'm going to allow y'all to submit memos in lieu of
20 closing arguments. How long do you need?

21 MR. WALLER: Your Honor, I believe I heard you earlier 20
22 days.

23 THE COURT: Okay.

24 MR. WALLER: That sounds great.

25 THE COURT: Okay. And Mr. Hunter, do you want 20 days to

1 respond?

2 MR. HUNTER: Yes, Your Honor. That would be great.

3 THE COURT: Okay. Thank you, sir. All right.

4 (WHEREUPON, the proceedings ended at 1:09 p.m.)

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6 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina)
) Certificate
County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 69, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 9th day of October, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Krystal J. Smith
Court Reporter

Florence, South Carolina
May 4, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS)
TWELFTH JUDICIAL CIRCUIT)

2014 DEC 9

Thomas E. Davis,
S.C.D.C. No. 351299,

COMME)
FLORE)

Case No. 2013-CP-21-0846

Applicant,

v.

**MEMORANDUM
OF LAW**

State of South Carolina,

Respondent.

Pursuant to this Court's request for a reply to Applicant's "Memorandum in Support of Applicant's Application for Post Conviction Relief," Respondent submits the following:

Procedural History

The Applicant is presently confined in SCDC pursuant to orders of commitment from the Florence County Clerk of Court. Applicant was indicted at the September 2011 term of the Florence County Grand Jury for attempted murder, armed robbery, and possession of a weapon during the commission of a violent crime (2011-GS-21-1371). Richard W. Strobel, Esquire represented the Applicant.

The State proceeded to trial on June 18, 2012, and the jury found the Applicant guilty as indicted on the armed robbery and weapon possession charges. As to the attempted murder charge, the jury found the Applicant guilty of the lesser included offense of assault and battery of a high and aggravated nature. The Honorable Thomas A. Russo sentenced the Applicant to concurrent terms of thirty (30) years imprisonment for armed robbery and twenty (20) years imprisonment for assault and battery of a high and aggravated nature. Judge Russo also sentenced the Applicant to a consecutive five (5) year prison term for possession of a weapon during a violent crime. The Applicant did not appeal,

Applicant filed a timely application for post-conviction relief (PCR) on March 27, 2013. An evidentiary hearing was held on October 9, 2014 at the Florence County Courthouse. Applicant was present and represented by Jonathan Waller, Esquire. The State was represented by Assistant Attorney General J. Croom Hunter, Esquire.

Allegations

Applicant alleges in his PCR application that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

Summary of Testimony Presented

At the evidentiary hearing, Applicant testified on his own behalf. Respondent also presented testimony from trial counsel, Richard W. Strobel, Esquire (Counsel). The Court also had before it a copy of the plea transcripts, the Florence County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant testified he was charged with attempted murder, armed robbery, and weapons possession. Applicant testified he was arrested with both codefendants, and they were charged with the same crimes, except the weapons possession. Applicant testified he was represented by Richard Strobel (Counsel). Applicant testified he retained Strobel after other inmates recommended his services. Applicant testified he first met with Counsel on April 12. Applicant testified Counsel had him sign a representation agreement and told Applicant he would come back again. Applicant testified he never met with Counsel again, and no one from Counsel's office ever came to see him. Applicant testified he spoke with Counsel on the phone four or five times, and Counsel charged \$1500 more. Applicant testified he

was denied bond, but his codefendants were able to get bonded out. Applicant testified he did have a bond hearing. Applicant testified Counsel told him the State of Connecticut had a hold on him for unrelated charges, and he would not get bond. Applicant testified Counsel never discussed any of the evidence or possible defenses with Applicant. Applicant testified he was never made aware that SLED was involved in the case until the day of the trial, and he never saw any SLED reports. Applicant testified he wrote to SLED to get the reports from the GSR test. However, Applicant testified he never asked Counsel for copies of the test results. Applicant testified he and Counsel never discussed retaining an expert, and they never discussed any of the witnesses. Applicant testified he provided Counsel with a number of witnesses to call on his behalf, but they did not testify, and Counsel never discussed those witnesses with Applicant. Applicant testified he and Counsel never discussed his trial. Applicant testified the State claimed he was the shooter, but he claimed innocence. Applicant testified his hands tested positive for gunshot residue, but he did not know how the residue got on his hands. Applicant testified the gun did not have his fingerprints on it. Applicant testified he was aware none of his codefendants tested positive for gunshot residue. Applicant testified he and Counsel never discussed any of his codefendants, and that he and Counsel got into an argument at trial. Applicant testified he did not believe Counsel was prepared for trial. Applicant testified Counsel never discussed his right to testify with him, but Applicant testified it was his decision to testify. Applicant testified he believed Counsel was ineffective for failing to object to a "hand of one, hand of all" jury charge, but Applicant testified he brought up the hand of one charge during his own trial testimony. Applicant testified that after he was found guilty, he attempted to contact Counsel about an appeal, but he was unable to get in touch with him. Applicant testified he was allowed to write letters after being found guilty, but he did not write Counsel requesting an appeal. Applicant

testified he did not attempt to call Counsel to request an appeal. Applicant testified he did not ask Counsel to file an appeal on his behalf. Applicant testified Counsel never discussed Applicant's right to an appeal of his conviction. Applicant testified he told Counsel he wanted to go to trial, but Counsel advised him to plead guilty.

On cross-examination, Applicant again claimed he and Counsel never discussed the evidence against him. Applicant testified he was sitting in the back seat of the car when the crime occurred. Applicant admitted that Arenthus Garrett testified that he witnessed the shooter get in the back seat of the car. Applicant testified he had dreadlocks when he went to trial, but his hair was cut after he went to SCDC. Applicant conceded that some witness testimony claimed the shooter had dreadlocks. Applicant conceded he was the only codefendant who tested positive for gunshot residue on his hands. Applicant testified he had been shooting guns in Darlington County earlier in the day. Applicant testified he did not understand why the gun did not have his fingerprints on it, but upon further questioning, he did admit the gun had rubber grips which were difficult to pull fingerprints from. Applicant testified he did not have any experts or other witnesses at the PCR hearing to testify on his behalf. Applicant claimed he testified at trial to get the truth out for the jury. Applicant testified it was his decision to testify. Applicant again claimed that Counsel never discussed anything with him. Applicant testified he brought up the "hand of one, hand of all" at trial to explain why he ran from the police. Applicant admitted he is guilty of the lesser offenses, but he denied he was the shooter. Applicant admitted that he did apologize after he was convicted, but he testified his apology was for not stopping the crime, rather than committing it. Applicant testified he never asked Counsel to file an appeal. Applicant testified he asked for an appeal once he reached BRCI, but by then it was too late.

After the conclusion of Applicant's testimony, the State presented testimony from Trial Counsel. Counsel testified he recalled representing Applicant and reviewed his file prior to the PCR hearing. Counsel testified he was retained to represent Applicant. Counsel testified he met with Applicant "too many times." Upon further questioning, Counsel testified he met with Applicant at least a dozen times prior to trial at the detention center. Counsel testified he and Applicant also spoke on the phone multiple times. Counsel testified he did not need to meet with Applicant any more than he did in order to prepare for trial. Counsel testified he went over the elements of the charges against Applicant. Counsel also testified he filed Rule 5 and Brady motions and went over the discovery materials with Applicant. Counsel testified Applicant never asked for a copy of his discovery materials. Counsel testified he "supposed" the evidence against Applicant was strong. Counsel testified he discussed Applicant's version of events and prepared the case with the intention of going to trial. Counsel testified Applicant never gave him the names of any witnesses to interview. Counsel testified he would have attempted to contact them if Applicant had given him any names. Counsel testified the State never conferred any plea offers. Counsel testified he orally went over the SLED reports with Applicant. Counsel testified that he argued to the jury that Applicant's DNA was not found anywhere. Counsel testified he moved for a directed verdict after the State's case and renewed his motion at the close of testimony. Counsel testified he never likes for his clients to testify but Applicant was adamant that he take the stand, even over Counsel's advice. Counsel testified he and Applicant did go over his prior record before he took the stand. Counsel testified he and the judge both reviewed Applicant's constitutional rights prior to his testimony. Counsel testified Applicant brought up the "hand of one, hand of all" during his testimony, but Counsel did not have a problem with the charge when the solicitor asked for it because he believed the charge would be more beneficial

than detrimental to Applicant's case during jury deliberations because it could help persuade the jury Applicant was not the shooter. Counsel recalled the judge saying on page 315 of the trial transcript that he believed the charge would help Applicant as well. Counsel testified Applicant was convicted of the lesser-included offense of ABHAN. Counsel testified he told Applicant before the trial that he had the right to appeal if he was found guilty. Counsel testified Applicant did not ask him to appeal the verdict. Counsel testified he did not believe Applicant had any likelihood of success on appeal.

On cross-examination, Counsel testified he kept notes of his meetings in his file, but he did not have the dates of the meetings he had with Applicant. Counsel testified his notes contain what he and Applicant spoke about at the meetings. Counsel testified he does not discuss the evidence until he gets all of the Rule 5 and Brady materials. Counsel testified that SLED did perform a GSR test on Applicant, and Applicant tested positive. Counsel testified he told the jury about a movie where a suspect got gunshot residue on his hands from being put in the back of a police car and rubbing his hands on the bench as one possible way Applicant could have tested positive. Counsel testified Applicant brought the movie to his attention. Counsel testified he told Applicant the GSR test was positive but did not explain the mechanics of the test itself. Counsel testified he did not see a need to talk to the SLED forensics analysts. Counsel testified he did not talk to the Florence County crime scene investigator. Counsel testified Applicant's fingerprints were not found. Counsel testified he did not have an independent fingerprint analysis done because he was afraid Applicant's fingerprints would be found on the weapon or the ammunition. Counsel testified there was no benefit to having fingerprint testing done. Counsel testified he did not consult any experts. Counsel testified he did not bring up the witness's prior criminal record as part of his trial strategy. Counsel testified he did not object to exhibits being

entered without a thorough foundation because he and the solicitor marked the exhibits before the trial to save time. Counsel testified he would have objected to the exhibits based on lack of foundation if he thought it was needed. Counsel testified his trial strategy was to win, and he did not believe the witnesses needed to be sequestered. Counsel testified that he waived his opening statement because he did not want to put certain things in front of the jury prematurely. Counsel testified that if Tyon Evans had testified based upon a statement that was not disclosed in the Rule 5 and Brady materials, Counsel would have "raised Hell." Counsel testified he would have asked for a mistrial if any statements came in that were not included in the discovery materials. Counsel testified Applicant was going to attempt to refute Evans' testimony when he took the stand himself. Counsel testified Applicant was "overbearing in his desire" to testify. Counsel testified he did not recall if he advised Applicant that he would waive the last closing argument by testifying. Counsel testified he did not object to the solicitor's cross examination of Applicant because Applicant claimed he was not the shooter, and objecting would have made it appear to the jury that Applicant was attempting to hide something. Counsel testified he did not object to solicitor's statement in closing that he was "sorry" for Applicant's ignorance because it was the solicitor's opinion, and he did not think it would have been good trial strategy to object during closing. Finally, Counsel testified he would have filed an appeal on his own if he thought the judge had ruled improperly on anything.

On redirect, Counsel testified it was trial strategy not to hire a fingerprint expert because finding Applicant's fingerprints would only have hurt him. Counsel testified he did object to the admission of Exhibit number 38. Counsel testified he did not believe making an opening statement would have helped his client because it would have locked him into what Applicant was going to say on the stand, and he was not confident Applicant would not change his story

when he took the stand. Counsel testified he did not attempt to impeach the victim because it would make his client look bad. Counsel testified he only objects to closing arguments when it is absolutely necessary because he thinks it is rude. He testified he did not believe there was anything in the solicitor's closing worth objecting to. Finally, Counsel testified he did not know if his trial strategy would have changed if someone else's fingerprints were found on the gun, but it would not have changed his trial strategy if Applicant's prints were found on it.

Findings of Fact and Conclusions of Law

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance

was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Applicant alleges Counsel was ineffective for failing to thoroughly challenge the State's case at trial. Respondent submits Applicant's argument fails because he has not shown Counsel was deficient in any way, and he has not shown any prejudice resulting from Counsel's alleged ineffectiveness.

A. Alleged Deficiency

Despite Applicant's testimony to the contrary, Counsel's testimony at the PCR hearing clearly showed that Counsel received, reviewed, and considered all of the State's evidence in the case, and Counsel met with Applicant at least a dozen times to discuss the case and prepare Applicant's defense. As such, Counsel had plenty of time to devise his overall strategy in the case. If Applicant's testimony that he only saw Counsel one time prior to trial is to be believed over Counsel's testimony, the Court's inquiry need not proceed any further. However, Respondent submits that Applicant's testimony was wholly not credible, just as the jury found Applicant's testimony at trial to be unbelievable. After all, the jury considered Applicant's far-fetched ramblings and decided he was not telling the truth when they convicted him. In fact, Counsel pointed out on the stand that Applicant was lying about the number of times they met, because Counsel appeared with Applicant at his bond hearing, which would have accounted for at least one meeting after their initial consultation.

Counsel was not ineffective for failing to thoroughly challenge the State's case at trial because Counsel's decisions were shaped by his trial strategy. "[T]he court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. When counsel articulates a strategy, it is measured under an objective standard of reasonableness. Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 691. Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Id. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

While Counsel's basic response to Applicant's questions of his overarching trial strategy was "to win," when pressed, Counsel gave clear and unambiguous reasons why he chose to make various decisions throughout the trial.

First, Applicant contends Counsel was ineffective for failing to retain or consult a fingerprint expert. However, failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported by mere speculation as to the result. Rollinson v. State, 346 S.C. 506, 552 S.E.2d 290 (2001). A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence. Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995); Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005). Regardless, Counsel's explanation for this strategic decision was more than adequate. Because Applicant's fingerprints were not found on the gun, Counsel reasoned there was no benefit to having any further testing done on the weapon. If, Counsel explained, Applicant's fingerprints were found on the weapon, it would only hurt Applicant's case. If Applicant's fingerprints were not found on the weapon, there was also nothing to be gained because the State already conceded Applicant's fingerprints were not found. Applicant claims that some mystery shooter's prints would have been found on the weapon; however, Applicant was the only codefendant who tested positive for gunshot residue. Clearly Counsel's reasoning was that if anyone's prints were to be found on the gun, they would most likely belong to Applicant. Additionally, Counsel cannot be held deficient for failing to retain an expert where he undertakes a vigorous cross-examination of the State's expert. See Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991). Applicant argues Counsel was deficient for not even consulting with an expert because Counsel essentially did not know what he did not know.

However, Counsel has been trying criminal cases for decades and is fully capable of determining whether he needs to consult an expert or not. Applicant claims Counsel did not adequately rebut the evidence presented by the State's crime scene expert (Paul Bird); however, the record reflects Counsel did thoroughly cross examine Bird for five (5) pages in the transcript. Record, 237-242. As such, Counsel's performance with regards to the weapon and any expert fingerprint testimony was not deficient.

Applicant next contends Counsel was ineffective for not objecting when the solicitor requested the judge give the jury a "hand of one" charge. However, Counsel testified at the PCR hearing that he did not object to the charge because he felt it could be beneficial to his client. Applicant cites numerous cases to support his position; however, they are distinguished from this case because here Applicant brought up the theory of accomplice liability on his own when he testified before the jury, and Counsel reasoned the charge could benefit Applicant. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Strickland, at 691. When the solicitor asked the judge to charge "hand of one, hand of all" the following took place:

The Court: Mr. Strobel, do you have any position on that?

Mr. Strobel: I'm not gonna object.

The Court: I don't blame you. I think you're [the solicitor] instilling in this case an issue that's not here, but I'll need to look at the charge I've got unless you have something you want me to consider.

Record, at 315. Clearly, even the trial judge agreed with Counsel's strategy in not objecting to the charge. Counsel obviously believed the charge would only serve to further confuse the jury about the State's case and show the solicitor was unsure which theory of the case was correct. Counsel's reasoning was obviously correct to a certain degree because the jury found Applicant

guilty of the lesser included ABHAN. As such, Counsel's performance cannot be deemed ineffective, and Applicant has failed to show any resulting prejudice.

Applicant next contends Counsel was ineffective for failing to object to the State's exhibits being admitted into evidence without any foundation. However, Counsel described his reasoning at the PCR hearing, explaining that he and the solicitor went through the exhibits prior to trial, so he was already aware of what the solicitor was planning to admit. Counsel explained that if he had a problem with the admission of any exhibits, he would object. Indeed, Counsel did object to the admission of State's Exhibit #38. Counsel may be found ineffective for failing to object to inadmissible evidence. See Dawkins v. State, 346 S.C. 151, 551 S.E.2d 260 (2001). However, Applicant has failed to show that any of the State's exhibits would have been otherwise inadmissible. Counsel's strategy behind not objecting to the admission of the exhibits was obviously to attempt to keep the jury from developing an unfavorable opinion of his client from constant interruptions and objections based on minor procedural issues. Accordingly, Applicant has not shown any prejudice from Counsel's decision not to object.

Applicant next contends Counsel was ineffective for waiving his opening statement. However, Counsel's testimony at the PCR hearing showed Counsel was concerned by Applicant's insistence that he take the stand in his own defense. Counsel's decision not to present an opening statement was reasonable because he was unsure what story Applicant was going to tell on the stand based on his previous conversations with Applicant. As such, Counsel's concern over presenting conflicting theories of the case to the jury was well-founded, and his strategy made sense. Furthermore, Applicant has not shown any prejudice from Counsel's decision to waive his opening statement.

Applicant next argues Counsel was ineffective for not attempting to impeach the state's eyewitness Arenthus Garrett based on his prior criminal record. However, Counsel testified he felt there was little to be gained by attempting to impeach the witness. Garrett did not positively identify Applicant as the shooter; he only described the shooter's physical appearance and actions. Counsel reasonably thought that an attempt to demonize Garrett as a criminal would serve no beneficial purpose in helping his client, but could possibly leave the jury with a negative impression. As such, his strategy was reasonable. Furthermore, Applicant has not shown how Counsel's decision not to impeach Garrett has prejudiced Applicant. After all, Applicant was convicted of the lesser-included offense of ABHAN, to which he admitted his guilt at the PCR hearing.

Applicant's next ground is that Counsel should have objected during the solicitor's cross-examination of Applicant, particularly when the solicitor asked why Applicant did not aid the victim, if he was not the shooter. Record, at 306. Applicant also contends Counsel was ineffective for not objecting to the solicitor's statement during closing arguments that he felt sorry for Applicant. Record, at 345. However, Respondent submits the solicitor's statements were not improper, and Applicant has presented no case law in support of his arguments. See Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct.App.1999) (issue is deemed abandoned on appeal if it is argued in a short, conclusory statement without supporting authority). Additionally, Counsel explained that he generally only objects during closing arguments if there is something "major" to which he thinks he should object. Applicant contends Counsel's statement that objecting during closing arguments is rude is not a valid trial strategy; however, if Counsel believes it is rude, it is certainly possible such objections could have an adverse effect on the members of the jury as well. As such, Counsel's strategy for not objecting

was reasonable. Furthermore, Applicant has not proven any prejudice resulting from the solicitor's comments.

Finally, Applicant argues Counsel was ineffective for failing to file an appeal of Applicant's conviction. However, testimony from both Applicant and Counsel at the PCR hearing shows Applicant never indicated to Counsel that he wanted an appeal. The United States Supreme Court has rejected a bright-line rule that counsel must always file an appeal in a criminal case. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). The Court held that in most cases a professionally reasonable attorney should consult with the defendant regarding an appeal. Id. In determining whether an attorney should consult with the criminal defendant concerning an appeal, the totality of the circumstances must be considered. Id. In examining the totality of the circumstances, the courts should consider: (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Id. Here, Counsel testified that he advised Applicant of his right to appeal, but Applicant never informed Counsel that he wished to file an appeal. Applicant testified that he attempted to get in touch with Counsel after the trial to ask for an appeal, but upon further questioning, Applicant admitted that while he had access to the telephone and mail during his incarceration, he did not call Counsel or write him a letter requesting an appeal. Furthermore, Respondent submits Counsel's representation of Applicant ended once Applicant was convicted, and Counsel had no duty to maintain any further communications with Applicant. Finally, Counsel testified he did not believe Applicant had any worthwhile appellate issues to pursue. As such, Counsel was not deficient for not filing an appeal, and Applicant has shown no prejudice.

B. Failure to Show Prejudice

Even assuming *arguendo* that Counsel's performance was deficient, Applicant has failed to show any prejudice resulting from Counsel's alleged ineffectiveness because Applicant was convicted based on overwhelming evidence. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), *cert. denied*, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008).

The record before the Court combined with the testimony from the PCR hearing clearly highlight the overwhelming evidence of Applicant's guilt that was presented to the jury. Johnny Hendricks (victim) testified that someone matching Applicant's description (hair in a ponytail) walked up and shot him in the back of the head while he was holding a small child in his lap. Record, at 77. Arenthus Garrett then testified he looked out his window after hearing a shot and saw the shooter wearing a light colored shirt and dreadlocks pulled into a ponytail. Record, at 90. Garret testified the shooter got into the backseat of the Nissan Altima that was used as the getaway car. Record, at 92. Almost immediately after the Altima pulled away from the shooting, a vehicle driven by undercover Florence Police Department officers took up pursuit. Officer Rodney Fridley testified that after a high speed chase, the Altima eventually came to a stop, and three people jumped out. All three were apprehended. Record, 98-108. Officer Jessie Collins testified he observed Applicant hiding underneath a house shortly after the suspects bailed out of the car. Collins testified he was forced to take Applicant after a struggle, and that Applicant was

the only one of the three suspects who had dreadlocks. Record, 111-18. Officer Kendrick Spears of the Florence Police Department testified that he found the gun in a wood line in the direction Applicant ran from the car. Officer Spears identified Applicant as one of the suspects who ran from the car. Record, 146-154. Sergeant Nida of the Florence Police Department testified the victim's wallet was recovered at the scene where the suspects were apprehended. Record, at 160. Ira Parnell, the SLED firearms examiner, testified the bullet recovered from the victim matched the gun that was recovered near Applicant. Record, 184-86. Next, Ila Simmons, of SLED, testified that both of Applicant's hands tested positive for traces of gunshot residue. Simmons further testified that none of the other codefendants tested positive for GSR. Record, 194-97. Next, Tyon Evans, Applicant's codefendant who admitted to driving the getaway car, testified that Applicant got out of the car at the victim's house, after which Evans heard a gunshot. Evans testified Applicant came running back to the car, jumped in, and said to go. Evans testified he saw the gun in the backseat with Applicant when he looked in the rearview mirror. Record, 255-57. Clearly, the testimony presented at trial created an almost insurmountable mountain of evidence against Applicant. The record reflects that an unusually large number of officers responded to the scene in Applicant's case, and he was essentially caught red-handed after shooting the victim (with a child in his lap) in the back of the head, and attempting to flee.

In contrast to the vast amount of credible testimony presented by the State, Applicant presented a disjointed and incredible tale when he took the stand in his own defense. Applicant claimed he went to the home of his codefendant Tyon Evans and smoked a blunt, after which point he became high, and Evans said "Come ride with me." Record, at 290. Applicant claimed he knew nothing about the gun. Applicant did admit he sat in the backseat of the car as they drove to the victim's house. Record, at 291. Applicant claimed the other codefendant (Rasheem

Thomas) saw the victim, who had allegedly been in an altercation with Evans. Applicant claimed he was going to get out of the car, until Evans pulled the gun out, at which point Applicant decided to stay in the car. Record, 292-93. Applicant claimed he never got out of the car, never touched the gun, never robbed the victim, and never pulled the trigger. Record, at 299. However, Applicant's testimony completely ignores the fact that all of the witnesses gave descriptions of the shooter matching Applicant's appearance, the gun was found in proximity to Applicant, Applicant was the only codefendant who was sitting in the backseat, and Applicant was the only codefendant who tested positive for gunshot residue.

Put simply, the evidence against Applicant was overwhelming, and the fact that Counsel was able to get Applicant convicted of ABHAN rather than attempted murder, in light of the overwhelming evidence, is proof in and of itself that Counsel was not deficient. While Counsel may have provided some terse answers in response to Applicant's questions at the PCR hearing, the fact remains that Applicant was facing an almost insurmountable struggle by proceeding to trial, and Counsel did the best he could reasonably be expected to do with the facts and evidence with which he was presented. For the foregoing reasons, Respondent submits Counsel was not deficient, and Applicant has been unable to prove any resulting prejudice. Accordingly, Applicant's PCR application should be denied and dismissed with prejudice.

Respectfully submitted,

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Dec. 8, 2014

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
)
 Thomas E. Davis, #351299,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

Case No. 2013-CP-21-0846

FILED
 2015 AUG 28 AM 11:21
 CONNIE REEL SHEARIN
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, SC


**ORDER OF DISMISSAL
 GRANTING WHITE V. STATE
 APPEAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 27, 2013. Respondent made its Return on March 18, 2013. The Court convened an evidentiary hearing into the matter on October 9, 2014, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. J. Croom Hunter, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the evidentiary hearing, Applicant testified on his own behalf. Respondent also presented testimony from trial counsel, Richard W. Strobel, Esquire (Counsel). The Court also had before it a copy of the plea transcripts, the Florence County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

I. PROCEDURAL HISTORY

The Applicant is presently confined in SCDC pursuant to orders of commitment from the Florence County Clerk of Court. Applicant was indicted at the September 2011 term of the Florence County Grand Jury for attempted murder, armed robbery, and possession of a weapon

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 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

during the commission of a violent crime (2011-GS-21-1371). Richard W. Strobel, Esquire represented the Applicant.

The State proceeded to trial on June 18, 2012, and the jury found the Applicant guilty as indicted on the armed robbery and weapon possession charges. As to the attempted murder charge, the jury found the Applicant guilty of the lesser included offense of assault and battery of a high and aggravated nature. The Honorable Thomas A. Russo sentenced the Applicant to concurrent terms of thirty (30) years imprisonment for armed robbery and twenty (20) years imprisonment for assault and battery of a high and aggravated nature. Judge Russo also sentenced the Applicant to a consecutive five (5) year prison term for possession of a weapon during a violent crime. The Applicant did not appeal.

II. ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

- 1. Ineffective assistance of counsel

III. SUMMARY OF TESTIMONY

During the evidentiary hearing, Applicant testified he was charged with attempted murder, armed robbery, and weapons possession. Applicant testified he was arrested with both codefendants, and they were charged with the same crimes, except the weapons possession. Applicant testified he was represented by Richard Strobel (Counsel). Applicant testified he retained Strobel after other inmates recommended his services. Applicant testified he first met with Counsel on April 12. Applicant testified Counsel had him sign a representation agreement