

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

Appeal from Anderson County
Alexander S. Macaulay, Circuit Court Judge

SAMMY COWAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001335

APPENDIX

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
APPLICANT'S EXHIBIT #1 (Enhanced CD of 911 call).**

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON) 10TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD

-VS-) 05-GS-04-696

SAMMY KAY COWAN,)

DEFENDANT.)

NOVEMBER 14 & 15, 2005

ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALFORD, JUDGE; AND A JURY.

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

RAME L. CAMPBELL, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

NANCY JO THOMASON, ESQUIRE
ATTORNEY FOR THE DEFENDANT

SHARON L. VIZER-HANKS
CIRCUIT COURT REPORTER

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

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E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
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15 -	PHOTOGRAPH	--10	-244
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VOIR DIRE

Date: November 14, 2005County: AndersonCase No: 2005-GS-04-696Judge: AlfordPl./State StatePl./State Atty: Rame L. CampbellDefendant: Sammy Kay CowanDefense Atty: Nancy Jo ThomasonCourt Reporter: Sharon L. Vize Hanks

Juror No.	Name	Sex	Race	Strikes			
				Court	Plaintiff	Defense	Accept
109	Michael Phillips	M	W		X-1		
125	William Saylor	M	W			X-1	
69	Mark Kennedy	M	W				1
12	Theodore Balk	M	W			X-2	
57	Sandra Head	F	W			X-3	
2	Stephen Ackerman	M	W				2
6	Catherine Asalone	F	W				3
128	Charles Shaw	M	W				4
106	Nancy Pebbles	F	W			X-4	
161	Aretha Williams	F	B			X-5	
T-14	Rickey Knight	W	M				5
T-17	Roxie Moore	F	W			X-6	
142	Kevin Strickland	M	W				6
29	Kimberly Chabek	F	W				7
T-11	Nancy Garval	F	W				8
28	Letty Carr	F	W			X-7	
150	Joyce Tollison	F	W			X-8	
T-23	Michelle Wilson	F	W			X-9	
101	Evelyn Owen	F	W				9
27	Dennis Carlton	M	W				10
T-10	Morris Freeman	M	W			X-10	

Monday, November 14, 2005

(WHEREUPON, State's Exhibit Numbers 1 through 22 were marked for identification only.)

THE COURT: Counsel, ready to proceed?

MR. CAMPBELL: Thank you, Your Honor.

Your Honor, the State is calling the case of The State vs. Sammy Kay Cowan indicted in indictment number 2005-GS-04-696, one count of murder; the second count, possession of a firearm during the commission of a violent crime.

THE COURT: Ms. Thomason, you represent the defendant, Sammy Kay Cowan, on these charges?

MS. THOMASON: Yes, Your Honor.

THE COURT: How does he plead?

MS. THOMASON: He pleads not guilty, Your Honor.

THE COURT: Are you ready for the trial then?

MS. THOMASON: Yes, Your Honor, we are.

THE COURT: Ladies and gentlemen of the jury panel, if you'd give me your attention, please. We're about to go into a trial in the matter of State of South Carolina vs. Sammy Kay Cowan. It's spelled C-o-w-a-n.

The State charges Mr. Cowan with two offenses. They charge him with murder and also with possession of a weapon during the commission of a violent crime. Make that a firearm during the commission of a violent crime.

1 Now, the State is represented in this case by
2 Assistant Solicitor Rame Campbell.

3 Sir, would you please stand and face the jury panel.

4 He will be assisted, I think, by Thomas Mathew
5 Bradley, who is not present today.

6 He will be back later; is that correct?

7 MR. CAMPBELL: He will be here tomorrow.

8 THE COURT: Is anyone on the jury panel related by
9 blood or marriage, friends with or have any other type social,
10 business or professional relationship with Mr. Rame Campbell
11 or Thomas Mathew Bradley of the Solicitor's Office? If so,
12 please stand.

13 (There was no response.)

14 THE COURT: Is anyone on the jury panel related by
15 blood or marriage, friends with, have any other type social,
16 business or professional relationship with anyone who works in
17 the 10th Circuit Solicitor's Office? If so, please stand.

18 (There was no response.)

19 THE COURT: The defendant, Sammy Kay Cowan, is
20 represented by Attorney Nancy Jo Thomason, and also at that
21 table would be an investigator, Jody McCurley. Counsel, would
22 you please stand and also please ask Mr. Cowan if he will
23 please stand so the jury can see who he is.

24 Thank you. You may be seated.

25 Now, is anyone on the jury panel related by blood or

1 marriage, friends with or have any other type social,
2 business, professional relationship with Sammy Kay Cowan? If
3 so, please stand.

4 Yes, sir, please give us your name and your number,
5 if you remember your number.

6 POTENTIAL JUROR: Marvin Fant. I don't remember the
7 number.

8 THE COURT: Your last name is?

9 MR. FANT: Fant.

10 THE COURT: Just one minute, sir. We'll find it.

11 THE CLERK: Your Honor, I believe he is a transfer,
12 transfer number 7.

13 THE COURT: All right. Transfer number 7. Yes,
14 sir, how do you know Mr. Cowan?

15 MR. FANT: Well, I remember him from when --

16 THE COURT: Wait just a minute.

17 MR. FANT: I remember him from -- he was a member of
18 my church.

19 THE COURT: Oh, okay. He was a member at your
20 church?

21 MR. FANT: Yes, sir, about a year and a half ago.

22 THE COURT: Let me ask you, sir, whether there's
23 anything about that relationship that would interfere in any
24 way with your ability to give both the State and the
25 defendant, Sammy Kay Cowan, a fair and impartial trial in this

1 case?

2 MR. FANT: Say that again, please.

3 THE COURT: Is there anything about your
4 relationship, that is to say church relationship with
5 Mr. Cowan, that would interfere in any way with your ability
6 to give both the State and the defendant a fair and impartial
7 trial in this case?

8 MR. FANT: No, I don't believe anything that would
9 interfere with that.

10 THE COURT: Thank you, sir. You may be seated.

11 Ms. Clerk has told me that some of you stood up when
12 I asked about the Circuit Solicitor's Office and I somehow
13 overlooked that. Let me ask that question one more time.

14 Is anyone on the jury panel related by blood or
15 marriage, friends with or have any other type social, business
16 or professional relationship with anyone who works in the 10th
17 Circuit Solicitor's Office? If so, please stand.

18 All right. I don't know how I overlooked that many
19 people but I did, apparently. I was reading something. What
20 I'd like to do is go from my left to right and from front to
21 back. So, ma'am, I'll ask you first. Yes, ma'am, give us
22 your name and number, if you remember it.

23 POTENTIAL JUROR: Evelyn Owen. I do not remember my
24 number --

25 THE COURT: Just one minute. Let us find your

1 number.

2 MS. OWEN: I know Christy Adams as a customer.

3 THE CLERK: 101.

4 THE COURT: Juror number 101. Ma'am, is there
5 anything about that relationship that would interfere in any
6 way with your ability to give both the State and the defendant
7 a fair and impartial trial in this case?

8 MS. OWEN: I don't think so.

9 THE COURT: Well, I need a more definitive answer.
10 Yes or no?

11 MS. OWEN: No, sir.

12 THE COURT: Thank you, ma'am. You may be seated.

13 Yes, ma'am, please give us your name.

14 POTENTIAL JUROR: Sandra Head. I believe I'm juror
15 57.

16 THE COURT: Just one minute. Let us check it.

17 MS. HEAD: I just know a lady that works in the
18 Solicitor's Office, Judy Collins. Our children are the same
19 age and are best friends. They go to church together and they
20 go to school together.

21 THE COURT: Now, let me ask you whether there's
22 anything about that relationship that would interfere in any
23 way with your ability to give both the State and the
24 defendant, Sammy Kay Cowan, a fair and impartial trial in this
25 case?

1 MS. HEAD: No, sir.

2 THE COURT: Thank you, ma'am. You may be seated.

3 Yes, sir?

4 POTENTIAL JUROR: Theodore Balk, somewhere around
5 12, I think.

6 THE COURT: Just one minute. Let us find it.

7 Number 12. Yes, sir?

8 MR. BALK: I know some people at the Solicitor's
9 Office.

10 THE COURT: All right. Let me ask you, sir, whether
11 that relationship would interfere in any way with your ability
12 to give both the State and the defendant a fair and impartial
13 trial in this case?

14 MR. BALK: No, sir.

15 THE COURT: Thank you, sir. You may be seated.

16 All right. I'll go back to my left. Yes, sir?

17 POTENTIAL JUROR: Ray Thomas. I don't recall my
18 number.

19 THE CLERK: 144, Your Honor.

20 THE COURT: 144. Yes, sir?

21 MR. THOMAS: My son-in-law's brother works for the
22 Solicitor's Office.

23 THE COURT: Son-in-law's brother. All right, sir.
24 Have you discussed this case at all with him, sir?

25 MR. THOMAS: Absolutely not.

1 THE COURT: You have not?

2 MR. THOMAS: No, sir.

3 THE COURT: Is there anything about that
4 relationship that would interfere in any way with your ability
5 to give both the State and the defendant a fair and impartial
6 trial in this case?

7 MR. THOMAS: No, Your Honor.

8 THE COURT: Thank you, sir. You may be seated.
9 Anyone else?

10 POTENTIAL JUROR: Frederick Bariou.

11 THE CLERK: Number 14.

12 THE COURT: Juror 14. Yes, sir?

13 MR. BARIOU: I'm with the Anderson Area Crime
14 Stoppers. I do have some contact with the Solicitor's Office.

15 THE COURT: Let me ask you, sir, whether that
16 relationship would interfere in any way with your ability to
17 give both the State and the defendant a fair and impartial
18 trial in this case?

19 MR. BARIOU: No, sir.

20 THE COURT: Thank you, sir. You may be seated.
21 Anyone else?

22 (There was no response)

23 THE COURT: Let me ask you then is anyone on the
24 jury panel related by blood or marriage, friends with or have
25 any other type social, business or professional business with,

1 that is to say currently or formally represented by or any
2 other relationship to Nancy Jo Thomason? If so, please stand.

3 (There was no response.)

4 THE COURT: Is anyone on the jury panel related by
5 blood or marriage, friends with or have any other type social,
6 business or professional relationship with Mr. Jody McCurley?
7 He's down front, is an investigator. If so, please stand.

8 Yes, ma'am, please give us your name and number, if
9 you know your number. Give us your name.

10 POTENTIAL JUROR: I'm Tammie Pettigrew. I was a
11 transfer.

12 THE COURT: Just one minute. Let us find your
13 number.

14 THE CLERK: Pettigrew, transfer number 18.

15 THE COURT: Number 18 transfer. Yes, ma'am?

16 MS. PETTIGREW: Jody and I work for the same office
17 building.

18 THE COURT: Now, let me ask you whether there's
19 anything about that relationship that would interfere in any
20 way with your ability to give both the State and the defendant
21 a fair and impartial trial in this case?

22 MS. PETTIGREW: No, sir.

23 THE COURT: Have you discussed this case at all with
24 him, ma'am?

25 MS. PETTIGREW: No, sir.

1 THE COURT: Thank you, ma'am. You may be seated.

2 Anyone else?

3 (There was no response.)

4 THE COURT: Let me explain at this time why we need
5 to get your name and also your juror number when you stand up.

6 The reason we have to do that is because we're on the record,
7 and the court reporter is recording all this information and
8 she has to have that as part of the record. That's the reason
9 we have to identify you by name and number.

10 Ladies and gentlemen of the jury panel, I'm going to
11 go through a list of potential witnesses in this case. All of
12 these witnesses probably will not be called, but they may be
13 called. And because of that I'm going to ask you -- I'm going
14 to go through this long list of potential or possible
15 witnesses, and what I'm going to ask you to do is listen
16 carefully to these person's names as I go through them.

17 If you are related by blood or marriage, friends
18 with or have any other type social, business or professional
19 relationship with any of these named person when I call their
20 name I'll ask that you please stand.

21 Now, here are the names. Again, if you have a
22 relationship with them, please stand.

23 Mellissa Decandt, spelled D-e-c-a-n-d-t, who is with
24 Anderson County Emergency Services.

25 (There was no response.)

1 THE COURT: Randy Allen Johnson.

2 MR. CAMPBELL: Your Honor, some of these witnesses
3 are in the courtroom. I can have them stand up.

4 THE COURT: Well, if the witness happens to be in
5 the courtroom if you can stand up so the jury can see if they
6 know you by sight, even if they don't recognize your name.

7 This is Randy Allen Johnson; is that correct?

8 MR. CAMPBELL: Yes, sir.

9 THE COURT: Thank you, sir. You may be seated.
10 James Craig Jones.

11 (There was no response.)

12 THE COURT: KINSHABA Simmons. The first name is
13 spelled K-i-n-s-h-a-b-a, Simmons.

14 (There was no response.)

15 THE COURT: Travis Wardlaw. This is Mr. Wardlaw all
16 the way to my left.

17 Thank you, sir. You may be seated.

18 (There was no response.)

19 THE COURT: Craig Williford. That's Mr. Williford
20 to my left.

21 Thank you, sir. You may be seated.

22 (There was no response.)

23 THE COURT: Joctavious Williams. This is
24 Mr. Williams all the way in the back.

25 Thank you, sir.

1 (There was no response.)

2 THE COURT: Natasha Reed. This is Ms. Reed on to my
3 left here.

4 (There was no response.)

5 THE COURT: Thomas McDonald. This is Mr. McDonald
6 all the way on the left this side here.

7 Thank you, sir.

8 (There was no response.)

9 THE COURT: Francis Ann Fleming. This is
10 Ms. Fleming right here in the middle right here.

11 Thank you, ma'am.

12 (There was no response.)

13 THE COURT: Detective Steve Reeves, Anderson County
14 Sheriff's Office.

15 MR. CAMPBELL: Your Honor, the next one is going to
16 be Steve Gains, my understanding with the Greyhound.

17 THE COURT: Steve Gains.

18 (There was no response.)

19 THE COURT: Dustin Wilson Smith is with South
20 Carolina Law Enforcement Division.

21 (There was no response.)

22 THE COURT: Ila, spelled I-l-a, Simmons who is with
23 South Carolina Law Enforcement Division.

24 (There was no response.)

25 THE COURT: F. Dan DeFreese with South Carolina Law

1 Enforcement Division.

2 (There was no response.)

3 THE COURT: Dr. Brett Woodard, who is a pathologist.

4 (There was no response.)

5 THE COURT: Sergeant Tommy Clamp with the Anderson
6 County Sheriff's Office.

7 Yes, ma'am, please give us your name and number.

8 POTENTIAL JUROR: Leslie Mitchell. I think 93.

9 THE COURT: Just one minute. Let's find your
10 number.

11 THE CLERK: Juror number 93.

12 THE COURT: Juror number 93. Yes, ma'am?

13 MS. MITCHELL: My husband works with Mr. Clamp.

14 THE COURT: Okay. Ma'am, is there anything about
15 that relationship that would interfere in any way with your
16 ability to give both sides a fair and impartial trial in this
17 case?

18 MS. MITCHELL: No, sir.

19 THE COURT: Now, how does he work with him, in what
20 capacity?

21 MS. MITCHELL: My husband is an investigator.

22 THE COURT: With the sheriff's office?

23 MS. MITCHELL: Yes, sir.

24 THE COURT: All right. Thank you, ma'am.

25 MR. CAMPBELL: Your Honor, he actually is a

1 potential witness in this case. Mike Mitchell is her husband.

2 So just --

3 THE COURT: Okay. That's coming up in a couple
4 minutes?

5 MS. CAMPBELL: Yeah. So that will just end that
6 one.

7 THE COURT: Thank you.

8 Mark Coyle, spelled C-o-y-l-e, of the Anderson
9 County Sheriff's Office.

10 MS. MITCHELL: You don't need me to stand up for
11 each one of these?

12 THE COURT: You're going to know all these. Let me
13 ask you, ma'am. Let me ask you. Your husband is Mike
14 Mitchell; is that correct?

15 MS. MITCHELL: Yes, sir.

16 THE COURT: And he's a potential witness in this
17 case?

18 MR. CAMPBELL: That's correct.

19 THE COURT: I think I'm going to excuse this juror
20 from this case, not require her to sit on this particular
21 case.

22 MS. THOMASON: Your Honor, I'd just like to -- may
23 we approach?

24 THE COURT: Yes, ma'am.

25 (WHEREUPON, a bench conference was had.)

1 THE COURT: Juror number 93, Mr. Mitchell, would you
2 please stand back up. Let me ask you a couple more questions,
3 ma'am. Have you discussed this case at all with your husband
4 or anyone else in the sheriff's office, or anyone else for
5 that matter?

6 MS. MITCHELL: No, sir.

7 THE COURT: Do you know anything about the case?

8 MS. MITCHELL: No, I don't.

9 THE COURT: Have you discussed this case with any
10 other jurors?

11 MS. MITCHELL: No, sir.

12 THE COURT: Thank you, ma'am. You may be seated.

13 Juror number 14. Sir, would you stand back up,
14 Mr. Bariou. I'm not sure I got your answer correctly. When
15 you were asked that in your work with Crime Stoppers you said
16 that you sometimes are in touch with, work with the
17 Solicitor's Office, in that capacity; is that right?

18 MR. BARIOU: Yes, sir.

19 THE COURT: Sir, I believe I asked you the question
20 whether that relationship with the Solicitor's Office would
21 interfere in any way with your ability to give both the State
22 and the defendant in this case a fair and impartial trial.
23 What was your response, sir, to that?

24 MR. BARIOU: It won't.

25 THE COURT: It would not interfere. All right.

1 That's all right. Thank you. I just wanted to confirm that.

2 Thank you.

3 Aaron Rivest. I'm not sure if I pronounced that
4 correctly. It's spelled R-i-v-e-s-t. He's with the Anderson
5 County Sheriff's Office.

6 (There was no response.)

7 THE COURT: Mike Mitchell with the sheriff's
8 department.

9 Yes, ma'am, please give us your name and number,
10 ma'am.

11 POTENTIAL JUROR: Andrea Faircloth. I'm not sure of
12 the number.

13 THE CLERK: 45.

14 THE COURT: Juror number 45. Yes, ma'am, how do you
15 know him?

16 MS. FAIRCLOTH: We worked together at one point, not
17 anymore.

18 THE COURT: Not at this point?

19 MS. FAIRCLOTH: Uh-uh.

20 THE COURT: You didn't work with him in the
21 sheriff's office?

22 MS. FAIRCLOTH: No.

23 THE COURT: Now, let me ask you whether that form of
24 work relationship would interfere in any way with your ability
25 to give both the State and the defendant in this case a fair

1 and impartial trial?

2 MS. FAIRCLOTH: No, it wouldn't.

3 THE COURT: Thank you, ma'am. You may be seated.

4 Anyone else?

5 (There was no response.)

6 THE COURT: Michael Sloan who is with the Anderson
7 County Sheriff's Department. This is Mr. Sloan here.

8 Thank you.

9 (There was no response.)

10 THE COURT: Charlie Boseman, who is the coroner in
11 Anderson County.

12 Yes, ma'am, please give us your name.

13 POTENTIAL JUROR: Kathy Foster.

14 THE COURT: Let us find your number. Just a minute,
15 please, ma'am.

16 THE CLERK: 47, Your Honor.

17 THE COURT: Juror number 47. Yes, ma'am, how do you
18 know Mr. Boseman?

19 MS. FOSTER: AnMed Credit Union is part of Anderson
20 Area Medical Center.

21 THE COURT: Do you work there?

22 MS. FOSTER: Yes, sir.

23 THE COURT: Ma'am, is there anything about that
24 relationship that would interfere in any way with your ability
25 to give both the State and the defendant a fair and impartial

1 trial if he would be called as witness by either side?

2 MS. FOSTER: No.

3 THE COURT: Thank you, ma'am. You may be seated.
4 Anyone else?

5 (There have no response.)

6 THE COURT: Mardzah Dawson. I don't know if I'm
7 pronouncing it correctly. Let me spell it for you. It's
8 M-a-r-d-z-a-h Dawson.

9 (There was no response.)

10 THE COURT: Coyla Howard. C-o-y-l-a Howard

11 (There was no response.)

12 THE COURT: Christopher Bell.

13 (There was no response.)

14 THE COURT: Montez Brawner. It's spelled
15 B-r-a-w-n-e-r.

16 (There was no response.)

17 THE COURT: Christine Craig.

18 (There was in response.)

19 THE COURT: David Grooves. It's spelled
20 G-r-o-o-v-e-s.

21 (There was no response.)

22 THE COURT: Alice Head.

23 (There was no response.)

24 THE COURT: Nakeita Head.

25 (There was no response.)

1 THE COURT: Larry Robinson.

2 (There was no response.)

3 THE COURT: Sherry Rosewood.

4 (There was no response.)

5 THE COURT: Joniki Scott.

6 (There was no response.)

7 THE COURT: Clarence Sullivan.

8 (There was no response.)

9 THE COURT: Chasity Welborn, spelled W-e-l-b-o-r-n.

10 (There was no response.)

11 THE COURT: Danny Welborn.

12 (There was no response.)

13 THE COURT: Marcus Welborn.

14 (There was no response.)

15 THE COURT: Martiz Shermaine Williams.

16 (There was no response.)

17 THE COURT: James Wood.

18 (There was no response.)

19 THE COURT: Marcus Duckwall.

20 (There was no response.)

21 THE COURT: John Terry Carlton.

22 (There was no response.)

23 THE COURT: Arthur Lee Johnson.

24 (There was no response.)

25 THE COURT: Carnelius Mattress.

1 (There was no response.)

2 THE COURT: Tina Dotson.

3 (There was no response.)

4 THE COURT: Latasha Roebuck. This is Ms. Roebuck
5 here.

6 Thank you.

7 (There have no response.)

8 THE COURT: Ishisha Reed. That first name is
9 spelled I-s-h-i-s-h-a Reed.

10 (There was no response.)

11 THE COURT: Brenda Davis.

12 (There was no response.)

13 THE COURT: Teri Atwater.

14 (There was no response.)

15 THE COURT: Captain Eric Boggs with the Anderson
16 County Department of Corrections.

17 (There was no response.)

18 MR. CAMPBELL: Can we Approach real quick?

19 THE COURT: Yes, sir.

20 (WHEREUPON, a bench conference was had.)

21 THE COURT: Yes, sir, please give us your name.

22 POTENTIAL JUROR: Ray Thomas, juror 124. I believe
23 Detective Steve Reeves that you already called, he worked for
24 our company, part-time summer job when he was in college.

25 THE COURT: Yes, sir. Let me ask you, sir, whether

1 that relationship -- I'm sorry. Whether that relationship
2 would interfere in any way with your ability to give both the
3 State and the defendant a fair and impartial trial in this
4 case?

5 MR. THOMAS: No, Your Honor.

6 THE COURT: Thank you, sir. You may be seated.

7 I want to ask you one other name, James Charlie
8 Jones. Mr. Jones is all the way in the back here on my left.

9 Thank you, sir.

10 Yes, sir? Well, we have three people. Let me start
11 with my left.

12 Ma'am, please give us your name.

13 POTENTIAL JUROR: Aretha Williams.

14 THE COURT: Just a minute. Let us find your number.

15 THE CLERK: 161, Your Honor.

16 THE COURT: 161. Yes, ma'am?

17 MS. WILLIAMS: I'm related to Mr. Jones.

18 THE COURT: How are you related to him, ma'am?

19 MS. WILLIAMS: We're cousins. A distance, but we
20 are cousins.

21 THE COURT: Let me ask you, if he were to be called
22 as a witness by either side in this case, if he testified
23 would that interfere in any way with your ability to give both
24 sides a fair and impartial trial in this case?

25 MS. WILLIAMS: No, sir.

1 THE COURT: Thank you, ma'am. You may be seated.

2 Yes, sir, please give us your name again.

3 POTENTIAL JUROR: Marvin Fant, transfer number 7.

4 THE COURT: Yes, sir?

5 MR. FANT: I work with Mr. Jones at Isola Laminates.

6 THE COURT: Sir, let me ask you whether that
7 relationship would interfere in any way with your ability to
8 give both the State and the defendant a fair and impartial
9 trial in this case if he were to be called as a witness by
10 either side.

11 MR. FANT: No, wouldn't be a problem.

12 THE COURT: Thank you, sir. You may be seated.

13 Yes, ma'am, please give us your name.

14 POTENTIAL JUROR: Belinda Williams.

15 THE COURT: Just one minute.

16 THE CLERK: Juror 162.

17 THE COURT: Juror number 162. Yes, ma'am?

18 MS. WILLIAMS: He's the father of one of my nephews.

19 THE COURT: He's the father of one of your nephews?

20 MS. WILLIAMS: Yes, sir.

21 THE COURT: Let me ask you, if he were to be called
22 as a witness by either side in case, would that interfere in
23 any way with your ability to give both sides a fair and
24 impartial trial in this case?

25 MS. WILLIAMS: No, sir.

1 THE COURT: Thank you, ma'am. You may be seated.

2 Anyone else?

3 (There was no response.)

4 THE COURT: Ladies and gentlemen of the jury panel,
5 the allegations in the indictment against Sammy Kay Cowan
6 allege as follows; that Sammy Kay Cowan did in Anderson
7 County, South Carolina on or about February the 6th, 2005
8 feloniously, willfully and with malice aforethought kill one
9 Frederick M. Penn, last name spelled P-e-n-n, by means of a
10 handgun.

11 Now, is anyone on the jury panel related by blood or
12 marriage, friends with or have any other type social, business
13 or professional relationship with Frederick M. Penn? If so,
14 please stand.

15 THE COURT: Yes, ma'am, please give us your name.

16 POTENTIAL JUROR: Mary Ann Wardlaw.

17 THE COURT: Just one minute. Let us find your.

18 THE CLERK: Transfer 21.

19 THE COURT: Transfer 21. Yes, ma'am, how do you
20 know Mr. Penn?

21 MS. WARDLAW: I'm friends with Mr. Penn and
22 Mr. Penn's entire family.

23 THE COURT: Ma'am, let me ask you then with the
24 allegations of this case, would that interfere with your
25 ability to give both the State and the defendant a fair and

1 impartial trial in this case?

2 MS. WARDLAW: Your Honor, I just -- yes.

3 THE COURT: It would interfere. Again, I appreciate
4 your honesty, ma'am. We will not require you to serve as a
5 juror on this particular case but just stay with the jury for
6 further instructions. We'll excuse you from this case. Thank
7 you, ma'am. You may be seated. You stay.

8 Anyone else?

9 (There this response.)

10 THE COURT: Ladies and gentlemen, what I have just
11 read to you are the allegations contained in the indictment.
12 That's what they are, allegations. They are not proof of
13 anything in this case.

14 An indictment is merely a formal document by which
15 any person charged with any criminal offense is put on notice
16 as to what the allegations against him or her are so they can
17 properly come into court and defend themselves.

18 Again, the allegations in the indictment are not
19 proof of anything, not evidence of anything and cannot be
20 considered as proof or evidence of anything in this case.

21 The only reason I read these allegations to you are
22 in the event it would cause you to know that you had prior
23 knowledge about this case before coming to court which might
24 affect your service as to this particular case, and that's the
25 only reason I read those allegations to you. Again, it's not

1 proof of anything, cannot be considered as proof of anything
2 in the case that comes today during trial.

3 Now, has any member of the jury panel had any prior
4 knowledge about this case from any source whatsoever before
5 coming here to court today? If so, please stand.

6 Yes, sir? Please give us your name and number
7 again, please, sir.

8 POTENTIAL JUROR: Marvin Fant, transfer 7.

9 THE COURT: Yes, sir. I'm going to ask you, please,
10 to come down and give us your response.

11 Is there anyone else that needs to respond to this
12 question?

13 (There was no response.)

14 THE COURT: Sir, please come down front and let me
15 get this response.

16 (WHEREUPON, the following side-bar was reported.)

17 THE COURT: Yes, sir. What do you know about this
18 case?

19 MR. FANT: Well, I know about it from the
20 newspapers.

21 THE COURT: Reading the newspapers. How about from
22 any other source?

23 MR. FANT: No, sir.

24 THE COURT: Based on what you read in the newspaper
25 have you formed any opinion about this case?

1 MR. FANT: To be honest, I have.

2 THE COURT: You have. Could you put aside anything
3 you read in the newspaper about it and just listen to the
4 testimony and the evidence in the case and the law as charged
5 by the Court and render a decision which would be fair to both
6 sides in this case?

7 MR. FANT: Yes, sir.

8 THE COURT: Could you do that?

9 MR. FANT: Yes.

10 THE COURT: All right. Let me make sure I
11 understand you. Could you put aside anything you've read
12 about this case, just discount that or put it aside and base
13 it solely on the testimony and evidence that comes in during
14 the trial?

15 MR. FANT: Yes, sir.

16 THE COURT: All right. Thank you, sir. You may
17 return to your seat.

18 (WHEREUPON, the side-bar was concluded.)

19 THE COURT: Let me ask the jury panel. There may
20 have been some articles in the newspaper about this case, has
21 any member of the jury panel read anything in the newspapers
22 about this particular case? If so, please stand.

23 (There was no response.)

24 THE COURT: Is any member of the jury panel related
25 by blood or marriage, friends with anyone who -- let me back

1 up and start over with that question. Is anyone on the jury
2 panel currently or formerly employed as a police officer? If
3 so, please stand.

4 (There was no response.)

5 THE COURT: Is anyone on the jury panel currently or
6 formerly employed with any solicitor or prosecutor's office?
7 If so, please stand.

8 (There was no response.)

9 THE COURT: Is anyone on the jury panel related by
10 blood or marriage or friends with anyone who works in a
11 prosecutor or solicitor's office? If so, please stand, other
12 than the ones that stood on a prior occasion with regard to
13 this Solicitor's Office, 10th Circuit.

14 (There was no response.)

15 THE COURT: Is anyone on the jury panel related by
16 blood or marriage, friends with -- excuse me. Is anyone
17 related to anyone who works in law enforcement, either
18 formerly or currently? If so, please stand.

19 Yes, sir? Please give us your name, sir.

20 POTENTIAL JUROR: James Wicker.

21 THE COURT: Let me get your number.

22 THE CLERK: Juror 160.

23 THE COURT: Juror 160. Yes, sir, to whom are you
24 related?

25 MR. WICKER: My sister, younger sister works for the

1 City of Anderson.

2 THE COURT: City of Anderson?

3 MR. WICKER: Yes, sir.

4 THE COURT: Sir, have you talked with her at all
5 about this case?

6 MR. WICKER: No, sir, I haven't.

7 THE COURT: Is there anything about that
8 relationship that would interfere in any way with your ability
9 to give both the State and the defendant a fair and impartial
10 trial in this case?

11 MR. WICKER: No, sir.

12 THE COURT: Thank you, sir. You may be seated.

13 Is anyone on the jury panel conscious of any
14 interest, bias or prejudice for or against the defendant,
15 Sammy Kay Cowan? If so, please stand.

16 (There was no response.)

17 THE COURT: Counsel, approach just a minute.

18 (WHEREUPON, a bench conference was had.)

19 THE COURT: Is any member of the jury panel or a
20 close family member a member of or a supporter of any
21 organization which supports police organizations such as
22 Fraternal Order of Police, Troopers Association, any other
23 police department that either is a member of that or
24 contributes money to the support of any of those
25 organizations? If so, please stand.

1 POTENTIAL JUROR: My husband is a member of F. O. P.

2 THE COURT: Ma'am, I need your name and let us get
3 your number.

4 POTENTIAL JUROR: Nancy Pebbles.

5 THE CLERK: 106, Your Honor.

6 THE COURT: 106. Ma'am, is there anything about
7 your husband's support of that organization that interferes in
8 any way with your ability to give both the State and the
9 defendant a fair and impartial trial in this case?

10 MS. PEBBLES: No.

11 THE COURT: Thank you, ma'am. You may be seated.

12 Yes, ma'am?

13 POTENTIAL JUROR: Deborah Epps, juror number 44.

14 THE COURT: Yes, ma'am?

15 MS. EPPS: My husband and I both are supporters of
16 the Fraternal Order of Police and State Troopers Association.

17 THE COURT: Ma'am, is there anything about your
18 support of those organizations that interferes in any way with
19 your ability to give both the State and the defendant a fair
20 and impartial trial in this case?

21 MS. EPPS: No, sir.

22 THE COURT: Thank you, ma'am. You may be seated.

23 Yes, sir?

24 POTENTIAL JUROR: Fred Bariou, 14, treasurer of
25 Anderson Area Crime Stoppers and supporter of F. O. P.

1 THE COURT: Let me ask you, sir, whether your
2 support and work with that organization would interfere in any
3 way with your ability to give both the State and the defendant
4 a fair and impartial trial in this case?

5 MR. BARIOU: No, sir.

6 THE COURT: Thank you, sir. You may be seated.

7 Anyone else?

8 (There was no response.)

9 THE COURT: Is anyone on the jury panel or member of
10 your close family a member of or contribute to any advocacy
11 groups such as Mothers Against Drunk Driving, Students Against
12 Drunk Driving, Citizens Against Violent Crime anywhere or any
13 other similar organization which supports tougher criminal
14 penalties in this State? If so, please stand.

15 Yes, ma'am, please give us your name.

16 POTENTIAL JUROR: Nicole McMahan, transfer 15. I
17 was a member of SADD when I was in high school.

18 THE COURT: Ma'am, is there anything about your
19 support of that organization when you were in high school that
20 interferes in any way with your ability to give both sides a
21 fair and impartial trial in this case?

22 MS. MCMAHAN: No, sir.

23 THE COURT: Thank you, ma'am. You may be seated.

24 Anyone else? Yes, ma'am, please give us your name
25 and number again.

1 POTENTIAL JUROR: Deborah Epps, juror 44.

2 THE COURT: Yes, ma'am?

3 MS. EPPS: Mothers Against Drunk Driving and DARE.

4 THE COURT: Ma'am, is there anything about your
5 support of that organization that would interfere in any way
6 with your ability to give both sides a fair and impartial
7 trial in this case?

8 MS. EPPS: No, sir.

9 THE COURT: Thank you, ma'am. You may be seated.
10 Anyone else?

11 (There was no response.)

12 THE COURT: Can each member of the jury panel give
13 both the State and the defendant, Sammy Kay Cowan, a fair and
14 impartial trial in this case? If not, please stand.

15 (There was no response.)

16 THE COURT: Does any member of the jury panel know
17 of any reason whatsoever why he or she should not serve as a
18 juror in this particular case? If so, please stand.

19 (There was no response.)

20 THE COURT: Any additional questions requested of
21 the jury panel from the State?

22 MR. CAMPBELL: None from State, Your Honor.

23 THE COURT: From the defense?

24 MS. THOMASON: None from the defendant, Your Honor.

25 THE COURT: Now, Counsel, strikes will be 10 and 5,

1 2 and 1 on alternate. We'll draw 1 alternate.

2 Madam Clerk, please give us a jury.

3 THE CLERK: Ladies and gentlemen, as I call your
4 name I'll ask that you come forward, bring any personal
5 belongings with you. Stand right up here in this area. I'll
6 ask you to face the State's table and the Defense table then
7 we'll either tell you to have a seat in the jury box or to
8 return to your seat. Thank you.

9 Juror number 109, Michael Phillips. Number 109.

10 (A white male came forward.)

11 THE CLERK: What say you for the State?

12 MR. CAMPBELL: Please excuse this juror.

13 THE CLERK: You may return to your seat. Thank you,
14 Mr. Phillips.

15 Number 125, William Saylor. Number 125.

16 (A white male came forward.)

17 THE CLERK: What say you for the State?

18 MR. CAMPBELL: Please present Mr. Saylor.

19 THE CLERK: What say you for the defendant?

20 MS. THOMASON: Excuse the juror in this case.

21 THE CLERK: You may return to your seat. Thank you,
22 Mr. Saylor.

23 Number 69, Mark Kennedy. Juror number 69.

24 (A white male came forward.)

25 THE CLERK: What say you for the State?

1 MR. CAMPBELL: Please present Mr. Kennedy.

2 THE CLERK: Say you for the defendant?

3 MS. THOMASON: Swear the juror.

4 THE CLERK: If you'll please have a seat right up
5 there in the jury box, Mr. Kennedy.

6 Number 12, Theodore Balk. Juror number 12.

7 (A white male came forward.)

8 THE CLERK: What say you for the State?

9 MR. CAMPBELL: Please present Mr. Balk.

10 THE CLERK: What say you for the defendant?

11 MS. THOMASON: Excuse the juror in this case.

12 THE CLERK: Thank you, Mr. Balk.

13 Number 57, Sandra Head. Juror number 57.

14 (A white female came forward.)

15 THE CLERK: What say you for the State?

16 MR. CAMPBELL: Please present Ms. Head.

17 THE CLERK: What say you for the defendant?

18 MS. THOMASON: Excuse the juror in this case.

19 THE CLERK: Thank you.

20 Number 2, Stephen Ackerman. Number 2.

21 (A white male came forward.)

22 THE CLERK: What say you for the State?

23 MR. CAMPBELL: Please present Mr. Ackerman.

24 THE CLERK: What say you for the defendant?

25 MS. THOMASON: Swear the juror.

1 THE CLERK: Have a seat in the jury box, please,
2 Mr. Ackerman.

3 Number 6, Catherine Asalone. Number 6.

4 (A white female came forward.)

5 THE CLERK: What say you for the State?

6 MR. CAMPBELL: Please present Ms. Asalone.

7 THE CLERK: What say you for the defendant?

8 MS. THOMASON: Swear the juror.

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

10 Number 128, Charles Shaw. Juror number 128.

11 (A white male came forward.)

12 THE CLERK: What say you for the State?

13 MR. CAMPBELL: Please present Mr. Shaw.

14 THE CLERK: What say you for the defendant?

15 MS. THOMASON: Swear the juror.

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

17 Number 106, Nancy Pebbles.

18 (A white female came forward.)

19 THE CLERK: What say you for the State?

20 MR. CAMPBELL: Please present Ms. Pebbles.

21 THE CLERK: What say you for the defendant?

22 MS. THOMASON: Excuse the juror in this case.

23 THE CLERK: Thank you, Ms. Pebbles.

24 Number 161, Aretha Williams. Juror number 161.

25 (A black female came forward.)

1 THE CLERK: What say you for the State?

2 MR. CAMPBELL: Please present Ms. Williams.

3 THE CLERK: What say you for the defendant?

4 MS. THOMASON: Excuse the juror in this case.

5 THE CLERK: Transfer number 14, Richey Knight.

6 Transfer 14.

7 (A white male came forward.)

8 THE CLERK: What say you for the State?

9 MR. CAMPBELL: Present Mr. Knight.

10 THE CLERK: What say you for the defendant?

11 MS. THOMASON: Swear the juror.

12 THE CLERK: Have a seat in the jury box, sir.

13 Transfer number 17, Roxie Moore. Transfer 17.

14 (A white female came forward.)

15 THE CLERK: What say you for the State?

16 MR. CAMPBELL: Please present Mr. Moore.

17 THE CLERK: What say you for the defendant?

18 MS. THOMASON: Excuse the juror in this case.

19 THE CLERK: Number 142, Kevin Strickland, 142.

20 (A white male came forward.)

21 THE CLERK: What say you for the State?

22 MR. CAMPBELL: Please present Mr. Strickland.

23 THE CLERK: What say you for the defendant?

24 MS. THOMASON: Swear the juror.

25 THE CLERK: Have a seat in the jury box, please.

1 Number 29, Kimberly Chabek. Number 29.

2 (A white female came forward.)

3 THE CLERK: What say you for the State?

4 MR. CAMPBELL: Please present Ms. Chabek.

5 THE CLERK: What say you for the defendant?

6 MS. THOMASON: Swear the juror.

7 THE CLERK: Have a seat in the jury box.

8 Transfer number 11, Nancy Garval. Transfer 11.

9 (A white female came forward.)

10 THE CLERK: What say you for the State?

11 MR. CAMPBELL: Please present Ms. Garval.

12 THE CLERK: What say you for the defendant?

13 MS. THOMASON: Swear the juror.

14 THE CLERK: Have a seat in the jury box.

15 Number 28, Letty Carr. Juror Number 28.

16 (A white female came forward.)

17 THE CLERK: What say you for the State?

18 MR. CAMPBELL: Please present Ms. Carr.

19 THE CLERK: What say you for the defendant?

20 MS. THOMASON: Excuse the juror in this case.

21 THE CLERK: Thank you, Ms. Carr.

22 Number 150, Joyce Tollison. Number 150.

23 (A white female came forward.)

24 THE CLERK: What say you for the State?

25 MR. CAMPBELL: Please present Ms. Tollison.

1 THE CLERK: What say you for the defendant?

2 MS. THOMASON: Excuse the juror in this case.

3 THE CLERK: Thank you, Ms. Tollison.

4 Transfer 23, Michelle Wilson. Transfer 23.

5 (A white female came forward.)

6 THE CLERK: What say you for the State?

7 MR. CAMPBELL: Please present Ms. Wilson.

8 THE CLERK: What say you for the defendant?

9 MS. THOMASON: Excuse the juror in this case.

10 THE CLERK: Thank you, Ms. Tollison.

11 Number 101, Evelyn Owen. Number 101.

12 (A white female came forward.)

13 THE CLERK: What say you for the State?

14 MR. CAMPBELL: Please present Ms. Owen.

15 THE CLERK: What say you for the defendant?

16 MS. THOMASON: Swear the lady.

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

18 Number 27, Dennis Carlton. Number 27.

19 (A white male came forward.)

20 THE CLERK: What say you for the State?

21 MR. CAMPBELL: Please present Mr. Carlton.

22 THE CLERK: What say you for the defendant?

23 MS. THOMASON: Swear the juror.

24 THE CLERK: Have a seat, please, Mr. Carlton, in the

25 jury box.

1 Transfer number 10, Morris Freeman. Transfer 10.

2 (A white male came forward.)

3 THE CLERK: What say you for the State?

4 MR. CAMPBELL: Present Mr. Freeman.

5 THE CLERK: What say you for the defendant?

6 MS. THOMASON: Excuse the juror in this case.

7 THE CLERK: Thank you, Mr. Freeman.

8 Number 173, Joseph Young. Number 173.

9 (A white male came forward.)

10 THE CLERK: What say you for the State?

11 MR. CAMPBELL: Please present Mr. Young.

12 THE CLERK: What say you for the defendant?

13 MS. THOMASON: Swear the juror.

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

15 Number 136, Christopher Smith. Number 136.

16 (A white male came forward.)

17 THE CLERK: What say you for the State?

18 MR. CAMPBELL: Present Mr. Smith.

19 THE CLERK: What say you for the defendant?

20 MS. THOMASON: Swear the juror.

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

22 Mr. Smith.

23 Number 47, Kathy Foster, for the alternate.

24 (A white female came forward.)

25 THE CLERK: What say you for the State?

1 MR. CAMPBELL: Present Ms. Foster.

2 THE CLERK: What say you for the defendant?

3 MS. THOMASON: Swear the juror.

4 THE CLERK: Have a seat, please, Ms. Foster. You'll
5 have a seat in the second row. You'll be our alternate juror.
6 Thank you.

7 THE COURT: Any questions concerning the selection
8 process from the State?

9 MR. CAMPBELL: None from the State, Your Honor.

10 THE COURT: From the defense?

11 MS. THOMASON: None, Your Honor.

12 THE COURT: Counsel, approach just a minute.

13 (WHEREUPON, a bench conference was had.)

14 THE COURT: Ladies and gentlemen of the jury panel
15 who were not selected for this particular case, I'm going to
16 go ahead and excuse you at this time. I would ask that you
17 call in tonight after 7 o'clock to the voicemail number and
18 you'll get a message at that time as to when you either need
19 to report back or call back again, as the case may be.

20 Madam Clerk is going to hand you out that number, I
21 think, in just one moment. So when you get that number,
22 remember, you can't leave a message on there. You can only
23 receive a message. You can call any time after 7:00 you want
24 to. Like, you can call 10 or 11 o'clock, if you want to.
25 Just call after 7:00.

1 (WHEREUPON, further instructions were given by the
2 Clerk to the jury venire about the call-in system.)

3 THE COURT: And it will tell you when to report back
4 or call back, as the case may be. We are going to free you up
5 as much as we can. Please enjoy the balance of the day.
6 Thank you for your patience, and you're free to go.

7 (WHEREUPON, the jury venire was excused for the
8 day.)

9 THE COURT: Counsel, it's late enough in the day. I
10 think I'm just going to go ahead and let the jury go to lunch
11 at this time. And we'll take lunch and come back and get
12 started with the case after that. I thought I might give them
13 a preliminary instruction but everybody is probably getting
14 pretty hungry so I'll wait.

15 Now, ladies and gentlemen of the jury panel, we're
16 going to go ahead and recess for lunch. There are a few
17 matters that I need to take up with counsel out of your
18 presence. So we'll take just a little bit longer than normal
19 for lunch hour. So I'm going to ask you to be back in the
20 jury room ready to go at 2:15.

21 By the courtroom clock it's about 7 minutes until
22 1:00, and I'm going to ask you to be back in the jury room at
23 2:15. That should give everybody plenty of time to get lunch
24 and get back, and the bailiff will direct you as to how to get
25 back there and how to go.

1 Now, please enjoy your lunch and please be back at
2 2:15. Thank you.

3 (WHEREUPON, the jury leaves the courtroom at
4 approximately 12:53 p.m.)

5 THE COURT: I intentionally didn't swear the jury
6 panel incase something comes up over the lunch time. So we'll
7 wait and do that. And I'll give them a preliminary
8 instruction and we'll go into opening statements as soon as we
9 start back.

10 Let me ask you how much in the way do we have of any
11 other pre-trial matters that we need to take up.

12 MS. THOMASON: Your Honor, I've looked at everything
13 that the Solicitor is intending on submitting in terms of
14 written evidence or physical evidence. I don't object to
15 anything. There's one thing, there's a 911 call and then
16 there's a transcript, and when he goes to put that in I don't
17 think we need the transcript if we got the audiotape, but
18 that's a minor issue.

19 The only thing that I would like to talk about
20 before we start our openings is I think the Solicitor through
21 the subpoenaing of the Greyhound people is going to try to
22 show for some reason that my client ran off after this event
23 occurred. There was not a warrant for him or anybody looking
24 for him as I understand it for three or four days after this
25 had happened. And so I'm going to object to any insinuation

1 or any evidence that he was, quote, unquote, on the run.

2 And the reason I want to talk about that before we
3 start openings is because obviously I don't want him using it
4 in openings if he's not going to be able to use it or present
5 that testimony. I'm not quite sure what the Greyhound person
6 plans to say. I know that there was some allegations that my
7 client had been with some family members in Atlanta and then
8 came back to Anderson.

9 But I don't know exactly what he's planning on
10 presenting in that line of questioning and I want to talk
11 about it or have your rule on it before he starts his opening
12 because I don't want him using that language if he can't
13 support it in the record.

14 THE COURT: Solicitor?

15 MR. CAMPBELL: Your Honor, regarding the defendant,
16 Mr. Cowan, in Georgia. This case was a late night shooting.
17 When law enforcement arrived at Club Envy they arrived within
18 4 to 5 minutes of the first 911 call that was placed.

19 Mr. Cowan, who is identified by several suspects,
20 had left the scene. The nature of this club, a lot of the
21 individuals had previous dealings with law enforcement and
22 they left the scene, those who were on the outside when the
23 shooting occurred almost before the police got there. It took
24 a little while to determine who the suspect was initially.

25 Another individual by the name of Kinshaba Simmons

1 was first named as a suspect. After Detective Reeves got
2 involved in the case he learned that it was actually Mr. Cowan
3 who did the shooting in the case, and from there he started
4 trying to find Mr. Cowan. It was determined through some
5 witnesses who called Detective Reeves that Mr. Cowan was in
6 Georgia looking for money and that he was at a bus station.

7 At that point, we subpoenaed the Greyhound records
8 and confirmed that this witness was telling the truth, that in
9 fact he had purchased not one but two bus tickets.

10 At that point, later in that week, it was about 5
11 days later, and Steven Miller called, the witness called
12 Detective Reeves. He was again looking for money.

13 At that point, they did a trace. They were able to
14 come in -- to find out the location. They went to the Hart
15 County Sheriff's Department, Hart City Police Department and
16 got a search warrant for the location of the phone number
17 that he had called from in Hartwell, Georgia. As a result,
18 he was arrested.

19 As a result, we tend to introduce this evidence that
20 in fact he left Anderson that night of the shooting, that he
21 did go to Atlanta and that he was subsequently captured about
22 5 days later in Hartwell, Georgia. And I think that's a very
23 vital part of the crime.

24 The warrant was actually obtained on February 7th,
25 Your Honor, by Detective Reeves, and therefore they started

1 looking for him, and it took awhile to get him here. And
2 that's the information we plan on introducing in our case.

3 MS. THOMASON: Your Honor, I have no objection to
4 the State introducing evidence of when the warrant was signed
5 by the Judge. Certainly that's admissible. Certainly where
6 he was arrested is admissible.

7 Now, the other information that was just relayed to
8 you by the Solicitor, I'm not sure if they are planning on
9 Detective Reeves bringing that in somehow. I don't know how
10 he's going to get around the hearsay rule, or if they have the
11 witnesses who called Detective Reeves present to testify. I'm
12 not sure who those people are, if they are here.

13 Certainly I'm going to object to Detective Reeves,
14 you know, calling -- I guess from the perspective of the fact
15 that they swore out a warrant and the fact that they found him
16 in Hartwell, they arrested him there, I don't have any
17 objection to that. But I don't think that there is any
18 evidence at all that Mr. Cowan in any way evaded police. You
19 know, they were looking for a suspect to serve a warrant.

20 The fact that, you know, it took them a couple days
21 to find him in Hartwell I don't think is any evidence that he
22 has evaded law enforcement. There's no evidence that he was
23 being chased or, you know, did something under an assumed name
24 or was hiding out somewhere so I just --

25 THE COURT: The warrant was issued on what date?

1 MR. CAMPBELL: February 7th. It was a Monday. He
2 actually had purchased a ticket from Atlanta to Bowling Green,
3 Kentucky on February the 2nd under the name Sam Cowan. The
4 next day on February the 8th a Greyhound ticket was also
5 purchased in the name of Sam Cowan from Atlanta to Athens.

6 We will have Greyhound people here to testify that
7 these tickets were actually not used. It's going to
8 corroborate what the witness is going to testify to. We do
9 have the witness that will testify that he made the phone
10 calls. We're going to link all of that up, and Detective
11 Reeves is also going to testify to that.

12 THE COURT: Counsel, you don't disagree that if he
13 was -- that warrant was issued on February the 7th, that if he
14 was buying, purchasing bus tickets in Georgia to other states
15 that that would come into evidence, for that purpose only?

16 MS. THOMASON: I haven't seen what they are planning
17 on presenting on that issue. My client, of course, denies
18 that he bought any bus tickets. So I don't know what they are
19 planning on putting in to show that he purchased a bus ticket.
20 He tells me he didn't.

21 THE COURT: Let's do this, Counsel. Let's stay away
22 from it in opening. Let's stay away from that in opening as
23 to any intent to flee by him until you can tie that in and
24 show it with the evidence. I don't think that's a hardship in
25 any manner. I think that you certainly can argue it in final

1 argument. If you have a problem with that I'll hear from you.

2 MR. CAMPBELL: I can hold off on -- let me just get
3 this straight. In my opening I can go into the fact that he
4 was captured in Hartwell, Georgia?

5 THE COURT: Absolutely.

6 MR. CAMPBELL: Just the point you're talking about
7 referring to Atlanta, when he went to Atlanta and purchased
8 two greyhound tickets?

9 THE COURT: Right.

10 MR. CAMPBELL: I can leave that out.

11 THE COURT: Wait until you tie it all in.

12 MR. CAMPBELL: I'll tie it in.

13 THE COURT: Of course, if you have people that come
14 testify to that then that's fine.

15 I'm just thinking on opening statement if he's got
16 people that are absolutely going to testify to that I don't
17 know why he can't get into it in opening statement. Do you,
18 Counsel, if he's going to have testimony to that effect?

19 MS. THOMASON: If he's got admissible testimony I
20 agree that he can go into what he's got evidence of. I was
21 concerned about what supporting evidence he had and how he
22 tends -- he is going to tend to portray that to the jury.

23 Obviously in closing he can argue anything once he's
24 presented the case as to what his position is on how or why
25 certain activities were done, and I can certainly respond to

1 that. I just didn't want him arguing in opening any evidence
2 that was not going to later be -- or that may later be ruled
3 inadmissible. I'd like to confer with him off the record for
4 a few minutes about the bus ticket issue.

5 THE COURT: Why don't you do that and when we come
6 back from lunch we'll take a couple minutes to revisit it at
7 that point, and it will give you a chance to discuss it a
8 little further.

9 MS. THOMASON: Yes, sir. Thank you.

10 THE COURT: Anything else?

11 MR. CAMPBELL: Yes, sir. I've got a couple things
12 I'm going to place, for the Court's record. We did file a
13 notice of intention to seek life imprisonment without parole.
14 This is due to a burglary first degree conviction, a voluntary
15 manslaughter conviction and ABWIK conviction.

16 I also have affidavit of service where it was served
17 to him at Anderson County Detention Center as well as the
18 affidavit of service where it was served on Ms. Thomason, and
19 I'll make that for the Court's record.

20 THE COURT: Let's make that part of the record.

21 (WHEREUPON, Court's Exhibit No. 1, Notice of Life
22 Sentence, was marked and made a part of the record.)

23 THE COURT: Counsel, you agree that that was served
24 on your client?

25 MS. THOMASON: Yes, Your Honor. I just asked him.

1 He acknowledges that he was served with those notices.

2 THE COURT: He understands the significance of that,
3 the three strikes rule?

4 MS. THOMASON: Oh, yes, sir, we've discussed it.

5 THE COURT: Anything else?

6 MR. CAMPBELL: Just a couple things we have
7 stipulated. We've already looked at this. She's already had
8 an opportunity, Ms. Thomason, to look at the evidence we tend
9 to introduce. We have stipulated to the 911 tape coming in
10 without having to call the custodian of the records for
11 Anderson County Emergency Services.

12 Several things that -- of course, we will go into it
13 when the defense has an opportunity to present their case. He
14 has an extensive record, and I do not plan on going into that
15 record on my direct, however if the door is opened I plan on
16 going into it. We are leaving out -- we're not going into
17 Lyle issues unless the door is opened.

18 THE COURT: You are saying going into your
19 presentation of your case. Only if he takes the stand and
20 testifies would you attempt to impeach him.

21 MR. CAMPBELL: Or she opens the door. I don't
22 expect Ms. Thomason to but if the door is open then I plan on
23 exploring that line of questioning further.

24 We're also going to be using people that have been
25 incarcerated with him at Anderson County Detention Center

1 where he has been talking, and we plan on using that against
2 him all in the State's case in chief.

3 THE COURT: And you are aware of those witnesses?

4 MS. THOMASON: I'm aware of those witnesses, Your
5 Honor. The one thing I don't have, and the Solicitor told me
6 he'd get them to me today, is rap sheets on all the
7 witnesses --

8 MR. CAMPBELL: I have them right here.

9 MS. THOMASON: -- because some of the other
10 witnesses have rap sheets as well. He'll give them to me.
11 I'm not worried about that. And I think that's everything,
12 Judge, that I can think of.

13 MR. CAMPBELL: He did -- just one more thing. I
14 know we're going to have some of the witnesses that heard and
15 are going to repeat what he stated at the scene of the crime
16 when the shooting took place, and some of the statements he
17 stated I've killed one of your boys, do it again. Basically,
18 along those lines. Because that is his statements, the
19 witnesses, we plan on letting them testify to that.

20 THE COURT: You don't disagree that that comes in if
21 it was made at the scene, Counsel?

22 MS. THOMASON: I'm not agreeing to the truth of
23 those statements, but I agree that if they are saying that he
24 said them that they are admissible.

25 THE COURT: Okay. Of course, that comes in under

1 exception of the hearsay rule.

2 MR. CAMPBELL: Yes, sir. And just for the record,
3 for the purpose of the record, I have here the defendant's
4 certified convictions which I will present Ms. Thomason, and
5 also the witnesses' rap sheets.

6 THE COURT: Okay. Anything else we need to address
7 pretrial?

8 (There was no response.)

9 THE COURT: You can talk about the bus issue.
10 That's the only thing we've got remaining. I understand that
11 -- well, let me just ask you for record, you've complied with
12 Rule 5 and Brady, is that correct, in so far as the defense?

13 MR. CAMPBELL: Yes, sir.

14 THE COURT: And you have all that information?

15 MS. THOMASON: Unless he surprises me with something
16 I believe I've got everything, Judge.

17 THE COURT: Okay. I just wanted to clear the record
18 on that.

19 Any other motions that the defense wants to make at
20 this time?

21 MS. THOMASON: No, sir, Your Honor.

22 MR. CAMPBELL: Nothing further from the State.

23 THE COURT: All right. Then we'll get some lunch,
24 and why don't we plan to take back up about 10 after 2:00, or
25 thereabouts, so we'll be ready to go at 2:15, and we can take

1 up the one remaining issue at that time. All right. Thank
2 you.

3 (WHEREUPON, a lunch break was taken.)

4 THE COURT: Counsel, ready to proceed?

5 MR. CAMPBELL: The State is ready, Your Honor.

6 MS. THOMASON: Defense is ready, Your Honor.

7 THE COURT: Anything else we need to take up,
8 including the matter before lunch?

9 MR. CAMPBELL: No, sir.

10 MS. THOMASON: No, sir.

11 THE COURT: I'll give them a preliminary instruction
12 and then we'll get right into opening statements.

13 (WHEREUPON, the jury enters the courtroom at
14 approximately 2:21 p.m.)

15 THE COURT: Good afternoon, ladies and gentlemen of
16 the jury panel. I hope you enjoyed your lunch today.

17 I'm going to ask the Clerk if she will at this time
18 to please swear in the jury panel.

19 (WHEREUPON, the jury was sworn.)

20 THE COURT: Ladies and gentlemen of the jury panel,
21 before we actually get started with trying the case I want to
22 give you what I call a preliminary charge, a preliminary
23 instruction as to what to expect as we go through the trial
24 and what your role will be in this trial.

25 I suspect that most of you have not been on a jury

1 in General Sessions or Criminal Court at the Circuit Court
2 level before and hopefully this information will make you a
3 little more comfortable in these unfamiliar surroundings.

4 Now, the first thing that will happen after I've
5 completed this instruction to you is that the attorney for
6 the State, who is an Assistant Solicitor, will make an
7 opening statement to you, and then the attorney for the
8 defendant will have the same opportunity to address you in an
9 opening statement.

10 These opening statements by the attorneys are not
11 evidence but you should pay close attention because they are
12 in essence going to identify to you what they perceive or say
13 the issues in the case are.

14 After they have made their opening statements to you
15 then the State will proceed by presenting the testimony and
16 evidence that they want you to consider, and the reason the
17 State goes first is the State has the burden of proof in this
18 case. There is no burden of proof upon the defendant to prove
19 his innocence.

20 The burden of proof is upon the State of South
21 Carolina to prove the charges against this defendant by
22 evidence that satisfies you, the jury, beyond a reasonable
23 doubt before you can return a verdict of guilty. If the State
24 fails to meet that burden of proof then your verdict must be
25 not guilty.

1 After the Assistant Solicitor has presented to you
2 the evidence that they want you to consider on behalf of the
3 State then the same opportunity will be afforded to the
4 defense. The defendant may but is not required to present any
5 testimony or evidence because the State has the burden of
6 proving the defendant guilty beyond a reasonable doubt.

7 The defendant does not have to prove he is innocent.
8 He is presumed innocent, and that presumption stays with him
9 throughout the trial and may only be removed if the State
10 meets its burden of proving the guilt of the defendant beyond
11 a reasonable doubt.

12 Now what is evidence? Evidence is the sworn
13 testimony you will hear from the witness stand, exhibits
14 admitted into the record for your consideration by me, the
15 presiding judge, and any stipulation of counsel.

16 Now, exhibits may take many forms such as documents,
17 pictures, videotapes, maps, diagrams and so forth.
18 Stipulations are agreements of facts by the attorneys. If the
19 attorneys enter into a stipulation of fact that will be made
20 known to you and you can consider it, give such weight to it
21 as you deem appropriate when you begin your deliberations in
22 this case along with all of the other testimony and evidence
23 in the case.

24 Sworn testimony, exhibits and stipulations of fact
25 are the only evidence you may consider in your deliberation of

1 the innocence or the guilt of the defendant. You may not
2 consider anything you heard from any other source about this
3 case in making your decision because that is not evidence.

4 After you have heard all the evidence then the
5 attorneys for the State and the defendant will once again
6 appear before you and make what we call closing arguments, and
7 we call them arguments because the attorneys are allowed at
8 that time to argue their positions and will attempt to
9 persuade you as to their view or position as to the facts.

10 Now, when you have heard final arguments from
11 counsel I will then charge you, which simply means to instruct
12 you, as to the law that applies to the issues in this case.

13 You will then retire to the jury room to deliberate and reach
14 your verdict.

15 Now, that's how a case is tried in General Sessions
16 Court, whether it be this case or any other case. Some cases
17 take a half a day or day, some cases take weeks, but the same
18 format applies in every case.

19 As the trial judge, I have three functions to
20 perform during the trial. I am the presiding officer and
21 therefore see that the trial is run in an orderly manner. I
22 decide based on rules of civil and criminal procedure whether
23 testimony and exhibits are admissible into evidence for your
24 consideration, and at the conclusion of the trial I instruct
25 you as to the law you must apply to the facts in this case in

1 reaching your verdict.

2 You, ladies and gentlemen, are also judges in this
3 case. You are the judges of the facts. In other words, you
4 determine the truth of the facts in this case.

5 Under our constitution I am not permitted as the
6 judge of the law to have an opinion about the facts. So I do
7 not get into whether I believe a witness or not. That is not
8 my function. I'm not even permitted to express an opinion, if
9 I had one, as to the facts in this case. So you, the jurors,
10 determine what is the truth of the facts.

11 Now, I do not permit jurors to take notes during the
12 trial because it is my experience that while writing notes you
13 may miss something very important for you to hear and you may
14 fail to observe a witness when testifying.

15 It is important that you pay careful attention to
16 all testimony and introduction of evidence since you must
17 judge the credibility or believability of the witnesses and
18 the weight to give all evidence introduced in this case in
19 determining the truth of the facts.

20 Now, during the trial the attorneys may object to
21 the admissibility of certain testimony or other evidence. I
22 will either sustain the objection, which means I agree and the
23 testimony or evidence may not be made part of the record for
24 your consider, or I will overrule the objection, which means
25 as the judge of the law I have determined that it is

1 admissible, it's part of the record for your consideration.

2 The mere fact that I have admitted it does not mean
3 that you must believe it or disbelieve it. I have simply
4 determined that it is admissible under our rules and it is up
5 to you then to believe it or disbelieve it and to assign such
6 weight to it as you determine to be appropriate.

7 At the conclusion of the trial when I send you to
8 the jury room every exhibit that is admitted into evidence
9 will be sent to the jury room for you to examine further and
10 to consider.

11 Now, to these charges in this case the defendant has
12 entered a plea of not guilty. The pleas of not guilty then
13 places upon the State of South Carolina the burden of proof in
14 this case. Under our constitution a person charged with a
15 criminal offense is presumed innocent.

16 Again, the defendant does not have to prove he did
17 not commit a crime. The State of South Carolina is required
18 to prove the charges made against the defendant by evidence
19 that satisfies you of his guilt beyond a reasonable doubt.

20 Ladies and gentlemen, whatever your verdict in this
21 case it must be your unanimous verdict. All 12 of you must
22 agree on the verdict which the foreperson is authorized to
23 write for the jury.

24 Ladies and gentlemen, you are not to discuss this
25 case at any time during the trial until I tell you and that

1 will not occur until you have received all of the evidence and
2 I have instructed you upon the law.

3 You should not discuss the case among yourselves and
4 you should not discuss it with your family, friends or anyone
5 else you might see on a break from court.

6 Let me explain the importance of that. You might
7 think well, what's wrong with us discussing the case as we go
8 along or what's wrong if somebody finds out I'm on a jury and
9 they want to know something about the case what's wrong with
10 me talking about the case?

11 The problem with talking about the case among
12 yourselves or with anyone else is once you start discussing
13 the case you start forming opinions, and you wouldn't be fair
14 to both sides of this case, both the State and the defendant,
15 if you didn't wait until you've heard all of the testimony and
16 evidence and I've instructed you upon the law before you began
17 deciding issues in this case or forming opinions in this case.
18 So please do not discuss it until I instruct you, and that
19 will be, as I say, after all of the evidence is in and I have
20 instructed you upon the law.

21 Now, if anyone should deliberately try to discuss
22 the case with you, you should not discuss it with them but
23 leave and report that attempt to me, to the bailiff or the
24 Clerk of Court. Give the best description of that person you
25 can to them. They will bring that information to me and I

1 will deal appropriately with that person. No one should try
2 to discuss the case with you. If they do, I certainly want to
3 be made aware of that.

4 Now, if there should be any media coverage of the
5 trial, and I never know about that, I do not know if there
6 will be media coverage or not, but if there should be, please
7 do not read, listen to or watch any media account of this
8 trial until after the trial is over.

9 If there should be some media coverage of the trial
10 and someone wants to save it for you until after the trial
11 you're welcome to read, listen to or watch any media account
12 after the trial is over, but please do not read, listen to or
13 watch any media account during the trial.

14 Now, there's no way we can insure the accuracy of
15 any account of what goes on in court and you need to base your
16 decision solely on the sworn testimony and evidence that comes
17 in during the course of the trial and from no other source.

18 Now, I'm concerned about your comfort and with your
19 ability to see and hear the testimony and evidence so you can
20 properly do your job. I'll try to take a break about every
21 hour and a half. If you need a break before the time a break
22 is taken, please raise your hand, right hand, let me know.
23 I'll take a break then as quickly after that as I can.

24 Now, if you cannot hear or see something you need to
25 hear or see during the course of the trial so you can properly

1 do your job, please do not hesitate to raise your right hand
2 and let me know and I'll make sure you are able to see and
3 hear so you can do your job. I try to anticipate that but I
4 may not always anticipate it. So don't hesitate to raise your
5 hand if you cannot hear or see something you need to hear and
6 see as the trial progresses.

7 If you wish to communicate with the Court, other
8 than needing a break or the inability to see or hear, please
9 write the message down on a tablet that will be provided for
10 you in the jury room. Give that to the bailiff. The bailiff
11 will bring it to me and I will either correspond in like
12 manner or I'll bring you back out in the courtroom and respond
13 as the case may be. That's how we should communicate, you now
14 having been sworn as jurors in this case.

15 Now, I want to explain the role of the alternate.
16 Ms. Foster, you are the alternate in this case. We'd ask that
17 you keep the same seat throughout this trial, if you will,
18 please. And the role of the alternate is the same as the
19 first 12 jurors chosen, and that's to listen carefully to the
20 testimony and evidence because if for any reason an emergency
21 should develop with regard to one of the first 12 jurors
22 chosen and we had to excuse that juror you would automatically
23 fill in for the missing juror and help deliberate and reach a
24 verdict. You could not do that if you hadn't listened
25 carefully to the testimony and evidence.

1 Now, I have asked juror number 2, Stephen Ackerman,
2 sir, I've asked that you serve as foreperson of this jury, and
3 I'll explain the role of the foreperson. The foreperson is
4 asked to serve as spokesperson for the jury back to the Court.

5 So if there's a matter that needs to come to the
6 attention of the Court from the jury I'd ask that you write
7 that down on a tablet provided back in the jury room and give
8 it to the bailiff who will bring it to me. As I've said, I'll
9 correspond in like manner or bring you back out in the
10 courtroom to respond.

11 We also ask that the foreperson serve as a moderator
12 once we've reached the deliberative stage of the trial to make
13 sure everyone is allowed to participate in those
14 deliberations, maintain some order in those deliberations.

15 And then finally, once a unanimous verdict is
16 reached by the jury, to record the verdict on verdict forms
17 which will be provided to you and explained to you at the
18 appropriate time at the conclusion of the trial.

19 The primary role of the foreperson is the same as
20 every other juror, and that's to listen carefully to the
21 testimony and evidence so you'll be in a position to
22 deliberate and help reach a verdict in this case.

23 Now, ladies and gentlemen, I hope this information
24 is helpful to you. And we're going to actually get started
25 with the trial now. I ask that you listen attentively as

1 counsel address you in opening statement.

2 Counsel, ready to proceed?

3 MR. CAMPBELL: Please the Court?

4 THE COURT: Yes, sir, Solicitor.

5 MR. CAMPBELL: Ms. Thomason.

6 Ladies and gentlemen of the jury, on the night of
7 February 6th, 2005, 5 gunshots were fired outside of Club Envy
8 on South Murray Avenue here in Anderson County.

9 Those 5 gunshots abruptly halted the festive mood
10 that is ongoing at Club Envy. See, February 6th, 2005 is
11 Super Bowl Sunday, the Patriots playing the Eagles in the
12 Super Bowl. Club Envy was having a party, and it was a good
13 one. There were 300 plus people there, big screen TV,
14 strippers and a lot of drinking going on.

15 It was about midnight when these 5 gunshots were
16 fired outside the club. And when that smoke cleared Frederick
17 or Fred Penn laid dead facedown in the asphalt in that parking
18 lot. As he laid there his life blood seeped out of the 5
19 gaping wounds in his body.

20 At that time, right before it had happened, due to
21 quick thinking of one of the security guards at Club Envy, he
22 called 911. Law enforcement arrived within 4 to 5 minutes,
23 secured the scene. Security, they locked down the club so
24 those inside couldn't get out. But still, by this time the
25 shooter, the one that killed Fred Penn had already left.

1 Also the people that left were some of the ones who
2 actually saw what happened, and you'll get an opportunity to
3 hear from some of them. They are going to take the stand.

4 Detective Steve Reeves, seated right here, was the
5 detective on-call that night, and he was given the task of
6 trying to figure out who done it, because these witnesses you
7 are going to hear from, I'll just go ahead and be up front
8 with you, you may not like them. You may not like who they
9 are, what they stand for because most of them have been
10 involved in the criminal justice system, some have done time.

11 Other people you may hear from you may not like the
12 decisions they make. But they are all going to tell you a
13 story. You are going to listen to what they have to say
14 because each of them have a little piece of the puzzle in this
15 case to point to the killer who the State alleges is Sammy Kay
16 Cowan seated right there in the gray shirt.

17 When Detective Reeves arrived at Club Envy they were
18 able to get a few witnesses and start talking to them. And
19 what they learned is that Mr. Penn, the victim in this case,
20 had gotten into verbal and physical altercation, fight with a
21 guy by the name of Kinshaba Simmons.

22 Security then took them outside, says you all get
23 out of here. Well, they continued. And while they were going
24 back and forth at one another Mr. Penn didn't know Mr. Cowan
25 had slipped outside, and while they were going at it, Kinshaba

1 Simmons and Mr. Penn, the State alleges that Sammy Kay Cowan
2 walked up to him with a 357 Magnum or shooting 38 bullets and
3 fired 5 shots slowly and deliberately.

4 And you can hear the gunshots. You're going to hear
5 the 911 tape when the security guard called requesting help
6 saying something is fixing to go down, send law enforcement
7 now. You can hear the gunshots start going off.

8 The 1st one is fired, 10 seconds later the 2nd one
9 is fired, 2 seconds later the 3rd one, 2 seconds later the 4th
10 one, 3 seconds later the 5th one. Mr. Penn was able to
11 actually walk 28 feet from the corner of the building where
12 this occurred where he dropped in the parking lot.

13 Now, Detective Reeves then has a monumental task of
14 trying to interview all these people and figure out what
15 happened, and one name kept coming up, Sammy Kay Cowan.
16 Eventually through the cooperation of several witnesses
17 Detective Reeves was able to locate Mr. Cowan in Hartwell,
18 Georgia, which is where he was arrested.

19 That is basically in a nutshell the facts of why we
20 are here today. The State has brought forward an indictment
21 alleging 2 counts, and as His Honor stated, this is not
22 evidence. This is what we allege. This is what the State has
23 to prove.

24 One is count 1 murder. That Sammy Kay Cowan did in
25 Anderson County on or about February 6th, 2005 feloniously,

1 willfully and with malice kill one Frederick Penn by means of
2 shooting him with a handgun and the victim died as a direct
3 result. The other one is possession of a firearm during the
4 commission of a violent crime, that violent crime being
5 murder, the firearm being the gun that fired the bullets that
6 killed Mr. Penn.

7 Now, this case is not a C. S. I. case, not a lot of
8 scientific evidence in it. This is basically a good old
9 fashioned pound the pavement work type police case. We don't
10 have a gun in this case to show because we're going to allege
11 that gun is long gone. Between the night of February 6th, the
12 night Mr. Cowan was apprehended in Hartwell, Georgia, we don't
13 know where that gun went to, gun or guns.

14 You're going to hear from some forensic people.
15 They are going to testify. One is going to be gunshot
16 residue, another one is going to be forensics firearms. They
17 recovered 4 slugs out of Mr. Penn and 1 out of the car where
18 he was standing.

19 You're also going to hear from a toxicologist. The
20 victim in this case, Mr. Penn, had been drinking. He had been
21 smoking marijuana that day. You'll get to hear all that.

22 Now, the State has the burden, as His Honor has
23 stated, to prove to you beyond a reasonable doubt that
24 Mr. Sammy Kay Cowan did commit these crimes. Reasonable doubt
25 is defined by our law as a doubt that would cause a reasonable

1 person to hesitate to act. That's legalese.

2 Let me just give you common sense. Common language
3 terms is, is that if the State, you feel the State proves
4 their case that Mr. Cowan is guilty then we have met that
5 burden of getting beyond a reasonable doubt. And, likewise,
6 if you feel we have not met our burden, that Mr. Cowan is
7 innocent, then find him not guilty.

8 The Judge stated you all are judges in this case,
9 you all judge the facts. You get to hear from these
10 witnesses. You can look them in the eye, you can eye them up,
11 down the other and you can determine, it's you all that has to
12 determine if they are telling the truth, if they are credible,
13 and from this, and from the evidence you get to look at you
14 come up with your decision in this case.

15 And at the end of this trial I'll have an
16 opportunity to speak to you all again in what we call closing
17 arguments. It's at that time, after you all have heard all
18 the testimony and viewed all the evidence that I'm going to
19 ask you to find Sammy Kay Cowan guilty of murdering Frederick
20 Penn on the night of February 6th, 2005 in Anderson County.
21 I thank you all.

22 MS. THOMASON: May it please the Court?

23 THE COURT: Counsel.

24 MS. THOMASON: Good afternoon, ladies and gentlemen.

25 As the Judge told you earlier, I'm Nancy Jo Thomason. I

1 practice law here in Anderson County, and I represent Sammy
2 Cowan, who is sitting at the table with me. And you've be
3 introduced to Jody McCurley, who is an investigator helping me
4 on this case.

5 In the words that you've just heard from the
6 Solicitor and in the words that you just heard from the Judge
7 the most important words -- five words that I think that you
8 heard, burden of proof, reasonable doubt, those are going to
9 be the most important words for you to remember and for you to
10 think about when you go back into the jury room to deliberate
11 this case.

12 As Mr. Cowan sits at that table with me he is
13 innocent. There is no question but that he is innocent. Our
14 law says that he is innocent. It is not until the State has
15 presented enough evidence to convince you otherwise.

16 We sometimes refer to it as the cloak of innocence
17 comes off of Mr. Cowan. He sits there just like every other
18 defendant in every other criminal case, he is presumed to be
19 innocent. He is innocent.

20 What you all have to decide is whether or not the
21 statements that are going to be made from that witness chair
22 are truthful enough, believable enough and trustworthy enough.
23 As the Solicitor said, you are going to hear from people who
24 were drinking a lot that day, people who were doing drugs or
25 have done drugs in the past, people who have committed crimes

1 and obviously been not so trustworthy in the past. That's
2 what you're going to hear from that witness stand.

3 There's no physical evidence in this case. There's
4 some photographs, there's a diagram, there's some bullets that
5 they took out of the victim. There's nothing in this case
6 that directly points the finger at Mr. Cowan or me or somebody
7 sitting out there, or anybody else. There's nothing that
8 physically relates this crime to Mr. Cowan or any other
9 possible defendant out there.

10 So what you've got to determine is whether the
11 people that you hear from sitting at that witness stand, when
12 they look at you and they talk to you and you hear about their
13 past and you hear about what they were doing that night,
14 whether or not based on those statements alone you can say
15 that Mr. Cowan is no longer innocent. That's where the burden
16 of proof comes in. They have the burden to convince you
17 otherwise. That's where reasonable doubt comes in.

18 You have the ability as the jury to say they put up
19 a good story, but you know what? I'm just not convinced. I
20 haven't heard anything that I can truly believe takes away
21 Mr. Cowan's innocence. I haven't heard from somebody
22 trustworthy enough. I haven't heard from somebody that I
23 don't think has some other motive. I haven't heard what I
24 need to hear to take away the cloak of innocence from
25 Mr. Cowan. And that's really what reasonable doubt is about.

1 If at the end of the case you have that kind of a
2 doubt and you are thinking to yourself I'm just not sure, I'm
3 just not sure I can trust those people that I heard from, that
4 is a reasonable doubt. And if that is the case you have to
5 find Mr. Cowan not guilty. At the end of the day or tomorrow
6 or the next day, depending upon when we get finished with this
7 case, I believe that's where you're going to be.

8 I believe you're going to have heard some things,
9 you're going to have heard some stories. None of them are
10 going to be complete stories, none of them are going to be
11 from people that you can completely trust. And I believe
12 that's where you are going to be sitting, is we just don't
13 know, we're just not sure. And in that event you must return
14 a verdict of not guilty. Thank you for your attention.

15 THE COURT: Please call your first witness.

16 MR. CAMPBELL: Your Honor, first we have stipulated
17 to the 911 tape.

18 MS. THOMASON: Your Honor, I have no objection to
19 the 911 tape coming in.

20 MR. CAMPBELL: I want to play that.

21 THE COURT: You may publish it.

22 (WHEREUPON, State's Exhibit No. 22, a 911 Audiotape,
23 was admitted into evidence; and played for the jury.)

24 MS. THOMASON: Your Honor, may we approach?

25 (WHEREUPON, a bench conference was had.)

1 THE COURT: Mr. Foreman, ladies and gentlemen of the
2 jury, we're going to take a short recess at this time. You
3 may refresh yourself during the break. You'll have
4 refreshments back in the jury room. You may refresh yourself
5 during this break. We'll probably take about 10 minutes or
6 so. Thank you.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 3:07 p.m.)

9 THE COURT: Let hear from you now, please, ma'am, on
10 the record.

11 MS. THOMASON: Your Honor, I just want to make sure
12 before we start with the testimony of live witnesses that we
13 sequester those witnesses who are not testifying at that time.

14 THE COURT: That's your motion?

15 MS. THOMASON: Yes, sir.

16 THE COURT: Solicitor, oppose the motion?

17 MR. CAMPBELL: No, sir.

18 THE COURT: Then we'll do this. The witnesses will
19 be sequestered, those that are going to be testifying in the
20 case, which means you have to remain outside the courtroom
21 until after you testify, and then even after you testify you
22 cannot go back out and discuss with the witnesses who have not
23 testified what your testimony was or what you heard while you
24 are in the courtroom, or even after you testify whenever you
25 are in the courtroom you can't go back and tell somebody who

1 has not testified.

2 So sequestration means not only waiting outside the
3 courtroom until after you testify but also not discussing
4 your testimony or anything you heard in the courtroom while
5 you testify or after you testify with witnesses who have not
6 yet testified.

7 So that's the sequestration rule and, of course,
8 I'll leave it up to counsel to make sure that the persons who
9 are going to testify are not in the courtroom before they
10 testify. So I'll let you tend to that now. I don't know who
11 your witnesses are.

12 MR. CAMPBELL: Thank you, Your Honor.

13 THE COURT: We'll take about 5 minutes or so, or 10.

14 (WHEREUPON, a brief recess was taken.)

15 MR. CAMPBELL: Your Honor, I have a motion to make.

16 THE COURT: Yes, sir.

17 MR. CAMPBELL: Your Honor, we had submitted several
18 subpoenas in this case, the State has, and one was a subpoena
19 to Kinshaba Simmons at [REDACTED] here in Anderson.
20 It was served on him October 27th.

21 Myself and Detective Reeves both met with him,
22 served him and he was supposed to be here at 9 o'clock this
23 morning. He has not shown up, besides our repeated contact.
24 We would ask that we be allowed to pick him up.

25 THE COURT: If you'll prepare a warrant, have him

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 picked up, yes, sir.

2 MR. CAMPBELL: Thank you, Your Honor.

3 THE COURT: Are you ready to proceed?

4 MR. CAMPBELL: Yes, Your Honor.

5 THE COURT: Please bring the jury in.

6 (WHEREUPON, the jury enters the courtroom at
7 approximately 3:28 p.m.)

8 THE COURT: Please call the next witness, sir.

9 MR. CAMPBELL: Your Honor, the State calls Randy
10 Allen Johnson.

11 ALLEN RANDOLPH JOHNSON, after having been duly
12 sworn, testified as follows:

13 THE CLERK: Please have a seat on the witness stand.
14 Please state your full name and spell your last name for the
15 record.

16 DIRECT EXAMINATION

17 BY MR. CAMPBELL:

18 Q. Please state your full name for the record.

19 A. My real name is Allen Randolph Johnson.

20 Q. Mr. Johnson, where do you live?

21 A. Anderson.

22 Q. And are you currently employed?

23 A. Yes, sir.

24 Q. And what do you do?

25 A. I'm a head cook at IHOP Restaurant.

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 Q. Do you have any other type of jobs?

2 A. I do security on the side.

3 Q. And who do you do that for?

4 A. A company called Tomaz [ph] Private Security Agency.

5 Q. I'm going to go ahead and just get this out of the

6 way. January of 2003 you were convicted forgery; is that

7 correct?

8 A. Yes, sir.

9 Q. Is that correct?

10 A. Yes, sir.

11 Q. Between a thousand and 5,000 --

12 MS. THOMASON: Excuse me. We're having a hard time

13 hearing the witness on this side of the room. If he might

14 could move a little closer to the microphone.

15 Q. Now, Mr. Johnson, you're from Anderson?

16 A. Yes, sir.

17 Q. Did you go to high school here?

18 A. Yes, sir.

19 Q. Where did you go to high school?

20 A. West Side.

21 Q. Now, I want to talk to you about the events that

22 occurred on February 6th, 2005; do you recall that day?

23 A. Yes, sir, I do.

24 Q. And why do you recall that day?

25 A. First time experience I'll never forget.

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 Q. Sir, you're going to have to speak up.

2 A. It's an experience that I will never forget.

3 Q. I'm sorry. I couldn't hear you.

4 A. An experience that I will never forget.

5 Q. That experience that you couldn't forget, what was
6 that?

7 A. Saw someone shot and killed.

8 Q. And where was someone shot and killed?

9 A. The club called Club Envy.

10 Q. And where is that located?

11 A. On, I believe South Murray.

12 Q. 3501 South Murray?

13 A. Yes, sir.

14 Q. Is that in Anderson County?

15 A. Yes, sir.

16 Q. Now, what was going on on February 6th, 2005?

17 A. A Super Bowl party.

18 Q. And did you work security?

19 A. Yes, sir, I did.

20 Q. At the club that day?

21 A. Yes, sir, I did.

22 Q. Now, were you actually scheduled to work security
23 that day? How had you come about working at the club?

24 A. It was a favor for an employee. I wasn't scheduled
25 to work.

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 Q. You were not scheduled to work there?

2 A. No, sir, it wasn't a contract assignment.

3 Q. But you were asked to work there and you did; is
4 that right?

5 A. Yes, sir.

6 Q. About what time did you get to the club?

7 A. I got there around the hours of 3 to 4.

8 Q. And when you got there -- as part of your duties in
9 working security what did you do?

10 A. You have to walk around and make sure everything is
11 okay, back doors are secure. If there's any video cameras
12 make sure they are working, and just make sure everyone comes
13 in safe and leaves safe.

14 Q. Does the club have a metal detector?

15 A. Yes, sir, I do.

16 Q. Is it one of the hand held ones or one of the ones
17 you walk through?

18 A. It's a magic -- it's called a magic wand. It's a
19 hand.

20 Q. Kind of like at the airport, they run over you?

21 A. Yes, sir.

22 Q. About your person. Now, the club, they were showing
23 the Super Bowl that day?

24 A. Yes, sir, they was.

25 Q. And anybody else working security with you?

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 A. There is another gentleman there that came in later
2 that night by the name of Blue. He was the doorman.

3 Q. And have you seen Blue recently?

4 A. No, sir, I haven't.

5 Q. Do you know where we can locate him?

6 A. No, sir.

7 Q. Now, after you got there did you make your rounds
8 and looked around to see if the club --

9 A. Yes, sir.

10 Q. -- was safe?

11 A. Yes, sir.

12 Q. Did you check the video cameras?

13 A. I glanced at the cameras. There was two working. I
14 believe there was the two that was disabled because of the
15 television setup, but the ones that was working was located
16 towards the dance floor and the pool table area.

17 Q. But there was no tape that was recording what was
18 going on; is that correct?

19 A. From my understanding, no, sir.

20 Q. Now, during that night -- do you know Fred Penn?

21 A. Yes, sir.

22 Q. You know who he was; is that correct?

23 A. Yes, sir.

24 Q. Do you know approximately what time he came in that
25 night?

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

- 1 A. He came in around somewhere between 8:30, quarter to
2 9:00.
- 3 Q. He come in with anybody?
- 4 A. He came in with another gentleman.
- 5 Q. And what kind of mood was he in?
- 6 A. Cheerful, motivated, good mood, ready to party.
- 7 Q. And was there a party going on?
- 8 A. Yes, sir.
- 9 Q. A lot of people there?
- 10 A. There was quite a number of folks.
- 11 Q. Standing room only? Was it standing room only?
- 12 A. Yes, sir.
- 13 Q. And they serve alcohol at this club?
- 14 A. Yes, sir.
- 15 Q. So a lot of drinking going on?
- 16 A. Quite a bit.
- 17 Q. During that night did you have any occasion -- any
18 fights or anything like that break out inside the club?
- 19 A. I had a couple of arguments, a couple of situations
20 got instigated that we quickly broke up before it got out of
21 hand.
- 22 Q. Now, any of these arguments involve Mr. Penn?
- 23 A. There was one incident.
- 24 Q. What happened?
- 25 A. Mr. Penn and another gentleman by the name of

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 Kinshaba Simms [sic] had a conflict, a couple of words was
2 passed. It got a little heated so we had to escort them on
3 the outside of the building so they could leave the premises.

4 Q. Now, you know Kinshaba Simmons? Do you know him by
5 any other name?

6 A. I just know him by a nickname. We call him Pissy.

7 Q. So they were escorted outside; is that right?

8 A. Mr. Simms was escorted first. We escort them first.
9 They give the one of the people, one of the persons the
10 opportunity to get in the vehicle and leave and then we
11 proceed to escort the second person out of the building so
12 they can leave as well.

13 Q. Was that Mr. Penn?

14 A. The first person was escorted was Mr. Simms.

15 Q. But both of them were escorted out; is that correct?

16 A. Yes, sir.

17 Q. Now, after they got outside did either one of them
18 come back in?

19 A. No, sir.

20 Q. And did you eventually go outside with them?

21 A. Yes, sir.

22 Q. Please tell the ladies and gentlemen of the jury
23 what happened once you got outside.

24 A. Once I got them outside there was some more vocal
25 words passed. A number of people started to crowd around a

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 big circle. So when I seen the situation getting a little too
2 much for me to handle I got on the phone and I called 911.

3 Q. Now, let me step back. Were you armed?

4 A. No, sir, not at the time.

5 Q. Did you have any type of weapon on you?

6 A. No, sir.

7 Q. How about Kinshaba Simmons or Fred Penn; do you know
8 if they had any weapons on them?

9 A. No, sir.

10 Q. And how did you know that?

11 A. Because when they came in I was the one who searched
12 them.

13 Q. So you Searched them with the metal detector and
14 they had nothing on them; is that correct?

15 A. Yes, sir.

16 Q. Now, after this argument or whatever was taking
17 place between Mr. Simmons and Mr. Penn what happened?

18 A. I'm sorry. Could you repeat that?

19 Q. After the argument outside that was taking place
20 between Kinshaba Simmons and Fred Penn, what happened next?

21 A. The situation started to get a little heated. By
22 the time I was on the phone I seen Mr. Cowan run past me and
23 stand towards where they was standing with a gun down on his
24 left-hand side.

25 Q. Is Mr. Cowan in the courtroom today?

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 A. Yes, sir.

2 Q. Can you please identify him.

3 A. The gentleman right there (indicated).

4 Q. The man in the gray shirt?

5 A. Yes, sir.

6 Q. Now, besides Cowan do you know him by any other
7 name?

8 A. I just recently found out his name is -- they call
9 him Detroit.

10 Q. And when you walked outside did you speak to
11 Mr. Cowan?

12 A. No, sir.

13 Q. What did you observe him do once he was outside?

14 A. When he went past me he turned to, like, the left
15 side. I saw the gun down in his left hand, down on his left
16 side, screaming we run this "sh" Detroit style. This is south
17 side. I done killed one of your boys and I don't mind doing
18 it again.

19 Q. And how was he dressed?

20 A. Casual, khaki style, like, corduroys. Maybe a dark,
21 light brown khaki sweater with a ball cap that matched.

22 Q. All one color? It was all brown?

23 A. It was one whole brown outfit.

24 Q. Now, you saw a pistol in one of his hands?

25 A. Left side.

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 Q. Left side. And where were you standing when you
2 observed this?

3 A. I was standing towards the front door area of the
4 club on the phone with dispatcher. I was probably maybe two
5 steps off of the sidewalk.

6 Q. Were you here in the courtroom when we played the
7 911 tape?

8 A. Yes, sir.

9 Q. Did you hear the tape?

10 A. Yes, sir.

11 Q. The first call, was that you?

12 A. Yes, sir.

13 Q. On the telephone with 911?

14 A. Yes, sir.

15 Q. After you observed him go by you with a gun in his
16 hand which way did Mr. Cowan go?

17 A. He went towards the left side of the building. It's
18 like a corner where parked cars be. It kind of cuts off in
19 the corner. They were standing in that area of the club.

20 Q. And what did you observe next?

21 A. At that time, Mr. Cowan kind of disappeared from my
22 sight, and that's when I heard the gunshots go off.

23 Q. How many shots did you hear?

24 A. Five.

25 Q. Were they in random succession or were they slow?

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 How were they?

2 A. They was slug style, maybe 3 to 4 seconds apart.

3 Q. Now, this club, when you first saw him run by you
4 how close to him were you?

5 A. Maybe 10 to 15 feet from him.

6 Q. Closer than me to you?

7 A. About the same distance that we are now.

8 Q. And he had a gun in his hand?

9 A. Yes, sir.

10 Q. Now, when he ran by you did he say anything directly
11 to you?

12 A. No, sir.

13 Q. He was just stating what you said earlier; is that
14 right?

15 A. Yes, sir.

16 Q. Now, Club Envy, has it got lights in the parking lot
17 under the building?

18 A. Yes, sir.

19 Q. Could you see fairly well?

20 A. Yes, sir.

21 Q. And how long did you think you observed him?

22 A. I saw him for approximately maybe 10 or 15 seconds
23 before the shooting.

24 Q. And after you heard it, when the gunshots occurred
25 you didn't actually see the shooting; is that correct?

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 A. No, sir, I didn't.

2 Q. But you heard the gunshots go off?

3 A. Yes, sir.

4 Q. What did you observe next?

5 A. At the point in time when I heard the gunshots go
6 off I was standing out with my manager. When I heard the
7 gunshots go off I grabbed him and proceeded to take and run
8 behind the building.

9 Q. You say run behind, were you running towards Burson
10 Road or Murray?

11 A. Burson Road.

12 Q. Did you observe anything after that?

13 A. I just saw a group of fellows running from the
14 scene.

15 Q. You saw Mr. Cowan run from the scene?

16 A. I didn't actually see Mr. Cowan run from the scene.

17 Q. Did you see him after the shooting?

18 A. No, sir.

19 Q. And how many times did you talk to 911?

20 A. If I can remember, it was twice.

21 Q. And did law enforcement, Anderson County Sheriff's
22 Office show up quickly?

23 A. Within about five to eight minutes or so.

24 Q. And where was Mr. Penn? What happened to him?

25 A. He was laying facedown on the pavement.

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 Q. Did you see Mr. Penn walk out from the back corner
2 of the building?

3 A. I saw when he took about two to three steps and
4 collapsed.

5 Q. Did he fall face first or backwards?

6 A. Face first.

7 Q. After this did you actually go back around to see
8 where Mr. Penn was, to see if he was okay, check on him?

9 A. Yes, sir.

10 Q. And was he still alive at that point in time?

11 A. When I saw him he was still laying down. There was
12 another gentleman trying to find out what was going on, see if
13 he was all right.

14 Q. Did you observe any weapons around Mr. Penn?

15 A. No, sir.

16 Q. Did you go around the side or the corner of the
17 building to see if there was any weapons?

18 A. I searched certain areas --

19 Q. Did you find any?

20 A. -- as I glanced. No, sir.

21 Q. Now, you heard the 911 tape being played, right?

22 A. Yes, sir.

23 Q. Was that your voice on there saying Charlie, let's
24 go?

25 A. Yes, sir.

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 Q. Who were you referring to as Charlie?

2 A. At the time, the manager of the club, Charlie Jones.

3 Q. Now, when Mr. Cowan made the statements south side

4 -- what did he say, south side run this shit?

5 A. Yes, sir.

6 Q. What else did he say?

7 A. We run this. This is Detroit style. I done killed
8 one of your boys and I don't mind doing it again.

9 Q. Who was he stating that to? Was he stating to an
10 individual or just out in the open?

11 A. He was stating it out in the open. He just blurted
12 it out.

13 Q. Wasn't directed towards you or anybody in
14 particular?

15 A. No, sir.

16 Q. Mr. Johnson, will you please step off the stand,
17 sir.

18 A. (The witness complied).

19 Q. Now, Mr. Johnson, you were talking about where you
20 were standing when you made the 911 call.

21 A. Yes, sir.

22 Q. Would it be to the left of this picture or right in
23 front of it where this is?

24 A. Right here in the area (indicated).

25 Q. You were standing here right in this area?

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 A. Yes, sir.

2 Q. You're going to have to speak up for the court
3 reporter to hear you.

4 A. I was standing here in this area by the front door
5 (indicated).

6 Q. Now, where did you first see Mr. Cowan?

7 A. He ran from this direction coming past me as I was
8 standing here (indicated). They got about here towards the
9 corner where this B. M. W. was at (indicated).

10 When Mr. Penn was shot they was back towards this
11 area of the building (indicated). At the time of the
12 incident -- before the incident happened, Mr. Cowan was
13 standing here screaming south side run this, this is Detroit
14 style. I done shot one of your boys, I don't mind doing it
15 again (indicated).

16 When the incident -- when Mr. Penn was shot he took
17 two or three steps from this area and collapsed here
18 (indicated). Me and Mr. Jones took off back towards Burson
19 Road (indicated).

20 Q. That's for identification, State's Exhibit Number 7,
21 for identification.

22 I show you what's been marked for identification as
23 State's Exhibit Number 12. This is a daytime photo. Is this
24 the same -- is this the location -- does this show the same
25 area?

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 A. Yes, sir.

2 Q. Is this the back corner right here you were talking
3 about?

4 A. Yes, sir.

5 Q. And this is where you were standing out here in
6 front of these double doors?

7 A. Yes, sir.

8 Q. Let me ask you -- let me show you one more thing.
9 These are the lights you were referring to, part of them?

10 A. Yes, sir.

11 Q. Can you identify what this is, Mr. Johnson?

12 A. The printout of Club Envy.

13 Q. Is this like an overhead view looking straight down
14 at it?

15 A. Yes, sir.

16 Q. And is this the car that was in the picture right
17 here?

18 A. Yes, sir.

19 Q. And this is what you are indicating, you were
20 standing in front of these double doors about right here?

21 A. Yes, sir.

22 Q. And which way did Mr. Cowan come around?

23 A. From Burson Road area, around this way (indicated).

24 Q. And he came around here, but you didn't see the
25 shooting; is that right?

ALLEN RANDOLPH JOHNSON - DIRECT BY MR. CAMPBELL

1 A. No, sir.

2 Q. And which direction did he run? Did you see him
3 when he first ran to Burson Road and he had a pistol in his
4 hand?

5 A. No, sir, I didn't see him when he ran.

6 Q. When he came back did he have a pistol in his hand?

7 A. When he ran past me he stopped here with the pistol
8 down by the left side (indicated). That's when I saw the gun.
9 And at the time of the shooting I grabbed Mr. Jones and we
10 proceeded to run back toward this area around the building
11 (indicated).

12 I kind of turned and glanced and saw Mr. Penn
13 collapse here (indicated). About four to five, maybe six
14 fellows, guys ran toward this direction as we was running this
15 way (indicated).

16 Q. And over to the right, if you come out of the club
17 directly to the left would have been South Murray Avenue?

18 A. Yes, sir.

19 Q. Then to the right would have been Burson Road?

20 A. Yes, sir.

21 Q. You can have a seat, please, sir.

22 A. (The witness complied).

23 Q. I have no further questions. Mr. Johnson, will you
24 please answer any questions Ms. Thomason may have.

25 A. Yes, sir.

ALLEN RANDOLPH JOHNSON - CROSS BY MS. THOMASON

CROSS-EXAMINATION

1

2 BY MS. THOMASON:

3 Q. Good afternoon, Mr. Johnson.

4 A. How you doing?

5 Q. I'm Nancy Thomason, and I represent Mr. Cowan in
6 this case. I want to go over some of your answers to the
7 Solicitor's questions. First of all, I think you confirmed
8 that you have a conviction for forgery; is that correct?

9 A. Yes, ma'am.

10 Q. Did you do any time on that? Did you get probation
11 on that?

12 A. Probation.

13 Q. When the Solicitor first asked you about this case
14 you said -- or about what happened that night, you said you
15 saw Mr. Cowan with a gun, and you used those words, I saw
16 Mr. Cowan. Isn't it true that on February 7th, 2005 you
17 didn't know his name?

18 A. No, ma'am.

19 Q. That's a correct statement? You did not know his
20 name?

21 A. No, ma'am, I didn't.

22 Q. And, in fact, had he not been in the club that
23 night, too?

24 A. Yes, ma'am.

25 Q. He had been inside, had he not?

ALLEN RANDOLPH JOHNSON - CROSS BY MS. THOMASON

1 A. Yes, ma'am.

2 Q. So you would have checked him for weapons when he
3 came in just like you did the other gentleman that you spoke
4 of?

5 A. Yes, ma'am.

6 Q. And I believe it was Mr. Kinshaba Simmons. I think
7 you said he has a nickname?

8 A. Yes, ma'am.

9 Q. And what's that nickname?

10 A. Pissy.

11 Q. And does Fred Penn have a nickname?

12 A. I just know him by Fred or Frederick.

13 Q. All right. And so Fred and Kinshaba are the two
14 that have this problem?

15 A. Yes, ma'am.

16 Q. Or Fred and Pissy, if you're going to call him by
17 his nickname. That's what everybody calls him, right?

18 A. Yes, ma'am.

19 Q. So you are the one who threw them out, right?

20 A. It was me and another security officer.

21 Q. So you say then you all can't be acting like this in
22 here, get on outside?

23 A. Yes, ma'am.

24 Q. Is that right?

25 A. Not those words.

ALLEN RANDOLPH JOHNSON - CROSS BY MS. THOMASON

1 Q. But something to that effect?

2 A. Yeah. Yeah.

3 Q. And that was when you started to call 911, right,
4 because you thought you were going to have a problem with
5 these guys?

6 A. Yes, ma'am.

7 Q. And then at some point you said to the Solicitor
8 that you saw Mr. Cowan. We now know that at the time you
9 didn't know this person that you saw; is that correct?

10 A. That's right.

11 Q. So February 7th, 2005 you simply see a fellow walk
12 by you that you knew had been in the club earlier and you were
13 seeing him again when Fred and Kinshaba were fighting outside,
14 right?

15 A. Yes, ma'am.

16 Q. And Fred and Kinshaba were both around the corner to
17 your left when the shooting happens, correct?

18 A. Yes, ma'am.

19 Q. And you don't see the shooting, correct?

20 A. No, ma'am.

21 Q. So you don't know -- even if Mr. Cowan had had a
22 weapon you don't know whose hand the weapon was in when it was
23 shot, do you?

24 A. No, ma'am.

25 Q. Okay. Now, I'm interested because my understanding

ALLEN RANDOLPH JOHNSON - CROSS BY MS. THOMASON

1 is you called 911 because Kinshaba and Fred are fighting and
2 you're worried about what's going to go down with them,
3 correct?

4 A. I called 911 because the situation was getting too
5 out of control.

6 Q. And we heard the 9111 tape. You were in the
7 courtroom when that was played, didn't you?

8 A. Yes, ma'am.

9 Q. You heard that, right?

10 A. Yes, ma'am.

11 Q. And you cannot only hear you talking to 911 but you
12 can actually hear the background information as well; isn't
13 that true?

14 A. Yes, ma'am.

15 Q. In fact, you can hear some shots in the background
16 on that tape; is that right?

17 A. Yes, ma'am.

18 Q. My question to you is you talk about these
19 boisterous comments or these shouting comments that Mr. Cowan
20 supposedly made but you can't hear those on the tape, can you?

21 A. Which one, about the we run this?

22 Q. It being a south side thing and so forth. You don't
23 hear those on the 911 tape, do you?

24 A. At the time he said south side I was not on the
25 phone with 911. But you do hear him say we run this, because

ALLEN RANDOLPH JOHNSON - CROSS BY MS. THOMASON

1 I was standing there and seen him talking at the time.

2 Q. How do you not -- if you are on the phone with 911
3 because you are upset about what's going on with Kinshaba and
4 Fred because they are fighting and they are around the corner
5 and it's getting out of control, and you are on the phone
6 saying there's some stuff going down over here, you need to
7 get down here, and then the gunshots are fired, where in the
8 midst of all that is my client supposedly saying this Detroit
9 stuff?

10 A. You can hear it on the videotape. You know what I'm
11 saying?

12 Q. There is no videotape, is there?

13 A. I mean, on the 911 tape.

14 Q. Well, if it's not on the 911 tape it must not have
15 happened?

16 MR. CAMPBELL: Your Honor, I have to object. He's
17 already answered these questions.

18 THE COURT: Well, I'll let her try to clarify it.

19 Go ahead, Counsel.

20 BY MS. THOMASON:

21 Q. I missed your last answer to that question?

22 A. Could you repeat the question?

23 Q. Why don't we hear it on the 911 tape?

24 A. Because at the time that he said that I was not on
25 the phone with the dispatcher.

ALLEN RANDOLPH JOHNSON - CROSS BY MS. THOMASON

1 Q. Well, explain to me then because I'm not getting the
2 time correctly. You say you pick up the phone to call?

3 A. Yes, ma'am.

4 Q. And you are concerned about these other two people.
5 Mr. Cowan isn't even in the picture yet. And then you see him
6 and he's shouting these horrible things and then gun fire?

7 A. Yes, ma'am.

8 Q. So why don't we hear the shouts on the 911 call?

9 A. Because when I was saying south side runs this, I
10 was not on the phone with dispatch. I was in the process of
11 calling the dispatcher at the time the incident was getting
12 out of control. When dispatcher picked up the phone to say
13 hello, by that time I turned and saw Mr. Cowan standing with
14 the gun in his left hand shouting.

15 Q. And you never said to 911 there's a man with a gun
16 here. You didn't say that, did you?

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

18 Q. No, sir, I don't believe you did.

19 MR. CAMPBELL: Objection, Your Honor. She's getting
20 argumentative with the witness.

21 THE COURT: I sustain the objection. I sustain the
22 objection. Counsel, you don't testify. You let him answer,
23 please, ma'am.

24 MS. THOMASON: Yes, sir, Your Honor.

25 MR. CAMPBELL: May we approach, Your Honor.

ALLEN RANDOLPH JOHNSON - CROSS BY MS. THOMASON

1 THE COURT: Yes, sir.

2 (WHEREUPON, a bench conference was had.)

3 BY MS. THOMASON:

4 Q. Mr. Johnson, I've got some notes here from the tape.

5 I'm going to ask you another question and see whether or not

6 you agree with me or not.

7 Would you agree that you said on the tape we got a

8 battle fight now involving guns? Did you say that?

9 A. I don't recall saying that.

10 Q. Okay. Do you recall ever saying that you saw a

11 specific man with a gun?

12 A. No, ma'am.

13 Q. Do you recall describing anyone that had a gun?

14 A. No, ma'am.

15 Q. Do you recall saying that there was one person in

16 particular with a gun?

17 A. No, ma'am.

18 Q. And who was Charlie?

19 A. I'm sorry?

20 Q. Who is Charlie, the name that you screamed on the

21 tape?

22 A. At the point in time, he was my employer.

23 Q. He was who?

24 A. My employer, the person I worked for.

25 Q. Did he own the club?

ALLEN RANDOLPH JOHNSON - CROSS BY MS. THOMASON

1 A. No, ma'am.

2 Q. Was it your job to keep him safe?

3 A. As well as everyone else.

4 Q. What kind of gun did you see?

5 A. When I saw the gun it looked like a 9 millimeter
6 style, down to his left-hand side.

7 Q. I'm sorry. I didn't understand the last part.

8 A. Down on his left-hand side.

9 Q. What do you mean when you say a 9 millimeter?

10 A. You can only see maybe like the barrel and the
11 chamber of the gun.

12 Q. Do you remember telling the police that you had seen
13 a semiautomatic pistol?

14 A. I did say semiautomatic 9 millimeter style.

15 Q. I'm not familiar with guns so you have to bear with
16 me. Would a 9 millimeter, saying that I have a 9 millimeter,
17 would that automatically mean that's a semiautomatic? Are
18 those two terms synonymous?

19 A. Not exactly, but I have been around enough guns to
20 know.

21 Q. That would be what you would be talking about?

22 A. Yes, ma'am.

23 Q. As opposed to a revolver?

24 A. I didn't see a revolver. I saw the 9 millimeter
25 style type of gun.

ALLEN RANDOLPH JOHNSON - CROSS BY MS. THOMASON

1 Q. Has anybody told you since then, either law
2 enforcement, the solicitor's office or anybody else told you
3 that it was not a semiautomatic?

4 A. No, ma'am, they haven't.

5 Q. Has anybody told you that there were no shell
6 casings found?

7 A. No, ma'am.

8 Q. Has anybody told you not to mention what kind of gun
9 it was?

10 A. No, ma'am.

11 Q. So as far as you are concerned it was a
12 semiautomatic?

13 A. Yes.

14 Q. Do you know enough about guns to know that
15 semiautomatics leave a shell casing?

16 A. Yes.

17 Q. So, in your opinion, knowing what you know about
18 guns would it be fair to say if there were no shell casings
19 found the person who was shot was probably shot with a
20 revolver?

21 A. I only saw Mr. Cowan holding a gun on his left-hand
22 side?

23 Q. And on February 7th, the night of February 7th you
24 told law enforcement the person you saw had a semiautomatic;
25 is that correct?

ALLEN RANDOLPH JOHNSON - CROSS BY MS. THOMASON

1 A. Yes.

2 Q. I imagine being in the type of business you are in
3 you have to be on the lookout for those sorts of things, would
4 you not?

5 A. Pretty much, yes.

6 Q. Your job is to protect people and keep people safe?

7 A. In that describing, yes.

8 Q. Would you be pretty confident in your ability to
9 distinguish handguns?

10 A. Yes.

11 Q. Had you allowed -- or had you thrown out Kinshaba
12 Simmons earlier in the evening?

13 A. Yes, I did.

14 Q. For busting a beer bottle on the stage or near the
15 stage or something?

16 A. Yes, sir.

17 Q. And he had come back in?

18 A. At the time when I threw him back out he was trying
19 to come in. I was at the front door stopping him a number of
20 times. When I seen him come back in he was discussing
21 something with the owner of the club, and the owner of the
22 club allowed him to come in.

23 Q. And my point simply being is he had been in the
24 club, had caused problems?

25 A. Yes.

ALLEN RANDOLPH JOHNSON - CROSS BY MS. THOMASON

1 Q. Went outside the club and then came back in the
2 club; is that correct?

3 A. Once I put him out I don't let them come back in
4 unless the manager says so, but I don't let them come back in.

5 Q. But we know for certain he was back in because you
6 had to throw him out the second time when he started fighting
7 with Fred, right?

8 A. Yes, he did come back in.

9 Q. So he had been thrown out, brought back in and then
10 thrown out a second time?

11 A. Yes.

12 Q. And you are certain that you checked, now that you
13 know him as Mr. Cowan, Mr. Cowan for a weapon when he came in
14 as you did all the other customers; is that correct?

15 A. Yes.

16 Q. And just one last point about the weapon. In your
17 statement that you gave to police you not only called it a
18 semiautomatic but you even specified you thought it was a
19 Ruger; is that correct?

20 A. Yes.

21 Q. Did you make that statement to police?

22 A. Yes.

23 Q. And you made that statement on February 7th, 2005?

24 A. Yes. I said it was maybe a 9 millimeter Ruger
25 style.

ALLEN RANDOLPH JOHNSON - REDIRECT BY MR. CAMPBELL

1 MS. THOMASON: That's all I have.

2 MR. CAMPBELL: Just a few follow-up.

3 THE COURT: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. CAMPBELL:

6 Q. Mr. Johnson, when all of this was taking place, the
7 commotion and arguing outside was going on, did you ever hear
8 Mr. Penn say anything?

9 A. I heard Mr. Penn say I don't have time for this.
10 I'm about to go home. I got things to do. I have kids to
11 take care of. I don't have time to play with other people
12 kids.

13 Q. Was he directing that at Mr. Simmons or Mr. Cowan?

14 A. Mr. Simms [sic].

15 Q. It was after that that Mr. Cowan ran around the
16 corner with a pistol; is that correct?

17 A. A little shortly after that, yes.

18 Q. Now, when you made the call to 911 what was your
19 purpose in making that call? Why did you call them?

20 A. Because there was a number of guys surrounding
21 Mr. Penn as well as Mr. Simms. The situation got louder, a
22 little more restless, a little more under control -- excuse
23 me, not under control but more violent, so I decided to call
24 911 and get them down there.

25 Q. Was there anything you could do by yourself to stop

ALLEN RANDOLPH JOHNSON - REDIRECT BY MR. CAMPBELL

1 all what was going on?

2 A. At the time, being the only security there, there
3 was really nothing I could do, on the outside.

4 Q. But the only thing you could do was call 911, right?

5 A. Yes, sir.

6 Q. Now, when you talked to the 911 operator you didn't
7 know a shooting was going to take place, did you?

8 A. No, I did not.

9 Q. And while you were on the phone the shooting was
10 going on; is that correct?

11 A. Yes, sir.

12 Q. Did the 911 operator ever ask you to describe the
13 shooter?

14 A. No, sir.

15 Q. Your main focus was to get law enforcement there,
16 was it not?

17 A. Yes, sir.

18 MS. THOMASON: Objection, Your Honor. He's leading.

19 THE COURT: Please avoid leading, Counsel.

20 BY MR. CAMPBELL:

21 Q. And how many guns did you see Mr. Cowan with?

22 A. I saw Mr. Cowan with one gun on his left-hand side.

23 Q. And do you know what color it was?

24 A. Chrome.

25 Q. Chrome, silver color?

ALLEN RANDOLPH JOHNSON - REDIRECT BY MR. CAMPBELL

1 A. Yeah, silver color.

2 Q. After the shooting took place what did you do to the
3 club? What happened?

4 A. After the shooting took place me and Mr. Jones
5 proceeded to go around the building. Once I got him around
6 the building I went back on the inside of the club, tried to
7 get the crowd under control and locked the club down.

8 Q. So you locked the club down so nobody could go out?

9 A. Come in or go out.

10 MR. CAMPBELL: I have nothing further.

11 MS. THOMASON: Nothing further.

12 MR. CAMPBELL: Your Honor, we're done with this
13 witness.

14 THE COURT: Thank you, sir. You may stand down.

15 MR. CAMPBELL: I call, Your Honor, James Charlie
16 Jones.

17 JAMES CHARLIE JONES, after having been duly
18 sworn, testified as follows:

19 THE CLERK: You may have a seat on the witness
20 stand. Please state your full name and spell your last name
21 for the record.

22 MR. CAMPBELL: Your Honor, may Ms. Thomason and I
23 approach quickly?

24 THE COURT: Yes, sir.

25 (WHEREUPON, a bench conference was had.)

JAMES CHARLIE JONES - DIRECT BY MR. CAMPBELL

DIRECT EXAMINATION

1

2 BY MR. CAMPBELL:

3 Q. Can you please state your name for the record.

4 A. James Charlie Jones, Junior, J-o-n-e-s.

5 Q. Mr. Jones, you go by Charlie; is that correct?

6 A. Yes.

7 Q. I'll go ahead, Mr. Jones, and get some housekeeping
8 matters out of the way. April 13th of 1987 you were convicted
9 of or pled guilty to giving or offering a bribe; is that
10 correct?

11 A. Yes, sir.

12 Q. And you were placed on probation for that; is that
13 correct?

14 A. Yes, sir.

15 Q. Mr. Jones, I want to talk to you about the events
16 that occurred February 6th, 2005. Do you recall that day?

17 A. Yes, sir.

18 Q. Why do you recall that day?

19 A. There was an incident that happened at the club,
20 Super Bowl night.

21 Q. And were you manager of the club at this time?

22 A. Yes, sir.

23 Q. Now, you were not the owner; is that correct?

24 A. No, sir.

25 Q. You were just there helping out; is that correct, as

JAMES CHARLIE JONES - DIRECT BY MR. CAMPBELL

1 manager?

2 A. Yes, sir.

3 Q. Now, the club is called Club Envy?

4 A. Yes, sir.

5 Q. Do you have any involvement with the club today?

6 A. No, sir.

7 Q. Is it still called Club Envy today or has it changed
8 names?

9 A. It's changed names.

10 Q. Do you know what it's called now?

11 A. The sign says Club Moet.

12 Q. It's been named several things; is that right, in
13 the past? The club has changed names several times in the
14 past?

15 A. Since Envy?

16 Q. No, before Envy?

17 A. Yes, sir.

18 Q. Now, on February 6th, 2005, approximately what time
19 did you get to Club Envy?

20 A. Maybe one o'clock.

21 Q. And this is in Anderson; is that correct?

22 A. Yes, sir.

23 Q. And what was going on that day? What were you all
24 doing?

25 A. It was Super Bowl Sunday and we just had a Super

JAMES CHARLIE JONES - DIRECT BY MR. CAMPBELL

1 Bowl party, a free Super Bowl party.

2 Q. And did you all have a big screen TV; is that
3 correct?

4 A. Yes, sir.

5 Q. What other entertainment did you have going on?

6 A. We had some exotic dancers there for half-time show.

7 Q. Anything else?

8 A. Free food.

9 Q. And alcohol wasn't free; is that right?

10 A. No, sir.

11 Q. And when you got there were you the one that set up
12 the TV to play that night?

13 A. Yes, sir.

14 Q. And how did you set it up? Did you have to bring
15 any of your own equipment or does the club already have the
16 equipment?

17 A. It was my own home -- I guess you call it a
18 projector screen.

19 Q. And you brought that to the club and set it up?

20 A. Yes, sir.

21 Q. Now, about what time did people start arriving that
22 night or that day?

23 A. I'm thinking it was approximately 4:00, 5:00.

24 Q. Did you all have security that night?

25 A. Yes, sir.

JAMES CHARLIE JONES - DIRECT BY MR. CAMPBELL

1 Q. Was that initially the security that was supposed to
2 be there or were the people you had helping out, kind of last
3 minute?

4 A. They work with the security team that was provided
5 there.

6 Q. Did you have to call for them to come there.

7 A. No, sir, they was already on schedule.

8 Q. Now, during that night did you have an opportunity
9 to see Mr. Fred Penn?

10 A. Yes, sir.

11 Q. Did you know Fred Penn?

12 A. Yes, sir.

13 Q. And you know approximately what time he showed up?

14 A. I would say 10:30, 11:00. Something like that.

15 Q. It was after the ball game was already over?

16 A. I'm not real sure. I'm not a football fan.

17 Q. Did you talk to him, speak to him?

18 A. Yes, sir.

19 Q. Can you describe his mood or how he was acting?

20 A. He's always the same to me. I mean, we speak and we
21 joke a little bit and he go on about his business.

22 Q. Was he in good spirits that day?

23 A. Yes, sir.

24 Q. Now, did you have an opportunity so see Sammy Cowan
25 there?

JAMES CHARLIE JONES - DIRECT BY MR. CAMPBELL

1 A. Yes, sir.

2 Q. And do you know Mr. Cowan?

3 A. Yes, sir.

4 Q. How do you know him?

5 A. Through coming in the club.

6 Q. Is he in the courtroom today?

7 A. Yes, sir.

8 Q. Can you identify him?

9 A. He's right here (indicated).

10 Q. In the gray shirt?

11 A. Yes, sir.

12 Q. Now, at sometime during the day or that night did
13 you see any type of arguments or fights go on?

14 A. Yes, sir.

15 Q. And who was that between?

16 A. I don't honestly know the guy's name.

17 Q. At some point in time was Mr. -- do you know
18 Kinshaba Simmons?

19 A. Maybe by face, not by name.

20 Q. At some point in time, was Mr. Penn outside the
21 club?

22 A. Yes, sir.

23 Q. And did you have occasion to go outside the club,
24 also?

25 A. Yes, sir.

JAMES CHARLIE JONES - DIRECT BY MR. CAMPBELL

1 Q. And why was that?

2 A. I was just doing a routine check.

3 Q. And when you were outside was Mr. Johnson with you?

4 A. Yes, sir.

5 Q. Randy Johnson?

6 A. He was one of my security that night.

7 Q. And how many people were at the club that night,
8 approximately?

9 A. 200, 250, something like that. 250.

10 Q. High as 3?

11 A. It could have been. I honestly don't know.

12 Q. A lot of people?

13 A. Yes, sir.

14 Q. Was it more than was expected to show up?

15 A. Absolutely.

16 Q. Now, when you were outside with Mr. Johnson did you
17 observe Mr. Penn?

18 A. Yes, sir.

19 Q. And what did you observe?

20 A. By walking outside doing a routine check I saw some
21 guys over in the corner, I guess having an argument or
22 whatever, but the owner was there so I didn't get into it.

23 Q. And who was getting into an argument? Do you know
24 anybody that was?

25 A. I think it was Fred and someone else. I couldn't

JAMES CHARLIE JONES - DIRECT BY MR. CAMPBELL

1 see in the corner.

2 Q. Now, as this argument was going on did anything
3 happen that caught your attention?

4 A. Yes, we was -- Randy and I was just standing out
5 there. Like I say, I was doing a routine check, as I do all
6 the time, and I saw a guy coming by the club with a gun, and I
7 got out the way.

8 Q. Can you describe this guy?

9 A. Mr. Cowan.

10 Q. The individual seated in the courtroom today?

11 A. Yes, sir.

12 Q. How was he dressed?

13 A. I would say casual. He had a T-shirt on, I'm
14 thinking.

15 Q. Was he in all one color?

16 A. I'm thinking he had a T-shirt on and brown khaki
17 pants.

18 Q. And did you observe him with any type of handgun or
19 weapon?

20 A. Yes, sir.

21 Q. What did you observe?

22 A. Him coming over to the incident with the gun.

23 Q. And did you actually see Mr. Cowan point the gun and
24 pull the trigger?

25 A. No, sir.

JAMES CHARLIE JONES - DIRECT BY MR. CAMPBELL

1 Q. What did you observe?

2 A. I saw them -- the club is like -- it was in a
3 corner. They were in the corner where I normally park my car,
4 and I was standing on the other side observing, because like I
5 said, the owner was over there in the corner with them trying
6 to get it under control, whatever it was. I didn't know,
7 thinking about it, anything had even been started.

8 Q. Did you hear anything?

9 A. Five shots.

10 Q. And after you heard the shots what did you see?

11 A. Well, after I heard the shots -- well, there was one
12 shot, a pause, another shot, a pause then three other shots.
13 After that, the individual started running toward Randy and
14 myself. I didn't know he was running toward his car. He was
15 running toward us, so I started running.

16 Q. Who was running toward, you?

17 A. Mr. Cowan was.

18 Q. Did he have the gun in his hand when he was running
19 toward you?

20 A. Yes, sir.

21 Q. Did you see anybody else with any type of weapons or
22 guns in their hands?

23 A. No, sir.

24 Q. And the direction you went to, was that towards
25 Burson Road?

JAMES CHARLIE JONES - DIRECT BY MR. CAMPBELL

1 A. I ran around the club.

2 Q. If you are standing outside the club facing out the
3 doors to the right?

4 A. Yes, sir.

5 Q. Now, at the Club Envy was there security cameras at
6 the club?

7 A. It was, but they wasn't hooked up yet.

8 Q. Were they hooked up to TV's?

9 A. No, sir.

10 Q. So the videotape that was retrieved was blank, had
11 nothing on it; is that right?

12 A. No, sir.

13 Q. How many guns did you observe?

14 A. Two.

15 Q. And do you recall what color?

16 A. To be honest with you, I just saw them up in the air
17 like that, and I ran, just to be frank with you.

18 Q. Mr. Jones, if you could please step down. I'm going
19 to have you identify something.

20 A. (The witness complied).

21 Q. This has been marked for identification as State's
22 Exhibit 7. You said there was a car parked, and you normally
23 park your car in the corner. is this your car right here?

24 A. The second car is mine.

25 Q. This car right here?

JAMES CHARLIE JONES - DIRECT BY MR. CAMPBELL

1 A. I normally park mine where the B. M. W. is.

2 Q. So that was somebody else that basically beat you to
3 your spot?

4 A. That was one of my security guys.

5 Q. The security guys that day?

6 A. Yes.

7 Q. Now, when the shooting took place where were you
8 standing?

9 A. On the other side.

10 Q. You can point right here.

11 A. Over this way (indicated).

12 Q. Over here?

13 A. Yes, sir.

14 Q. Okay. And which way did you see Mr. Cowan initially
15 go?

16 A. When he first approached?

17 Q. Yes, sir.

18 A. He was running down this way (indicated).

19 Q. And did he run around the B. M. W.?

20 A. I honestly don't know because I couldn't see in that
21 corner.

22 Q. And after you heard the shots, where were you? Were
23 you over here or still in front over here?

24 A. I was over here (indicated).

25 Q. And Mr. Cowan ran toward you at that point in time

JAMES CHARLIE JONES - CROSS BY MS. THOMASON

1 with the guns in his hand?

2 A. Yes.

3 Q. Okay. But this was where the shooting took place;
4 is that correct?

5 A. Yes, sir.

6 Q. But you did not see the actual shooting, you just
7 heard it?

8 A. Right. I couldn't see in that corner over there.

9 Q. This is basically an overview of it. Is this the
10 corner you're referring to where the gunshots took place?

11 A. Yes, sir.

12 Q. And when you ran you were returning towards over
13 here, Burson Road; is that right?

14 A. I ran around the building.

15 Q. Go and have a seat, please, sir.

16 A. (The witness complied).

17 MR. CAMPBELL: Mr. Jones, please answer any
18 questions Ms. Thomason may have.

19 CROSS-EXAMINATION

20 BY MS. THOMASON:

21 Q. Mr. Jones, I'm Nancy Jo Thomason. I'm representing
22 Mr. Cowan in this case.

23 Do you remember giving a statement on February 7th,
24 2005 to one of the investigators at the sheriff's department?

25 A. Yes.

JAMES CHARLIE JONES - CROSS BY MS. THOMASON

1 Q. Would you agree with me that that was fairly close
2 in proximity in time to the events that took place the night
3 of the Super Bowl?

4 A. Yes.

5 Q. Would you agree with me that some of the information
6 you gave in that statement is different than the information
7 you've given here today?

8 A. No.

9 Q. You don't think so?

10 A. I wouldn't think so. Maybe I didn't say everything
11 that I said in that statement because I can't remember exactly
12 what was said word for word that night.

13 Q. Well, the first thing I want to ask you about is how
14 many shots you heard. In your statement do you remember being
15 fairly clear about hearing four shots and not five?

16 A. I think I told them four or five.

17 Q. Well, if your statement says I heard about four
18 shots. It sounded like one shot, a pause, another shot, a
19 pause then two more together. Does that sound correct, like
20 what you said in your statement?

21 A. It was three more together.

22 Q. Why didn't you tell them that on the night of your
23 statement, on the day of your statement?

24 A. I thought I did. I know it was three.

25 Q. You haven't discussed that with law enforcement or

JAMES CHARLIE JONES - CROSS BY MS. THOMASON

1 any investigator since the time that you gave your statement
2 on February 7th?

3 A. No.

4 Q. Your memory hasn't been enhanced by something you
5 read or saw about this case?

6 A. No.

7 Q. You're sure about that?

8 A. Absolutely.

9 Q. You also in your statement -- and I'm sure at this
10 point law enforcement is trying to get every piece of
11 information out of you they possibly can; is that right? I
12 mean, they are wanting to know how this all happened, right?
13 Mr. Penn is dead, right?

14 A. Right.

15 Q. And they are trying to find out how that happened,
16 right?

17 A. Right.

18 Q. So law enforcement is probably pressuring you pretty
19 hard to give every single bit of information they could
20 possibly find out; is that right?

21 A. No.

22 Q. They didn't ask you please try to remember every
23 single thing you can remember?

24 A. No one has asked me to please remember anything.
25 I'm just here to tell the truth, ma'am.

JAMES CHARLIE JONES - CROSS BY MS. THOMASON

1 Q. But when you gave your statement did you just say
2 I'll give you a statement, write down everything I'm going to
3 tell you and they never bothered to ask another question, or
4 did they try to say well, where were you at this particular
5 time, or where were the other people? Didn't law enforcement
6 ask you some specific questions?

7 A. He asked me to come to his car. I sit down in his
8 car, and he was asking me some questions.

9 Q. And I'm sure he was trying to be thorough, right?

10 A. Yes.

11 Q. I mean, a good law enforcement officer would be
12 thorough --

13 MR. CAMPBELL: Your Honor, I object. This is pure
14 speculation.

15 THE COURT: I sustain the objection, Counsel.

16 BY MS. THOMASON:

17 Q. Well, in your statement when you were sitting in the
18 car with that law enforcement officer you never identified
19 Mr. Cowan, did you?

20 A. Not by name, no, ma'am.

21 Q. In fact, in your statement you said just some black
22 guy. Isn't that what you put in your statement?

23 A. I guess.

24 Q. Then later on in your statement you said I looked
25 over and saw a different guy with a gun in each hand; does

JAMES CHARLIE JONES - CROSS BY MS. THOMASON

1 that sound right?

2 A. No.

3 Q. That doesn't sound right? Let me give you a copy of
4 your statement and let you read it, and I've marked on that
5 one so just ignore my markings. But look over that statement
6 and see if that really is your statement, and your signature
7 at the bottom.

8 A. Okay.

9 Q. Is that your statement?

10 A. Yes.

11 Q. Is that the one that you gave on February 7th?

12 A. Yes.

13 Q. And I believe the officer wrote those words down for
14 you; is that correct?

15 A. Yes.

16 Q. And then you signed it; isn't that right?

17 A. Yes.

18 Q. And nowhere in that statement do you mention
19 Mr. Cowan, do you?

20 A. No.

21 Q. You don't call him Sammy or --

22 A. I call him the other guy.

23 Q. At one point you say some black guy and then another
24 point you say a different guy, that's right.

25 A. Right. The black guy and the different guy is the

JAMES CHARLIE JONES - CROSS BY MS. THOMASON

1 same guy.

2 Q. You mention Fred by name.

3 A. Yes.

4 Q. When you are outside -- and I believe you said you
5 were with Randy; is that right?

6 A. Yes.

7 Q. When you are outside with Randy is he fairly close
8 to you?

9 A. Was Randy?

10 Q. Yes.

11 A. Yes.

12 Q. And you all are kind of standing there together when
13 all of this is going on?

14 A. Side-by-side.

15 Q. So he nor you could see what is going on around the
16 corner to the left of you?

17 A. Ma'am?

18 Q. Neither Randy nor you --

19 A. No, ma'am.

20 Q. -- could see what was going on around the corner to
21 the left of you, right?

22 A. No, ma'am.

23 Q. Do you remember when Randy called 911?

24 A. I honestly don't remember because I was calling 911,
25 too.

JAMES CHARLIE JONES - CROSS BY MS. THOMASON

1 Q. You and Randy were both calling 911?

2 A. I was using my cell phone, he was using his. I'm
3 Mr. Jones on the 911 call.

4 Q. You were in the courtroom earlier when the 911 tapes
5 were played?

6 A. Yes.

7 Q. So some of those 911 calls, even though we heard
8 them one after another, some of them were going on at the same
9 time with different dispatch operators; is that correct?

10 A. Uh-huh.

11 Q. So you were talking to 911 and Randy was talking to
12 911 and you all may have been talking to two different people
13 at the same time; is that right?

14 A. It's possible.

15 Q. Now, you note in your statement that at the time
16 that all this was happening there were about six people
17 outside; isn't that right?

18 A. Yes, I would say that's right.

19 Q. Had you been involved with the time that Pissy --
20 excuse me, Kinshaba, I think he's known as Pissy, was thrown
21 out of the club earlier that evening?

22 A. Yes.

23 Q. And I think he had broken a beer bottle or something
24 and gotten thrown out, and then he had come back in?

25 A. I'm the one throwed him out.

JAMES CHARLIE JONES - CROSS BY MS. THOMASON

1 Q. Then he came back in a second time?

2 A. I don't know how he got back in, ma'am. That was
3 over my head. I honestly don't know. I know I threw him
4 out.

5 Q. But you didn't let him back in?

6 A. No.

7 Q. But you know somehow he got back in a second time?

8 A. Somehow he did.

9 Q. And then the next time that he went back out was
10 with the argument that he had with this other fellow when you
11 and Randy were all kind of escorting them back off the
12 premises?

13 A. I didn't.

14 Q. You didn't do that?

15 A. No. I don't even remember when they went outside.
16 I don't remember when Fred went outside, when Sammy went
17 outside, when Pissy went outside. I don't know when any of
18 them went outside. I went outside to check the parking lot.

19 Q. And they came out after you?

20 A. No. They were already out there. I was just doing
21 a routine check, as I normally do, and when I got outside it
22 was already on over in the corner?

23 Q. So the fight was already going on over in the
24 left-hand corner when you got outside?

25 A. Yes.

JAMES CHARLIE JONES - REDIRECT BY MR. CAMPBELL

1 Q. So you really didn't know who was fighting with who?

2 A. Absolutely not.

3 Q. You didn't even know what the fight was about?

4 A. Absolutely not.

5 Q. You saw two guns up in the air?

6 A. Yes.

7 Q. Do you know what kind of guns they were?

8 A. No, ma'am. I didn't get that close to see. When I
9 saw them I ran, like I say. I'm not Superman.

10 Q. You saw two guns in the air and you said I'm getting
11 out of here?

12 A. That's right.

13 Q. And you went around the building?

14 A. (Nodded).

15 Q. You didn't see anything else?

16 A. I ran around the building with the phone on my ear.
17 I'm probably one of the ones that she was talking to and my
18 phone lost signal and I couldn't get through.

19 MS. THOMASON: Thank you, sir. I don't have any
20 other questions. Thank you, sir.

21 MR. CAMPBELL: Just a couple of follow-up.

22 THE COURT: Yes, sir.

23 REDIRECT EXAMINATION

24 BY MR. CAMPBELL:

25 Q. Mr. Jones, when you walked outside, you put in your

JAMES CHARLIE JONES - REDIRECT BY MR. CAMPBELL

1 statement you saw Fred and some black guy passing a few words;
2 is that correct?

3 A. Yes.

4 Q. Was Fred passing words to Mr. Cowan or was it a
5 different person?

6 A. No, sir. It was a different person.

7 Q. Then you stated they had a few words next to the
8 B. M. W. beside the door. After the shots fired, I looked
9 over and saw a different guy with a gun in each hand?

10 A. Yes, sir.

11 Q. The guy that Mr. Penn was initially having the
12 conversation or argument with, was that the guy you saw with
13 the guns?

14 A. No, sir.

15 Q. What guy did you see with guns in his hands?

16 A. Mr. Cowan.

17 Q. Mr. Cowan.

18 A. I'm not saying that the guy was running toward me,
19 but he was running this way and I was over here and I started
20 running. I didn't know what was going on then.

21 Q. But after the shots you saw Mr. Cowan with the guns
22 in his hands?

23 A. Right, running toward me.

24 MR. CAMPBELL: No further questions.

25 MS. THOMASON: Just briefly, Your Honor.

JAMES CHARLIE JONES - RECROSS BY MS. THOMASON

RECROSS-EXAMINATION

BY MS. THOMASON:

Q. Mr. Jones, I'm sorry. I don't want to harp on this too many times but I could have sworn that you just told me once you heard the gunshots you took off and didn't see anything else. When was it that you saw the person with the hands up in the air and the guns?

A. When he was running toward us, Randy and myself, but he was running toward his car, but we were in the midst of his car.

Q. Okay, so are you saying --

A. He wasn't actually running at us. He was going toward his car, but I didn't know so I took off running.

Q. You don't feel like he was running toward you to harm you?

A. No. No, he wasn't.

Q. Right. But what I'm saying is did you see these two guns in the air after you heard gunfire or before?

A. Before.

Q. Before?

A. He came down with the guns in the air.

Q. But your statement says you saw him after?

A. He --

Q. And you just testified to the Solicitor that you saw them after. So I'm trying to make sure --

TRAVIS WARDLAW - DIRECT BY MR. CAMPBELL

1 A. I saw guns both times, ma'am.

2 Q. So you saw them both times?

3 A. Yes, ma'am.

4 Q. So you saw them before and after?

5 A. Yes, ma'am.

6 MS. THOMASON: Okay. Thank you, sir.

7 MR. CAMPBELL: No further questions.

8 THE COURT: Thank you, sir. You may stand down,
9 sir.

10 MR. CAMPBELL: May we approach, Your Honor?

11 THE COURT: Yes, sir.

12 (WHEREUPON, a bench conference was had.)

13 MR. CAMPBELL: We call Travis Wardlaw.

14 TRAVIS WARDLAW, after having been duly sworn,
15 testified as follows:

16 THE CLERK: Please have a seat on the witness stand.
17 Please state your full name, spell your last name for the
18 record.

19 THE WITNESS: Travis Wardlaw, W-a-r-d-l-a-w.

20 DIRECT EXAMINATION

21 BY MR. CAMPBELL:

22 Q. Mr. Wardlaw, I want to talk to you about the events
23 that occurred on February 7th, 2005. Do you recall that day?

24 A. Yes, sir.

25 Q. Why do you recall that day?

TRAVIS WARDLAW - DIRECT BY MR. CAMPBELL

1 A. Me and my friend, Frederick Penn, we went to Club
2 Envy.

3 Q. And how do you know Fred?

4 A. By our family relationships, and we hung out a
5 little bit together, too.

6 Q. Now, that day, did you all hang out together?

7 A. Yes.

8 Q. And what did you all do that day?

9 A. We had went to -- were invited to a Super Bowl
10 party. I think it was Orr Street on the east side.

11 Q. And did you and Fred go up there?

12 A. Yeah.

13 Q. And did you watch the game there?

14 A. Yeah.

15 Q. Was there drinking going on?

16 A. Uh-huh.

17 Q. Did you see Fred drink?

18 A. Yes.

19 Q. And did you drink yourself?

20 A. Uh-huh.

21 Q. Now, did you all watch the entire game while you
22 were there?

23 A. Yeah.

24 Q. And after that what did you all do?

25 A. He dropped his girlfriend off at the house and we

1 continued to go to Envy.

2 Q. Did you make any other stops prior to going to Club
3 Envy?

4 A. We picked up Craig Williford.

5 Q. And then you three went to Club Envy?

6 A. Uh-huh.

7 Q. About what time did you get there; do you recall?

8 A. About 11:30, 11:45.

9 Q. And when you got there what did you all do?

10 A. They -- him and Craig went to a dance floor area and
11 I went to the bar.

12 Q. And after that, did you stay in contact with Fred
13 while you were on the inside of the club?

14 A. No, not really. We wasn't even there long, after
15 the incident had happened.

16 Q. And while you were in there did you observe Fred get
17 into an argument or fight with anybody?

18 A. No.

19 Q. Did you see -- well, after that, while you were in
20 the club, what's the next thing that happened to you while you
21 were there?

22 A. I'd say when I got back, gave him his drinks and
23 gave Craig his drinks, I went on in my own little corner where
24 I was at. It's not about 5 feet away from them, and my back
25 was to them about this time. And about 10, 15 minutes a girl

TRAVIS WARDLAW - DIRECT BY MR. CAMPBELL

1 came and said your friend outside arguing with some dudes from
2 south side.

3 Q. And what did you do?

4 A. I proceeded to the door, and by the time I got to
5 the door I saw the door open and then that's when I heard the
6 gunshots and I saw Craig run, my friend that was with me. He
7 was outside. I saw him run past the door and I heard
8 gunshots. I never did make it outside.

9 Q. And do you know how many gunshots you heard?

10 A. About 4 or 5. It was random. They were right
11 behind each other.

12 Q. And but you weren't outside to see who actually did
13 the shooting; is that right?

14 A. No, I wasn't.

15 Q. Do you know Sammy Kay Cowan?

16 A. I don't know until I saw his -- I seen him in the
17 clubs a couple times. I didn't know his name, actually.

18 Q. Is he in the courtroom today?

19 A. Yes, sir.

20 Q. Did you see where is he?

21 A. He's sitting right here (indicated).

22 Q. In the gray shirt?

23 A. Yes, sir.

24 Q. Did you see him that night in the club?

25 A. Uh-huh.

TRAVIS WARDLAW - DIRECT BY MR. CAMPBELL

1 Q. Did you see him and Fred have words?

2 A. No.

3 Q. Did you ever see them together?

4 A. Not together, but when we was in the clubs we were
5 probably two or three feet from each other.

6 Q. But that night you didn't see them together; is that
7 right?

8 A. Uh-uh.

9 Q. After these shots were fired what did you do?

10 A. Everybody started running back in when the shots
11 were fired, then when it calmed down I went outside and I saw
12 him lying on the ground, and everybody was screaming crying
13 and on the phones and stuff like that.

14 Q. Was the club locked down before you were able to get
15 back out?

16 A. No, the club wasn't locked down. See, everybody did
17 get back outside. The club didn't get locked down until the
18 police had came and told everybody to get back in the
19 building.

20 Q. And did you go back inside?

21 A. Uh-huh.

22 Q. After that how did you get home?

23 A. My mother was waiting on the outside for me, and she
24 drove me home.

25 MR. CAMPBELL: I have no further questions. Answer

TRAVIS WARDLAW - CROSS BY MS. THOMASON

1 any questions Ms. Thomason has.

2 CROSS-EXAMINATION

3 BY MS. THOMASON:

4 Q. You didn't see the shooting?

5 A. No.

6 Q. You didn't see Sammy Cowan argue with your friend,
7 Fred?

8 A. No.

9 MS. THOMASON: That's all I have.

10 MR. CAMPBELL: No further questions.

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

12 MR. CAMPBELL: We call Craig Carnelious Williford.

13 CRAIG CARNELIOUS WILLIFORD, after having been
14 duly sworn, testified as follows:

15 THE CLERK: You may have a seat on the witness
16 stand. Please state your full name and spell your last name
17 for the record.

18 THE WITNESS: Craig Carnelious Williford.

19 DIRECT EXAMINATION

20 BY MR. CAMPBELL:

21 Q. Mr. Williford, you live in Anderson?

22 A. Yes, sir.

23 Q. How long have you lived in Anderson?

24 A. 22 years.

25 Q. 22 years?

CRAIG CARNELIOUS WILLIFORD - DIRECT BY MR. CAMPBELL

1 A. Yes, sir.

2 Q. And are you currently employed?

3 A. No, sir.

4 Q. Now, you know the victim in this case, Fred Penn; is
5 that correct?

6 A. Yes, sir.

7 Q. How do you know him?

8 A. From family friend -- well, my brother.

9 Q. You know him awhile?

10 A. Yes, sir.

11 Q. I want to talk to you about February 6th, 2005. Do
12 you recall that day?

13 A. Yes, sir.

14 Q. Why do you recall that day?

15 A. Super Bowl Sunday.

16 Q. On that day did you watch the Super Bowl?

17 A. Yes, sir.

18 Q. Where did you watch it?

19 A. At home.

20 Q. And were you by yourself at the time?

21 A. Yes, sir.

22 Q. Anybody else watch the Super Bowl with you?

23 A. My aunt, and that was it.

24 Q. And that's it?

25 A. Yes, sir.

CRAIG CARNELIOUS WILLIFORD - DIRECT BY MR. CAMPBELL

1 Q. And after the Super Bowl did you have an occasion to
2 speak with Mr. Penn?

3 A. When they came by after the Super Bowl party they
4 were at.

5 Q. When you say they, who was they?

6 A. Travis, my older brother and Fred Penn.

7 Q. Travis Wardlaw?

8 A. Yes, sir.

9 Q. And they came by your house?

10 A. Yes, sir.

11 Q. And what happened?

12 A. And they came by my house and asked if I wanted a
13 ride to a post-game party at Club Envy.

14 Q. And who was driving?

15 A. Fred Penn.

16 Q. And who all went?

17 A. Me, Travis Wardlaw and Fred Penn.

18 Q. Your brother didn't go?

19 A. No, sir.

20 Q. And you went to the club; is that right?

21 A. Yes, sir.

22 Q. And the club is at 3501 South Murray Avenue?

23 A. Yes, sir.

24 Q. Is that Anderson County?

25 A. Yes, sir.

CRAIG CARNELIOUS WILLIFORD - DIRECT BY MR. CAMPBELL

1 Q. When you got there, do you know approximately what
2 time it was?

3 A. Probably a little after 11:00, I think. I don't
4 know the approximate time.

5 Q. How would you describe the club? Was it pretty busy
6 that night?

7 A. Yeah, it was pretty packed.

8 Q. A lot of people?

9 A. Yes, sir.

10 Q. Drinking going on?

11 A. Yes, sir.

12 Q. And you went into the club, I'm assuming; is that
13 correct?

14 A. Yes, sir.

15 Q. When you went in there did Fred go in with you?

16 A. Yes, sir.

17 Q. Did you ever see at any point Fred get into any type
18 of argument with anybody?

19 A. No, sir, not at the time.

20 Q. What happened once you got inside the club? What
21 did you do?

22 A. Well, me, Travis and Fred went to the bar and got a
23 couple of drinks, and then we all kind of spaced out but we
24 were still close together. I sat down in the chair and Travis
25 stopped by a table, and Fred was on the far side of the room.

CRAIG CARNELIOUS WILLIFORD - DIRECT BY MR. CAMPBELL

1 Q. Well, at some point did you wind up outside?

2 A. Yes, sir.

3 Q. Why is that?

4 A. As I was sitting down in the chair I seen Fred and
5 some other guys walking towards the door. So I got up because
6 he wasn't with Travis or anyone that we knew or that we were
7 there with so I just wanted to go out, check and see what was
8 going on?

9 Q. Fred was your ride?

10 A. Yes, sir.

11 Q. And when you saw Fred and these other boys walking
12 outside did they look like they were having any type of heated
13 conversation or argument?

14 A. No, sir, not from where I could see.

15 Q. Do you know Kinshaba Simmons?

16 A. No, sir.

17 Q. Do you know Sammy Kay Cowan?

18 A. Not well affiliated with him but I've seen their
19 face before.

20 Q. Now, once you got outside what did you see?

21 A. When I walked out the door Fred was standing like
22 right by the door, and that was basically it. I mean, there
23 were people -- other people coming towards the door.

24 Q. Did you see Fred have any type of argument with
25 anybody?

CRAIG CARNELIOUS WILLIFORD - DIRECT BY MR. CAMPBELL

1 A. Not when I first got out there, no, sir.

2 Q. How about after you were out there for a little
3 while?

4 A. No, sir.

5 Q. Well, while you were outside what did you see?

6 A. As Fred was standing there I tapped him on his
7 shoulder, and I was just like, let's go. Because things
8 didn't seem right anyway, because I think at that time
9 somebody was probably messing with him or something but I
10 didn't know for sure because he was just standing there by
11 himself like he was waiting on something or someone.

12 Q. Then what happened?

13 A. I was turned looking towards the door looking for
14 Travis and then after that I turned back around and Fred
15 wasn't -- he wasn't standing beside me anymore.

16 Q. Where was he?

17 A. I don't know for sure.

18 Q. And what did you see after you lost sight of Fred?

19 A. When I turned back around I saw the guy, Sammy
20 Cowan. He was behind me when I turned back around and he had
21 his hands in his pockets.

22 Q. Both hands were in his pockets?

23 A. Yes, sir.

24 Q. What did he do with his hands?

25 A. At this time, he pulled his hands out of his pockets

CRAIG CARNELIOUS WILLIFORD - DIRECT BY MR. CAMPBELL

1 and he asked me if I was riding with Fred.

2 Q. And what did you tell him?

3 A. And I told him yeah.

4 Q. And did he say anything else to you?

5 A. He told me I better stop riding with him.

6 Q. Did he have anything in his hands?

7 A. Two guns, a gun in each hand.

8 Q. Do you know what color they were?

9 A. I couldn't tell what color both of them were, but
10 one of them looked like a silver color.

11 Q. And at that point, how close to you was Mr. Cowan
12 when you saw him with the guns?

13 A. Probably five feet.

14 Q. Closer from me to you?

15 A. Yes, sir.

16 Q. Tell me when to stop.

17 A. About that far.

18 Q. About this far from you?

19 A. Yes, sir.

20 Q. How was the light? Could you see in the area?

21 A. On one side, but it had a cast of shadow on the
22 other side.

23 Q. But you knew it was Mr. Cowan?

24 A. Yes, sir.

25 Q. Is he in the courtroom today?

CRAIG CARNELIOUS WILLIFORD - DIRECT BY MR. CAMPBELL

1 A. Yes, sir.

2 Q. Can you please identify him.

3 A. The guy in the middle there with the gray shirt on
4 (indicated).

5 Q. The gray shirt on, and that's the guy that had the
6 guns?

7 A. Yes, sir.

8 Q. What kind of outfit did he have? How was he dressed
9 that night on February 6th, 2005?

10 A. In some sort of brown suit.

11 Q. Was it all one color?

12 A. Yes, sir.

13 Q. But it was brown?

14 A. Yes, sir.

15 Q. Now, at that point what did Mr. Cowan do after he
16 pulled the gun out and told you you better stop riding with
17 him?

18 A. He left from in front of me going towards the
19 highway where the cars were on the -- in the parking area
20 right there in front of the club.

21 Q. And what did you observe?

22 A. I just heard gunshots.

23 Q. Did you actually see anybody pull a gun up and point
24 it at Mr. Penn?

25 A. No, sir, I didn't.

CRAIG CARNELIOUS WILLIFORD - DIRECT BY MR. CAMPBELL

1 Q. You just heard the gunshot; is that correct?

2 A. Yes, sir.

3 Q. You lost sight of him once he went around the
4 corner?

5 A. Yes, sir.

6 Q. After you heard the gunshots what did you do?

7 A. I just started running.

8 Q. And where did you go?

9 A. To Homeland Park Fire Department.

10 Q. Approximately how many shots did you hear?

11 A. I only heard about two, and after that I was on my
12 phone trying to call someone to come get me and trying to call
13 Travis to see what actually was going on, or if he had knew.

14 Q. Were you ever able to get back up with Travis?

15 A. Yes, sir.

16 Q. When was that?

17 A. Later on, like after everyone had gotten to the
18 hospital.

19 Q. But you didn't see him again, Travis, at the club
20 after that? You took off; is that right?

21 A. Yes, sir.

22 MR. CAMPBELL: I have no further questions of this
23 witness.

24 Please answer any questions Ms. Thomason may have.

25 CROSS-EXAMINATION

CRAIG CARNELIOUS WILLIFORD - CROSS BY MS. THOMASON

1 BY MS. THOMASON:

2 Q. Mr. Williford, you just said that you, I think, got
3 back up with your friends at the hospital?

4 A. No, that's when I got in touch with him.

5 Q. What were you doing at the hospital?

6 A. Everyone that -- obviously, everyone else was
7 contacted and told that Fred had been shot before I did.

8 Q. So you were a close enough friend that you would
9 have gone to the hospital knowing that he had been hurt?

10 A. Yes, ma'am.

11 Q. You would have expected to be there with the family?

12 A. Yes, ma'am.

13 Q. So you all are pretty close?

14 A. Yes, ma'am.

15 Q. I imagine you would want to do whatever you had to
16 to make sure that this crime came to justice?

17 A. Yes, ma'am.

18 Q. Have you seen the diagram that the solicitor's
19 office has prepared? Let me show you two things, what's been
20 marked as State's 12, and then this diagram that has not yet
21 been marked. Have you seen those two items?

22 A. No, ma'am.

23 Q. Can you identify them?

24 A. Yes, ma'am.

25 Q. What's the one on the white paper?

CRAIG CARNELIOUS WILLIFORD - CROSS BY MS. THOMASON

1 A. Club Envy.

2 Q. Is that an overhead diagram of Club Envy?

3 A. Yes, ma'am.

4 Q. And what's the other one?

5 A. That's the picture diagram.

6 Q. Would you mind stepping down here to the overhead so
7 we can look at these for the jury. I'll give you my pen.
8 Come stand around this way.

9 Now, if you would, just point for me to where you
10 talked to Fred when you came out of the front doors.

11 A. (Indicated) right in here.

12 Q. Okay. And then point for me where you were when you
13 had the conversation about who you were riding with?

14 A. Right off the edge (indicate).

15 Q. And where was Fred at the time that you were having
16 that conversation?

17 A. I don't know. Obviously -- I mean, he was down this
18 way somewhere because it was dark down in that way.

19 Q. Do you know how -- well, let me switch this out.
20 That's an actual photograph of the club during the daytime; is
21 that right?

22 A. Yes, ma'am.

23 Q. So the corner that you are talking about that was
24 dark is this corner right here?

25 A. Yes, ma'am, it's like that whole part down there

CRAIG CARNELIOUS WILLIFORD - CROSS BY MS. THOMASON

1 (indicated).

2 Q. Okay. So show us on this one, kind of point there
3 and if you'll point on this it will show up on the screen.
4 Point there to where you had the conversation about who you
5 were riding with?

6 A. (Indicated) right in there.

7 Q. Okay. So kind of at the edge of the building; is
8 that right?

9 A. Yes, ma'am.

10 Q. And then at that point you are not sure where Fred
11 was?

12 A. No, ma'am.

13 Q. You can step back up there.

14 A. (The witness complied).

15 Q. Now, I believe you gave a statement to law
16 enforcement as well?

17 A. Yes, ma'am.

18 Q. You didn't give a statement to law enforcement until
19 sometime in April; is that right?

20 A. Yes, ma'am.

21 Q. And that was several months after all this had
22 happened; is that right?

23 A. Yes, ma'am.

24 Q. Did they just not talk to you that evening or they
25 didn't know that you had been there that evening?

CRAIG CARNELIOUS WILLIFORD - CROSS BY MS. THOMASON

1 A. I was trying to find out who I was supposed to talk
2 to because I didn't know for sure.

3 Q. So you sought out somebody at law enforcement to
4 tell them what you knew about the case?

5 A. Yes, ma'am.

6 Q. And at the time of the night of the Super Bowl when
7 you were talking to the fellow about who you were riding with,
8 having ridden there with Fred, I guess, you didn't know who he
9 was at that time? You didn't know him as Sammy Cowan then?

10 A. No, ma'am. I had seen him before but I never knew
11 him.

12 Q. So you had recognized him as someone you had seen
13 before but it was not someone whose name you knew; is that
14 correct?

15 A. Yes, ma'am.

16 Q. And even when you went to see law enforcement in
17 April you still didn't know that his name was Sammy Cowan?

18 A. No, ma'am.

19 Q. How did you come to find out who -- and don't repeat
20 what anybody said because that would be hearsay, but just tell
21 me who told you that this was Sammy Cowan so that you knew to
22 say Sammy Cowan today in the courtroom?

23 A. From the photo pictures at the law enforcement
24 office.

25 Q. So a law enforcement officer told you that his name

CRAIG CARNELIOUS WILLIFORD - CROSS BY MS. THOMASON

1 was Sammy Cowan?

2 A. Yes, ma'am.

3 Q. Now, I'm a little confused about the sequence of
4 events, so help me understand this. You get concerned because
5 you see Fred go outside?

6 A. Yes, ma'am.

7 Q. But Fred does not seem to be combative with anyone,
8 doesn't seem to be arguing with anyone; is that correct?

9 A. Yes, ma'am.

10 Q. Well, if he wasn't arguing with anyone and nobody
11 was fighting with him why did you have this eerie feeling
12 about that?

13 A. Because that was my ride and that's who I was riding
14 with.

15 Q. So you were just more worried he might run off and
16 leave me, I might not have a ride home? Is that what you were
17 concerned about?

18 A. No, ma'am.

19 Q. Well, there was nothing to make you believe that
20 there was going to be any problem because you hadn't seen any
21 arguing and you hadn't seen any fighting; would that be
22 correct?

23 A. Yes, ma'am.

24 Q. Were you present at the club earlier in the evening
25 when a fellow named -- they call him Pissy, had broken a beer

CRAIG CARNELIOUS WILLIFORD - CROSS BY MS. THOMASON

1 bottle? Were you present when that happened?

2 A. No, ma'am.

3 Q. Did you see, I think they call him -- they call him
4 Pissy but his name is Kinshaba Simmons, do you know him?

5 A. No, ma'am. I don't know him but, I mean, I've seen
6 his face before and someone else has identified him to me.

7 Q. So at this point you would know who he was if you
8 saw him?

9 A. Yes, ma'am.

10 Q. Did you see him leaving with Fred that night? Did
11 you see him going anywhere that night with Fred?

12 A. No, ma'am.

13 Q. And you didn't see Fred arguing with anyone?

14 A. No, ma'am.

15 Q. And then you are standing at the corner of the club
16 where it takes kind of a left-hand jut back towards the side
17 of building; is that right?

18 A. I was standing closer to the edge of the sidewalk
19 out towards the parking lot part though.

20 Q. So you could see -- I think there was a B. M. W.
21 parked right there. You could see that car?

22 A. Yes, ma'am.

23 Q. And do you agree with me that whoever shot Fred shot
24 him in that corner? Do you think that's where he got shot,
25 was in that corner?

CRAIG CARNELIOUS WILLIFORD - CROSS BY MS. THOMASON

1 A. No, ma'am.

2 Q. You don't think he was shot in that corner?

3 A. No, ma'am.

4 Q. Where do you think Fred was when he got shot?

5 A. Maybe on that sidewalk but not -- I don't think he
6 was in that corner.

7 Q. Was he on that side of the building?

8 A. On the side, yes, ma'am. Right there in front where
9 the parking lot, where the row of cars were.

10 Q. Had anybody ever shown you this photograph?

11 A. No, ma'am.

12 Q. If I were to suggest to you that that's a photograph
13 from the night of the shooting would you agree that that's --
14 that could be? Would you know whether or not that B. M. W.
15 was the car that was in the spot that night? Would you have
16 any way of knowing that one way or the other?

17 A. I don't -- it doesn't look like it.

18 Q. Okay. So that doesn't look like the night to you?

19 A. I mean, I don't actually remember what kind of car
20 was there.

21 Q. I'm just trying to figure out how if you were at the
22 corner of the building and Fred was to the left of you and
23 this fellow whose name you didn't know at the time comes up
24 talking about who you are riding with and you see guns that
25 instant but then --

CRAIG CARNELIOUS WILLIFORD - CROSS BY MS. THOMASON

1 A. Fred wasn't there at the time.

2 Q. Sir?

3 A. Fred wasn't standing there right beside me at that
4 time.

5 Q. Where had Fred gone at that point?

6 A. I don't know. I had turned my back the other way,
7 facing back the other way to the other street of the backside.

8 Q. Towards Burson Road?

9 A. If that's the name of the street. I don't know what
10 the name of the street is.

11 Q. If you're standing with your back to the front doors
12 of the club you would have been turned to the right or to the
13 left?

14 A. To the right.

15 Q. To the right, okay. And what happened then, after
16 you saw the guy talking to you about riding with Fred?

17 A. He just took off running past me.

18 Q. So the guy that spoke to you about riding with Fred
19 ran past you?

20 A. He stopped in front of me, he said that, then he,
21 like, just left walking from in front of me, like, behind the
22 car. Not down towards close to the club but the other
23 backside.

24 Q. How long was it before you heard shots?

25 A. Probably about 15, 20 seconds.

CRAIG CARNELIOUS WILLIFORD - REDIRECT BY MR. CAMPBELL

1 Q. A few seconds?

2 A. Yes, ma'am.

3 Q. And you don't know who else was over there?

4 A. No, ma'am.

5 Q. And you had seen the same fellow that had asked you
6 about riding with Fred in the club that night?

7 A. Yes, ma'am.

8 Q. Earlier in the club?

9 A. Yes, ma'am.

10 Q. And there were other people outside. There was more
11 than just you and Fred and this fellow that was talking to you
12 outside; isn't that correct?

13 A. Yes, ma'am.

14 Q. And you didn't see the actual shooting?

15 A. No, ma'am.

16 MS. THOMASON: That's all I have.

17 MR. CAMPBELL: A few follow-ups.

18 REDIRECT EXAMINATION

19 BY MR. CAMPBELL:

20 Q. Mr. Williford?

21 A. Yes, sir.

22 Q. After the shots were fired did you stay around the
23 parking lot at Club Envy?

24 A. No, sir.

25 Q. You took off; is that right?

CRAIG CARNELIOUS WILLIFORD - REDIRECT BY MR. CAMPBELL

1 A. Yes, sir.

2 Q. So that night you didn't talk to any law enforcement
3 officers with the sheriff's department or any other agency?

4 A. No, sir.

5 Q. And you may have not known what Mr. Sammy Cowan's
6 actual name was. Did you know him by any other name?

7 MS. THOMASON: Objection, Your Honor. May we
8 approach or hear this outside the presence of the jury?

9 THE COURT: Please approach.

10 (WHEREUPON, a bench conference was had.)

11 THE COURT: Mr. Foreman, ladies and gentlemen of the
12 jury, there's a matter I need to take up with counsel at this
13 time. We'll take about five minutes, not a lot of time.
14 We're not going much longer today, to tell you the truth. But
15 I'll allow you to refresh yourself during this break. If
16 you'll do that quickly, though, and we'll have you back in, in
17 just about five minutes or so. Thank you.

18 (WHEREUPON, the jury leaves the courtroom at
19 approximately 5:13 p.m.)

20 THE COURT: All right, Counsel. We'll have a
21 proffer outside the presence of the jury for the State on the
22 question you wish to ask him. The Court has instructed you
23 that whatever he knew prior to the incident occurred he can
24 testify to by way of identification, otherwise not something
25 somebody supplied to him after the incident, particularly not

CRAIG CARNELIOUS WILLIFORD - REDIRECT BY MR. CAMPBELL

1 something supplied to him by the police or somebody else after
2 the fact. But proceed on that basis.

3 BY MR. CAMPBELL:

4 Q. Mr. Williford, dealing strictly with February 6th,
5 2005, did you know Sammy Cowan by any other name?

6 A. No, sir.

7 MR. CAMPBELL: No other questions other than that.

8 THE COURT: Well, let's take a quick -- that covers
9 it, doesn't it?

10 MS. THOMASON: Yes, sir, as long as he's not going
11 to ask any other questions that's fine.

12 MR. CAMPBELL: I've just got a couple extra
13 follow-ups for him from hers. That's it.

14 THE COURT: We'll do that, but I gave the jury five
15 minutes. I better give it to them or they'll shoot me when I
16 come back out. So let's take -- quickly, if you want to
17 refresh yourself we'll just take a quick five minutes and come
18 back and finish up. Only five minutes and be back.

19 (WHEREUPON, a brief recess was taken.)

20 THE COURT: Please bring them in.

21 (WHEREUPON, the jury enters the courtroom at
22 approximately 5:24 p.m.)

23 BY MR. CAMPBELL:

24 Q. Mr. Williford, the guy that spoke to you and the man
25 with the two guns in his hands, whether you knew his name or

MICHAEL MUMPHERY - DIRECT BY MR. CAMPBELL

1 not, is that the individual that's seated in the courtroom
2 today?

3 A. Yes, sir.

4 Q. That's the guy you saw with the guns and who told
5 you to quit riding?

6 A. Yes, sir.

7 MR. CAMPBELL: No further questions.

8 MS. THOMASON: Nothing further.

9 THE COURT: Thank you, sir. You may stand down,
10 sir.

11 MR. CAMPBELL: Your Honor, I have just one witness
12 left and that will be it.

13 We call Michael Mumphery.

14 MICHAEL K. MUMPHERY, after having been duly
15 sworn, testified as follows:

16 THE CLERK: Please have a seat on the witness stand.
17 Please state your full name, spell your last name for the
18 record.

19 THE WITNESS: Michael K. Mumphery, M-u-m-p-h-e-r-y.

20 DIRECT EXAMINATION

21 BY MR. CAMPBELL:

22 Q. Mr. Mumphery, you are employed with Greyhound?

23 A. Yes, sir.

24 Q. How long you been employed there?

25 A. Nine year.

MICHAEL MUMPHERY - DIRECT BY MR. CAMPBELL

1 Q. Nine years?

2 A. Yes, sir.

3 Q. And what capacity or position are you employed as?

4 A. I am the terminal trainer in Atlanta.

5 Q. And as part of your job do you have an opportunity
6 to keep records in ordinary course of business for Greyhound?

7 A. Yes, sir.

8 (WHEREUPON, State's Exhibit No. 23, a Greyhound Bus
9 Ticket Record, was marked for identification only.)

10 Q. I want to talk to you about specific records.
11 Mr. Mumphery, I'm going to show you what's been marked for
12 identification right now, State's Exhibit 23. Can you please
13 identify what this is, sir?

14 A. This shows that a ticket had been purchased from --

15 Q. Go ahead, I'm sorry?

16 A. From Atlanta, Georgia to Bowling Green, Kentucky.

17 Q. Is this part of Greyhound's records?

18 A. Yes, sir.

19 Q. And when a person buys a ticket through Greyhound do
20 they give a name, typically?

21 A. Yes, sir.

22 Q. Is this name typically recorded?

23 A. Yes, sir.

24 Q. Is it placed upon a ticket?

25 A. Yes, sir.

MICHAEL MUMPHERY - DIRECT BY MR. CAMPBELL

1 Q. And that's what you'd expect would have taken place
2 on February 7th, 2005?

3 MS. THOMASON: Objection, Your Honor. He's leading.

4 THE COURT: Yes. Please avoid leading. Rephrase,
5 Counsel.

6 Q. Mr. Mumphery, these are records kept in your
7 ordinary course of business, is it not?

8 A. Yes, sir.

9 Q. What dates does this business record indicate or
10 show?

11 A. February 7th, 2005 and February 8th, 2005.

12 Q. And on that day did a certain individual purchase a
13 ticket through Greyhound?

14 A. On that particular date?

15 Q. Yes, sir.

16 A. Not necessarily. It states that they were scheduled
17 to depart on that particular day.

18 Q. So an individual can purchase a ticket but for a
19 later date; is that correct?

20 A. Yes, sir.

21 Q. In this case, what is the name of the individual
22 that is listed down there that purchased a ticket?

23 A. The name is Sam Cowan.

24 Q. Cowan, C-o-w-a-n?

25 A. Cowan, C-o-w-a-n. Thank you.

MICHAEL MUMPHERY - DIRECT BY MR. CAMPBELL

1 Q. On the first date, what date is it?

2 A. Scheduled to leave on February 7th, 2005.

3 Q. From Atlanta to where?

4 A. Bowling Green, Kentucky.

5 Q. What's the second date?

6 A. The second date is February 8th, 2005.

7 Q. And what is the scheduled departure time or
8 destination?

9 A. The destination is from -- it's Athens, Georgia.

10 Q. To Athens, Georgia from Atlanta?

11 A. Yes, sir.

12 Q. Now, do you know if these tickets were used?

13 A. The ticket for Bowling Green, Kentucky, no. It was
14 not used.

15 Q. Was it cancelled?

16 A. Yes, sir.

17 Q. How about the ticket to Athens?

18 A. I do not know that it was used. It was purchased
19 but I don't know if it was used.

20 Q. Would you have any way of actually knowing if it was
21 used?

22 A. It would indicate in the system once it had been
23 used but I show no indication.

24 Q. But you don't know if it was actually used or not?

25 A. I do not know if it was used.

MICHAEL MUMPHERY - CROSS BY MR. THOMASON

1 Q. Is that correct?

2 A. Yes, sir.

3 Q. And both names -- what was the name on the second
4 ticket?

5 A. Sam, Sam Cowan.

6 Q. Cowan?

7 A. Cowan. I'm sorry.

8 MR. CAMPBELL: Your Honor, I don't have any further
9 questions at this time. I just now want to move this into
10 evidence.

11 MS. THOMASON: No objection.

12 THE COURT: Admitted without objection.

13 (WHEREUPON, State's Exhibit No. 23, Greyhound Bus
14 Ticket Record, was admitted into evidence.)

15 CROSS-EXAMINATION

16 BY MS. THOMASON:

17 Q. Mr. Mumphery, is that correct?

18 A. Yes, ma'am.

19 Q. Mr. Mumphery, what do you call this actual piece of
20 paper, this document?

21 A. What is it called?

22 Q. Yes, sir. Is there a name for this particular
23 record?

24 A. It just shows the transactions that was processed.
25 It would be -- it would be listed under category of ticket

1 sale.

2 Q. The top of the document, it says record search for
3 passenger Cowan, and it's got Cowan in all capitals, and then
4 it says from 01-01-2005 to 3-31-2005; is that correct?

5 A. Yes.

6 Q. Let me back up for a minute. Do you work in the
7 Anderson Greyhound office?

8 A. No.

9 Q. Which office do you work in?

10 A. Atlanta.

11 Q. Did you prepare this document when it was subpoenaed
12 from your office?

13 A. No.

14 Q. So you didn't prepare this document?

15 A. No.

16 Q. Do you know how this document came to be prepared?

17 A. Yes.

18 Q. So you are familiar with this type of search engine,
19 if you will, within the company's computer?

20 A. Yes.

21 Q. Okay. So am I correct in assuming that where it
22 says record search for passenger Cowan, S, somebody went into
23 your system and did a search for any and all tickets under the
24 name of Cowan; is that correct?

25 A. Yes.

MICHAEL MUMPHERY - CROSS BY MR. THOMASON

1 Q. Now, would that search be limited to the Atlanta
2 ticket office or would it be for the whole country?

3 A. The whole country.

4 Q. Okay. So if you do that search it will show you
5 everybody in the country who purchased a ticket, not just the
6 Atlanta departures? Or would it simply choose the people who
7 are wanting to depart from Atlanta, I guess is what I'm
8 saying? Do you have the control to say I want tickets
9 purchased by somebody named Cowan leaving this terminal?

10 A. Yes.

11 Q. Okay. So when whoever enters this search in the
12 computer they put in the name Cowan departing from the Atlanta
13 terminal and it came up with these two names?

14 A. Yes.

15 Q. If you'll look with me across the columns there's
16 three lines of information after the title of the document.
17 The first line of words appears to be the title of each
18 column; is that correct?

19 A. Yes.

20 Q. For example, it says last name then below it listed
21 twice is the name Cowan twice; is that right?

22 A. Yes.

23 Q. Okay. So what does the third piece of information
24 over the third column over, it 's labeled COM, or C-O-M, what
25 does that indicate?

MICHAEL MUMPHERY - CROSS BY MR. THOMASON

1 A. The C-O-M?

2 Q. Yes, sir.

3 A. I'm not sure.

4 Q. For one of those tickets there's a one in that
5 column and for one of those tickets there's a 49 in that
6 column. You don't know what those numbers mean?

7 A. No, ma'am. No.

8 Q. Then under form it says 29 twice. What does form
9 mean?

10 A. The form is the form number on the ticket.

11 Q. And do you all have different -- I mean, as a
12 layperson who doesn't know anything about buses, what does
13 that mean?

14 A. It just states which form was used, form 29.

15 Q. Meaning to purchase the ticket?

16 A. Yes.

17 Q. And what is a form 29 as opposed to any other kind
18 of form? Does that tell you anything about how this ticket
19 was purchased?

20 A. No, it does not. And I've never seen a number other
21 than 29 on the form.

22 Q. You've never seen anything other than form 29?

23 A. Yes.

24 Q. And then ticket I imagine is the ticket number; is
25 that correct?

MICHAEL MUMPHERY - CROSS BY MR. THOMASON

1 A. It's the ticket number, yes.

2 Q. Then C-P-N, what does that mean?

3 A. The C-P-N is also part of the ticket number. It
4 indicates how many passengers was on this ticket.

5 Q. Okay.

6 A. Confirmation, on that confirmation.

7 Q. And on each of these it says one?

8 A. Yes.

9 Q. So that would indicate the person was traveling
10 alone?

11 A. Yes, exactly.

12 Q. And then C-H-E I imagine is short for schedule?

13 A. Yes.

14 Q. And what is that 1154 and 514? Are those times?

15 A. No, those are the schedule numbers.

16 Q. Kind of like a flight number for an airline?

17 A. Okay. Yes.

18 Q. And then depart is the departure date; is that
19 correct?

20 A. Yes, ma'am.

21 Q. And then the coupon origin, that means that the
22 ticket was originated in Atlanta?

23 A. Yes, ma'am.

24 Q. Then O-S-T, I guess that's originating state?

25 A. Yes, ma'am.

MICHAEL MUMPHERY - CROSS BY MR. THOMASON

1 Q. Because it says Georgia.

2 A. Yes.

3 Q. Then coupon destination is where the person was
4 going?

5 A. Yes, ma'am.

6 Q. Then it shows again the state of destination, and it
7 shows the ticket origin, ticket destination and then a
8 confirmation number; is that right?

9 A. Yes, ma'am.

10 Q. Does anything about this form tell you who purchased
11 this ticket?

12 A. No, ma'am.

13 Q. Could I call into your Atlanta station and buy a
14 ticket for my granddaughter to come from Atlanta to Anderson?

15 A. No, ma'am.

16 Q. Why not?

17 A. If you were calling in you would have to call the
18 800 number.

19 Q. Okay. But, I mean, I could call and order a ticket
20 for somebody else?

21 A. Yes, ma'am.

22 Q. So I could call the correct number and say I want a
23 ticket for my granddaughter next week to come from Atlanta to
24 Anderson?

25 A. Yes, ma'am.

MICHAEL MUMPHERY - CROSS BY MR. THOMASON

1 Q. And they would put her name on the ticket,
2 obviously, because she would be the one that needed to travel,
3 right?

4 A. Yes, ma'am.

5 MS. THOMASON: That's all I have.

6 MR. CAMPBELL: I don't have any further questions.

7 THE COURT: Thank you, sir. You may stand down.

8 You want this witness excused?

9 MR. CAMPBELL: Yes, sir. That's all I have.

10 THE COURT: No objection to this witness being
11 excused, Counsel?

12 MS. THOMASON: Sir?

13 THE COURT: No objection to this witness being
14 excused?

15 MS. THOMASON: No, sir.

16 THE COURT: Thank you for coming, sir. You may be
17 excused at this time.

18 All right. It's a good time to wrap it up for the
19 evening, I believe.

20 Mr. Foreman, ladies and gentlemen of the jury, we're
21 going to recess for the evening. I'll ask you to be back in
22 your jury room in the morning at 9:30 ready to go at that
23 time. 9:30 in the jury room.

24 On the overnight recess please do not discuss this
25 case among yourselves or with anyone else you might see.

1 I'll remind you that if there should be any media
2 coverage of this trial please do not read, listen to or watch
3 any media account of the trial until after the trial is over.
4 If there should be any media coverage and I'm made aware of it
5 I may very well ask you whether you've read, listened to or
6 watched any media account, and if you have to answer that you
7 have then that's going to cause us a problem in this case. So
8 please do not read, listen to or watch media account.

9 Please have a pleasant evening tonight and please be
10 back in the jury room in the morning at 9:30.

11 It may already be dark outside, I'm not sure. Does
12 any lady members of the jury panel need anyone to accompany
13 you outside to your cars? If so, please raise your hands.
14 Everybody feel comfortable with that?

15 (There was no response.)

16 THE COURT: Thank you. We'll see you in the morning
17 at 9:30.

18 (WHEREUPON, the jury leaves the courtroom at
19 approximately 5:40.)

20 THE COURT: We'll start back at 9:30. I'll be here
21 probably around 9:00. If you need me before court starts
22 back, something comes up we need to take care of I'll be in
23 chambers probably around 9:00 or so, but we'll start promptly
24 at 9:30 and see how far we can get.

25 Thank you. We'll see you in the morning.

1 (WHEREUPON, the trial of this case was recessed for
2 the day.)

3 Tuesday, November 15, 2005

4 THE COURT: Morning, Counsel. Are we ready to
5 proceed this morning?

6 MS. THOMASON: Yes, Your Honor.

7 MR. CAMPBELL: The State is ready, Your Honor.

8 THE COURT: Please bring the jury.

9 (WHEREUPON, the jury enters the courtroom at
10 approximately 9:45 a.m.)

11 THE COURT: Good morning, Mr. Foreman, ladies and
12 gentlemen of the jury. I hope you had a pleasant evening last
13 night. We're ready now to presume with the trial.

14 Counsel, ready to proceed?

15 MR. CAMPBELL: Counsel is ready.

16 THE COURT: Please call your next witness.

17 MR. CAMPBELL: Your Honor, the State calls Kinshaba
18 Simmons to the stand.

19 KINSHABA SIMMONS, after having been duly sworn,
20 testified as follows:

21 THE CLERK: Please have a seat on the witness stand.
22 Please state your full name, spell your last name for the
23 record.

24 THE WITNESS: My name is Kinshaba Simmons,
25 S-i-m-m-o-n-s.

KINSHABA SIMMONS - DIRECT BY MR. CAMPBELL

DIRECT EXAMINATION

1
2 BY MR. CAMPBELL:

3 Q. Mr. Simmons, you currently live at [REDACTED]
4 in Anderson?

5 A. Yes, sir.

6 Q. Now, in 1996 you were convicted of attempted armed
7 robbery; is that correct?

8 A. Yes, sir.

9 Q. As well as assault with intent to kill; is that
10 correct?

11 A. Yes, sir.

12 Q. You did prison time for that, didn't you?

13 A. Yes, sir.

14 Q. I want to talk to you about the events that took
15 place on February 6th, 2005. Do you recall that day?

16 A. Yes, sir.

17 Q. Why do you recall that day?

18 A. It was a Super Bowl party, after we went to the
19 club.

20 Q. What club are you referring to?

21 A. It was -- I can't recall the club but it's -- I
22 forget the name of the club.

23 Q. You know where the location is?

24 A. It's in Homeland Park on 29.

25 Q. What color is the building?

KINSHABA SIMMONS - DIRECT BY MR. CAMPBELL

1 A. Green.

2 Q. Greenish blue?

3 A. Yes, sir.

4 Q. And you went to the club that night?

5 A. Yes, sir.

6 Q. What time did you get there?

7 A. It was a little bit after the Super Bowl game. It
8 was about 12:30, 1:00.

9 Q. And who were you going with? Who did you go over
10 there with?

11 A. Me, Booka [ph] and Jock.

12 Q. Do you know what Jock's name is?

13 A. Joctavious Williams.

14 THE COURT: Sir, if I could get you to speak just a
15 little more distinctly and a little louder, if you will, so
16 everyone can hear you. Thank you.

17 Q. Speak into the microphone. You can pull it a little
18 closer to you.

19 Now, how did you get to the club that night?

20 A. Drove.

21 Q. You drove yourself?

22 A. Yes, sir.

23 Q. And when you got there, do you know -- first of all,
24 do know Fred or Frederick Penn?

25 A. Yes, sir.

KINSHABA SIMMONS - DIRECT BY MR. CAMPBELL

1 Q. How do you know him?

2 A. Been knowing him all my life.

3 Q. And do you know Sammy Cowan?

4 A. Know him as Detroit.

5 Q. Is he in the courtroom today?

6 A. Yes, sir.

7 Q. Can you please identify him.

8 A. (Indicated).

9 Q. The man seated in the white shirt?

10 A. Yes, sir.

11 Q. And this is the individual you know as Detroit?

12 A. Yes, sir.

13 Q. How long have you been knowing him?

14 A. Not that long. He just popped up on us one day.

15 Probably a couple months.

16 Q. Now, that night at the Super Bowl party, was there a
17 lot of people in the club?

18 A. Yes, sir.

19 Q. Had you been drinking that night?

20 A. Yes, sir.

21 Q. Did you see Fred in the club that night?

22 A. He was against the wall.

23 Q. Was he already there?

24 A. Yeah, he was there when I got there. Yes, sir.

25 Q. How about Mr. Cowan, was he already there?

KINSHABA SIMMONS - DIRECT BY MR. CAMPBELL

1 A. Yes, sir. He was sitting at the door when I got
2 there. Standing at the door, rather.

3 Q. Now, once inside, what did you observe? Anything go
4 on?

5 A. I seen a dispute in the corner. I seen a couple
6 people go outside, so I followed.

7 Q. Why did they leave or go outside?

8 A. Fred and Detroit had had a couple words and I guess
9 escalated outside, so I followed.

10 Q. Were you around them when this was going on?

11 A. No, sir, I was on the floor.

12 Q. You say the floor, dance floor?

13 A. Yes, sir.

14 Q. And you observed this, they were all going outside;
15 is that right?

16 A. Yes, sir.

17 Q. And you followed?

18 A. Yes, sir.

19 Q. Now, when you got outside what did you see?

20 A. Detroit and Fred were having some words. And then
21 when I come out the door Fred looked at me, and me and him, we
22 had a couple words. And I throwed some drink on him, and he
23 swung out on me, and me and him got to fighting. And I seen
24 Detroit take off running, and when he came back he just
25 started shooting.

KINSHABA SIMMONS - DIRECT BY MR. CAMPBELL

1 Q. When you saw him running which direction did he go?

2 A. He went to the left. I think around the building or
3 something.

4 Q. Now, was the fight between -- or argument between
5 Mr. Cowan and Mr. Penn, did that have anything to do with you?

6 A. No, sir.

7 Q. What were you and Mr. Penn fighting and arguing
8 over?

9 A. Just words, just having words. I had throwed some
10 liquor on him.

11 Q. Now, do you recall seeing Mr. Cowan there that day;
12 is that right? That night?

13 A. Yes, sir.

14 Q. How was he dressed?

15 A. He was in all brown.

16 Q. And when you saw him come back around what was he
17 doing?

18 A. When he came back around he started shooting. He
19 just started shooting.

20 Q. Did you see him have guns in his hands?

21 A. Yes, sir.

22 Q. And how many guns did he have?

23 A. He had two.

24 Q. And could you tell what color they were?

25 A. Chrome.

KINSHABA SIMMONS - DIRECT BY MR. CAMPBELL

1 Q. And do you know what type they were?

2 A. I think a 357.

3 Q. Was it a revolver or an automatic?

4 A. A revolver.

5 Q. Did he say anything before he started shooting?

6 A. He said I killed one of your home boys, don't make
7 me kill you, or something.

8 Q. Did he say anything else?

9 A. No, sir.

10 Q. Now, where were you and Mr. Penn having your
11 confrontation at?

12 A. In the front of the club.

13 Q. Was it in the corner or right in front?

14 A. It was, like, on the side right there where the car
15 had been parked at.

16 Q. And how close was Mr. Cowan when he fired the first
17 shot?

18 A. He was about right where the Judge at, and I'm right
19 here.

20 Q. About the distance between the Judge and you?

21 A. Yes, sir.

22 Q. About ten feet?

23 A. Yes, sir.

24 Q. And did you observe or actually see Mr. Cowan raise
25 the pistol?

KINSHABA SIMMONS - DIRECT BY MR. CAMPBELL

1 A. Yes, sir.

2 Q. He raised both of them or just one?

3 A. When I looked back he just had both of them like
4 that and was shooting (indicated).

5 Q. And did you see him pull the trigger?

6 A. Yes, sir.

7 Q. How close to Fred Penn were you when he fired the
8 first shot?

9 A. Me and Penn was still locked up when he shot the
10 first shot, and when he shot I jumped back and looked and took
11 off.

12 Q. And when the first shot was fired you started
13 running?

14 A. Yes, sir.

15 Q. And where did you go?

16 A. Got in my car and went home.

17 Q. You stick around for when the sheriff's department
18 showed up?

19 A. No, sir.

20 Q. Now, did you go down to the sheriff's department
21 shortly thereafter?

22 A. The next morning.

23 Q. Why did you go down there?

24 A. Because they had said I had killed somebody.

25 Q. So why did you go to the sheriff's department?

KINSHABA SIMMONS - DIRECT BY MR. CAMPBELL

1 A. To get it straight.

2 Q. Who did you talk to?

3 A. Talked to that officer (indicated).

4 Q. Detective Reeves?

5 A. Yes, sir.

6 Q. And on that day, February 7th, you gave a statement
7 to Detective Reeves?

8 A. Yes, sir.

9 Q. How many shots did you hear were fired?

10 A. About 5.

11 Q. Now, were you present yesterday when we played the
12 911 tape?

13 A. No, sir.

14 Q. And after Mr. Cowan started shooting did you see him
15 leave?

16 A. I was already gone, sir.

17 Q. Now, did Mr. Cowan shooting have anything to do with
18 you and Mr. Penn's argument?

19 A. No, sir.

20 Q. Mr. Simmons, you go by a nickname?

21 A. Yes, sir.

22 Q. What nickname do you go by?

23 A. Pissy.

24 MR. CAMPBELL: I have no further questions. Please
25 answer any questions Ms. Thomason may have.

KINSHABA SIMMONS (IC) - CROSS BY MS. THOMASON

1 MS. THOMASON: Your Honor, I think we might need to
2 approach, briefly.

3 THE COURT: Yes, ma'am.

4 (WHEREUPON, a bench conference was had.)

5 THE COURT: Mr. Foreman, ladies and gentlemen of the
6 jury, there's a brief matter that I need to take up with
7 counsel out of your presence, and this will be very brief. So
8 please retire to the jury room and I'll have you right back
9 in, in just a minute.

10 (WHEREUPON, the jury leaves the courtroom at
11 approximately 10:00 a.m.)

12 THE COURT: Counsel?

13 CROSS-EXAMINATION

14 BY MS. THOMASON:

15 Q. Mr. Simmons, I'm Nancy Thomason. I realize you
16 weren't here yesterday, and I represent Mr. Cowan. In going
17 through your criminal record I have a question that I want to
18 ask you about and get cleared up before we go over it in front
19 of the jury.

20 In 1995, your record shows that you were convicted
21 of an attempted armed robbery and two different counts of
22 assault with intent to kill. Then in 1996 there was another
23 conviction of assault with intent to kill. Did you have two
24 different instances where you were convicted?

25 A. No, it was just one. I was 16 at the time. They

KINSHABA SIMMONS (IC) - CROSS BY MS. THOMASON

1 held me until I turn 17 and they just charged me with one.

2 Q. So in '95 was when the event happened and you were
3 arrested?

4 A. Uh-huh.

5 Q. Then in '96 was when you started your Y. O. A.
6 sentence?

7 A. Yes, ma'am.

8 Q. And you started that at Perry?

9 A. Yes, ma'am.

10 Q. So the entry in 1996 is simply when you went into
11 the correctional facility?

12 A. Yes, ma'am.

13 Q. Is that right?

14 A. Uh-huh.

15 MS. THOMASON: That answers my question, Your Honor.

16 THE COURT: Well, let's bring the jury back in then.
17 You're satisfied with the information you have.

18 MS. THOMASON: Shall I sit down, Your Honor?

19 THE COURT: Yeah, just sit down then you can stand
20 up.

21 Sir, she will ask you those questions again in front
22 of the jury, but not exactly like that.

23 Okay, please bring the jury in.

24 (WHEREUPON, the jury enters the courtroom at
25 approximately 10:05 a.m.)

KINSHABA SIMMONS - CROSS BY MS. THOMASON

1 THE COURT: Counsel, you ready to proceed?

2 MS. THOMASON: Thank you, Your Honor. May it please
3 the Court.

4 CROSS-EXAMINATION

5 BY MS. THOMASON:

6 Q. Mr. Simmons, you told the Solicitor that you were
7 there on the night of the Super Bowl party, that you walked
8 out because there was some sort of confrontation between
9 Mr. Cowan and Mr. Penn; is that right?

10 A. Yes. I walked out because I seen a couple of my
11 home boys going out the door.

12 Q. And where did you go when you went outside?

13 A. I was in front of the building.

14 Q. And where was Mr. Cowan and Mr. Penn when you went
15 outside?

16 A. They was on the side over there arguing.

17 Q. To the left or to your right?

18 A. To the left.

19 Q. And what happened next?

20 A. They were arguing. When I came out there he turned
21 around and looked at me. So, I mean, we got to arguing and I
22 just throwed liquor on him.

23 Q. I'm sorry? You did what?

24 A. I said I came out, me and him got to arguing and I
25 throwed some liquor on him.

KINSHABA SIMMONS - CROSS BY MS. THOMASON

1 Q. You threw a liquor drink on Mr. Fred Penn?

2 A. Yes, ma'am.

3 Q. Then what happened?

4 A. Then me and him got to fighting.

5 Q. You and Mr. Penn got to fighting?

6 A. Yes, ma'am.

7 Q. And then what happened?

8 A. Then some shooting came -- started.

9 Q. Were you still in the middle of throws with Mr. Penn
10 when the shooting started?

11 A. No, we was locked up when the shooting started.

12 Q. Okay. You were locked up when the shooting started?

13 A. Yes, ma'am.

14 Q. And you didn't get hit --

15 A. No, ma'am.

16 Q. -- by any bullets? And then what happened?

17 A. When the first shot started I started running.

18 Before I -- when I looked back I seen Detroit shooting. I
19 kept on running.

20 Q. I thought I heard you tell the Solicitor that you
21 saw Mr. Cowan go one way then go another. Did you tell him
22 that?

23 A. I told him when he took off running he went to the
24 left on the side of the building and came back.

25 Q. If I'm standing at the club at the front door with

1 my back to the door and I'm looking out and Murray is on my
2 left and Burson Road is on my right, am I correct in
3 describing it that way?

4 A. I reckon.

5 Q. Which way, if I'm standing there looking out, with
6 Murray on my left, are you saying that Mr. Cowan ran towards
7 Murray and then came back?

8 A. I just know he started -- he took off running. When
9 he came back he had 2 guns.

10 Q. So you didn't see which way he went?

11 A. No, ma'am. He took off running to my left.

12 Q. Nobody was trying to break you and Mr. Penn up?

13 A. No, ma'am.

14 Q. Nobody else cared that you all were over there
15 carrying on fighting?

16 A. I don't know.

17 Q. Do you remember giving the police a statement on
18 March 16th, 2005 where you told them that there were several
19 other people who were within 6 feet of you?

20 A. Yes, ma'am.

21 Q. So there were some other people there?

22 A. There was some other people, yes, ma'am.

23 Q. So there were some other people who should have seen
24 what you saw?

25 A. Yes, ma'am.

KINSHABA SIMMONS - CROSS BY MS. THOMASON

1 Q. And you gave those names to the police?

2 A. Yes, ma'am.

3 Q. The Solicitor went over with you that you were
4 convicted of armed robbery and 2 different assault with intent
5 to kill charges back in '95; is that correct?

6 A. Yes, ma'am.

7 Q. How much time did you spend in prison on those
8 charges?

9 A. I got a 1 to 6. I did 13 months and come out on
10 6-year parole.

11 Q. I noticed -- well, you weren't here yesterday, were
12 you?

13 A. No, ma'am.

14 Q. Were you subpoenaed to be here yesterday?

15 A. Yes, ma'am.

16 Q. Did you show up?

17 A. No, ma'am.

18 Q. How did you end up getting here this morning?

19 A. I came on my own.

20 Q. You came on your own this morning?

21 A. (Nodded).

22 Q. The police didn't come get you?

23 A. They called me.

24 Q. And what did they say?

25 A. Told me I needed to be in court.

1 Q. Or what?

2 A. There wasn't no or.

3 Q. Who called you?

4 A. Officer Reeve.

5 Q. Detective Reeves sitting here?

6 A. Yes, sir -- yes, ma'am.

7 Q. What else did you all talk about?

8 A. Nothing. He just told me I needed to be in court.

9 Q. They didn't come pick you up last night on a bench
10 warrant?

11 A. No. He wanted me to meet him but I ain't never go
12 meet him. So he couldn't lock me up.

13 Q. When was the last time you had any alcohol or drugs
14 in your system?

15 A. The weekend.

16 Q. The weekend. What kind of alcohol or drugs do you
17 have in your system from the weekend?

18 A. Liquor and marijuana.

19 Q. Liquor and marijuana?

20 A. (Nodded).

21 Q. You haven't done any cocaine?

22 A. No, ma'am.

23 Q. Isn't it true that on the night at the Super Bowl
24 you had already been thrown out of the club once for breaking
25 a beer bottle near the stage somewhere?

KINSHABA SIMMONS - CROSS BY MS. THOMASON

1 A. Yes, sir, on the floor I was dancing at.

2 Q. But you got back in somehow?

3 A. Yes, ma'am, they let me back in.

4 Q. And you and Freddy -- or Fred were actually having a
5 fight inside the club at one point; isn't that correct?

6 A. No, ma'am.

7 Q. So you never had any exchange of any words with him?

8 A. Not when we was in the club.

9 Q. Well, why did you all all of a sudden start fighting
10 outside?

11 A. Drunk.

12 Q. You all were both drunk?

13 A. Yes, ma'am.

14 Q. Did you talk to any of the other police officers or
15 law enforcement after yesterday, before you came up here to
16 testify this morning?

17 A. No, ma'am.

18 Q. And initially law enforcement suspected you for this
19 crime, didn't they?

20 A. No. They just -- they said they had needed -- when
21 I had called them the next morning when they said -- somebody
22 had told me that they were looking for me for the murder.
23 They just wanted me to come up there. They told me they know
24 I didn't shoot him. They just wanted me to come up and give a
25 statement.

KINSHABA SIMMONS - REDIRECT BY MR. CAMPBELL

1 Q. So you don't think they ever suspected you to begin
2 with?

3 A. I don't know.

4 Q. Mr. Simmons, you said you were drunk the night of
5 the shooting?

6 A. Yes, ma'am.

7 Q. And so drunk that you got into a fight with a guy
8 for no real reason?

9 A. We were just mouthing off to each other.

10 Q. Had you done any other drugs that night?

11 A. No, ma'am.

12 Q. You didn't smoke any pot, do any cocaine that night?

13 A. Yeah, I was smoking weed that night.

14 Q. So you were doing other drugs that night?

15 A. Yeah.

16 MS. THOMASON: That's all I have.

17 MR. CAMPBELL: Just a couple follow-up.

18 THE COURT: Yes, sir.

19 REDIRECT EXAMINATION

20 BY MR. CAMPBELL:

21 Q. Mr. Simmons, you and Mr. Penn were fighting outside.
22 Did you have a weapon on you?

23 A. No, sir.

24 Q. Did Mr. Penn?

25 A. No, sir.

KINSHABA SIMMONS - RECROSS BY MS. THOMASON

1 Q. Ms. Thomason asked you, you were subpoenaed to be
2 here yesterday and didn't show up; is that right?

3 A. Yes, sir.

4 Q. Why didn't you show up?

5 A. Detroit had called my house told me don't come to
6 court.

7 Q. Mr. Cowan right here?

8 A. Yes, sir.

9 Q. Called your house and said don't show up?

10 A. Yes, sir.

11 Q. Is that because you were scared?

12 A. Yes, sir.

13 MR. CAMPBELL: I have no further questions.

14 RECROSS-EXAMINATION

15 BY MS. THOMASON:

16 Q. If he scared you so bad why did you show up today?

17 A. Because I ain't being scared no more and I wanted
18 Mr. Penn, you know, to have some justice.

19 Q. So you were scared yesterday but you are not scared
20 today?

21 A. No, I ain't said I wasn't scared today. I just came
22 up here.

23 MS. THOMASON: That's all I have.

24 MR. CAMPBELL: I have no further questions of this
25 witness.

JOCTAVIOUS WILLIAMS - DIRECT BY MR. CAMPBELL

1 THE COURT: Thank you, sir. You may stand down,
2 sir.

3 MR. CAMPBELL: I call Joctavious Williams.

4 JOCTAVIOUS WILLIAMS, after having been duly
5 sworn, testified as follows:

6 THE CLERK: Please state your full name, spell your
7 last name for the record.

8 THE WITNESS: Joctavious Marquis Williams,
9 W-i-l-l-i-a-m-s.

10 DIRECT EXAMINATION

11 BY MR. CAMPBELL:

12 Q. Mr. Williams, I want to talk to you about February
13 the 6th, 2005. Do you recall that day?

14 A. Yes, sir.

15 Q. What happened that day?

16 A. I went to the Club Envy.

17 Q. And where is that located?

18 A. Like going toward Frigidare.

19 Q. Down 81?

20 A. Yeah.

21 Q. I'm going to go ahead and talk to you and get it out
22 of the way. You are currently on probation; is that correct?

23 A. Yes, sir.

24 Q. And what are you on probation for?

25 A. PWID.

JOCTAVIOUS WILLIAMS - DIRECT BY MR. CAMPBELL

1 Q. Distribution of drugs?

2 A. Yeah.

3 Q. Crack?

4 A. Yeah.

5 Q. And you are currently -- you were convicted in --
6 doesn't have it here, but you are currently on probation; is
7 that correct?

8 A. Yes, sir.

9 Q. About what time did you get to the Club Envy that
10 night?

11 A. In between 10:00 and 10:30.

12 Q. Did you go with anybody there?

13 A. No. I met up with my home boy Marcus Welborn.

14 Q. You met Marcus Welborn there?

15 A. Yes, sir?

16 Q. And when you got inside the club -- do you know Fred
17 Penn?

18 A. Yeah.

19 Q. How long have you known him?

20 A. Since I been about like 9.

21 Q. And do you know Sammy Cowan?

22 A. Yeah.

23 Q. Is he in the courtroom today?

24 A. Yes, sir.

25 Q. Can you identify him?

JOCTAVIOUS WILLIAMS - DIRECT BY MR. CAMPBELL

1 A. Right there, the white shirt.

2 Q. With the white shirt?

3 A. Yeah.

4 Q. Do you know him by Sammy Cowan or do you know him by
5 something else?

6 A. Detroit.

7 Q. Is that what you typically call him, Detroit?

8 A. Yeah.

9 Q. Was he there when you arrived at the club?

10 A. Yeah, he was there.

11 Q. Was Fred already there, too?

12 A. Yes, sir.

13 Q. Now, when you got to the club did you ever see any
14 words or anything passed between Mr. Cowan and Mr. Penn?

15 A. No, sir.

16 Q. How about Kinshaba Simmons and Mr. Penn?

17 A. Outside.

18 Q. Just outside?

19 A. (Nodded).

20 Q. At what point in the night did you wind up going
21 outside the club?

22 A. When the security escorted Fred and Kinshaba
23 outside.

24 Q. And you went with them?

25 A. Yeah, to see what the commotion was.

JOCTAVIOUS WILLIAMS - DIRECT BY MR. CAMPBELL

1 Q. You just wanted to find out what was going on?

2 A. I seen Pissy going outside. That's my home boy. I
3 was trying to see what was going on.

4 Q. And when you went outside what did you see?

5 A. Him and Fred had some words. I seen Pissy dash him
6 with the liquor, dashed a cup of liquor in his face. Fred had
7 said something to him. They swung a couple blows. Had a
8 little -- little blows passed. After that it was -- Detroit
9 ran into the Burson Road, came back with some pistols and
10 fired a shot, and I ran and got in the car.

11 Q. Now, when you say Pissy are you talking about
12 Kinshaba Simmons?

13 A. Yes, sir.

14 Q. Is he the individual that just walked out with the
15 white T-shirt on?

16 A. Yes, sir.

17 Q. When you got outside he and Mr. Penn were having
18 words?

19 A. Yes, sir.

20 Q. When you walked out the doors which direction were
21 they having words?

22 A. I don't know, left-hand side.

23 Q. Left-hand side of the door?

24 A. Yeah.

25 Q. And do you know what they were arguing over?

JOCTAVIOUS WILLIAMS - DIRECT BY MR: CAMPBELL

1 A. No.

2 Q. At this point, did you see Mr. Cowan involved in any
3 of this argument?

4 A. No, he wasn't in the argument.

5 Q. Do you know how he was dressed that night?

6 A. It was like a brown, tan color.

7 Q. And when you walked out, what did you see him do?

8 A. He said he was tired of this shit. He throw the
9 bottle there, he ran towards Burson Road.

10 Q. And Burson Road, being toward the right of when you
11 walked out the doors?

12 A. Yeah.

13 Q. At that point, did you start watching what Kinshaba
14 and Fred were doing?

15 A. Yeah. I tried to break them up.

16 Q. And when he came back, talking about Mr. Cowan came
17 back, what was he doing?

18 A. He had some words with Craig, Craig Williford. He
19 had some words with him then he went from there, and that's
20 when he had pulled out a pistol.

21 Q. How many pistols he pull out?

22 A. Two.

23 Q. And you know what color they were?

24 A. (Shook head).

25 Q. Do you recall?

JOCTAVIOUS WILLIAMS - DIRECT BY MR. CAMPBELL

1 A. I know they were revolver.

2 Q. And how close to Mr. Cowan were you when this
3 happened?

4 A. I was like at the end of a little step at the
5 entrance of the door.

6 Q. Tell me how close. Tell me to stop.

7 A. Right there.

8 Q. You were about this far from him?

9 A. Yeah.

10 Q. And you could plainly see him, clearly?

11 A. (Nodded).

12 Q. How many pistols did you see?

13 A. Two.

14 Q. Two?

15 A. Yes, sir.

16 Q. And what did he do with those pistols?

17 A. Pulled them out.

18 Q. And where did he have them?

19 A. In his pocket, coat pocket.

20 Q. He pulled them out?

21 A. (Nodded).

22 Q. Then what did he do?

23 A. Fired a shot.

24 Q. Did you see him raise the gun?

25 A. Yeah.

JOCTAVIOUS WILLIAMS - DIRECT BY MR. CAMPBELL

1 Q. And who did he point it at?

2 A. Fred.

3 Q. Did you see him pull the trigger?

4 A. Yeah.

5 Q. When that first shot happened, what did you do?

6 A. Ran to my car.

7 Q. Was Kinshaba Simmons fighting, still with Mr. Penn
8 at that first shot?

9 A. No. The first shot I seen, like, the fight break up
10 and scatter and everybody ran.

11 Q. Where was Mr. Cowan when he fired the first shot?

12 A. Like, at the end of the car. It was a car parked
13 beside the building. He was at the end of the car, and Fred
14 and Kinshaba was in the corner of the club when he fired the
15 shot.

16 Q. How many shots did you hear fired?

17 A. I heard one before I ran out, and I heard like four
18 more when I was leaving the parking lot.

19 Q. Did you see Kinshaba Simmons with a weapon?

20 A. No, sir.

21 Q. Did you see Fred Penn with a weapon?

22 A. No, sir.

23 Q. Both of them were unarmed?

24 A. Yeah, they was unarmed

25 Q. The only thing that happened between them --

JOCTAVIOUS WILLIAMS - DIRECT BY MR. CAMPBELL

1 A. A little fight.

2 Q. -- was Kinshaba throwing a drink?

3 A. Yeah, a little scuffle, fight.

4 Q. Mr. Williams, if you could please step down off the
5 stand.

6 A. (The witness complied).

7 Q. When you walked outside the club which direction was
8 Mr. Penn and Mr. Simmons?

9 A. Right corner over here (indicated).

10 Q. Over here?

11 A. Yeah.

12 Q. And which direction did Mr. Cowan run when he came
13 out of the club?

14 A. Over that way (indicated).

15 Q. He went this way, from here to there?

16 A. Yeah.

17 Q. When he came back around where are you standing?

18 A. Right there (indicated).

19 Q. Over in this area?

20 A. Yes, sir.

21 Q. And where was Mr. Cowan when he started shooting?

22 A. Right beside the car right here (indicated).

23 Q. Right beside this car?

24 A. Yeah. In between those two cars.

25 Q. In between the two cars right here?

JOCTAVIOUS WILLIAMS - CROSS BY MS. THOMASON

1 A. Yeah.

2 Q. Where was Mr. Penn?

3 THE COURT: Excuse me, I don't think the jury nor --
4 I think even the court reporter is having trouble hearing, but
5 I don't think the jury can hear what he's saying. If he can
6 speak up just a little bit.

7 BY MR. CAMPBELL:

8 Q. Speak up so the jury and the court reporter can
9 here.

10 A. He was in between those two cars right there
11 (indicated).

12 Q. Who was?

13 A. Detroit. Mr. Penn was all the way up against the
14 wall.

15 Q. Detroit was between these two cars?

16 A. Yeah.

17 Q. And Mr. Penn was up against the wall?

18 A. Up against the wall.

19 Q. Go and have a seat, please, sir.

20 A. (The witness complied).

21 MR. CAMPBELL: Mr. Williams, will you please answer
22 any questions Ms. Thomason may have.

23 CROSS-EXAMINATION

24 BY MS. THOMASON:

25 Q. Mr. Williams, you were convicted in 2004 for

JOCTAVIOUS WILLIAMS - CROSS BY MS. THOMASON

1 possession and distribution of marijuana; is that correct?

2 A. No, possession of crack cocaine.

3 Q. Crack cocaine?

4 A. Yes, sir.

5 Q. And did you do any time on that charge?

6 A. No. Five suspended to two.

7 Q. And you gave the police a statement in this case,
8 didn't you?

9 A. Uh-huh.

10 Q. Have you spoken with any law enforcement officers
11 since you gave that statement?

12 A. No, ma'am.

13 Q. You haven't talked with Detective Reeves or any
14 other officers in preparation for your testimony today?

15 A. I have talked to them since this been going on.

16 Q. You have?

17 A. Yeah.

18 Q. So you've spoken with somebody from law enforcement
19 since you gave this statement?

20 A. Yes.

21 Q. Where were you when you gave this statement?

22 A. In my lawyer's office. Mr. Byrholdt's office.

23 Q. In your lawyer's office?

24 A. Yes.

25 Q. Mr. Who?

JOCTAVIOUS WILLIAMS - CROSS BY MS. THOMASON

1 A. Mr. Byrholdt.

2 Q. Byrholdt?

3 A. Yeah.

4 Q. And why would you have a lawyer with you when you
5 gave this statement?

6 A. I was -- I had a call. My lawyer gave me a call and
7 said he had me involved in something, to meet him in his
8 office.

9 Q. You gave the statement May 4th, 2005; is that
10 correct?

11 A. Yes, ma'am.

12 Q. And isn't it true that you gave the statement
13 because of some charges, on other drug charges you'd been
14 charged with and your lawyer told you you needed to cooperate
15 with law enforcement so you don't get in trouble because this
16 is your second shot at another drug charge; isn't that true?

17 A. Yes, ma'am.

18 Q. So Mr. Byrholdt was representing you in a brand new
19 drug case that you had pending against you and he worked out a
20 deal for you to talk to the cops; is that right?

21 A. Yes, ma'am.

22 MS. THOMASON: That's all I have.

23 Q. One more question. I'm sorry. Have you been
24 convicted on that new drug charge?

25 A. No, ma'am.

NATASHA REED - DIRECT BY MR. CAMPBELL

1 Q. No?

2 A. (There was no response).

3 MS. THOMASON: That's all I have.

4 REDIRECT EXAMINATION

5 BY MR. CAMPBELL:

6 Q. Mr. Williams, was the statement you gave to the
7 police true?

8 A. Yes, ma'am -- yes, sir.

9 MR. CAMPBELL: No further questions.

10 THE COURT: The witness may step down. Thank you,
11 sir. You may stand down.

12 MR. CAMPBELL: Your Honor, may we approach?

13 THE COURT: Yes, sir.

14 (WHEREUPON, a bench conference was had.)

15 MR. CAMPBELL: We call Ms. Reed.

16 NATASHA REED, after having been duly sworn,
17 testified as follows:

18 THE CLERK: You may have a seat on the witness
19 stand. Please state your full name, spell your last name for
20 the record.

21 THE WITNESS: Natasha Ann Reed, R-e-e-d.

22 DIRECT EXAMINATION

23 BY MR. CAMPBELL:

24 Q. Ms. Reed, you currently live in Anderson?

25 A. Uh-huh.

NATASHA REED - DIRECT BY MR. CAMPBELL

1 Q. You lived here all your life?

2 A. Yes.

3 Q. I want to talk to you about the events that took
4 place on February 6th, 2005. Do you recall that day?

5 A. Uh-huh.

6 THE COURT: Excuse me, Counsel.

7 Ma'am, please answer yes or no so it will be easier
8 for us to record your responses, ma'am. Thank you.

9 BY MR. CAMPBELL:

10 Q. Why do you recall that day?

11 A. That's the day we went to Club Envy and Fred got
12 shot.

13 Q. When you say Fred who are you referring to?

14 A. Frederick Penn.

15 Q. Do you know Frederick Penn?

16 A. Yes.

17 Q. How long you known him?

18 A. For awhile. We kind of grew up together.

19 Q. And what was going on at Club Envy that night, do
20 you know?

21 A. They was having a Super Bowl party.

22 Q. And how did you get there that night?

23 A. Me and two friends rode together.

24 Q. Do you recall approximately what time you got there?

25 A. Around 11:00, 11:15.

NATASHA REED - DIRECT BY MR. CAMPBELL

1 Q. And when you got there what did you observe or see?

2 A. When we pulled up in the parking lot it was like a
3 big crowd outside so we couldn't actually get through, through
4 the parking lot. So it was like somebody was fighting up in
5 the corner. So we was sitting there trying to figure out who
6 it was?

7 Q. Were you still in your car?

8 A. Uh-huh. We never got out of the car.

9 Q. And what did you see? Did you see who was fighting?

10 A. Yeah, it was pumpkin and Fred and some more guys.

11 Q. When you say pumpkin, you're referring to Kinshaba
12 Simmons?

13 A. Yes.

14 Q. Is he the guy that walked outside with the white
15 T-shirt on?

16 A. Yes.

17 Q. What did you see them two doing?

18 A. Well, when we pulled up they was, like, kind of
19 arguing and he kept hitting Fred but Fred never hit him back,
20 and then he hit him with a bottle and that's when they started
21 fighting.

22 Q. At that point -- well, how far away from them were
23 you?

24 A. Maybe about ten feet.

25 Q. And did you see Kinshaba Simmons with a weapon?

NATASHA REED - DIRECT BY MR. CAMPBELL

1 A. No.

2 Q. A gun or any knife or anything?

3 A. No.

4 Q. How about Fred Penn?

5 A. No.

6 Q. After they started fighting what else did you see?

7 A. They started fighting and I seen a guy with a gun so
8 I told Joniki. I was like, they about to start shooting.

9 Let's go.

10 Q. Do you know what color of clothes he was wearing?

11 A. He had on a brown khaki suit.

12 Q. Was it a black guy, a white guy?

13 A. A black guy.

14 Q. Was he facing you or had his back to you?

15 A. His back was towards me.

16 Q. And you say he had a gun; is that right?

17 A. Yes.

18 Q. Did you see how many?

19 A. One.

20 Q. Do you know what color it was?

21 A. It was silver.

22 Q. And do you know a lot about guns?

23 A. No.

24 Q. Do you know the difference between an automatic and
25 a revolver?

NATASHA REED - DIRECT BY MR. CAMPBELL

- 1 A. No.
- 2 Q. What did you see this individual do with the gun?
- 3 A. He was just standing there holding it.
- 4 Q. And what did you do?
- 5 A. We backed up and left.
- 6 Q. Why?
- 7 A. Because I knew somebody was about to start shooting.
- 8 Q. And how many shots did you hear?
- 9 A. Maybe three or four. I'm not sure.
- 10 Q. And at that point you were still in the car; is that
- 11 right?
- 12 A. Yes.
- 13 Q. And what did you all do?
- 14 A. We backed up and left and came back around, and we
- 15 pulled up the same time the ambulance was pulling up.
- 16 Q. Did you talk to law enforcement, the sheriff's
- 17 department that night?
- 18 A. Yes.
- 19 Q. And you gave a statement; is that right?
- 20 A. Yes.
- 21 Q. Did you ever see the face of the individual who had
- 22 the gun in his hand?
- 23 A. No.
- 24 Q. Now, Ms. Reed, back in '94 you had a shoplifting
- 25 conviction; is that correct?

NATASHA REED - CROSS BY MS. THOMASON

1 A. Yes.

2 Q. Nothing else since then; is that right?

3 A. No.

4 MR. CAMPBELL: I have no further questions,
5 Ms. Reed. Will you please answer any questions Ms. Thomason
6 may have.

7 CROSS-EXAMINATION

8 BY MS. THOMASON:

9 Q. Ms. Reed, there was a big crowd out there that
10 night?

11 A. Yes.

12 Q. A big party going on?

13 A. Yes.

14 Q. Lots of people drinking, having a good time?

15 A. I don't know. I never got to get in.

16 Q. You never went in?

17 A. No.

18 Q. Would it surprise you if I suggested to you that
19 there were other people out there that night that had guns?

20 A. No.

21 Q. Why not?

22 A. I mean, there was a fight and most likely that's
23 what they do, pull out guns when they fight.

24 Q. So it's not a surprising thing to you that the folks
25 that hang out at Club Envy might have some guns?

NATASHA REED - REDIRECT BY MR. CAMPBELL

1 A. I don't know.

2 Q. That doesn't surprise you?

3 A. No.

4 Q. And you didn't see Kinshaba with a weapon but that
5 didn't mean he didn't have one; is that right?

6 A. I didn't see him with one.

7 Q. You just didn't see him with one?

8 A. No.

9 Q. And you didn't see Fred Penn with one but that
10 doesn't mean he didn't have one, you just didn't see it?

11 A. I didn't see him with one.

12 Q. And I'm assuming that you didn't check out all the
13 other people out there. There could have been somebody else
14 with a gun, couldn't there?

15 A. I don't know. I didn't see nobody else.

16 Q. It is possible that somebody else in all of those
17 people that were out there crowding around had a gun other
18 than the guy that you said you saw?

19 A. Yeah.

20 MS. THOMASON: That's all I have.

21 REDIRECT-EXAMINATION

22 BY MR. CAMPBELL:

23 Q. Ms. Reed, how many individuals did you see with a
24 weapon or gun?

25 A. One.

THOMAS LEROY MCDONALD - DIRECT BY MR. CAMPBELL

1 Q. And that individual was dressed in what color
2 outfit?

3 A. A brown khaki suit.

4 Q. Nobody else that you saw or could observe had
5 anything else, any other weapon?

6 A. No.

7 MR. CAMPBELL: No further questions.

8 MS. THOMASON: Nothing further.

9 THE COURT: Thank you, ma'am. You may stand down.

10 MR. CAMPBELL: Your Honor, may Ms. Thomason and I
11 approach?

12 THE COURT: Yes, sir.

13 (WHEREUPON, a bench conference was had.)

14 MR. CAMPBELL: We call Thomas McDonald.

15 THOMAS LEROY MCDONALD, after having been duly
16 sworn, testified as follows:

17 THE CLERK: Please state your full name and spell
18 your last name for the record.

19 THE WITNESS: Thomas Leroy McDonald,
20 M-c-D-o-n-a-l-d.

21 DIRECT EXAMINATION

22 BY MR. CAMPBELL:

23 Q. Mr. McDonald, where do you currently live?

24 A. I'm currently residing at Home of the Heart, a
25 Christian rehab for alcoholics and drug addicts.

THOMAS LEROY MCDONALD - DIRECT BY MR. CAMPBELL

1 Q. How long you been there?

2 A. This Thursday will be two weeks.

3 Q. And is that because you have a drug problem?

4 A. Yes, sir.

5 Q. In fact, you have a criminal record; is that right?

6 A. Yes, sir.

7 Q. In 1999, you had an assault and battery of a high
8 and aggravated nature; is that correct?

9 A. Yes, sir.

10 Q. In 2001, you had a receiving stolen goods,
11 possession of stolen goods charge conviction?

12 A. Yes, sir.

13 Q. Is that correct?

14 A. Yes, sir.

15 Q. Now, you were incarcerated in Anderson County
16 Detention Center between January 18th, 2005 and April 27th,
17 2005; is that correct?

18 A. Yes, sir.

19 Q. What type of charges were you incarcerated on at
20 that time?

21 A. I had a grand larceny charge and assault and battery
22 with a high and aggravated nature charge.

23 Q. And what happened to those charges?

24 A. I pled guilty to those charges and was sentenced to
25 Mental Health Court for my addictions for alcohol and drugs.

THOMAS LEROY MCDONALD - DIRECT BY MR. CAMPBELL

1 Q. And was that in April?

2 A. Yes, sir.

3 Q. Now, during that time that you were in Anderson
4 County Detention Center did you have an occasion to come in
5 contact with an individual by the name of Sam Cowan, Sammy
6 Cowan?

7 A. Yes, sir, I did.

8 Q. Is he in the courtroom today?

9 A. Yes, sir.

10 Q. Can you identify him?

11 A. Yes, sir. He's right there with the white shirt and
12 tie (indicated).

13 Q. Did you know him as Sammy Cowan?

14 A. Well, we called him Detroit.

15 Q. Now, around February, sometime in February did you
16 contact law enforcement?

17 A. I myself didn't. I had my niece contact because he
18 was -- Mr. Cowan was bragging about, you know, what he had
19 done and I was concerned, you know. And I had my niece
20 contact -- find out who the investigator of the case was and,
21 you know, that I may talk to them.

22 Q. Now, prior to that did law enforcement, sheriff's
23 department, anybody contact you?

24 A. No, sir.

25 Q. And you cooperated freely on your own; is that

THOMAS LEROY MCDONALD - DIRECT BY MR. CAMPBELL

1 right?

2 A. Yes, sir.

3 Q. Had anything been promised to you?

4 A. No, sir.

5 Q. Have you ever met me before?

6 A. Not until yesterday.

7 Q. And you never spoke to me; is that correct?

8 A. No, sir.

9 Q. And no deals were made or given to you in agreement
10 for you to cooperate and testify today; is that right?

11 A. No, sir.

12 Q. Was any leniency given on the charges that you pled
13 guilty to in April?

14 A. No, sir.

15 Q. Now, how close were you incarcerated -- you said
16 both you all were incarcerated in Anderson County Detention
17 Center. Where exactly were you compared to Mr. Cowan in the
18 jail?

19 A. At different times I was in cells around him. There
20 is a federal side. It's a hallway of individual cells,
21 one-man cells, and they are side-by-side and just separated by
22 a wall about this big. At one point in time I was beside him,
23 at one point in time I was in a cell -- two cells down.

24 Q. And did he talk directly to you or did he talk to
25 other people about the events that took place?

THOMAS LEROY MCDONALD - DIRECT BY MR. CAMPBELL

1 A. He did a lot of talking, some to me, some to other
2 people, a lot on the telephone.

3 Q. Did law enforcement ever ask you to ask him
4 questions?

5 A. No, sir, they did not.

6 Q. And what did you hear him say?

7 A. I heard him say that he had, you know, been in a
8 nightclub and that there was an argument that took place and
9 pussy mother fucker kept running his mouth so he fired him up.

10 Q. That's what he said?

11 A. Yes, sir.

12 Q. And what did you take that to mean?

13 A. I took it to mean that he shot the victim.

14 Q. Did he ever say who the victim was?

15 A. He had mentioned that it was a guy named Fred.

16 Q. And prior to this did you know anything about the
17 events that took place between Mr. Cowan and this individual
18 named Fred?

19 A. No, sir, just what Mr. Cowan said.

20 Q. You had no other outside information or contact
21 whether it be newspapers, media, radio, television that
22 informed you about what happened?

23 A. No, sir, they don't allow those in the detention
24 center.

25 Q. When you said he lit him up, did he say how he did

THOMAS LEROY MCDONALD - DIRECT BY MR. CAMPBELL

1 it or what he used?

2 A. He had made a statement that the police thought that
3 he had two 357 handguns. At one point in time he said they
4 had no evidence and he was going to beat it. Then another
5 time and another occasion he said damned right I had two
6 357's, and yeah, I fired him up.

7 Q. Did he ever mention what happened to these
8 handguns?

9 A. Not directly. He did mention on the phone on one
10 occasion that on his way to A. T. L. that they flew or it
11 flew.

12 Q. When you say A. T. L. what are you referring to?

13 A. To Atlanta.

14 Q. What did he mention about Atlanta?

15 A. He had mentioned that he had went to Atlanta on the
16 night of the shooting and that he had purchased a bus ticket.
17 That he was going to leave town and he was going to try to
18 head back home to Detroit but upon consideration he cancelled
19 and he went to Athens, Georgia to where he knew a girl.

20 Q. Now, being here today, you're doing this on your
21 own; is that right?

22 A. Yes, sir.

23 Q. And why, someone who's been -- had a previous
24 criminal history such as yourself, currently involved in
25 mental health type program due to drug addiction would you

THOMAS LEROY MCDONALD - DIRECT BY MR. CAMPBELL

1 agree to -- would you send all this information to the police,
2 sheriff's department?

3 A. You know, I realize that my life, you know, it's
4 been turmoil, and I've caused that upon myself. For once, you
5 know, I want to change, and today I set here as a man
6 determined to change, and I feel in my heart that it's the
7 right thing to do, you know, to step forward and to tell the
8 truth, especially in a matter such as this one because the way
9 Mr. Cowan, he had no remorse in the way he talked and bragged
10 about what he had done.

11 You know, I got to thinking about what if I get out
12 of here. What if he goes into a rage and he is in a Wal-Mart
13 parking lot and my family is there, you know, and he just
14 happens to start shooting his 357. You know, that could be
15 my family.

16 Q. Mr. Cowan ever say anything directed to you about
17 coming to testify?

18 A. Oh, yes, sir, he did. Before my release from the
19 county somehow he got wind of that I was involved, you know,
20 talking to the investigator and he threatened my life and the
21 life of my family once he got out. He made mention that he
22 had a brother that would be getting out of prison soon and
23 that he would have him kill my family and kill me.

24 MR. CAMPBELL: I have no further questions. Please
25 answer any question Ms. Thomason may have.

THOMAS LEROY MCDONALD - CROSS BY MS. THOMASON

CROSS-EXAMINATION

1

2 BY MS. THOMASON:

3 Q. Mr. McDonald, you've been involved in the criminal
4 justice system dating back to 1997, haven't you?

5 A. Yes, ma'am.

6 Q. You've had drug problems since then, haven't you?

7 A. Yes, ma'am.

8 Q. You've been convicted at least twice of having more
9 than 28 grams of marijuana on you, haven't you?

10 A. Yes, ma'am.

11 Q. You were convicted also in 1999 of assault and
12 battery of a high and aggravated nature, weren't you?

13 A. Yes, ma'am.

14 Q. You were given a 10-year sentence. You did 42
15 months in prison, didn't you?

16 A. Yes, ma'am.

17 Q. Where did you do that time?

18 A. I started out at Givens Correctional Facility, and
19 from there I went to Tiger River.

20 Q. I imagine being in prison is not a pleasant thing?

21 A. No, ma'am, it isn't.

22 Q. You don't want to go back?

23 A. No, ma'am.

24 Q. In 2001 you were convicted of receiving stolen
25 goods; is that right?

THOMAS LEROY MCDONALD - CROSS BY MS. THOMASON

1 A. Yes, ma'am.

2 Q. You were convicted again and given 5 years for that
3 charge; is this right?

4 A. Yes, ma'am.

5 Q. A second time in 2001 you were convicted of
6 possession of a stolen vehicle; is that right?

7 A. Yes, ma'am.

8 Q. You were given 5 years for that crime; is that
9 right?

10 A. Yes, ma'am, that's the same charge.

11 Q. One is possession of stolen goods and one is
12 possessing stolen vehicle. Were you in a stolen car?

13 A. Yes, ma'am.

14 Q. And you had some stolen goods in the car?

15 A. No, ma'am.

16 Q. And then your most recent charge was this assault
17 and battery high and aggravated nature that you were charged
18 with in 2005; is that right?

19 A. Yes, ma'am.

20 Q. In fact, you came into the detention center sometime
21 in the middle of January 2005 on that charge; is that right?

22 A. January the 18th, to be exact.

23 Q. What did you do to get charged with assault and
24 battery of a high and aggravated nature?

25 A. I was at my girlfriend's house --

THOMAS LEROY MCDONALD - CROSS BY MS. THOMASON

1 MR. CAMPBELL: Your Honor, I object. That's
2 irrelevant to this case.

3 THE COURT: Sustained.

4 MS. THOMASON: Your Honor, may we approach?

5 THE COURT: Yes, ma'am.

6 (WHEREUPON, a bench conference was had.)

7 BY MS. THOMASON:

8 Q. Mr. McDonald, my question to you was what you had
9 done to get assault and battery of a high and aggravated
10 nature, and I don't need to know the whole story but what was
11 the injury that you caused to whomever was the victim?

12 A. There was some staples in the back of his head.

13 Q. And those got there because you hit that person in
14 the back of the head?

15 A. Yes, ma'am.

16 Q. And what kind of weapon did you use to hit that
17 person in the back of head?

18 A. It was a hammer.

19 Q. A hammer?

20 A. Yes, ma'am.

21 Q. And how many stitches did that cause the victim to
22 have?

23 A. 13.

24 Q. 13 stitches. Does he have any permanent brain
25 injury or problems as a result of that?

THOMAS LEROY MCDONALD - CROSS BY MS. THOMASON

1 A. No, ma'am.

2 THE COURT: Counsel, move on.

3 Q. And you were allowed into Mental Health Court; is
4 that correct?

5 A. Yes, ma'am.

6 Q. And when was your disposition made to allow you to
7 handle your punishment for this crime through Mental Health
8 Court?

9 A. I don't understand the question.

10 Q. When did you find out that you were going to be
11 allowed to go through Mental Health Court instead of to get
12 prison time or have to plead guilty in open court for this
13 charge?

14 A. I had talked with Tommy Olglesby from Mental Health
15 and he had made mention of this program. I was having some
16 problems in the county and --

17 Q. What I'm asking you, sir, is was it -- we are in
18 November now. Was it October or was it September?

19 A. April 27th I was sentenced.

20 Q. So in April of this year is when you were given the
21 opportunity to go through Mental Health Court; is that
22 correct?

23 A. Yes, ma'am.

24 Q. What is your mental diagnosis?

25 A. Positive substance abuse. It's another word in

THOMAS LEROY MCDONALD - CROSS BY MS. THOMASON

1 there -- depression, manic depression, and there's something
2 else. I'm not completely sure of that myself.

3 Q. And what kind of treatment are you receiving?

4 A. I'm currently involved with therapy, group therapy
5 at the Mental Health and I'm in Christian rehab now on my own
6 accord.

7 Q. Are you on any kind of medications?

8 A. No, ma'am, not at this time.

9 Q. And what drugs were you addicted to?

10 A. Alcohol and crack cocaine and Methamphetamine.

11 Q. Isn't it true when you are addicted to
12 Methamphetamines it's a pretty serious addiction?

13 MR. CAMPBELL: Objection, Your Honor. That has
14 nothing to do with this case.

15 MS. THOMASON: I'm going to tie it in, Your Honor, I
16 assure you, very quickly.

17 THE COURT: I'll allow you a little leeway on cross.
18 Go ahead, Counsel.

19 BY MS. THOMASON:

20 Q. Isn't it true when you are addicted to
21 Methamphetamine it's a pretty strong addiction?

22 A. Yes, ma'am.

23 Q. And it kind of takes over your life; isn't that
24 true?

25 A. Yes, ma'am.

THOMAS LEROY MCDONALD - CROSS BY MS. THOMASON

1 Q. And when you were arrested in January of 2005 you
2 were still using at that time, weren't you?

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

4 Q. And to have to come off that kind of a drug in
5 prison I imagine it was a pretty horrible thing, isn't it?

6 A. Yes, ma'am.

7 Q. You'd do pretty much almost anything to get out, to
8 get back to using again, wouldn't you?

9 A. No, ma'am.

10 MR. CAMPBELL: Objection, Your Honor. That has
11 nothing to do with the case.

12 THE COURT: I'll allow you leeway, Counsel. Go
13 ahead.

14 BY MS. THOMASON:

15 Q. You would do almost anything to get out and get some
16 more of that drug, wouldn't you?

17 A. No, ma'am.

18 Q. Your mind doesn't think about that before you get
19 treatment, all I want to do is get out and get some more of
20 that drug?

21 A. My mind was thinking that I wanted help, I want to
22 be off of that drug because it took control of my life and I
23 wanted my life back.

24 Q. You weren't thinking that you wanted to do whatever
25 you could to get out of that jailhouse?

THOMAS LEROY MCDONALD - REDIRECT BY MR. CAMPBELL

1 A. No, ma'am.

2 MS. THOMASON: That's all I have.

3 MR. CAMPBELL: A couple follow-ups.

4 THE COURT: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. CAMPBELL:

7 Q. Mr. McDonald, prior to you pleading on April 27th,
8 2005 did you and I have any other agreement or did you speak
9 to me regarding entering Mental Health?

10 A. No, sir.

11 Q. Who mentioned Mental Health Court for you?

12 A. Tommy Olglesby.

13 Q. Did your attorney help with that?

14 A. Yes, sir, John Stathakis.

15 Q. But it was nothing to do with myself or Detective
16 Reeves; is that right?

17 A. No, sir.

18 MR. CAMPBELL: I have no further questions.

19 THE COURT: Thank you, sir. You may stand down,
20 sir.

21 MS. THOMASON: I'm sorry, Your Honor.

22 THE COURT: I'm sorry.

23 Wait just a minute, sir. Resume the chair, if you
24 will, the witness chair.

25 RECROSS-EXAMINATION

THOMAS LEROY MCDONALD - RECROSS BY MS. THOMASON

1 BY MS. THOMASON:

2 Q. Mr. McDonald, it is true that all the letters that
3 you wrote to Detective Reeves and all of the statements that
4 you gave to Detective Reeves all occurred prior to your
5 release from the Anderson County Detention Center; isn't that
6 correct?

7 A. Yes, ma'am.

8 Q. And you were not released from the Anderson County
9 Detention Center until you entered that plea to Mental Health
10 Court; is that correct?

11 A. It's the same day I was released that I entered --
12 that I pled guilty in court.

13 MS. THOMASON: Yes, sir. Thank you.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. CAMPBELL:

16 Q. Did Detective Reeves promise you or help you get
17 into Mental Health Court?

18 A. No, sir.

19 Q. Anybody at the sheriff's department help you get in
20 Mental Health Court?

21 A. No, sir.

22 MR. CAMPBELL: No further questions.

23 THE COURT: All right. Thank you, sir. You may
24 step down.

25 Counsel, it might be a good time to take a short

1 recess.

2 Mr. Foreman, ladies and gentlemen of the jury, we're
3 going to take a recess at this time. You may refresh
4 yourselves during the break.

5 The Clerk of Court has agreed that you could bring
6 something back to drink with you in the jury box. Please be
7 careful with that and not spill it, but if you want to bring
8 some coffee, water, Coke, whatever you have back there to
9 drink in the jury box you're welcome to do that. You may
10 refresh yourselves during the break, and we'll take probably
11 about 10 to 15 minutes. Thank you.

12 (WHEREUPON, the jury leaves the courtroom at
13 approximately 10:55 a.m.)

14 THE COURT: We'll be in recess. Any matters we need
15 to take up before we go to break?

16 MR. CAMPBELL: No, Your Honor.

17 THE COURT: Defense?

18 MS. THOMASON: No, Your Honor.

19 THE COURT: Let's take about 10, 12 minutes and
20 refresh ourselves. Thank you.

21 (WHEREUPON, a brief recess was taken.)

22 (WHEREUPON, State's Exhibits Numbers 24 through 29
23 were marked for identification only.)

24 THE COURT: Counsel, ready to proceed?

25 MR. CAMPBELL: May we Approach?

1 (WHEREUPON, a bench conference was had.)

2 THE COURT: Yes, ma'am?

3 MS. THOMASON: Your Honor, I kind of have a
4 preemptive motion on the next witness who I understand is
5 going to be Francis Ann Fleming. Of course, I don't know what
6 she's going to testify to yet. She gave a little over a
7 2-page statement to the police that has a lot to do with a lot
8 of things that don't have to do with this case. A lot of what
9 she gave to law enforcement I would object to as being
10 completely not relevant.

11 The one thing that I am most concerned with is that
12 the Solicitor does not go into my client's prior bad acts or
13 prior history. There was another witness who gave a statement
14 that they tried to get this girl not to go out with my client
15 because of his prior record and I don't want to go there. I'm
16 not going to open that door and I don't want them to.

17 What I am anticipating is the last paragraph and a
18 half or so of her statement is about phone calls that she had
19 with Mr. Cowan after the shooting took place. She was not a
20 witness at the shooting but she did talk to him on the phone
21 a couple times.

22 Certainly, I have no objection to what she may
23 testify to that he said but in one of those conversations she
24 actually started off by talking to a man named Tubs, and this
25 Tubs fellow supposedly told her all about the shooting at the

1 club and told her that Sammy Cowan was suspected in that.

2 So I would object to her testifying to anything that
3 Tubs told her. So if the Solicitor is planning on going --
4 and, again, I just wanted to do this outside the presence of
5 the jury because we all know once that bell has been rung you
6 can't unring it, and I don't want him going into anything
7 either that's not relevant or hearsay that would not be
8 properly admissible under the hearsay exceptions.

9 MR. CAMPBELL: Your Honor, regarding his prior bad
10 acts, we are not going into that. If we were we would have
11 used all the other witnesses, because they all know. We have
12 not gone there. We did not offer any type of Lyle evidence
13 in this case, even maybe an outside shot of it. We are not
14 going there.

15 This witness is going to testify to the fact of what
16 he stated to her on the telephone calls after the shooting.
17 Also, I don't plan on going into what Tubs stated, this
18 individual by that name. That is hearsay. I don't plan on
19 going into that.

20 You know, she's going to testify to what he told her
21 on the phone, and she cooperated with law enforcement, and,
22 you know, what he stated to her, and that's basically all we
23 are going into with her.

24 MS. THOMASON: That's certainly admissible.

25 THE COURT: Then you, of course, have to be careful

FRANCIS ANN FLEMING - DIRECT BY MR. CAMPBELL

1 not to open the door on cross.

2 MS. THOMASON: Yes, sir.

3 THE COURT: All right. Thank you.

4 Please bring the jury in.

5 (WHEREUPON, the jury enters the courtroom at
6 approximately 11:37 a.m.)

7 THE COURT: Counsel, ready to proceed?

8 MR. CAMPBELL: Thank you, Your Honor. We call
9 Francis Ann Fleming.

10 FRANCIS ANN FLEMING, after having been duly
11 sworn, testified as follows:

12 THE CLERK: Please have a seat on the witness stand.
13 Please state your full name, spell your last name for the
14 record.

15 THE WITNESS: Francis Ann Fleming, F-l-e-m-i-n-g.

16 DIRECT EXAMINATION

17 BY MR. CAMPBELL:

18 Q. Ms. Fleming, where do you currently live?

19 A. [REDACTED], Honea Path, South Carolina.

20 Q. Do you know Mr. Sammy Cowan?

21 A. Yes.

22 Q. Is he in the courtroom today?

23 A. Yes.

24 Q. What is he wearing?

25 A. A white shirt with a tie.

FRANCIS ANN FLEMING - DIRECT BY MR. CAMPBELL

1 Q. And how do you know Mr. Cowan?

2 A. We got to be good friends April of 2004.

3 Q. Did it eventually wind up being a relationship?

4 A. Yes.

5 Q. Now, what did you call Mr. Cowan by name? What name
6 did you call him?

7 A. Sam.

8 Q. Did he go by any other names?

9 A. Tyrone, Detroit.

10 Q. Now, I want to talk to you about the events that
11 took place after February 6th, 2005; do you recall that?

12 A. Yes.

13 Q. Why do you recall those days?

14 A. (There was no response).

15 Q. Let me back up. When after February 6th, 2005 did
16 you initially come into contact or have any correspondence
17 with Mr. Cowan?

18 A. On Monday.

19 Q. February the 7th?

20 A. Yes.

21 Q. And how did you come into contact with him?

22 A. A friend of his, Tubs.

23 Q. Don't repeat anything that Tubs said because that
24 would be hearsay.

25 A. Okay. Well, he called me.

FRANCIS ANN FLEMING - DIRECT BY MR. CAMPBELL

1 Q. Tubs did?

2 A. Tubs called me.

3 Q. And what did you do?

4 A. Asked me to come to his house at lunchtime. He said
5 he wanted to talk to me.

6 Q. And did you do that?

7 A. Yes.

8 Q. And while you were at his house did you eventually
9 have a conversation with Mr. Cowan?

10 A. Yes.

11 Q. And what was that conversation about?

12 A. I had asked him where he was at. I had told him
13 that I had heard some rumors.

14 Q. And what did he say?

15 A. He -- I think he said that do I believe everything I
16 hear. Something to that nature. He never told me where he
17 was.

18 Q. And did you all talk about anything else?

19 A. No, not really. We just argued a lot.

20 Q. And this is around lunchtime?

21 A. Yes.

22 Q. After that, when was the next time you had any type
23 of correspondence with Mr. Cowan?

24 A. I talked to him one more time while I was with Tubs.
25 Basically, the same thing ensued, you know, ended up arguing.

FRANCIS ANN FLEMING - DIRECT BY MR. CAMPBELL

1 I started crying. He wouldn't talk to me when I cry, so he
2 hung up.

3 Q. And what did you do after that?

4 A. I went on back to work.

5 Q. And before you left work that day did you have any
6 more telephone calls from Mr. Cowan?

7 A. Yes. I had one. I don't recall exactly what time
8 it was but I do know it was before I got off work.

9 Q. What time do you typically get off work?

10 A. Anywhere between 5:00, 6:00.

11 Q. And what did you all talk about on this telephone
12 conversation?

13 A. I asked him where he was. He didn't tell me.
14 Really, he didn't have a lot to say to me about -- you know,
15 but I told him I was concerned about him and --

16 Q. And did you have any other conversation with him?

17 A. I asked him -- I could hear a noise in the
18 background like a radio. It sounded like he was in a car
19 because I could hear people talking like, you know, when you
20 are on the cell phone and you're in a car. That's what it
21 sounded like. And I asked him where he was and he told me he
22 was not anywhere around Anderson, I assume.

23 Q. And did you have any more telephone calls with him
24 that day, Monday, February 7th?

25 A. Yes. Around -- I believe it was around 8 o'clock

1 that evening he called me back. It was quite at that time,
2 very quite. I asked him again where he was. He didn't tell
3 me where he was at except to say he was at a bus station.

4 Q. Did he tell you what bus station he was at?

5 A. No.

6 Q. And when he was talking to you did he ask you for
7 anything?

8 A. At that time, I don't remember him asking me for
9 anything.

10 Q. After that third call that Monday on February 7th,
11 did you talk to him any more that week?

12 A. I talked to him on Tuesday.

13 Q. And when did you talk to him then, about what time?

14 A. It was before lunch time, I believe. I told him I
15 had read the papers and what the papers were saying. That I
16 was concerned for him and that he needed to come on back home.

17 Q. What did he tell you?

18 A. He asked me why would he want to do something like
19 that.

20 Q. Did he ask you for anything at that point in time?

21 A. He did ask for some money.

22 Q. And how were you supposed to get this money to him?

23 A. I don't know.

24 Q. Did you ever get any money for him?

25 A. No.

FRANCIS ANN FLEMING - DIRECT BY MR. CAMPBELL

1 Q. Did you have any more conversations with him the
2 rest of the week?

3 A. Let's see. That was on Tuesday. Friday.

4 Q. Now, before Friday did you have occasion to talk to
5 Detective Reeves?

6 A. Yes.

7 Q. Tell the ladies and gentlemen of the jury how that
8 came about.

9 A. On Thursday I was at work on my job and two
10 detectives came to my job to pick me up.

11 Q. And why did they do that?

12 A. I assume they thought I knew something more than I
13 knew about, what had happened.

14 Q. And what did you tell the detectives?

15 A. I answered the questions and told them what I knew
16 and what I didn't know.

17 Q. And did you agree to help them, law enforcement?

18 A. I did.

19 Q. And what did they ask you to do?

20 A. They asked me to let them know if he got in contact
21 with me again.

22 Q. And did you do that?

23 A. Yes, I did.

24 Q. And when did you do that?

25 A. On Friday evening around 5:30 I had gotten off of

FRANCIS ANN FLEMING - DIRECT BY MR. CAMPBELL

1 work and a friend and I had been -- had had a bad week. So
2 one of my friends and I went to get a drink after work, and he
3 called.

4 Q. He being Sammy Cowan?

5 A. Sam called.

6 Q. And after he called what did you do?

7 A. I called Detective Reeves.

8 Q. Did Mr. Cowan call you anymore that night?

9 A. Yes. He called me several times that night.

10 Q. And did you inform --

11 A. Every time.

12 Q. -- Detective Reeves that he had called?

13 A. Yes. Yes.

14 Q. After that did you have any more involvement in the
15 case?

16 A. No.

17 Q. Now, when you went down on Thursday, February the
18 10th, is that correct, to the sheriff's department?

19 A. Yes.

20 Q. You wrote a statement on that day; is that right?

21 A. Yes, I did.

22 Q. Did they ever ask you to write any more statements
23 besides the one you wrote on Thursday?

24 A. No.

25 Q. The only thing they asked you was to call them if he

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 called you?

2 A. Yes.

3 MR. CAMPBELL: I have no further questions. Please
4 answer any questions Ms. Thomason might have.

5 MS. THOMASON: No questions, Your Honor.

6 THE COURT: Thank you, ma'am. You may stand down.

7 MR. CAMPBELL: The witness may be excused?

8 MS. THOMASON: No objection.

9 THE COURT: Thank you for coming. You may be
10 excused.

11 MR. CAMPBELL: Your Honor, the State calls Detective
12 Steve Reeves.

13 STEVEN JAMES REEVES, after having been duly
14 sworn, testified as follows:

15 THE CLERK: Please have a seat on the witness stand.
16 Please state your full name, spell your last name for the
17 record.

18 THE WITNESS: Steven James Reeves, R-e-e-v-e-s.

19 DIRECT EXAMINATION

20 BY MR. CAMPBELL:

21 Q. Mr. Reeves, you are a detective at Anderson County
22 Sheriff's Department?

23 A. Yes, sir.

24 Q. How long have you been employed at Anderson County
25 Sheriff's Department?

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 A. Ten years.

2 Q. How long as an investigator?

3 A. Eight.

4 Q. Prior to working with Anderson County Sheriff's
5 Department did you work anywhere else?

6 A. No, sir.

7 Q. Now, you were the detective on call February 6th,
8 2005; is that correct?

9 A. Yes, sir.

10 Q. How did you have the occasion to come into contact
11 or become involved in this case?

12 A. Well, as you said, I was on call that night, primary
13 on call with two other detectives as my back-up.

14 Q. And when you are on call does that mean anything
15 that happens or a crime is committed --

16 A. Anything that happens the pager goes off.

17 Q. And you are the detective that takes charge of the
18 case; is that right?

19 A. Yes, sir.

20 Q. Now, on the night you had on occasion -- it
21 occurred, you got a telephone call; is that correct, pager
22 went off?

23 A. Correct.

24 Q. And where did you go?

25 A. Went to Club Envy on South Murray Avenue in Anderson

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 County.

2 Q. Is that Anderson County?

3 A. Yes, sir.

4 Q. And when you arrived what did you observe?

5 A. When I got there there were numerous patrol cars
6 from the sheriff's office and the majority of the parking lot
7 was already roped off or taped off with crime scene tape.

8 Q. The scene was already secure?

9 A. Yes, sir.

10 Q. How about the people inside the club, was it secure,
11 too?

12 A. When I initially got there I was advised that there
13 were numerous individuals inside the club, patrons
14 so-to-speak, that were inside at that time.

15 Q. Now, at that point, did you start your
16 investigation?

17 A. Yes, sir.

18 Q. And as part of that investigation what, if anything,
19 did you do?

20 A. The initial point when I arrived I had to park out
21 on the median on Murray Avenue because it was roped off,
22 obviously. I got with the officers there. Lieutenant Hill
23 was on the scene. It was his shift that was on duty that
24 night. I kind of got a feel for what the lay of the land was,
25 who was where, if we had any witnesses that were outside, what

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 they saw initially.

2 When the other detectives arrived, Kevin Mathason
3 and Michael Sloan, we started to divvy up those individuals
4 that we needed to take a written statement from, and we
5 started doing that.

6 Q. About how long after 911 had received their first
7 call did the sheriff's department show up on the scene? Were
8 you able to determine that?

9 A. I think it was about four minutes.

10 Q. So it was a quick response; is that right?

11 A. Yes, sir,

12 Q. And EMS showed up shortly thereafter?

13 A. Yes, sir.

14 Q. Now, when you arrived did you determine who the
15 victim in the case was?

16 A. Yes, sir, we did.

17 Q. And who was that?

18 A. It was Frederick Penn.

19 Q. Was he deceased at the scene?

20 A. He was.

21 Q. And did you all place a towel, basically a blanket
22 over him?

23 A. Yes, sir, there have a sheet placed over his body.

24 Q. Now, at this point, what were you able to determine
25 from the witnesses that you had talked to?

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 A. Like I said, there were two other detectives with
2 me. Once we interviewed the individuals we knew were outside
3 and knew from verbal interview saw something that was
4 pertaining to this case or relevant to the case, we did know
5 that Mr. Penn was involved in a verbal and then physical
6 altercation with the subject. That was our focus from the
7 beginning because we knew from a witness on the scene who had
8 actually picked out Mr. Kinshaba Simmons from a photo lineup
9 as being the person involved in that verbal and physical
10 altercation with the victim.

11 Q. At this point, you didn't have a suspect to the
12 shooting of Mr. Penn; is that correct?

13 A. No, sir.

14 Q. And let me ask you, Club Envy, that is on 3501 South
15 Murray Avenue in Anderson County?

16 A. Yes, sir.

17 Q. Now, is this area -- is the club fairly well lit, a
18 lot of lighting in the area, the parking lot of the club?

19 A. It's got some lighting in the parking lot from pole
20 lighting or Duke Power lights. There's also eave lighting,
21 such as you see in the courtroom, all the way around the eaves
22 of the building shining straight down.

23 Q. Now, approximately what time did you leave the Club
24 Envy, the crime scene that night; do you recall?

25 A. I think we probably left somewhere around between

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 4:00 and 5:00.

2 Q. In the morning?

3 A. Yes, sir.

4 Q. And at that point had you identified a potential or
5 possible suspect of the shooting?

6 A. No, sir, not at that time.

7 Q. What did you all have?

8 A. Really, we just had that -- from other statements
9 that corroborated, that the lineup from the witness that
10 Mr. Simmons was in fact involved in an altercation with the
11 victim, Mr. Penn.

12 Q. Did you put the word out basically?

13 A. We did.

14 Q. That you wanted to talk to Mr. Simmons?

15 A. Yes, sir.

16 Q. Now, as part of your job as the lead detective in
17 the case do you look for any type of forensic evidence when
18 you go to a crime scene?

19 A. Yes, sir.

20 Q. And did you do that in this case?

21 A. We did.

22 Q. And what, if anything, did you find?

23 A. We found on a B. M. W. parked in the corner of the
24 building or in a parking space in the corner of the building
25 blood transfer on the trunk lid. That was collected for

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 possible matching to the victim or whoever.

2 The car was also processed for prints by one of our
3 forensic officers, Officer Coyle, and a latent partial print
4 was obtained from the print. That was put into evidence.
5 Shell casings were looked for, obviously on the ground and in
6 and around the area and in the whole parking lot.

7 We also found inside the trunk of that B. M. W.,
8 after receiving a consent to search from the owner of the car,
9 one spent round that was fired in or struck the outside of the
10 trunk area and lodged itself inside the trunk, and that was
11 taken into evidence.

12 Q. Did you retrieve any type of videotapes or anything
13 from the surveillance cameras?

14 A. Yes, sir, we did.

15 Q. And what did you determine on those tapes?

16 A. That the videotape was blank. That according to the
17 manager, Mr. Jones, he had actually brought that V. C. R. in
18 from his home. The tape that was in there was from his home.
19 That the video system at the club was not set up to do any
20 kind of recording. He actually brought the V. C. R. in to run
21 all the cables through to run the projector for the football
22 game.

23 Q. Now, you dust this B. M. W. you are referring to for
24 fingerprints. Did you all lift any?

25 A. Yes, sir.

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1 Q. As a result of this lift did you have them analyzed?

2 A. Yes, sir.

3 Q. And what did you determine?

4 A. It was matched. That print was matched to the
5 victim, Fred Penn.

6 Q. Off the back of the B. M. W.?

7 A. Yes, sir.

8 Q. Did you find any shell casings in the parking lot?

9 A. No, sir.

10 Q. Or anywhere in the area?

11 A. No, sir.

12 Q. Now, the next day -- now, this shooting, did it
13 occur before midnight?

14 A. Right before midnight.

15 Q. On February the 6th?

16 A. Yes, sir.

17 Q. And you arrived then basically early morning right
18 after midnight February the 7th?

19 A. Correct.

20 Q. Now, the next day did you have an occasion to talk
21 to Mr. Simmons?

22 A. I did not talk to him the next day. Another
23 detective, Investigator Vaughn, did talk to him at the
24 sheriff's office.

25 Q. As a result, was a statement taken?

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 A. Correct.

2 Q. And at that point, was he a suspect to the shooting?

3 A. He was not. As I said before, he was the one person
4 we could identify was in close proximity to the victim. He
5 was a person of interest that we wanted to talk to. He came
6 in, had someone bring him into the sheriff's office and gave a
7 written statement to Investigator Vaughn.

8 Q. Well, at some point were you all able to determine a
9 potential suspect in this case of the shooting?

10 A. Yes, sir, we were.

11 Q. And how were you able to do that?

12 A. In Mr. Simmons' statement he mentioned that he
13 actually saw the shooter in the case. He said he went by a
14 street name or nickname of Detroit. From that statement, I
15 came out that night. Some other photo lineups were given to
16 witnesses that we did obtain the night at the scene and they,
17 in fact, identified Mr. Cowan as the subject that had firearms
18 in his possession in the parking lot of the club.

19 Q. And as a result of that what did you all do?

20 A. I obtained a warrant on the night or evening of the
21 7th for murder and had Mr. Cowan put into N. C. I. C.

22 Q. Now, did you give Mr. Simmons or anybody at the
23 sheriff's department a gunshot residue kit?

24 A. We did not.

25 Q. And why was that?

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1 A. SLED gives us guidelines that after six hours that a
2 G. S. R. Kit is not going to give us any telltale results, and
3 obviously that time of evening or afternoon on the 7th, that
4 was well beyond the six hour timeframe.

5 Q. Now, besides the witnesses indicating that Mr. Cowan
6 was the shooter in the case did they mention any other
7 physical characteristics about him to help link him to the
8 shooting?

9 A. We did get, obviously, from Mr. Simmons a detailed
10 statement where he actually saw Mr. Cowan shooting. He
11 described the weapons that were used. Obviously, we didn't
12 have that from the scene.

13 Following up from that point we did have a clothing
14 description, brown, and in some cases a brown top and bottom
15 if not a brown bottom or a brown top, from the varying
16 witnesses.

17 Q. Now, anybody else come forward at this point in
18 time?

19 A. No, sir.

20 Q. How did you eventually get linked up or come into
21 contact with Mr. Cowan?

22 A. On Friday night -- well, I guess I should back up.
23 On Thursday we did have a chance to interview a female that
24 had a relationship with Mr. Cowan and we knew that he had
25 called her on her phone. We advised her that we knew this

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1 fact and we did have call tracing capabilities.

2 She did call me on Friday afternoon and advised me
3 that he had called her on her phone. From that point, I put
4 some things in motion through her phone company to trace that
5 call and numerous other calls into the evening to, not
6 necessarily a phone but to a tower that that phone was hitting
7 off of in Hartwell, Georgia.

8 Q. Were you able to run this phone number back to a
9 specific address?

10 A. We were. From that point, once we had the tower we
11 knew, through Verizon, gave us some records that showed the
12 exact phone number that was calling, was being called from,
13 and from that point they were able to give us ownership
14 information or registration information for that phone, a name
15 and an address that was in Hartwell, Georgia.

16 Q. And with this information in hand what, if anything,
17 did you all or you, or Anderson County Sheriff's Department
18 do?

19 A. We were able to contact the Hart County Sheriff's
20 Office and the Hartwell Police Department who in turn took
21 over that portion of the effort since it being their
22 jurisdiction. They did obtain a search warrant for the owner
23 of that phone's house, a Brian Roebuck, in Hartwell.

24 Upon service of this search warrant, the phone was
25 not found and neither was Mr. Cowan found. At that point,

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 Mr. Roebuck's sister did drive up to the property and advise
2 that she had given Mr. Cowan a ride to her apartment. From
3 there, Hart County and Hart City Sheriff's Office and Police
4 Department did go to her apartment complex, called Mr. Cowan
5 out, and he was taken into custody without incident.

6 Q. Now, were you able to recover any type of weapon?

7 A. No, sir.

8 Q. And how many days had passed since the shooting; do
9 you recall?

10 A. The shooting was on a Sunday, Super Bowl Sunday, and
11 Mr. Cowan was taken into custody late Friday night, early
12 Saturday morning.

13 Q. And that was in Hartwell, Georgia; is that correct?

14 A. Correct.

15 Q. Now, after this were you able to talk to the
16 witnesses?

17 A. Yes, sir.

18 Q. And what was the purpose of doing this?

19 A. Just trying to sure up the case and try to find more
20 witnesses. We try to find as many people as possible. We
21 knew people were in that parking lot. For one reason or
22 another they didn't stay, whether it be they are on probation
23 and they could get in some hot water with their probation
24 agent for being around alcohol or other people on probation,
25 or they have had a bad experience with law enforcement,

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 whatever that may be, which we do run into those folks from
2 time to time.

3 Q. And that's the type of individuals you were dealing
4 with at the club that night?

5 A. Correct.

6 Q. And after that you were able to start rounding up
7 people.

8 A. We were.

9 Q. And taking statements?

10 A. Well, we initially got a few people and had some
11 names and interviewed them, and in interviewing them they gave
12 us additional names of people that they saw there. So we were
13 able to kind of branch out like a tree does and follow up on
14 these other names and get additional witness statements from
15 these other individuals.

16 Q. And during your conversations with any witness that
17 you interviewed or the sheriff's department interviewed was
18 any other suspect's name listed other than Mr. Cowan as the
19 shooter?

20 A. No, sir.

21 Q. Did anybody state that Mr. Simmons was the shooter?

22 A. No, sir.

23 Q. Now, during a part of your investigation did you
24 eventually contact Greyhound?

25 A. Excuse me?

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 Q. As part of your investigation did you eventually
2 contact Greyhound Bus line?

3 A. That's correct.

4 Q. And what was the purpose of doing that?

5 A. We had gotten information from one of our witnesses
6 and also from an anonymous tip that came in around the same
7 time that Mr. Cowan supposedly left the area and/or used a
8 Greyhound bus for transportation away from the Anderson area.
9 So we did send a request to Greyhound for a search of
10 Mr. Cowan's name to see if he possibly did buy any Greyhound
11 tickets for any type of transportation during a certain time
12 period.

13 Q. And as a result what did you learn?

14 A. Greyhound send back results that showed on the 7th
15 and the 8th of the month, which would have been Monday and
16 Friday, post-shooting, that a ticket was bought in Mr. Cowan's
17 name from Atlanta, the destination Bowling Green, Kentucky,
18 and a second ticket was bought on the 8th, which was Tuesday,
19 from Atlanta to Athens.

20 Q. Do you know if the first ticket was used?

21 A. According to Greyhound, they advised that neither
22 ticket was used.

23 Q. Now, Detective Reeves, as part of your investigation
24 you also subpoenaed information from the 911 tape we heard
25 yesterday?

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 A. Correct.

2 Q. If you could please step off the stand -- well,
3 further in your investigation you had the scene photographed;
4 is that correct?

5 A. Correct.

6 Q. Actually, let me go ahead and show these to you
7 first. Sit up there and let me show these to you first.

8 Detective Reeves, I show you what's been marked
9 State's Exhibit 1 through 21. Can you please identify what
10 these are, sir?

11 A. These are two groups of photos taken of the crime
12 scene the night of the shooting, night and/or the morning of
13 the shooting, also some pictures taken from autopsy, and the
14 second group are daytime photos taken of the crime scene.

15 Q. Do these pictures fairly and accurately represent
16 the scene on the night of the shooting as well as the scene in
17 the daylight photographs of it?

18 A. Yes, sir.

19 MR. CAMPBELL: Your Honor, I move these into
20 evidence.

21 MS. THOMASON: Let me look at them for a second.

22 No objection, Your Honor.

23 THE COURT: Admitted without objection.

24 (WHEREUPON, State's Exhibit Numbers 1 through 21,
25 Photographs, were admitted into evidence.)

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 BY MR. CAMPBELL:

2 Q. Detective Reeves, would you please step off the
3 stand, sir.

4 A. (The witness complied).

5 Q. Detective Reeves, I'm going to show you this. Can
6 you please identify what this is.

7 A. This is a diagram of Club Envy, an overhead view
8 that shows Burson Road, obviously on your left, and you can
9 see it in this line over here it shows South Murray Avenue on
10 your right.

11 Q. And through your investigation when you arrived
12 where was the victim positioned?

13 A. The victim was positioned right here, the figure of
14 the person (indicated).

15 Q. And did you all do a tape measure distance-wise from
16 the corner how far he was?

17 A. We did.

18 Q. And how far was that?

19 A. Actually 28 feet.

20 Q. Now, the car represented in this overhead diagram,
21 does that represent the B. M. W. that was in the corner?

22 A. Yes, sir, it was a blue B. M. W.

23 Q. And through your investigation could you determine
24 where the actual shooting took place?

25 A. Going through all the witness statements and

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 obviously the blood transfer from the victim, Fred Penn, which
2 was on the rear, and his fingerprint was back here, that
3 everything occurred on this side of the B. M. W. and back
4 around to this corner (indicated).

5 Q. Detective Reeves, can you please identify this
6 photograph, sir, which has been marked State's Exhibit 6?

7 A. From our diagram, the corner which is back off
8 screen to here of the building and then the rest of the
9 building runs out toward Murray Avenue, this is the blue
10 B. M. W. which the fingerprint was found on the trunk lid and
11 there's also transfer blood from the victim, Fred Penn.

12 Q. When you say transfer blood what are you referring
13 to?

14 A. The transfer would be, without getting into a lot of
15 technical terms, brushing up against something. You have
16 blood on either your clothing or your skin and you brush up
17 against stuff and you leave the transfer of that blood.

18 Q. And the cloth in the background, what is that?

19 A. Mr. Penn's body is understood that cloth.

20 Q. And that's where it was 28 feet from the back
21 corner?

22 A. Correct.

23 Q. Were you able to determine how many times Mr. Penn
24 was shot?

25 A. Mr. Penn was shot 5 times.

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 Q. State's Exhibit 7, is this a reverse angle?

2 A. Correct. You are looking at the view from about
3 midway in the parking lot. You can see the B. M. W. here on
4 the side. The fingerprint and the transfer of the blood are
5 on the back end of the corner. This is Mr. Penn's body under
6 the drop cloth.

7 Q. I show you what's been marked State's Exhibit 1. Is
8 this the B. M. W. there?

9 A. Correct. That's another view of the B. M. W.

10 Q. Does this show blood on the -- where you are talking
11 about the transfer blood?

12 A. Correct. There's also blood up here. You can't see
13 it from that picture because of the glare.

14 Q. You're going to have to speak up so they can hear
15 you.

16 A. Yes. Up here on the bumper and there's also blood
17 up here on the trunk. You can't see it because of the glare
18 on that picture.

19 Q. What's been marked as State's Exhibit 2, can you
20 identify what this is, sir?

21 A. This is the rear of the B. M. W. You see the
22 transfer of the blood which is on the trunk --

23 Q. You're going to still have to speak up.

24 A. This shows the transfer here on the trunk lid of
25 Mr. Penn's blood, and also see some of it here outside the

STEVEN JAMES REEVES - DIRECT BY MR. CAMPBELL

1 glare, and that's obviously the tag that was on the B. M. W.

2 Q. Does it show -- you said you recovered a bullet from
3 the trunk?

4 A. We did.

5 Q. This photograph show where the bullet entered the
6 trunk?

7 A. See the bullet entry right here (indicated).

8 Q. I show you what's been marked State's Exhibit 3.
9 Can you identify what this is, sir?

10 A. Right there is the spent round from that bullet
11 hole. This is actually on the backside coming to the back
12 glass of the B. M. W.

13 Q. You say spent round. Is that the bullet?

14 A. Correct.

15 Q. That was recovered from the trunk?

16 A. It's a spent bullet from that hole in the trunk lid.

17 Q. And was this bullet placed into evidence?

18 A. Yes, sir, it was.

19 Q. I show you back again State's Exhibit 7. You
20 referred to the lighting. Is this the lighting you referred
21 to?

22 A. Right here, and there's single bulbs all recessed in
23 the lighting around the eaves of the building (indicated).

24 Q. And would also be shown in State's Exhibit 15. Is
25 that a daytime photograph where the lighting was located?

STEVEN JAMES REEVES - CROSS BY MS. THOMASON

1 A. Correct. It shows lighting recessed up in the eaves
2 and looking back at -- or actually over Burson Road.

3 Q. Burson Road is in the far foreground where it looks
4 like a chain-link fence and some trucks?

5 A. Correct.

6 Q. Now, is this the entrance coming out of the club?

7 A. Correct.

8 Q. And that's the front stoop we've been referring to?

9 A. Correct.

10 Q. You can go have a seat Detective Reeves.

11 A. (The witness complied).

12 MR. CAMPBELL: Detective Reeves, would you please
13 answer any questions Ms. Thomason may have.

14 CROSS-EXAMINATION

15 BY MS. THOMASON:

16 Q. You said upon your investigation you determined that
17 Mr. Penn was shot five times; is that correct?

18 A. Correct.

19 Q. Plus the bullet in the trunk of the car, that would
20 be 6 rounds fired?

21 A. No, ma'am. Four rounds recovered from his body and
22 one recovered from the trunk.

23 Q. So he was only shot four times?

24 A. I believe Dr. Woodard was able to show that that
25 fourth one did exit his body. So there were five exit wounds

DUSTIN WILSON SMITH - DIRECT BY MR. BRADLEY

1 to his body.

2 MS. THOMASON: That's all the questions I have.

3 MR. CAMPBELL: No further questions.

4 THE COURT: Thank you, sir. You may stand down.

5 MR. CAMPBELL: Your Honor, may we approach?

6 THE COURT: Yes, sir.

7 (WHEREUPON, a bench conference was had.)

8 MR. BRADLEY: May it please the Court?

9 THE COURT: Yes, sir.

10 MR. BRADLEY: The State calls Dustin Wilson Smith.

11 DUSTIN WILSON SMITH, after having been duly
12 sworn, testified as follows:

13 THE CLERK: You may have a seat on the witness
14 stand. Please state your full name. Spell your last name for
15 the record.

16 THE WITNESS: My name is Dustin Smith, S-m-i-t-h.

17 DIRECT EXAMINATION

18 BY MR. BRADLEY:

19 Q. Mr. Smith, what is your occupation?

20 A. I'm a forensic toxicologist.

21 Q. By whom are you employed?

22 A. South Carolina Law Enforcement Division, more
23 commonly known as SLED.

24 Q. How long have you been employed by SLED?

25 A. Approximately seven years.

DUSTIN WILSON SMITH - DIRECT BY MR. BRADLEY

1 Q. What education and training do you have qualifying
2 you in toxicology?

3 A. I have a bachelors of science with minor in
4 chemistry -- I'm sorry, bachelor of science in biology with a
5 minor in chemistry from the College of Charleston.

6 In regards to blood alcohol analysis through SLED --
7 well, first of all, I am a certified forensic toxicologist
8 through SLED, by SLED.

9 And in regards to blood alcohol analysis, I have
10 undergone training in the form of lecture series, literature,
11 and I have also taken the competency test in the form of a
12 written test as well as a test to show that I am competent in
13 the analysis of Ethanol.

14 As far as drugs go, I have undergone lecture series
15 in the analysis of drugs as well as pharmacology. I have
16 undergone training as far as how to interpret the results as
17 far as blood alcohol and drugs are concerned, and I have
18 passed a competency test with the drugs and I am regularly
19 proficiency tested for both drugs and alcohol to show that I
20 am still proficient in my analysis.

21 MS. THOMASON: Your Honor, we have no objection to
22 him being qualified as an expert in the area of toxicology.

23 THE COURT: With that stipulation he's so qualified.

24 Solicitor, let me give the jury a brief instruction
25 about expert witnesses.

DUSTIN WILSON SMITH - DIRECT BY MR. BRADLEY

1 Mr. Foreman, ladies and gentlemen of the jury, I
2 charge you that although lay witnesses are limited to
3 testifying about facts within their knowledge, not allowed to
4 give opinions, certain witnesses who by training, education or
5 experience considered as experts in a particular field may
6 give opinions in that field based upon the facts, the matter
7 and their conclusions, and these opinions constitute evidence
8 to be considered by you in connection with all the other
9 evidence and testimony in the case and it's for you, the jury,
10 the give it such weight as you in your experience and
11 discretion may determine.

12 By this, I mean that you must weigh such evidence
13 and accept or reject it in the same manner you treat all other
14 evidence in the case. The value of the expert testimony does
15 not depend upon the skill and knowledge professed by experts
16 but upon the skill and knowledge they actually possess.

17 Expert testimony is given for the purpose of
18 enlightening you and not for the purpose of controlling your
19 judgment. And this will apply to not only this witness but
20 also any other witnesses who may testify as experts in the
21 trial. Thank you.

22 Solicitor, you may proceed.

23 MR. BRADLEY: Thank you, Your Honor.

24 BY MR. BRADLEY:

25 Q. Agent Smith, did you examine some evidence in this

DUSTIN WILSON SMITH - DIRECT BY MR. BRADLEY

1 case?

2 A. Yes, I did.

3 Q. And can you tell us what that was.

4 A. Sure. The pieces of evidence that were submitted to
5 me included kidney, spleen, liver, gastric contents, ocular
6 fluid, blood -- and blood.

7 Q. From where did you receive this evidence?

8 A. Well, I received it from our log-in department in
9 SLED. The way the evidence is submitted into SLED is that the
10 outside agency, in this case it was the Anderson County
11 Sheriff's Office, will bring in a piece of evidence into our
12 log-in department. It's there taken into custody in SLED and
13 logged into our computer system, along with what needs to be
14 done with the evidence.

15 It's placed into a logged refrigerator in the log-in
16 department, then a technician from our department will go
17 down, remove that evidence, bring it up into our laboratory
18 and then at that point I will take custody of the evidence.

19 Q. In what condition was the evidence that you analyzed
20 -- what condition was it when you received it?

21 A. The evidence was in proper condition. It did not
22 appear to be tampered with in any way.

23 Q. Had it have been tampered with what would you have
24 done?

25 A. If the evidence had been tempered with I would have

DUSTIN WILSON SMITH - DIRECT BY MR. BRADLEY

1 made a note in my case and then I would have let my supervisor
2 know immediately.

3 Q. But it was not tempered with in any way?

4 A. That's correct.

5 Q. Please describe what you did with the blood alcohol
6 specimen.

7 A. With the blood, in regards to alcohol, I performed a
8 blood alcohol analysis. This involves an instrument called a
9 head space gas chromatograph, essentially. We run our samples
10 in duplicate. We bracket those samples with controls that
11 have to be within a certain range, and in this case they were.

12 Q. What were your findings with respect to the blood?

13 A. Okay. In this case, and as far as blood alcohol
14 goes, I found a 0.227 percent weight per volume Ethanol found
15 in blood.

16 Q. So that's .227 blood alcohol level?

17 A. That's correct.

18 Q. Is there a recognized correlation between the
19 alcohol content of the blood and the intoxication?

20 A. There certainly is. South Carolina's legal limit in
21 regards to driving under the influence is a 0.08 as far as the
22 inferred level.

23 Also, the American Medical Association indicates a
24 level of 0.05 as being impaired to operate motor vehicle. So
25 you can use those levels as indicators as far as intoxication

DUSTIN WILSON SMITH - DIRECT BY MR. BRADLEY

1 goes as for a level.

2 A 0.227 is an extremely high level of alcohol and
3 you could assume that this person would be very intoxicated
4 and very much under the influence of alcohol.

5 Q. Did you test anything else with blood?

6 A. For the blood for a homicide case we also run a
7 panel of drug screens, and those drug screens include an
8 Amphetamine, Methamphetamine, Barbiturates, Benzodiazepines,
9 Cocaine and Cocaine metabolites, and Opiates, and marijuana or
10 Tetrahydrocannabinol. In this case, all of those screens were
11 negative except for the marijuana screen.

12 At that point, I confirmed and quantitated the
13 amount of the Tetrahydrocannabinol and its metabolites and I
14 found a 41 micrograms per liter of Tetrahydrocannabinol, 11
15 micrograms per liter of 11 Hydroxy-Tetrahydrocannabinol, and
16 45 micrograms per liter of 11 Carboxy-Tetrahydrocannabinol.

17 Q. And from what you've testified, you have testified
18 that the blood sample from the victim was .227 percent blood
19 alcohol and tested positive for T. H. C. From that analysis,
20 what was your conclusion of the victim?

21 A. Well, certainly that the victim was grossly
22 intoxicated on both -- with the combination of Ethanol and
23 Tetrahydrocannabinol, which is the primary ingredient in
24 marijuana.

25 One thing I'd like to note is that the 41 micrograms

DUSTIN WILSON SMITH - DIRECT BY MR. BRADLEY

1 per liter of Tetrahydrocannabinol is an extremely high level
2 of that particular drug with the parent drug. You usually see
3 that drug metabolize which basically means change into a form
4 that's very easily removed from the body. You usually see
5 that metabolized completely within just a couple of hours, and
6 the fact that there is still that much there means that it was
7 an extremely recent use. It had just been a couple of minutes
8 since he last used the marijuana before he was killed.

9 MR. BRADLEY: No further questions, Your Honor.

10 MS. THOMASON: No questions, Your Honor.

11 THE COURT: Any reason why the witness couldn't be
12 excused?

13 MR. BRADLEY: No.

14 MS. THOMASON: No objection to him being excused,
15 Your Honor.

16 THE COURT: Thank you for coming, sir. You may be
17 excused at this time.

18 MR. CAMPBELL: Your Honor, at this point,
19 Ms. Thomason and I have stipulated in this case on the
20 internal chain and everything. That was stipulated to.

21 MS. THOMASON: We're stipulating to the chain of
22 custody, Your Honor. I'm not objecting to that.

23 MR. BRADLEY: May it please the Court, Your Honor.
24 The State calls Ila Simmons.

25 ILA SIMMONS, after having been duly sworn,

ILA SIMMONS - DIRECT BY MR. BRADLEY

1 testified as follows:

2 THE CLERK: You may have a seat on the witness
3 stand. Please state your full name. Spell your last name for
4 the record.

5 THE WITNESS: My name is Ila Simmons, S-i-m-m-o-n-s.

6 DIRECT EXAMINATION

7 BY MR. BRADLEY:

8 Q. Ms. Simmons, what is your occupation?

9 A. I'm employed with the South Carolina Law Enforcement
10 Division in the forensics laboratory in the area of trace
11 evidence.

12 Q. And what is trace evidence?

13 A. Trace evidence encompasses numerous areas of
14 forensics. We analyze gunshot residue, gunpowder residue. We
15 compare fiber evidence. We also look at explosive residues,
16 fire debris.

17 Q. How long have you been a trace evidence examiner?

18 A. For five years.

19 Q. And what do you do as a trace evidence examiner?

20 A. I analyze all that sorts of evidence. I analyze
21 gunshot residue and gunpowder residue.

22 Q. Do you keep records of how many you have done, this
23 G. S. R. Analysis?

24 A. An approximation, yes.

25 Q. And what would you say -- how many times have you

ILA SIMMONS - DIRECT BY MR. BRADLEY

1 done this?

2 A. I've probably analyzed 4000 gunshot residue samples
3 in the five years I'm been an analyst.

4 Q. And what's your education and training for this job?

5 A. I have a bachelors of science and chemistry from
6 Columbia College, and after I began working at SLED I
7 underwent a three year training program in-house in the area
8 of trace evidence where I had to take competency examinations
9 in all of the areas of trace evidence. That's on the
10 instrumentation we use, on the ways of analyzing the evidence
11 and collecting the evidence.

12 MS. THOMASON: Your Honor, we don't have any
13 objection to this lady as an expert in the area of trace
14 evidence, particularly gunshot residue.

15 THE COURT: With that stipulation she's so
16 qualified.

17 You may proceed.

18 MR. BRADLEY: Thank you, Your Honor.

19 BY MR. BRADLEY:

20 Q. What is gunshot residue exactly?

21 A. Gunshot residue is a mixture of chemicals that come
22 out of a gun when a gun is fired. It can get on anything in
23 close proximity to the weapon within may five feet or so,
24 including the hands of a person shooting the weapon.

25 Q. What are you looking for when you're doing an

ILA SIMMONS - DIRECT BY MR. BRADLEY

1 analysis with the G. S. R. kit?

2 A. We are looking for the chemicals that come from the
3 primer region of the bullet. It's primarily lead, barium and
4 antimony, are the chemicals we're looking for.

5 Q. What are you able to determine from the results when
6 you analyze a kit?

7 A. We can determine if someone was in the presence of a
8 firearm when it was fired, they were firing a firearm, if they
9 handled a firearm after it was fired or just in close
10 proximity to the weapon when it was discharged.

11 Q. Is it common to find G. S. R. on the victim of the
12 shooting?

13 A. Yes, it is.

14 Q. And where is it most commonly found?

15 A. On the victim of the shooting?

16 Q. Yes.

17 A. It can be found primarily around the gunshot wound.
18 It can also be found on the hands of a victim if the hands
19 were in a position so they were between the gun and the wound.

20 Q. And how far does G. S. R., gunshot residue normally
21 travel?

22 A. Depending upon the caliber of weapon, on a handgun,
23 the largest caliber handguns are 45 or 44 Magnum, probably
24 about 5 feet.

25 Q. What about a 357 Magnum?

ILA SIMMONS - DIRECT BY MR. BRADLEY

1 A. Around 4 feet or so.

2 Q. Where is G. S. R. most commonly found on a person
3 that has fired a gun?

4 A. It's found on the hands. It will be found on the
5 palms and backs of both hands depending on how the weapon was
6 held. If a gun is held like this, in a position like this it
7 can be found on the palms and backs of both hands (indicated.)
8 If it was held by just one hand then it can be found on the
9 palm and back of one hand?

10 Q. Is the majority of the G. S. R. moving forward or
11 backward?

12 A. It's moving forward.

13 Q. Did you examine some evidence in this case?

14 A. I did.

15 Q. I'm showing you what's been marked State's Exhibit
16 29. Take a look at that. Can you please tell us what that
17 is.

18 A. Yes. These are the three gunshot residue kits that
19 were sent, submitted to SLED that I did analysis on in this
20 case.

21 Q. So it was in your possession and you did do
22 analysis?

23 A. Yes. Each are marked with my initials, the
24 laboratory identification number as well as the item number
25 and the date in which each kit was opened.

ILA SIMMONS - DIRECT BY MR. BRADLEY

1 Q. What does it say on the kits?

2 A. It says gunshot residue G. S. R. kits, then it has
3 the name from whom it was collected.

4 Q. Who was it collected from?

5 A. I have one from a Charles Sullivan and one from a
6 Frederick Penn, as well as a gunshot residue kit from the
7 shirt of Frederick Penn.

8 MR. BRADLEY: At this time, Your Honor, I'd like to
9 move it into evidence.

10 THE COURT: Any objection, Counsel, to admission of
11 that evidence?

12 MS. THOMASON: No objection.

13 THE COURT: Admitted without objection.

14 MR. BRADLEY: Thank you, Your Honor.

15 (WHEREUPON, State's Exhibit No. 29, Gunshot Residue
16 Kits, were admitted into evidence.)

17 BY MR. BRADLEY:

18 Q. In what condition did you receive the kits that you
19 analyzed that were from the victim, Mr. Penn?

20 A. Both the kits were sealed in this outer envelope.
21 It was sealed with evidence tape as well as the initials and
22 the date in which the agency submitted it. It's also included
23 -- within this envelope was this smaller envelope. It was
24 also sealed, had the initials and date of the person
25 collecting the kit.

ILA SIMMONS - DIRECT BY MR. BRADLEY

1 Q. Were they tempered with in any way?

2 A. No, they were not.

3 Q. And you had testified that you did analysis on these
4 kits?

5 A. Yes, I did.

6 Q. And from your analysis were you able to form an
7 expert opinion as to the results of your examination?

8 A. Yes. On the kit from Frederick Penn, no gunshot
9 residue was detected. On the samples that were submitted from
10 the shirt of Frederick Penn from right around the gunshot
11 wound, gunshot residue was found in that area. And from
12 Charles Sullivan, no gunshot residue was found on his kit
13 either.

14 Q. You testified that the shirt that you analyzed there
15 was gunshot residue, what does that normally represent?

16 A. Gunshot residue was found around the gunshot wound.
17 It can mean that the shot was relatively close, probably
18 within the four feet range. It could also -- gunshot residue
19 can be trapped on the bullet or projectile and also can get on
20 a garment.

21 Q. How can G. S. R. be removed?

22 A. G. S. R. can be removed from the hands very easily.
23 Washing the hands will remove gunshot residue. If you begin
24 to sweat the gunshot residue is going to be removed. If you
25 were to put your hands in and out of your pockets in a wiping

ILA SIMMONS - DIRECT BY MR. BRADLEY

1 fashion it would be removed in that way.

2 Q. How long would it remain on a living person?

3 A. Six hours. Even if none of the aforementioned
4 things occurred, if you didn't wash your hands, didn't wipe
5 your hands it would only remain for six hours.

6 Q. How long would it remain on a deceased person or an
7 in adamant object?

8 A. Indefinitely, until it was removed. The body stops
9 sweating, the heart quits beating, you quit absorbing things
10 through your skin when deceased, so it can remain on the hands
11 until it is removed on the deceased person.

12 Q. Ms. Simmons, you testified that the kit you analyzed
13 for the victim's hands, the G. S. R. kit on his hands, there
14 was no G. S. R. found on hands; is that correct?

15 A. That's correct.

16 Q. And what does that usually represent?

17 A. That the hands were probably not between the weapon
18 and where the wound occurred on the body. The hands were not,
19 like, directly in front of the weapon when the weapon was
20 fired. They were in another position so that the gunshot
21 residue did not get on them.

22 Q. Does that also represent that the victim was not
23 handling a gun?

24 A. Yes. Within six hours of his death he did not fire
25 a weapon.

ILA SIMMONS - CROSS BY MS. THOMASON

1 MR. BRADLEY: No further questions, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. THOMASON:

4 Q. Ms. Simmons, I want to make sure I understood the
5 answer to your last question. It doesn't mean -- when you
6 don't find gunshot residue it doesn't mean that the person
7 that you tested didn't have a gun it just means that they
8 didn't fire a gun?

9 A. That's correct. That's correct.

10 MS. THOMASON: That's all I have.

11 MR. BRADLEY: No further questions, Your Honor.

12 THE COURT: Thank you, ma'am. You may stand down.

13 Any reason why this witness couldn't be excused?

14 MS. THOMASON: No objection.

15 MR. BRADLEY: No.

16 THE COURT: Thank you for coming, ma'am. You may be
17 excused.

18 MR. BRADLEY: May it please the Court, Your Honor.

19 The State calls Dan DeFreese.

20 FRANK DAN DEFREESE, after having been duly
21 sworn, testified as follows:

22 THE CLERK: Have a seat on the witness stand.
23 Please state your full name, spell your last name for the
24 record.

25 THE WITNESS: My name is Frank Dan DeFreese. It's

FRANK DAN DEFREESE - DIRECT BY MR. BRADLEY

1 D-e-F-r-e-e-s-e.

2 DIRECT EXAMINATION

3 BY MR. BRADLEY:

4 Q. Mr. DeFreese, what is your occupation?

5 A. I work for the South Carolina Law Enforcement
6 Division in Columbia. I'm assigned to the forensics services
7 laboratory.

8 Q. What is your position? What do you normally
9 analyze?

10 A. Yes. I'm a senior agent and I'm assigned to the
11 firearms department in the laboratory, and that's where I
12 examine articles of firearm and tool mark evidence.

13 Q. How long have you been employed by SLED?

14 A. For 38 years.

15 Q. And what are your duties there?

16 A. My main duties consist of examining firearms
17 evidence and tool mark evidence and rendering conclusions
18 based on my examinations.

19 Q. And what exactly is firearms identification?

20 A. Firearms identification is a subspecialty of tool
21 mark identification and it deals principally with the
22 identification of bullets and cartridge cases back to the
23 firearms in which they were fired. It's done on the basis of
24 microscopic markings that were left on bullets and cartridge
25 cases during the instant of firing, and where these markings

FRANK DAN DEFREESE - DIRECT BY MR. BRADLEY

1 survive in sufficient condition to observe them and analyze
2 then it's possible to identify them back to a particular gun
3 barrel or back to a particular firearm.

4 Q. Mr. DeFreese, what is your educational background?

5 A. Well, I'm a graduate of the University of South
6 Carolina in Columbia. My principal training in the field of
7 firearm and tool mark identification I received at SLED. Then
8 after my employment I undertook a period of training that
9 lasted just about two and a half years. I studied the
10 technique of firearm and tool mark identification under
11 Lieutenant Millard Cate who established the SLED laboratory
12 when SLED itself was established in 1947.

13 Lieutenant Karl Bernard Stokes was also assigned to
14 the laboratory at that time and I received instruction from
15 him as well. And after working cases under their supervision
16 for about two and a half years I began accepting cases on my
17 own and testifying as to my results, which I've been doing now
18 since 1968.

19 Q. So you have testified in court as to firearms
20 identification?

21 A. Yes, many times.

22 Q. How many times would you say?

23 A. I don't know exactly. Probably between 500 and 600
24 times.

25 MS. THOMASON: Your Honor, we don't have any

FRANK DAN DEFREESE - DIRECT BY MR. BRADLEY

1 objection to him being qualified as an expert.

2 THE COURT: Without objection. With that
3 stipulation he's so qualified. You may proceed.

4 MR. BRADLEY: Thank you, Your Honor.

5 BY MR. BRADLEY:

6 Q. At this time, I'm showing you what's been marked as
7 State's Exhibit 24 through 28. Please take a look at them.

8 A. Yes, sir.

9 Q. Have you ever seen these bullets before?

10 A. Yes, I have.

11 Q. And under what circumstances did you see them?

12 A. They were submitted to our laboratory for analysis
13 by the Anderson County Sheriff's Department.

14 Q. And what condition were they in when you received
15 them?

16 A. They were in substantially the same condition as
17 they are right now with the exception that I engraved certain
18 markings on the bases of the bullets so I could identify them
19 later.

20 MR. BRADLEY: At this time, I'd like to move those
21 bullets in evidence.

22 MS. THOMASON: No objection.

23 THE COURT: Admitted without objection.

24 (WHEREUPON, State's Exhibit Numbers 24 through 28,
25 Bullets, were admitted into evidence.)

FRANK DAN DEFREESE - DIRECT BY MR. BRADLEY

1 BY MR. BRADLEY:

2 Q. Upon receiving bullets did you make any examinations
3 upon them?

4 A. I did. I examined all of the bullet specimens and I
5 recorded certain information about them and I engraved them so
6 that I could not interchange them. And then I microscopically
7 compared each of these five bullets with each other to see if
8 the same class characteristics and if the same individual
9 characteristics left on them by the gun barrel in which they
10 were fired were present.

11 I found the same class characteristics and I found
12 matching individual characteristics that were sufficient to
13 let me identify all five of these bullets as having been fired
14 in the same gun, by the same gun.

15 Additionally, based on the class characteristics,
16 because all of these bullets were fired from a gun barrel that
17 was rifled with five lands and grooves and a right-hand twist
18 I was able to suggest a possible list of manufacturers of
19 firearms that could have fired these bullets.

20 All of these bullets were consistent in their size
21 and the weight with bullets that are loaded into 38 Special
22 caliber or 357 Magnum caliber cartridges, and I produced a
23 list of about 11 or 12, something like that, firearms
24 manufacturers or firearms makes that possibly could have fired
25 these bullets.

FRANK DAN DEFREESE - DIRECT BY MR. BRADLEY

1 Q. So it is your opinion that these bullets are
2 consistent with being fired from a 357 Magnum or 38 Special?

3 A. Yes, sir.

4 Q. And what's the general characteristics of a 357
5 revolver?

6 A. Well, both the 38 Special and 357 caliber firearms
7 are overwhelmingly revolvers. There are some manually
8 operated firearms, manually operated pistols, semiautomatic
9 pistols, and there are some rifles that are also chambered for
10 both cartridges. But for instance, a 357 or a 38 Special
11 caliber revolver would consist of a frame that has as its
12 central member a rotating cylinder into which a certain number
13 of chambers are cut. Usually anywhere from 5 to as many as 8
14 cartridges can be placed in 38 Special and 357 Magnum caliber
15 firearms, most of them being 5 or 6 shots.

16 And then it has a single barrel, and most of them
17 are external hammer guns. The majority of them are
18 double-action, although some of them are also single-action
19 revolvers. And after manually loading as many cartridges as
20 the chamber will hold the shooter will either manually cock or
21 cock by means of pulling the trigger the gun and cause it to
22 fire. The bullet will be expelled and the next cartridge will
23 be rotated to alignment with the bore inside the chamber --
24 inside the cylinder and it will be fired in sequential order.

25 Cartridges are not ejected automatically from a

FRANK DAN DEFREESE - DIRECT BY MR. BRADLEY

1 revolver during the firing sequence as they would be from a
2 semiautomatic pistol.

3 Q. Did you analyze any shell casings?

4 A. There were no fired cartridge cases submitted. The
5 only evidence submitted in this case are just the bullets.

6 Q. And you testified earlier that from your opinion all
7 the bullets that you analyzed were fired from the same
8 firearm?

9 A. They were.

10 MR. BRADLEY: No further questions, Your Honor.

11 MS. THOMASON: I don't have any questions.

12 THE COURT: Thank you, sir.

13 Any reason why this witness couldn't be excused?

14 MR. BRADLEY: No, Your Honor.

15 MS. THOMASON: No objection.

16 THE COURT: Thank you for coming, sir. You may be
17 excused.

18 Mr. Foreman, ladies and gentlemen of the jury, we've
19 come to a good point to break for lunch, so we're going to do
20 that at this time.

21 What I'm going to ask you to do is I'll ask you to
22 be back in the jury room ready to go about 10 minutes until
23 2:00. It's right now about 22 minutes to 1:00. So if you'll
24 be back at 10 minutes to 2:00 that will give you about an hour
25 and 12 minutes of my calculation to eat lunch and get back.

1 There still may be a matter or two that I need to take up with
2 counsel so I'm taking a little bit more than an hour.

3 Please enjoy your lunch. Please do not discuss the
4 case among yourselves or with anyone else you might see during
5 the lunch break. If anyone tries to discuss the case with
6 you, please do not discuss it with them but make note of that
7 person and let the bailiff know upon your return.

8 Thank you. Please enjoy your lunch and be back in
9 the jury room at 10 minutes to 2:00.

10 (WHEREUPON, the jury leaves the courtroom at
11 approximately 12:40 p.m.)

12 THE COURT: Counsel, we'll break for lunch. I would
13 ask you to maybe spend about 5 minutes with me in chambers and
14 I want to briefly run through my planned charge in this case,
15 along with a couple other things with you with regard to
16 verdict form and that. So if you'll do that, please, for
17 about 5 minutes and then we'll go to lunch. Thank you.

18 (WHEREUPON, a lunch break was taken.)

19 THE COURT: Counsel, ready to proceed?

20 MS. THOMASON: Yes, sir.

21 MR. CAMPBELL: Yes, sir, Your Honor.

22 THE COURT: Please bring the jury in, sir.

23 (WHEREUPON, the jury enters the courtroom at
24 approximately 2:03 p.m.)

25 THE COURT: Good afternoon, Mr. Foreman, ladies and

DR. BRETT WOODARD - DIRECT BY MR. CAMPBELL

1 gentlemen of the jury. I hope you enjoyed your lunch today.

2 We're ready now to resume with the trial.

3 Counsel, ready to proceed?

4 MR. CAMPBELL: Thank you, Your Honor. We call

5 Dr. Brett Woodard, please.

6 DR. BRETT HOUGHTON WOODARD, after having been

7 duly sworn, testified as follows:

8 THE CLERK: Please have a seat on the witness stand.

9 State your full name and spell your last name for the record.

10 THE WITNESS: Brett Houghton Woodard.

11 H-o-u-g-h-t-o-n W-o-o-d-a-r-d.

12 MS. THOMASON: Your Honor, defense would stipulate

13 to Dr. Woodard's credential as both a physician and a

14 pathologist. We would not object to him being qualified as an

15 expert in the area of pathology.

16 THE COURT: With that stipulation, Counsel, he's

17 qualified as a pathologist.

18 Please proceed.

19 DIRECT EXAMINATION

20 BY MR. CAMPBELL:

21 Q. Dr. Woodard, are you the pathologist for Anderson

22 County?

23 A. I do most of the autopsies for the coroner of

24 Anderson County, yes, sir.

25 Q. And did you have an occasion to do an autopsy on a

DR. BRETT WOODARD - DIRECT BY MR. CAMPBELL

1 Frederick Michael Penn?

2 A. Yes, sir, I did.

3 Q. And what date was that?

4 A. The autopsy was performed on February 7th of 2005.

5 Q. And can you just briefly explain to the ladies and
6 gentlemen of the jury what an autopsy is.

7 A. The body is received from the coroner from the site
8 of the death of the individual. The coroner and the police
9 authorities supply information about the scene of the death.
10 The body is then studied from the outside, to include the
11 clothing that the body is received in, coats, jackets, shirts,
12 pants and the possessions that may be on the individual.

13 Any abnormalities that are observed in those
14 clothing or possessions are examined through to the skin
15 surface to see if there's any abnormalities on the skin
16 surface that might indicate some exterior force had been
17 applied to the body. And then the body is studied
18 underneath the skin for any organ damage that may have been
19 caused by whatever force had been applied to the exterior
20 surface of the body.

21 Q. And you had a chance to conduct an autopsy on
22 Frederick Penn on February 10. Where did this take place?

23 A. At the Anderson Area Medical Center morgue facility.

24 Q. And typically how long does an autopsy last or take?

25 A. It varies. A couple hours to maybe four hours.

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1 Q. And you conducted an autopsy on Frederick Penn. As
2 a result of doing that what did you determine Mr. Penn's --
3 how did he die?

4 A. He died as a result of a gunshot wound that went
5 through his heart and caused bleeding into the space around
6 the lungs and the space around the heart and loss of the blood
7 -- his body's blood system?

8 Q. While you were performing this autopsy did you have
9 the occasion to observe any type of evidence of other injury
10 besides this one?

11 A. Yes. He had some scrapes and bruises to the skin of
12 his body, external skin of his body. They were located over
13 the left eyebrow area. There was some scrapes and bruises
14 there. There was a bruise over the prominence of the left
15 cheek. There were some scrapes along the edge of the left
16 side of his nose.

17 And then there were some scrapes over the top of his
18 forehead, and then over the last three fingers of his left
19 hand, on this surface of the hand, what we would refer to as
20 the dorsal surface or the back surface, he had some scrapes
21 over this area that had fine particulate material in it that
22 at least visually looked like surface of asphalt material.

23 Q. And these scrapes, would they be consistent with a
24 body falling?

25 A. Yes. They would be consistent with a body falling

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1 or scraping against a rough surface. At least in the case of
2 the hand, asphalt type surface.

3 Q. And how about the injuries and abrasions on the
4 head -- face?

5 A. They were, again, the type of scraping that we see
6 against a rough surface. I didn't see any material that
7 looked like asphalt in those?

8 Q. Now, other than that did you observe any other type
9 of injuries to Mr. Penn's body?

10 A. No. There were five gunshot wounds of entrance and
11 one gunshot of exit that we observed.

12 Q. Dr. Woodard, I want to show you this. Can you
13 please identify this?

14 A. Yeah. This represents a standard male body chart
15 that I drew on the approximate positions of where the gunshot
16 wounds of entrance were. I drew the entrance wounds with
17 little circles, and the second sheet I drew entrance wounds
18 with little circles then exit wound with a little X for exit
19 wound on it, and they are a measured position on his body.

20 Q. And this is part of your autopsy report; is that
21 correct?

22 A. That's correct. It's a little sketch to try and
23 keep track of what we saw from the outside of the body.

24 Q. Dr. Woodard, I'd ask you to please step down off the
25 stand. This way we don't have to kind of explain it twice

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1 here.

2 (WHEREUPON, the witness stepped off the witness
3 stand.)

4 A. This is a representative drawing, not to indicate
5 that the size and the variation of that individual. He was a
6 heavier, larger person than this idealized person would be.
7 But this shows the relative position of the gunshot wounds
8 underneath the collarbone on the right side.

9 Above the nipple of the right side into the right
10 chest was a gunshot wound that passed into the body by
11 breaking the rib in that location and then passed in a
12 direction that would be down toward the feet but back toward
13 the back of the individual.

14 In passing through this, it put a hole in the
15 right-upper portion of the lung. Put a hole in the right side
16 of the heart, put a hole in the left lower portion of the lung
17 and then it broke the fifth rib to come into the soft tissues,
18 still inside the body where I recovered a copper clad
19 mushroomed lead projectile, which I placed into evidence.

20 The next gunshot wound that's on this frontal chart
21 was just to the left of the belly button, and this wound went
22 through the deceased gentleman's abdominal parietal and
23 musculature almost going directly to the right.

24 The projectile stopped in the soft tissues on the
25 right side and a relatively intact projectile was retrieved.

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1 Also around the entry wound there was some fine black particle
2 material that was suggestive of powder so we used a gunshot
3 detection kit that was supplied by the Anderson Sheriff's
4 Department to try to recover this material, and it was sent to
5 the state crime lab for analysis.

6 The next wound here on the front that's described is
7 in the front of the left leg. This wound went in a more
8 posterior direction. It passed through the head of the hip
9 and broke the head of hip. Excuse me. It passed up through
10 the abdominal fat and passed through the musculature but never
11 entered the abdomen and came to exit along the side on the
12 left side of the deceased body where it left the body and let
13 the clothing. So no projectile was retrieved in association
14 with that wound.

15 The next wound that's described here or shown on
16 this chart from his left side is a wound right here on the hip
17 on the left lateral side of the leg (indicated). It passed
18 back into the pelvis, went through the pants then passed into
19 the pelvis through the soft tissues of anterior thigh and
20 eventually during its passage broke the left hip as it passed
21 into the buttocks area. In the buttocks area we retrieved a
22 badly deformed lead projectile with a copper jacket similar to
23 the other projectiles though more deformed.

24 And the final wound, which is very -- or is lower on
25 the left lateral aspect of the thigh passed in an upward

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1 direction. It entered through the inguinal canal or where
2 people would have a hernia and went back into the pelvic bone.
3 We could see the projectile on an x-ray but we didn't recover
4 that projectile.

5 Q. Please have a seat, sir.

6 A. (The witness complied).

7 Q. Now, Dr. Woodard, the projectiles you referred to,
8 they would be the bullets?

9 A. That would be the bullets from a gun. That's
10 correct.

11 Q. Now, you mentioned that you did a test for gunshot
12 residue; is that correct?

13 A. We specifically did a test around the umbilical
14 injury because we saw a fine particulate material that looked
15 like powder material that would come out of the end of a gun
16 when it was fired, very close to the sight of entry.

17 Q. Could you see this with your eyes or did you have to
18 use a microscope?

19 A. No. We could see it with our eyes by looking at the
20 skin.

21 Q. And the bullets you recovered, you put them in the
22 evidence and gave them to the sheriff's department; is that
23 correct?

24 A. That's correct.

25 Q. Now, based upon these five gunshot wounds that you

DR. BRETT WOODARD - DIRECT BY MR. CAMPBELL

1 were referring to in your diagram, was one or all of them
2 lethal?

3 A. The gunshot wound that came through the chest,
4 diagonally through the chest and toward the back of the chest
5 was a lethal gunshot wound. It passed through both the right
6 lung, the upper portion of the right lung and the lower
7 portion of the right lung, but it also went through the heart,
8 and without instantaneous medical care it was lethal.

9 Q. And based on this autopsy and then in the bounds of
10 reasonable medical certainty have you formed an expert opinion
11 on how Mr. Penn died?

12 A. Yes. He died because of the gunshot wound that went
13 through his heart.

14 MR. CAMPBELL: Dr. Woodard, please answer any
15 questions Ms. Thomason may have.

16 MS. THOMASON: No questions, Your Honor.

17 THE COURT: Thank you, sir. You may stand down,
18 sir.

19 MR. CAMPBELL: Your Honor, at this time the State
20 rests.

21 THE COURT: Mr. Foreman, ladies and gentlemen of the
22 jury, the State has rested its case. There's matters I need
23 to take up with the attorneys at this time out of the jury's
24 presence. So I'll ask you, if you will, to retire to the jury
25 room for a brief time. It will not be that long, but you may

1 refresh yourselves during this break if you need to.

2 (WHEREUPON, the jury leaves the courtroom at
3 approximately 2:17 p.m.)

4 THE COURT: Any matters we need to take up out of
5 the presence of the jury at this time, from the State?

6 MR. CAMPBELL: Your Honor, I just have one,
7 basically housekeeping matter. I'll just go ahead and get it
8 out of the way while I'm thinking about it. We issued a bench
9 warrant yesterday on Kinshaba Simmons, and he did show up to
10 court and testified. So I just need to make a motion to
11 rescind that bench warrant.

12 THE COURT: The Court will rescind the bench
13 warrant, yes, sir.

14 MR. CAMPBELL: Thank you, Your Honor.

15 MS. THOMASON: Your Honor, I would make a motion for
16 directed verdict in this case. The State has failed to meet
17 their burden of proof to show that it was, in fact, Mr. Cowan
18 that was involved in the shooting. I would ask that you issue
19 a directed verdict in his favor.

20 THE COURT: Thank you. And, of course, in looking
21 at a motion for directed verdict the Court is required to look
22 at the evidence in light most favorable to the party against
23 whom the motion is being made.

24 In this case, looking at the evidence in the light
25 most favorable to the State I find that there is substantial

1 evidence from which the jury could infer that the State has
2 proven the elements of this offense beyond a reasonable doubt.

3 Now, of course, the Court does not weigh evidence.
4 The Court is only concerned whether there is any substantial
5 evidence. It's up to the jury to weigh the evidence and
6 determine whether the State has proven its case.

7 In the directed verdict stage the Court is
8 interested in substantial evidence from which the jury could
9 make those inferences. I therefore would deny your motion for
10 directed verdict on each of these two charges today.

11 Anything else from the defense?

12 MS. THOMASON: No, sir, Your Honor. We are not
13 going to put forth any evidence and Mr. Cowan is not going to
14 testify.

15 THE COURT: If you'd please bring him around and let
16 me question him about that right and explain those rights to
17 him. Let him come around and be sworn, if you will.

18 SAMMY KAY COWAN, after having been duly sworn,
19 testified as follows:

20 THE COURT: Mr. Cowan, I need to explain to you your
21 right to testify or not to testify to you. We need to put
22 that on the record. For the record, you are Sammy Kay Cowan;
23 is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Mr. Cowan, we have reached that stage of

1 your trial where you may present your defense. You have the
2 right to testify in your own behalf, however no one can make
3 you testify.

4 In the event you have a record for any convictions
5 involving dishonesty or false statement or for a crime
6 punishable by imprisonment for more than one year and this
7 Court determines the probative value of admitting this
8 outweighs its prejudicial effect to you the Solicitor will be
9 able to introduce this record for impeachment purposes to
10 attack your credibility.

11 If you elect not to take the stand I will charge the
12 jury that they are not to give the fact that you did not
13 testify any consideration whatsoever and there is to be
14 absolutely no prejudice to you because you did not testify.

15 It is left entirely up to you whether or not you
16 testify. You may talk with your attorney, your family, your
17 friends or anyone else, but the ultimate decision is left
18 entirely up to you. Do you understand that, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, have you discussed with your
21 attorney the advantages and disadvantages of testifying in
22 your case?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you wish to testify in your case?

25 THE DEFENDANT: No, sir.

1 THE COURT: Is that your decision, sir?

2 THE DEFENDANT: That's my decision.

3 THE COURT: All right, sir. Thank you. You may
4 return to your seat.

5 Counsel, would you like a few minutes before we
6 start to final arguments?

7 MS. THOMASON: Absolutely.

8 MR. CAMPBELL: Yes, sir.

9 THE COURT: All right. Why don't we do this. You
10 think about 10 minutes or so, 15 minutes? What do you think
11 you need?

12 MR. CAMPBELL: That will be fine.

13 THE COURT: Let's just take about 15 minutes. We'll
14 recess until then. I'll give you a chance to make preparation
15 now. Of course, the State will have the opening argument and
16 the defense will have the final argument since they put up no
17 testimony or evidence.

18 What I will do, instruct the jury then, please, sir,
19 that we are going to take a little longer than normal break.
20 They may refresh themselves. If they want to smoke, if you
21 have someone available to take them to a smoking area that
22 will be okay. But just tell them to go ahead and take about
23 15 minutes. Thank you, sir.

24 We'll be at ease for 15 minutes. Thank you.

25 (WHEREUPON, a brief recess was taken.)

1 THE COURT: When I bring the jury back the defense
2 will need to rest before the jury. The State has rested, the
3 defense will need to rest before the jury then I'll tell them
4 we're going into final arguments.

5 All right, sir, please bring them in.

6 Counsel, I am going to ask the jury if they read
7 articles in the paper today.

8 MR. CAMPBELL: Your Honor, I did bring an article,
9 if you'd like to see it.

10 THE COURT: Could I see it?

11 MR. CAMPBELL: Yes, sir.

12 THE COURT: Thank you.

13 (WHEREUPON, the jury enters the courtroom at
14 approximately 2:40 p.m.)

15 THE COURT: Mr. Foreman, ladies and gentlemen of the
16 jury, before we get started back with the trial I would like
17 to ask the jury, there was an article that appeared in the
18 Anderson Independent Mail with regard to this trial this
19 morning. Did anyone on the jury read this article this
20 morning?

21 (There was no response.)

22 THE COURT: Let the record reflect that they all
23 shake their head no, that they have not read the article.

24 You are welcome to read the article after the trial
25 but I appreciate you not reading it during the trial.

1 Now, Counsel, ready to proceed?

2 MS. THOMASON: Your Honor, the defense rests.

3 THE COURT: Now, Mr. Foreman, ladies and gentlemen
4 of the jury, the defense has rested. The defense is not
5 putting up any testimony or evidence in this case. Of course,
6 they are not required to.

7 Now, this will conclude all the taking of testimony
8 and evidence in the case. We are to that part of the trial
9 where counsel will make their final arguments to you. I ask
10 that you listen attentively as counsel address you in final
11 argument.

12 Counsel, ready to proceed?

13 MR. CAMPBELL: Thank you, Your Honor. Please the
14 Court?

15 THE COURT: Solicitor.

16 MR. CAMPBELL: Ladies and gentlemen of the jury, 283
17 days ago one individual, one Anderson County resident,
18 Frederick Penn, died at Club Envy at the hands of the
19 defendant, Sammy Cowan.

20 When we began this trial I told you several things.
21 One of them is our witnesses, a lot of them, that they had
22 prior run-ins with law enforcement. And you heard them all on
23 the stand. Just about all of them had a record.

24 Now, the State doesn't get to pick and choose its
25 witnesses. If we did we'd have the preacher, boy scout and

1 your grandmother sitting on the jury -- or as our witnesses in
2 that box right there, but we don't have that option.

3 We take the facts as we find them. We present them
4 to you all, and it is your decision. You all are the judges
5 of the facts, as the Judge told you yesterday. You all
6 determine whether or not there's guilt or innocence.

7 Now, the State has that burden of proof, and we
8 welcome that burden because it is our job to prove the case to
9 you. It's your job to decide whether we did it or not.
10 Reasonable doubt can cause a person to hesitate to act. As I
11 told you, that's kind of a legalese argument, the definition
12 of it. If you feel he did it the State has met the reasonable
13 doubt, and you find him guilty.

14 If you don't think the State has done its job in
15 presenting enough evidence to prove that he committed this
16 crime, and he's been charged with a murder, it's your job to
17 find him not guilty. It's your decision.

18 Now, the types of evidence we have in this type of
19 case, you have direct evidence and circumstantial evidence.
20 Direct evidence in this case would be seeing someone
21 witnessing him pointing the gun, pulling the trigger. They
22 see it with their eyes.

23 Circumstantial is when you look at the facts and
24 you combine that with your worldly experiences, everyday
25 experiences, common sense and you deduct -- you come to a

1 conclusion. If a person walked in this door out here with a
2 long coat on with a bunch of water on it and an umbrella and
3 you are sitting here in this courtroom and there's no windows
4 here, what would come to your mind? It's raining outside.
5 That's circumstantial evidence.

6 You might not see it raining, hear it raining but
7 you observe the individuals coming in, they are carrying
8 umbrellas, you can deduct that it is raining outside. That is
9 circumstantial evidence.

10 Now, Mr. Cowan has been charged with murder, the
11 killing of another human being with malice aforethought. We
12 all know what killing of a human being is. You don't kill.
13 We all know that.

14 Malice aforethought, what is that? That is what you
15 are dealing with at that point in time when that person pulled
16 the trigger what was in his mind, his heart. A person, if I
17 point a gun at someone and pull the trigger I have evil intent
18 at that time. That is what malice aforethought is. He
19 thought about it, knew what he was doing was wrong and
20 committed it, did it, followed through with the act which
21 resulted in the death of another human being.

22 Mr. Cowan has also been charged with possession of a
23 firearm during the commission of a violent crime, that violent
24 crime being murder. You cannot find one without the other.
25 You can't find him guilty of possession of a firearm and find

1 him not guilty of murder because the firearm is what was used
2 to commit the murder.

3 Now, as part of you all's job you all determine the
4 credibility of the witnesses. As I said, the State takes them
5 as we find them, put them on that stand, ask them questions,
6 they get cross-examined. It's your decision.

7 You all get to judge that person. You get to eye
8 them up one side, down the other and you determine if you
9 think that person is telling the truth, they're credible, they
10 are lying, if they are in it for something to gain from it.
11 You all determine that, not I, not Ms. Thomason, not His
12 Honor. You all do. And you combine all this with the
13 evidence that you will have to look at, the testimony, and
14 you'll come up with a decision.

15 The State contends that that decision should be
16 guilty, guilty of murder and guilty of possession of a firearm
17 during the commission of a violent crime, that that man, Sammy
18 Kay Cowan, did on February 6th kill, with malice aforethought,
19 Frederick Penn.

20 Let's talk about the State's evidence in this case.
21 You've heard -- there's probably, say, I think 16 witnesses
22 you've heard in the last couple of days. To start off with
23 you heard the 911 tape. You hear the commotion going on in
24 the background, you hear the panic going on.

25 You can hear someone yelling on that tape, and you

1 can listen to that tape again. And as you hear, it was Randy
2 Johnson calling in because he knew something was getting out
3 of hand. It was beyond his control. He didn't have a weapon
4 on him. He was not an armed security guard. But he knew when
5 he saw that pistol something was fixing to go down that he
6 didn't want a part of and he needed help, help from the law
7 enforcement.

8 You listen to that tape. That first shot when it
9 goes off, count them. Take your watch.

10 (PAUSE)

11 That's ten seconds that you just saw. Ten seconds
12 and then the second shot. It was very slow and deliberate.

13 Mr. Cowan knew what he was doing. The State contends he fired
14 that shot, he just kept walking towards him. He kept firing.

15 You listen to that tape. Five shots in all. This
16 isn't a case of self defense because if there was why would
17 there be five shots? Come right down to it, a killing,
18 execution, he shot him slow and deliberate, took his time.
19 Does that go to a malice aforethought?

20 He knew what he was doing. That first shot went
21 off. He waited two more seconds. Two more seconds passed, he
22 fired a third. Two more seconds passed, he fired a fourth
23 one. Three seconds passed, he fired the fifth shot, the shot
24 that hit him. One of those shots hit him right here, and that
25 is the shot, as Dr. Woodard testified, killed him.

1 My job, as the State, we present these witnesses to
2 you. As I told you before, we don't pick them. We take them
3 as we find them. You all have to determine if they are
4 telling the truth or not.

5 And you may wonder, why did we put up so many
6 witnesses? This type of case, if you have the shooter, the
7 killer in this case, absconding, taking off, you don't have
8 the gun, you got to prove your case through witness testimony.
9 It's kind of like building blocks.

10 You all remember when you were young. You may have
11 done it this fourth of July, you know, those sparklers, those
12 tall, skinny, wired sparklers. You light one of them. You
13 have a bunch of your friends, especially the kids, you all
14 stand around. One lights, the next person holds it up there
15 and lights the second one. The next person holds one up and
16 lights the third one. Eventually everybody has their little
17 sparklers lit and it casts that waive of light out. That is
18 essentially what we are doing here in the case.

19 Each person is basically a sparkler and they are
20 telling you a little bit about it, about the case. You got a
21 person over here that saw something, a person over here that
22 saw something, a person in the background that saw something,
23 but they all have something to add. That waive of the light
24 in this case is justice, seeking justice to be served whether
25 it's for the State or for Mr. Cowan.

1 Let's talk about the evidence in this case. Several
2 of the witnesses place the gun in Mr. Cowan's hand. You heard
3 this first security guard, Randy Johnson, I saw the weapon.
4 He thought it was an automatic.

5 Let's talk about it. Whether it was an automatic or
6 revolver, does it really matter? The point is they all saw a
7 gun, the gunshots are what killed Mr. Penn. It doesn't matter
8 if they knew what make or model or serial number. They saw a
9 weapon, a weapon in that man's hands.

10 What did Mr. Johnson say? He saw the weapon. When
11 he saw it he knew things were getting out of control and he
12 got on that cell phone and quickly, and he was quick thinking
13 on that, get law enforcement here. But he couldn't react fast
14 enough to stop the killing of Fred Penn, and you hear on the
15 tape, you hear the gunshots going off while he's speaking to
16 the dispatcher.

17 When you heard the tape there's also reference in
18 there -- you hear a lot of commotion and some people talking.
19 They want to know who did it. What was one of the quotes
20 people said on that tape? That guy from Detroit. I think
21 they used a little bit harsher language than that, but the
22 gist of it, they said that guy from Detroit. That guy from
23 Detroit they are referring, Sammy Cowan, whose nickname, his
24 friends were people who know he goes by Detroit. So you got
25 Mr. Johnson here who knows he has a gun.

1 Charlie Jones, who was kind of managing the club
2 that night saw the guns. And what did he say when
3 Ms. Thomason was cross-examining him? I saw him pull the guns
4 out he had in his hands, I saw him coming and going. He
5 didn't see him shooting him but he saw him coming and going.

6 That's where that circumstantial evidence comes in.
7 You see somebody with a pistol.' Mr. Cowan is running towards
8 the area where there's a scuffle going on between Kinshaba
9 Simmons and Mr. Penn, with a pistol in his hand. You hear
10 gunshots, then you see him run back with a pistol in his hand.
11 What can you decipher from that? Mr. Cowan is the one who
12 pulled the trigger.

13 Then you have the next witness sitting out there
14 standing outside, Craig Williford. As he stated, Mr. Cowan,
15 you know, Fred Penn was my ride. That's why I went out there.
16 I was looking for my buddy, Travis Wardlaw. You know, I knew
17 things weren't going down right so we were trying to get out
18 of there. And who comes running up to them from the right
19 side from Burson Road? Mr. Cowan. He pulls out two pistols.
20 What does he say to them? Better stop riding with him. Are
21 you riding with him? Yeah. You better stop riding with him.
22 He already made up his mind he's fixing to kill him. Why else
23 would he make such a statement as that?

24 Then you actually have the people who witnessed it,
25 Joctavious Williams and Kinshaba Simmons. Kinshaba was the

1 one who was having the fight with Fred Penn to begin with. It
2 had nothing to do with Mr. Cowan. He took advantage of the
3 situation, for whatever reason.

4 Both of them testified they were there. They
5 observed it. They were very close, and they watched Cowan
6 raise the gun and fire, pull the trigger. Both of them were
7 smart enough to get out of there. That's what they did. They
8 ran, and as they were running those shots continued to fire.

9 And we know that that fight occurred in the back of
10 that corner, because as the evidence shows there's blood
11 marks. There was blood droppings on the back of that B. M. W.
12 There's fingerprints of the victim, as well as his blood on
13 the back of the B. M. W. It occurred in that background, in
14 that back.

15 The other thing you have is while Mr. Cowan was
16 incarcerated for this, yeah, the testimony of someone that was
17 in there with him. He doesn't have a stellar record, I can
18 tell you that, but he was up front with you. I've done a lot
19 of wrong in my life. And he's paid the price for it. But he
20 was here to tell you what he heard.

21 And how would someone who has no outside contact,
22 because he got locked up on January 18th, this occurred on
23 February the 6th, know what went on? How would he know
24 without any contact to TV, the newspapers, he said they are
25 not allowed? The only way he would know is that the actual

1 killer told him or he overheard him talking, and that's what
2 we have here. Mr. Cowan is bragging in prison, in his local
3 detention center.

4 As the photo shows, you got the blood droppings
5 right here. They took the fingerprints. One of the bullets
6 was recovered right there. That's how we know the fight
7 occurred right there where the killing took place.

8 Now, a lot of them, the witnesses, they all
9 testified, you heard them, they all identified the killer, the
10 shooter with brown clothes on. Who do you have? You've got
11 Randy Johnson, he told you he was dressed in brown, Craig
12 Jones -- Charlie Jones, Craig Williford, Joctavious Williams,
13 Kinshaba Simmons.

14 Natasha Williams testified that she saw an
15 individual, black male dressed in brown with a pistol down at
16 his side, and she was smart enough to get out of there because
17 she knew something wasn't right. And they drove around, she
18 never even got out of the car. But they all identified the
19 person with brown clothing as Mr. Cowan, all pointing to him.

20 The people that know him as Detroit. Randy Johnson
21 knows his name is Detroit. Charlie Jones, Ann Fleming,
22 Joctavious Williams, Kinshaba Simmons, they all knew that his
23 nickname was Detroit, all pointing to Mr. Cowan.

24 The people that saw him shoot, Kinshaba Simmons,
25 Joctavious Williams. And out of his own mouth you heard

1 Thomas McDonald testify that he heard, out of his own mouth,
2 the defendant testify that yeah, he lit him up with two 357's,
3 and that they flew on the way to A. T. L., Atlanta. He was
4 bragging about the killing.

5 We had several individuals talk about he ran from
6 Burson Road. Those individuals testified a fight took place
7 in this corner right here next to the B. M. W., and when they
8 walked out the defendant, Sammy Cowan, ran towards Burson
9 Road. As Mr. Johnson testified, he searched him. He didn't
10 have a weapon on him because he hit him with the metal
11 detector, one of those wand metal detectors. You may have saw
12 them when you came into the courthouse today.

13 Where was he running to and what was he running for?
14 When he ran from here around here he was fixing to arm
15 himself. He was getting his weapons. As the witnesses
16 testified, he came around, he had them in his pockets and
17 started pulling them out, showing them to everybody. And not
18 one of the witnesses testify or said anything different other
19 than that.

20 Let's talk about this. After the shooting the
21 killer didn't stick around, did he? He skedaddled out of
22 there. He got out of there. The officers arrive in four
23 minutes. Where did he go? To Atlanta. How do we know that?
24 Detective Reeves testified and we subpoenaed the records from
25 Greyhound. And the guy who was here last night, Monday night,

1 he testified that an individual -- or a name, in the name of
2 Sam Cowan purchased a ticket from Atlanta to Bowling Green,
3 Kentucky that was not used.

4 On February the 8th purchased another ticket from
5 Atlanta to Athens, Georgia. Either Mr. Cowan purchased that
6 ticket himself -- and this was a nationwide search under that
7 name during that time period.

8 Is it a coincidence all of a sudden Sammy Cowan's
9 name pops up at a Greyhound bus station in Atlanta the day
10 after the shooting? Is it a coincidence that maybe someone
11 called in to try to help him out? We don't know if it
12 actually was him or someone else who used his name trying to
13 help him out and get a ticket but we do know for a fact that
14 he was in Georgia.

15 How else do we know that, besides the Greyhound
16 records? He called Ann Fleming. What did he tell her, on
17 February 7th? I'm at a us station. Do you think Mr. Cowan is
18 lying to her? We got proof that someone named Sam Cowan
19 purchased a ticket on February 7th at a bus station.

20 What else do we have? Thomas McDonald, the guy that
21 was locked up with him. How would he know that Mr. Cowan went
22 to the bus station in Atlanta? As he testified, he was at a
23 bus station, he bought a ticket and cancelled that ticket and
24 then went to Athens. The way he would know is if the killer
25 himself told him. That killer is Sammy Cowan.

1 They all point in one direction, that the defendant,
2 Sammy Cowan, murdered Fred Penn. That waive of light is cast
3 now from all directions and it points in one spot, right here,
4 Sammy Cowan.

5 We don't have a weapon in the case, we told you
6 that. As Mr. McDonald said it flew on the way to A. T. L.
7 going the Atlanta. It's somewhere between here and Georgia,
8 in Georgia, Atlanta. We don't know where it is. We're not
9 going to able to recover that weapon. But the point is the
10 witnesses put the guns in his hand and testified that he was
11 the one that pulled the trigger that killed Mr. Penn.

12 Now, to top it all off what did two of the
13 witnesses tell you? They were threatened by Mr. Cowan.
14 McDonald was, as well as Kinshaba Simmons. He testified here
15 today. He didn't show up yesterday. Why? Because he was
16 scared, because he got a call. You know, we're not dealing
17 with saints here.

18 Ladies and gentlemen of the jury, you have heard the
19 facts. It is your job to decipher, to come up with a
20 conclusion of whether or not he killed him. It's the State's
21 position that we have proved beyond a reasonable doubt that
22 the defendant, Sammy Kay Cowan, murdered Fred Penn February
23 6th, 2005. All the testimony and the facts lead to one
24 conclusion.

25 Officer Reeves testified, you know, initially all we

1 had was a suspect to go on and after I talked to that suspect,
2 Simmons, everybody said he didn't do it, had nothing involved
3 with but the fight. All the testimony he could find from
4 witnesses led to one, pointed in one direction.

5 Ladies and gentlemen of the jury, it is your
6 ultimate decision in this case. This is a last opportunity I
7 will have to speak to you. Yes, Ms. Thomason will get up and
8 she will present the defense's case in this matter.

9 And as she's done during the trial -- you know, what
10 the defense job is in this case is basically to poke holes in
11 the State's case, blow smoke, try to confuse the issues a
12 little bit, try to create reasonable doubt. She's doing her
13 job. But the State is beyond. We feel we have surpassed that
14 burden or we have proved it.

15 But she does not have the last say in this case.
16 Each and every one of you have the last say, and that last say
17 should be Sammy Kay Cowan is guilty of murder. I thank you
18 all for your time and your attention in this matter.

19 MS. THOMASON: May it please the Court?

20 THE COURT: Counsel.

21 MS. THOMASON: Ladies and gentlemen, I want to start
22 by saying thank you. I appreciate your attention the last
23 couple of days in this case, and certainly Mr. Cowan
24 appreciates your attention.

25 Out of everybody in this room who takes this case

1 very seriously he, of course, his freedom is on the line and
2 he is probably taking this case absolutely the most seriously.
3 It is his life and his future that is in your hands today, and
4 that is an awesome responsibility.

5 It is an awesome responsibility for me in terms of
6 presenting his case to you. In doing that it is very rare
7 that I go through a day without making a mistake, and it is
8 very rare that I don't not remember something correctly.

9 So when I'm going through this evidence, when I'm
10 telling you what you remember being testified to, if I
11 misstate something correct in your mind what you think that
12 is. The record is available for your review. All you have to
13 do is let the Judge know about it, if you have a question.
14 But certainly if I misspeak don't hold that against Mr. Cowan.

15 I'm going to do the very best job that I can to
16 present the case based on the facts as we see them for him,
17 but certainly it's his future and I don't want to in any way
18 jeopardize that because of something that I may say, that I
19 may have gotten wrong or something offensive.

20 The State has the burden of proof in this case.
21 They have to prove beyond reasonable doubt to each and every
22 one of you, not just 5 of you, not just 6 of you, not just 11
23 of you but all 12 of you beyond a reasonable doubt that
24 Mr. Cowan committed this crime.

25 No question about malice aforethought. Whoever shot

1 Mr. Penn committed murder. I'm not going to argue with you
2 about that. I'm not going to argue with you that he got shot
3 on the night that they say that he did.

4 The question is can you believe the stories that you
5 have been told, and based on the inconsistencies that you have
6 been told can you convict Mr. Cowan of murder?

7 And I would say to you that once you think about the
8 people that you heard from and you think strong and hard about
9 what they told you there's going to be that thing in your gut
10 that just says "uhh" this doesn't feel right. That thing in
11 your gut that "uhh" I'm just not sure, that's reasonable
12 doubt. That's what reasonable doubt is.

13 You all are 12 intelligent people who bring into
14 this courtroom your everyday life experiences, who bring your
15 common sense to the courtroom. And, yes, we expect you to
16 leave any biases at home. We expect you to put aside any, you
17 know, things that you may think that you know about this case
18 before we come in -- before you come into the courtroom. But
19 nobody says check your common sense at the door and leave it
20 outside. We want you to use your common sense.

21 And what that common sense is going to tell you is a
22 lot of people up here say they saw a lot of things but there's
23 no way that any of them could be right, completely, because
24 they all said different things. I want to go through each of
25 the witnesses' testimony and tell you the problems that I have

1 with it, with their testimony.

2 Now, Randy Johnson is the first person who
3 testified. Randy didn't see the shooting. So he doesn't know
4 who committed the murder. He didn't see the shooting. He
5 says he saw a gun. It was a semiautomatic gun, not a
6 revolver. He said he saw one gun, said he saw it down by the
7 left side and that the person that he saw go past him he
8 didn't know.

9 Okay. If you will recall when he testified -- when
10 he first testified I saw Sammy Cowan. Well, in
11 cross-examination he admitted that when he talked to the
12 police he didn't know Sammy Cowan. He didn't say Sammy Cowan.
13 He said I saw some guy.

14 There were a lot of guys in that parking lot that
15 night. As you heard some of the witnesses say, there were
16 tons of people. Of course, other witnesses say there were
17 only six people outside, and still other people say I don't
18 know, there were a couple people outside. So, again, we
19 really don't know what to believe about who was where or when
20 because everybody had a different story about how many people
21 were even there on the outside of the club.

22 The main important piece that you need to remember
23 from Randy Johnson is that he did not see the shooting. He
24 doesn't know what happened. Now, he tried to bolster his
25 testimony by making these horrible statements about what

1 Mr. Cowan supposedly said. Interestingly enough he was kind
2 of baffled as to why that wasn't on the 911 tape.

3 Well, well, I called 911 after.

4 Well, that doesn't make any sense. I mean, if you
5 listen to the 911 tape and you listen to his original
6 testimony before I started asking him any questions he says, I
7 walked outside. I could tell there was going to be a fight.
8 I started calling 911. I start telling them that they need to
9 get somebody out here, then I see this guy come by with a gun
10 and I say oh, no, there's going to be a shooting.

11 But at some point he's supposed to be hearing this
12 person yelling these mean things about a killing. Well, if he
13 was yelling it loud enough for him to hear it don't you think
14 you ought to be able to hear it on the cell phone tape from
15 the 911 call like you can hear those other things in the
16 background that you heard? So I would suggest to you that is
17 simply an attempt to bolster his testimony to make it sound
18 like he really knew what was going on when he didn't.

19 Charlie Jones. Charlie Jones is a nice fellow,
20 likable fellow, good guy, I'm sure. Of course, he's been
21 convicted of offering a bribe before. So I would think it's
22 probably not too far past his ethical standards to come in
23 here and tell you something that maybe did or didn't happen.

24 You saw him, in his own words from that witness
25 stand, change his story not once, not twice but three times.

1 He first started saying to me on cross-examination that he saw
2 Mr. Cowan running across the parking lot towards one way, and
3 quite frankly, I can't remember which way it was to begin
4 with. But at any rate, when I was questioning him he said
5 that Mr. Cowan was running one way.

6 Then when Mr. Campbell got back up and asked him
7 some more questions on redirect he said no, he was running the
8 other way. Then I got back up and I said, Now, wait a minute,
9 Mr. Jones, you just told me he was running this direction, you
10 just told Mr. Campbell he was running in this direction, and
11 what was his response? He was running both directions.

12 Let's just -- I mean, I'm just going to make it up
13 as I go along. First it was this way, then it was this way,
14 now it was both. You know, he didn't see the shooting. He
15 said Mr. Cowan had on a T-shirt. He called him some black guy
16 in his statement to the police. He didn't know Mr. Cowan, had
17 never seen him before, or if he had it was briefly and
18 certainly didn't know him by name.

19 And what does he say? He's running across with two
20 guns up in the air ready for a shootout. Now, I would suggest
21 to you if he was running across the parking lot with two guns
22 up in the air there would have been more people who saw it.
23 Maybe somebody would have tried to stop him. But it certainly
24 is inconsistent with the first statement that you saw.

25 And I love how all those people are out there in the

1 middle of the night, they've all been drinking, they've all
2 been at a Super Bowl party, you know, pulling for their team,
3 they've all admitted that they'd been drinking and having a
4 big time and they can all remember that the gun was silver, or
5 they can all remember that it was a revolver.

6 I just find that hard to believe that somebody is
7 moving that fast and you can see that much after having
8 ingested alcohol and remember it that clearly. But any rate,
9 Mr. Jones says two guns. Mr. Johnson says one.

10 Craig Williford. Craig Williford I'm sure is a nice
11 fellow but here again we've got a third story now with
12 Mr. Williford. Mr. Williford's story is that Mr. Cowan was
13 walking across the parking lot with his hands in his pockets
14 and all of a sudden he pulls the guns out of his pockets. So
15 that's yet a third story that's inconsistent with the first
16 two. Again, he did not see anybody shoot anybody. He didn't
17 say that he saw anything. He admitted he didn't see anything.

18 He also was such good friends with the victim -- I'm
19 not saying there's anything wrong with being friends with the
20 victim, but he was such good friends with the victim that he
21 thought he should be at the hospital with the family at the
22 time, that night after everybody got to the hospital.

23 Then he doesn't seek out the police and he doesn't
24 find anybody to talk to at the police station to tell them
25 about what he saw until April, until two and a half months

1 later. April 12th, two months and a few days later he finally
2 finds somebody who will take his story about what he saw and
3 what he heard.

4 I think you have to weigh his testimony with regard
5 to his personal relationship with the family, his personal
6 relationship with the victim and his personal relationship
7 with wanting to see some sort of vindication happen for his
8 friend. I don't blame him for that but maybe his thoughts and
9 his memories aren't as particularly clear as they should be
10 because they are clouded by his wanting to have something done
11 on behalf of his friend.

12 Travis Wardlaw. Travis didn't see the shooting. He
13 didn't see Fred and Sammy arguing. He didn't see anything. I
14 don't think I even asked him any questions. I'm not sure what
15 his testimony was about.

16 Michael Mumphery. Michael Mumphery was the fellow
17 from Greyhound that testified. And this is important because
18 I kind of wondered where all this was going with the Greyhound
19 tickets. And I thought I was right, and I was, that the
20 solicitor is trying to argue to you that somehow there was
21 this huge conspiracy for Mr. Cowan to run after this happened.

22 Well, I would suggest to you that if he wanted to
23 run off he would have gone somewhere other than Hartwell.
24 And, you know, let me know if it's criminal to be in Hartwell
25 because if it is or if that shows some sort of guilt I might

1 be in trouble because I've been over there a few times myself.

2 Being in Hartwell, Georgia several days after being
3 at a Super Bowl party is not a crime, nor is it indicative of
4 a crime having been committed, nor is it indicative of having
5 participated in a crime. I'm not sure what that is supposed
6 to show.

7 Mr. Mumphery, the guy from Greyhound, told you
8 anybody could call and order tickets in anybody's name. And
9 Mr. Campbell got it completely wrong, I believe. Now, you
10 remember what you think you heard the Greyhound person
11 testified to, but as I recall, nobody had to be in Atlanta to
12 buy those tickets.

13 Do you remember me asking him, could I call up and
14 order a ticket for my granddaughter to come from Atlanta from
15 Anderson to see me, and he said yes. All you got to do is
16 pick up the phone and you put it in her name. So to me the
17 Greyhound bus ticket is really irrelevant.

18 But the second thing I want you to think about is
19 how many people do you think in Atlanta, Georgia are named Sam
20 Cowan? It's not a very unusual name. You know, is it
21 possible that somebody else ordered a ticket? I don't know.

22 And if you were a stone-cold, cold-blooded killer
23 and you were on the run would you really order a bus ticket in
24 your own name? That just doesn't make any sense. So my point
25 in saying all those things to you is that's kind of a red

1 herring to give you something that, well, he must have been
2 guilty because he was doing these other things.

3 I say that you take all the Greyhound information
4 and you chunk it in the trash. It doesn't mean a thing. It
5 doesn't prove a thing. It doesn't tell you anything. It
6 doesn't help you get anywhere beyond the witnesses that you
7 have heard all these inconsistencies from. It doesn't do a
8 thing to help you.

9 Kinshaba Simmons. Kinshaba Simmons, himself, who
10 has been convicted of assault with intent to kill, Kinshaba
11 Simmons who was originally the person they thought was
12 involved in this crime.

13 And we called him Pissy several times during the
14 testimony. That's his nickname. And I hope that didn't
15 offend any of you, and I'm sorry if during my questioning
16 using that language did. And that's just one of things that
17 you run into that we can't help what somebody calls themselves
18 or what their nicknames are.

19 But Mr. Simmons has been knowing Fred Penn all his
20 life, been around him all his life. You know, didn't know
21 Mr. Cowan but for a month or two before all this happened.

22 Kinshaba Simmons is the one who was fighting with the victim.

23 Kinshaba Simmons is the one who was outside yelling,
24 fussing, arguing with Mr. Penn. He's the one who dumped a
25 drink on Mr. Penn. He's the one who was locked up, as he

1 called it, fighting, physically touching, hurting, coming in
2 contact with one another.

3 But in the midst of all that, in the midst of
4 dumping a drink on somebody, being drunk, he said he was real
5 drunk, he said he was high on marijuana, in the midst of all
6 that somehow sees this other person coming up with two guns,
7 that person he'd only know for a month or so and he's able to
8 clearly identify him.

9 I would suggest to you that he had a motivation for
10 testifying. Not motivating enough to get him here yesterday
11 when he is supposed to come, not motivating enough to get him
12 here without a little help and a nudge from the sheriff's
13 office. He was motivated in going and talking to the police
14 when all of this was going on and giving them a name of
15 somebody else because he was the most likely candidate to have
16 committed this crime.

17 Think about it. Nobody had suggested whatsoever
18 that Mr. Cowan and Mr. Penn had anything to do with one
19 another. I mean, what the Solicitor wants you to believe is
20 that just out of the blue Mr. Cowan went to his car and got a
21 gun and shot somebody, for no real reason.

22 But they want you to think that Mr. Simmons, who was
23 admittedly fighting with the guy who got killed, had nothing
24 to do with it, and he's the one who put the finger on
25 Mr. Cowan. He's the only one that I recall who testified that

1 he actually saw anybody get shot or saw the victim get shot.
2 He's got a real motivation for telling you what he wants you
3 to know.

4 How does he know what's going on if he's in the
5 middle of this fight, or why didn't he get shot, or how did he
6 get away before all this goes on if he's locked up in the
7 corner with Mr. Penn?

8 Joctavious Williams. I would suggest to you that
9 you just completely discount Joctavious Williams' testimony.
10 As he told you, he worked out a deal, he and his lawyer. He
11 went to his lawyer's office and they typed up a statement,
12 May 4th, 2005, after he'd gotten in some other trouble. I
13 think he had a lot of motivation to say whatever the police
14 wanted him to say.

15 Natasha Reed. She's the one who said there was a
16 big crowd outside. She saw one gun. She said some guy was
17 just standing there holding the gun. She never saw his face.
18 She was honest with you about knowing that there were probably
19 other people there with guns. She said yeah, there could have
20 been other people there with guns at this party. There were
21 tons of people outside.

22 Thomas McDonald, the jailhouse informant. I would
23 suggest to you, again, that of all of these witnesses the very
24 least credible is Thomas McDonald. Here he is with two
25 previous serious drug charges; marijuana more than 28 grams,

1 for which he had to do some time on then, and then a previous
2 assault and battery high and aggravated nature, we typically
3 refer to that as ABHAN, that he did time on.

4 Then he gets in trouble in January for beating
5 somebody in the head with a hammer and causing -- I can't
6 remember if he said 13 or 16 stitches. Beats a guy in the
7 back of the head with a hammer and now he's going to
8 counseling. Don't you think that's a little interesting?
9 Don't you think being a Methamphetamine addict as he said he
10 was, an alcoholic as he said he was that he might have wanted
11 to say anything or do anything to get out of that jail?

12 He got locked up January 18th, 2005. He starts
13 calling and writing letters soon after Mr. Cowan arrives.
14 None of them really say anything specific. Heard him talking
15 about Atlanta, heard him saying this, that and the other.

16 Don't think for a moment that the other guys out
17 there at the jail didn't know why Mr. Cowan was there. Don't
18 think that there's anybody out there that doesn't know why you
19 are there. That's what they talk about. What are you doing
20 out here? What is your lawyer doing for you?

21 Of course he knew, of course he knew what Mr. Cowan
22 was being held for, and he sure did get a sweet deal. Again,
23 I think it makes you wonder what his motivation was and would
24 he have said just about anything.

25 Ms. Fleming. Ms. Fleming was honest with you, I

1 think. She didn't have a whole lot to add. She said that she
2 was friends with Mr. Cowan. They had a relationship. He
3 called her after the shooting had happened. They fussed and
4 argued about different things. He had asked for some money.

5 He never said I'm on the run. He never said go tell
6 them I'm somewhere that I'm not. He never asked her to do
7 anything illegal, and he just didn't tell her where he was. I
8 mean, you know, there are lot of men who would probably do
9 that with their girlfriends at some point or another. Her
10 testimony just really wasn't all that important.

11 Detective Reeves, the toxicologist; the SLED agent,
12 Ms. Simmons, with the trace evidence; the bullets from the gun
13 that Mr. DeFreese gave you; and the information that
14 Dr. Woodard gave you; all that is very good scientific
15 information. I mean, it is what it is. I mean, the bullets
16 are there. They came out of Mr. Penn. There's no question
17 about that. The gunshot residue is what it is. It came off
18 the body. Those facts aren't in dispute.

19 The one and only fact that is in dispute is whether
20 or not based on all of these inconsistencies you can really in
21 your heart believe that Mr. Cowan committed this crime.
22 That's the question.

23 The Judge is going to tell you that you have the
24 ability to judge the credibility of these witnesses. You
25 can believe some of what they say, you can believe all of

1 what they say, or you can believe none of what they say.
2 That is your job. It's not a job that I envy. It's a very
3 serious job.

4 I think after you've reviewed the evidence, after
5 you've all reflected, you've all talked together and thought
6 about this you're going to have made up your mind that there's
7 just not enough evidence here. There's just not enough to
8 convict Mr. Cowan of murder. And if that's the case, you
9 check that jury form not guilty and you let us know that to
10 convict somebody of murder you've got to have more than a
11 bunch of people telling a bunch of different stories.

12 Thank you again for your attention.

13 THE COURT: Mr. Foreman and ladies and gentlemen
14 of the jury, that concludes the final arguments of counsel.
15 It is now time for me to charge you, that is to say instruct
16 you, with regard to the law that applies to the issues in
17 this case.

18 I'd like to begin that by commending the attorneys
19 who have tried this case. They have done an excellent job of
20 representing their particular clients and their respective
21 positions. They have done an excellent job, as we expect
22 trial lawyers to do in the State of South Carolina. So I
23 will commend them.

24 Now, the State charges the defendant in this case,
25 Mr. Sammy Kay Cowan, with two offenses. They charge him with

1 the offense of murder and they charge him with the offense of
2 possession with a firearm during the commission of a violent
3 crime. Now, to these charges the defendant has pled not
4 guilty, which in turn then places upon the State the burden of
5 proving him guilty beyond a reasonable doubt.

6 Mr. Foreman, ladies and gentlemen of the jury, a
7 person charged with committing a criminal offense in South
8 Carolina is never required to prove himself innocent.

9 I charge you that is a vital important rule of law
10 that a defendant in a criminal trial no matter how great or
11 serious may be the offense of which he is charged must always
12 be presumed innocent until his guilt has been proved beyond a
13 reasonable doubt. This presumption of innocence remains with
14 the defendant at all times throughout the trial and is only
15 removed when and if the State has proved guilt beyond a
16 reasonable doubt.

17 For it is your solemn duty, ladies and gentlemen, if
18 not clearly convinced of guilt beyond every reasonable doubt
19 to the contrary to find the defendant not guilty. So the
20 State has the burden of proving the defendant guilty beyond a
21 reasonable doubt.

22 Now, some of you may have served as jurors in civil
23 cases where you were told it is only necessary to prove the
24 fact is more likely true than not such as by the greater
25 weight or preponderance of the evidence. However, in criminal

1 cases the State's proof must be more powerful than that. It
2 must be beyond a reasonable doubt.

3 Now, ladies and gentlemen, proof beyond a reasonable
4 doubt is proof that leaves you firmly convinced of the
5 defendant's guilt. There are very few things in this world
6 that we know with absolute certainty, and in criminal cases
7 the law does not require proof that overcomes every possible
8 doubt.

9 A reasonable doubt may also be described as the kind
10 of doubt that would cause a reasonable person to hesitate to
11 act. If you have such a doubt as to the guilt of the
12 defendant then he would be entitled to a verdict of not
13 guilty. Reasonable doubt may arise from evidence which is in
14 the case or from the absence or lack of evidence in the case.

15 If based on your consideration of the evidence you
16 are firmly convinced that the defendant is guilty of the crime
17 charged you must find him guilty. If, on the other hand, you
18 think there is a real possibility that he is not guilty you
19 must give him the benefit of the doubt and find him not
20 guilty. You alone must make the determination of whether or
21 not reasonable doubt exists as to the guilt of the defendant.

22 Now, Mr. Foreman, ladies and gentlemen of the jury,
23 I instruct you and emphasize to you that the fact that the
24 defendant did not testify on his own behalf is not a factor to
25 be considered by you in any way in your deliberation. You

1 must not consider the fact that the defendant has chosen not
2 to testify when you determine the guilt or innocence of the
3 defendant. It must not be considered by you in any manner
4 whatsoever, either against or for the defendant.

5 A defendant has a constitutional right to remain
6 silent. The assertion of that constitutional right cannot and
7 must not be considered by you in your deliberations. Under
8 your oath you are to reach no inference and draw no conclusion
9 whatsoever from the fact that the defendant did not testify.
10 The fact that the defendant did not testify should not even be
11 discussed in your jury room.

12 The burden of proof, as I have stated to you, is
13 upon the State. It is not the burden of the accused to prove
14 his innocence. The burden of proof remains upon the State to
15 prove guilt beyond every reasonable doubt.

16 Again, I emphasize that the fact that the defendant
17 did not testify is not a factor to be considered by you in
18 determining the guilt or innocence of the defendant or in any
19 other aspect of your deliberations.

20 Mr. Foreman, ladies and gentlemen of the jury, there
21 are two types of evidence which are generally presented during
22 the trial. There is direct evidence and circumstantial
23 evidence. Direct evidence is the testimony of a person who
24 asserts or claims to have actual knowledge of a fact such as
25 an eyewitness. Circumstantial evidence is proof of a chain of

1 fact and circumstance indicating the existence of a fact.

2 The law makes absolutely no distinction between the
3 weight or value to be given to either direct or circumstantial
4 evidence nor is a greater degree of certainty required of
5 circumstantial evidence than of direct evidence. You should
6 weigh all the evidence in the case. After weighing all the
7 evidence if you are not convinced of the guilt of the
8 defendant beyond a reasonable doubt you must find the
9 defendant not guilty.

10 Mr. Foreman, ladies and gentlemen of the jury, under
11 the constitution of South Carolina you are the finders of
12 facts in this case. I do not have the right to pass upon the
13 facts or even to express any opinion I might have as to the
14 facts, nor may I suggest in any way what I might think about
15 the guilt or innocence of the defendant. You should form no
16 opinion in that regard from anything I may have said or any
17 ruling I've made during the course of the trial.

18 Mr. Foreman, ladies and gentlemen of the jury,
19 you've heard the testimony of witnesses who have special
20 knowledge, skill, experience, training or education in a
21 particular field and who have given opinions as to matters in
22 which they are skilled.

23 In determining the weight to be given such opinions
24 you should consider the qualifications and credibility of the
25 expert witnesses and the reasons given for their opinions.

1 You are not bound by such opinions. Give to them the weight,
2 if any, you deemed entitled.

3 As the sole judges of the facts in this case you are
4 also necessarily the sole judges of the credibility or
5 believability of each of the witnesses that have testified
6 during the course of the trial.

7 Now, there are a number of factors which you may
8 consider in arriving at your assessment as to a particular
9 witness's credibility or believability. Some factors I'm
10 going the list for you now, and should you think of other
11 factors that you believe also ought to be considered when you
12 go back into your jury room on the question of credibility
13 then you should consider those factors as well.

14 But you may consider the demeanor of the witness
15 from the witness stand, what was that witness's manner of
16 appearance, was a witness straightforward in answering
17 questions or hesitant in responding to questions.

18 Simply put, do you believe the witness was telling
19 the truth or not telling the truth. Do you believe the
20 witness knew of what that witness testified or did not know of
21 what that witness testified.

22 You may consider whether or not the testimony of a
23 witness is consistent or inconsistent with that witness's own
24 testimony or with other evidence and testimony presented
25 during the course of the trial.

1 You may also consider how the witness came to know
2 the facts to which he or she testified. You may consider the
3 opportunity that a witness had to observe or hear, that is to
4 perceive the existence of a fact by means of their senses.

5 You may also consider whether or not a witness is
6 biased or prejudice. That simply means do you find that a
7 particular witness had some reason to come into court and
8 testify one way or another to help or hurt one side or the
9 other. You may also consider whether or not the testimony of
10 a witness was straightened or weakened by other testimony or
11 other evidence presented during the course of the trial.

12 Now, you as the finders of the facts in this case
13 and you as the judges of the credibility or believability of
14 each of the witnesses that have testified may believe as much
15 or as little of what a witness testifies to as you deem
16 appropriate. You may believe all of what a witness says, you
17 may believe none of what a witness says or you may believe
18 only part of what a witness says.

19 Now, Mr. Foreman, ladies and gentlemen of the jury,
20 the same constitution that makes you the finders of the facts
21 makes me the sole and only instructor in the law. You must
22 accept as correct the law that I charge and apply to the law
23 the evidence as you find it and reach your verdict.

24 Put aside any conception you may have had as to the
25 law before coming here today and accept the law as I instruct

1 it to be. You, for purposes of your duty as jurors today,
2 should not be concerned about what the law ought to be but
3 what I charge you the law is now in this State.

4 Mr. Foreman, ladies and gentlemen of the jury, I
5 charge you with regard to criminal intent. Criminal intent is
6 a necessary element of each crime that must be proved by the
7 State beyond a reasonable doubt. Criminal intent is always a
8 matter that must be determined by the jury from the
9 circumstances surrounding the situation.

10 There is no way to prove intent to a mathematical
11 certainty. There is no way medical science can dissect a
12 person's brain and determine what he had in mind. So the law
13 says that criminal intent may be inferred from the
14 circumstances shown to have existed. This is how the jury
15 makes a determination whether or not the element requiring
16 intent was present.

17 Criminal intent is a state of mind which operated
18 jointly with an act in the commission of a crime. Criminal
19 intent is a mental state, a conscious wrongdoing. So it is up
20 to you, the jury, to determine what the defendant intended to
21 do based on the circumstances shown to have existed.

22 I tell you that the State must prove criminal intent
23 beyond a reasonable doubt just as the State must prove every
24 element of the offenses beyond a reasonable doubt.

25 It is not necessary to establish intent by direct

1 and positive evidence but intent may be established by
2 inference in the same way as any other fact, by taking into
3 consideration the acts of the parties and all of the facts and
4 circumstances of the case. While the State may prove motive
5 it is unnecessary that the State do so. However, the State
6 must prove intent.

7 Mr. Foreman, ladies and gentlemen of the jury, I
8 charge you that were you to find from the evidence that the
9 defendant was merely present or near the scene of an alleged
10 crime on the date in question you are instructed that such
11 presence at or near the scene of the crime merely creates a
12 suspicion and you cannot find him guilty because of suspicion.

13 Mere presence at or near the scene of a crime does
14 not of itself permit an inference to be drawn by you that the
15 defendant had knowledge of any criminal plan which might have
16 been formed. Suspicious circumstances are not a justification
17 for finding guilt. To find the defendant guilty you must find
18 that he was present and participated in the commission of the
19 crime on the incident in question.

20 Now, Mr. Foreman, ladies and gentlemen of the jury,
21 I want to charge you specifically with the offenses to which
22 the defendant is charged today.

23 I would remind you at this point that you will not
24 have these written instructions written down for you back in
25 the jury room when you begin your deliberations. So you are

1 going to have to call on your collective memories as to what I
2 instruct you the law is on that.

3 If you run into some question about what I instruct
4 you the law is you can notify the bailiff. The bailiff will
5 let me know and I'll bring you back out from the jury room and
6 reinstruct you on any part of the law or all of the law that
7 you do not understand.

8 So what I would ask you to do at this time is to
9 listen very carefully to these offenses and the law of these
10 offenses when I go through them.

11 I instruct you first as to the crime of murder.
12 Murder is the willful, felonious killing of a human being by
13 another human being with malice aforethought.

14 Malice is hatred, ill will or hostility towards
15 another person. It is the intentional doing of a wrongful act
16 without just cause or excuse and with the intent to inflict an
17 injury or in other circumstances that the law will infer an
18 evil intent.

19 Malice aforethought may be express or inferred.
20 These terms express or inferred do not mean different kinds of
21 malice but merely the manner in which malice may be shown to
22 have existed, that is by direct evidence or from inference of
23 the facts and circumstances which are proved.

24 Now express malice is shown when a person speaks
25 words which express hatred or ill will for another or when the

1 person prepared beforehand to do the act which was later
2 accomplished. For example, lying in wait for a person or any
3 other acts of preparation going to show that the deed was
4 within the defendant's mind would be expressed malice.

5 Malice is said to be express where there is
6 manifested a violent, deliberate intention unlawfully to take
7 away the life of another human being. Malice is implied where
8 one intentionally and deliberately does an unlawful act which
9 he or she then knows to be wrong and in violation of his duty
10 to another and where no excuse or legal provocation appears
11 and when the circumstances attending the killing show an
12 abandoned heart, a malignant heart fatally bent upon mischief.

13 Malice may be inferred from conduct showing a total
14 disregard to human life. Inferred malice may also arise when
15 the deed is done with a deadly weapon.

16 A deadly weapon is any article, instrument or
17 substance which is likely to cause death or great bodily harm.
18 The following are examples of instruments which may be deadly
19 weapons; a pistol, a shotgun, a rifle, a knife, a sling shot,
20 metal knuckles, razor, gasoline, a firebomb, Molotov cocktail.
21 A gun may be a deadly weapon even if it is not operating.

22 If facts are proved beyond a reasonable doubt
23 sufficient to raise an inference of malice to your
24 satisfaction this would simply be an evidentiary fact to be
25 taken into consideration by you, the jury, along with other

1 evidence in the case. You may give it such weight as you find
2 it should receive.

3 You as jurors are free to accept or reject this
4 permissive inference depending on your view of the facts. In
5 other words, if such conduct results directly in the death of
6 another and if such conduct was so culpable and inexcusable,
7 so aggravated and grossly reckless as to show an active
8 intentional disregard of the consequences of human life thus
9 denoting a malignant spirit, a heart devoid of social duty and
10 fatally bent on mischief inference of malice may arise.

11 Furthermore, it is not just carelessness nor not
12 mere recklessness or a passive indifference to the safety of
13 others. This is conduct, when it shows a deliberate and
14 intentional design to so use or employ or handle a deadly
15 weapon or dangerous instrumentality so as to endanger the
16 life of another or of others without just cause or excuse may
17 be sufficient to raise this inference.

18 However, it is for you, the jury, to decide beyond a
19 reasonable doubt whether upon all the facts and circumstances
20 of this case the defendant's alleged use of a deadly weapon
21 demonstrated such an intentional disregard for human life that
22 malice may be inferred from the use of a deadly weapon. And
23 it is for you, the jury, to decide what weight should be given
24 this fact. And it will be observed, ladies and gentlemen,
25 that there must be malice aforethought.

1 And while the law does not require that malice shall
2 exist for any particular length of time before the commission
3 of the act it must be aforethought. There must be a
4 combination of the previous evil intent and the act producing
5 the fatal result. If the evidence should show under what
6 circumstances a fatal injury was inflicted then you, the jury,
7 would have to determine whether under such circumstances the
8 act was malicious.

9 The defendant is also charged in this case with the
10 offense of possession of a firearm during the commission of a
11 violent crime. Now, pursuant to Section 16-23-490, South
12 Carolina Code of Laws, 1976 as amended, it provides as
13 follows; if a person is in possession of a firearm or visibly
14 displays a firearm or visibly displays a knife during the
15 commission of a violent crime and is convicted of committing
16 or attempting to commit a violent crime, as defined in Section
17 16-1-60 of the South Carolina Code, 1976 as amended, he is
18 guilty of this offense.

19 Section 16-1-60 of the South Carolina Code, 1976 as
20 amended defines a violent crime in South Carolina to include
21 the crime of murder. You may not consider the charge of
22 possession of a firearm or knife during the commission of a
23 violent crime unless you first find the defendant guilty of
24 murder. If you do not find him guilty of that charge then you
25 would find him not guilty on this charge and would not

1 consider it in your deliberations.

2 In other words, a defendant must be found guilty of
3 a violent crime and the State must have proved beyond a
4 reasonable doubt that the defendant was in possession of a
5 firearm or visibly displayed a firearm or knife during the
6 commission of that violent crime before you may find the
7 defendant guilty of this charge.

8 Mr. Foreman, ladies and gentlemen of the jury,
9 nothing that I may have said or done during the course of the
10 trial has been in any way intended to express or suggest a
11 view in the case or an opinion as to the facts, the weight of
12 the evidence or the credibility of the witnesses. If any of
13 my actions or words have seemed to so indicate you will
14 disregard such and form your own opinion as to these matters.

15 You have been selected as fair and impartial jurors
16 sworn to impartially try and determine the facts of this case,
17 and when you comply with your oath to do so then no one will
18 have a right to criticize your verdict and you'll have fully
19 discharged your duty as jurors.

20 You are to decide this case according to the
21 testimony that you have heard from the lips of the sworn
22 witnesses along with other evidence introduced during the
23 course of the trial.

24 I charge you that as jurors you must decide these
25 issues in this proceeding without bias and without prejudice

1 to any party. You cannot allow yourself to be governed by
2 sympathy, by prejudice, by passion, by public opinion or any
3 other arbitrary fact.

4 Both the State and the defendant have the right to
5 expect that each of you will carefully and impartially
6 consider all of the evidence in the case and that you will
7 follow the law as I have explained it to you.

8 Now, Mr. Foreman, I charge you that once you begin
9 your deliberations that you maintain some order in those
10 deliberations, that everyone who wants to participate and be
11 heard in those deliberations be allowed to do so.

12 If for any reason any members of the jury panel take
13 a break from the deliberations all should take a break. By
14 that, I mean all 12 jurors should be present and deliberating
15 when deliberations are going on.

16 Whatever your verdict in this case it must be your
17 unanimous verdict. All 12 jurors must agree on the verdict,
18 Mr. Foreman, which you'll be authorized to place on the
19 verdict forms.

20 Now, I have prepared for your use in the jury room,
21 Mr. Foreman, two verdict forms, one for each of the charges in
22 this case. Going over the verdict form on the charge of
23 murder there are two possible verdicts which appear on that
24 verdict form. They are as follows; we, the jury, find the
25 defendant, Sammy Kay Cowan, guilty of murder. The second

1 possible verdict that appears on the verdict form is we, the
2 jury, find the defendant, Sammy Kay Cowan, not guilty.

3 Now, the second verdict form is as to the charge of
4 possession of a firearm during the commission of a violent
5 crime. And, again, you have two possible verdicts. And the
6 possible verdicts read as follows; we, the jury, find the
7 defendant, Sammy Kay Cowan, guilty of possession of a firearm
8 during the commission of a violent crime. The second possible
9 verdict on the verdict form is we, the jury, find the
10 defendant, Sammy Kay Cowan, not guilty.

11 Now, Mr. Foreman, ladies and gentlemen, in preparing
12 the verdict forms I have to put the possible verdicts on the
13 forms in some order. I do it the say way every time. The
14 order in which the possible verdicts appear on the verdict
15 forms means absolutely nothing.

16 What you should do, Mr. Foreman, is deliberate.
17 Once the jury has reached a unanimous verdict then you would
18 go to the verdict form, find the verdict on the verdict form
19 which corresponds to the verdict reached by the jury. You
20 simply then put a checkmark in the blank beside that
21 particular verdict, sign your name on the line above the word
22 person's signature and date it.

23 Now, once you have done that as to each of the two
24 charges in this case you would knock on the door, let the
25 bailiff know you have reached a verdict. He will let me know,

1 and I will bring you back out into the courtroom to receive
2 those verdicts.

3 Now, I would tell you this, Mr. Foreman, that
4 insofar as the charge of possession of a firearm during the
5 commission of a violent crime, you could not find the
6 defendant guilty on that charge unless you had found him
7 guilty of murder.

8 Therefore, what you should do is deliberate first as
9 to the charge of murder. If you were to find the defendant
10 not guilty on that charge then you would not even consider the
11 possession of a firearm during the commission of a violent
12 crime because in order to find him guilty of that crime you
13 would of first had to find him guilty of a violent crime, in
14 this case that would be the murder charge.

15 If you were to find him guilty of murder, on that
16 charge, you then would consider the second offense, which is
17 possession of a firearm during the commission of a violent
18 crime, and would make a separate finding as to that
19 particular charge.

20 Now, Mr. Foreman, ladies and gentlemen, I'm going to
21 ask you to retire to the jury room but do not yet begin your
22 deliberations. I have to give counsel an opportunity to
23 request additional instructions on the law.

24 If additional instructions are requested and I deem
25 additional instructions are necessary I will bring you back

1 out into the courtroom and give you those additional
2 instructions. It follows then you should not begin
3 deliberating until we make sure all instructions are complete.

4 Now, if no additional instructions are necessary I
5 will send you by means of the bailiff the verdict forms, all
6 exhibits which have been admitted into evidence and
7 instructions to begin deliberating. Please do not begin
8 deliberating until you get that instruction.

9 If you'll retire to the jury room, all except the
10 alternate.

11 Ma'am, I'll ask you this time not to go into the
12 jury room but to wait just outside the courtroom door for
13 further instructions.

14 Thank you. Please retire to the jury room.

15 (WHEREUPON, the jury leaves the courtroom at
16 approximately 3:55 p.m.)

17 THE COURT: Exceptions or additional requests to
18 charge, from the State?

19 MR. CAMPBELL: None from State.

20 THE COURT: From the defense?

21 THE DEFENDANT: None, Your Honor.

22 THE COURT: Please, if you would, check with the
23 court reporter the exhibits and make sure only those exhibits
24 were admitted into evidence go back to the jury, please.

25 (WHEREUPON, Counsel for the State and Defense agreed

1 upon the evidence, and the verdict forms and evidence were
2 sent back to the jury and they were instructed to begin their
3 deliberations at approximately 4:00 p.m.)

4 THE COURT: Good job, Counsel. We will be in recess
5 for a little bit.

6 (WHEREUPON, the alternate juror was brought before
7 the Court and excused, and Court was in recess while awaiting
8 for a verdict from the jury.)

9 THE COURT: Counsel, approach just a minute.

10 (WHEREUPON, a bench conference was had.)

11 (WHEREUPON, Court's Exhibit Numbers 2 and 3, Notes
12 from the Jury, were marked and made a part of the record.)

13 THE COURT: All right. Please bring the jury in.

14 (WHEREUPON, the jury enters the courtroom at
15 approximately 5:55 p.m.)

16 THE COURT: Mr. Foreman, ladies and gentlemen of the
17 jury, you requested that we provide you with the testimony of
18 Joctavious Williams, I believe, and the court reporter is
19 prepared to have that played back for you at this time.

20 (WHEREUPON, the testimony of Joctavious Williams was
21 played for the jury.)

22 THE COURT: Mr. Foreman, ladies and gentlemen, that
23 concludes that testimony. If you'll retire back to the jury
24 room and resume your deliberations. I would caution you, any
25 time if you need anything else replayed we can do that, or any

1 part of the law recharged we can do that. I just ask that you
2 consider all of that in context of all of the other testimony
3 and evidence and the law as I've instructed to you in your
4 deliberations. Thank you.

5 Please retire to the jury room and resume your
6 deliberations.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 6:08 p.m.)

9 THE COURT: All right. We'll be at ease.

10 (WHEREUPON, court was in recess while awaiting a
11 verdict from the jury.)

12 (WHEREUPON, Court's Exhibit No. 4, a Note from the
13 Jury, was marked and made a part of the record.)

14 THE COURT: Ladies and gentlemen in the courtroom,
15 we have a verdict in this case. I have no idea what the
16 verdict is. I have not heard anything about the verdict. But
17 whatever the verdict is we will respect the jury's verdict,
18 okay. I do not want any outburst in the courtroom, please, no
19 display of emotion. And so please do not do that.

20 If you feel like you're going to have to do that
21 whichever way the verdict goes please go ahead and leave now,
22 because I do not want that. If there's any outburst in the
23 courtroom I'll probably hold you in contempt of court, and so
24 please don't do that. That's what I ask you to do.

25 And if you have emotions about the verdict,

1 whichever way it is, I ask you to wait until you get outside
2 the courthouse before you display those emotions. I
3 appreciate that. Thank you.

4 Please bring the jury in, sir.

5 (WHEREUPON, the jury enters the courtroom at
6 approximately 8:32 p.m.)

7 THE CLERK: Mr. Foreman, ladies and gentlemen of the
8 jury, have you agreed on a verdict?

9 THE FOREPERSON: (Nodded).

10 THE CLERK: Would you pass it over, please.

11 THE COURT: Madam Clerk, would you please publish
12 the verdict.

13 THE CLERK: Case 2005-GS-04-696, The State of South
14 Carolina vs. Sammy Kay Cowan, the verdict of the jury; we, the
15 jury, find the defendant, Sammy Kay Cowan, guilty of murder.
16 That's signed Stephen T. Ackerman, foreperson.

17 Indictment for possession -- count two possession of
18 a firearm during the commission of a violent crime,
19 2005-GS-04-696, The State of South Carolina vs. Sammy Kay
20 Cowan, the verdict of the jury; we, the jury, find the
21 defendant, Sammy Kay Cowan, guilty of possession of a firearm
22 during the commission of a violent crime. That's signed
23 Stephen T. Ackerman, foreperson.

24 Mr. Foreman, ladies and gentlemen of the jury, if
25 these are your verdicts would you please indicate by raising

1 your right hand.

2 All hands are raised to the verdicts of the jury,
3 Your Honor.

4 THE COURT: Any questions of the jury panel, from
5 the State?

6 MR. CAMPBELL: No, Your Honor.

7 THE COURT: From the defense?

8 MS. THOMASON: None, Your Honor.

9 THE COURT: Mr. Foreman, ladies and gentlemen of the
10 jury, this will conclude your service on this case. I'm going
11 to ask you to come back in the morning. We're going to start
12 another case in the morning, and I'm not sure that we would
13 have enough jurors to go forward without you. And for that
14 reason I would try to do that, but we're going to start
15 another case in the morning and we need to insure that we have
16 enough jurors in the jury panel to be able to go forward on
17 the next case. So I'm going to excuse you at this time and
18 I'll ask you to be back here in the courtroom in the morning
19 at 9 o'clock and we would expect to draw a jury in the next
20 case at this time.

21 I would like to take this opportunity to thank you
22 for your service thus far this week and the sacrifices you
23 have made. Jury duty is not easy, and I understand that, and
24 I certainly understand and don't take for granted the fact
25 that you've got to make sacrifices to be here and we deeply

1 appreciate that sacrifice.

2 Thank you. You're free to go at this time. Does
3 anyone --

4 Is someone going to be able to accompany them down
5 to the parking area, the ladies, particularly on the jury? If
6 we can do that, I'd appreciate it.

7 You're free to go at this time, Mr. Foreman, ladies
8 and gentlemen.

9 (WHEREUPON, the jury was excused at approximately
10 8:35 p.m.)

11 THE COURT: Solicitor, do you have the sentencing
12 sheets? Well, let me back up just a minute and give counsel
13 an opportunity to make any motions that need to be made at
14 this time. Any from the State?

15 MR. CAMPBELL: No, Your Honor.

16 THE COURT: From the defense?

17 MS. THOMASON: None. No motions at this time.

18 THE COURT: Then if you'd please bring the
19 sentencing sheets up.

20 MS. THOMASON: Do you want us to come around, Your
21 Honor?

22 THE COURT: Please, ma'am.

23 Solicitor, let me hear you with regard to his record
24 and also anyone else that wishes to speak on behalf of the
25 State, and then I'll hear from the defendant.

1 MR. CAMPBELL: Your Honor, I'm not going to worry
2 about Magistrate Court. In 1989 he was convicted of assault
3 and battery with a high and aggravated nature. He was given a
4 1 to 6, mostly a Y. O. A. and shock probation. He was also
5 convicted of burglary 1st, given the same sentence.
6 Apparently they were together.

7 September 14, 1994 he was convicted of voluntary
8 manslaughter, convicted 15 years. He's also been convicted of
9 assault and battery with intent to kill, 15 years, and he's
10 also been convicted of possession of a firearm during the
11 commission of a violent crime, 5 years concurrent with the
12 above sentence, Your Honor.

13 THE COURT: All right. Let me ask you whether --
14 you started trial by saying you'd noticed the defendant with
15 life without parole on the 3 strikes rule. Now, have you got
16 certified copies of those that you'd like to make part of the
17 record, of the prior convictions?

18 MR. CAMPBELL: Yes, sir, I have certified copies.

19 Here's on the burglary 1st, the voluntary
20 manslaughter originally indicted for murder, possession of a
21 firearm during the commission of a violent crime, and then an
22 ABWIK. These are certified convictions. Your Honor, I'll put
23 them in as a Court document. If you'll let me hand them down
24 to you first.

25 THE COURT: I believe these will be more than enough

1 to establish the 2 prior strikes that would make the 3rd
2 strike, and that was the basis of your notice of life without
3 parole, 3 strikes rule?

4 MR. CAMPBELL: That's correct, Your Honor. I'll
5 make this a Court's exhibit.

6 THE COURT: Let's make it a State's Exhibit, if you
7 don't mind. Since you are seeking a life without parole
8 sentence based on the 3 strikes rule I think that that should
9 come in as a State's Exhibit rather than a Court's exhibit.

10 MR. CAMPBELL: Your Honor, the only reason I say
11 that is because the other one is a Court's Exhibit, the
12 notice.

13 THE COURT: Well, I again think they ought to be
14 State exhibits myself, including that one, because it's not
15 the Court that's doing anything in this case. That's notice
16 that you are giving to the Court. So why don't we change
17 those to State exhibits.

18 MR. CAMPBELL: And just for the record, it was Court
19 Exhibit 1, where we filed -- entered into the record notice of
20 intent to seek a sentence of life without parole as well as
21 the affidavit of service informing Mr. Cowan as well as his
22 attorney, Ms. Thomason.

23 (WHEREUPON, State's Exhibit No. 30, Notice to Seek
24 Life Without Parole, was marked and admitted into evidence.)

25 MR. CAMPBELL: Your Honor, at the appropriate time

1 when you're ready.

2 THE COURT: I'd like to hear from them now then I'll
3 hear from the defense.

4 MR. CAMPBELL: This is Virginia Anderson.

5 THE COURT: Ma'am, please give us your name for the
6 record.

7 MS. WILLIAMS: My name is Virginia Anderson
8 Williams. I reside here in Anderson, South Carolina. Fred
9 Penn was my nephew. I've known -- I feel that what Mr. Cowan
10 done was an injustice to our family. I feel that he should
11 not ever be allowed to be in the free world again to be able
12 to walk among free people because what he's done he will do it
13 again.

14 THE COURT: Thank you, ma'am.

15 Please give us your name.

16 MS. PENN: My name is Arlene Penn Anderson. On
17 behalf of my family, my brother, my mother, just as a father,
18 son and a good person I know sometimes you leak through the
19 system and you don't understand why things happen but I just
20 want to appreciate you as the law to make sure that a justice
21 has been served and that this man don't ever be able to harm
22 other people, not only just my brother. I can't bring him
23 back and this won't nearly bring nothing back, but just on
24 behalf of thanking the law that this man can't harm anyone's
25 family ever and destruct it like he did ours.

1 THE COURT: Anyone else?

2 MR. CAMPBELL: That is all, Your Honor.

3 THE COURT: And let me hear from the defense,
4 please, ma'am.

5 MS. THOMASON: Thank you, Your Honor. May it please
6 the Court. In these cases there's not a lot I can say, Your
7 Honor. Your hands are tied by the statute and I think it's a
8 waste for me to stand up here and try to make some argument to
9 you that you should do something other than what the law
10 requires you to do, and Mr. Cowan understands and I understand
11 that that means you are required to impose the life without
12 parole because of the statute, and we understand that.

13 THE COURT: Mr. Cowan, is there anything you'd like
14 to say to the Court at this time?

15 THE DEFENDANT: The only thing I can say is I
16 understand the way they feel towards me. I tried to, you
17 know, let everything come out in court. I didn't want to take
18 the stand because of my past, and I know that's something they
19 was going to bring up, draw the jury attention away from
20 that. But, you know what I'm saying, what happened, I didn't
21 have nothing to do with it. I didn't get in no confrontation
22 with the man inside or outside, but everybody looking at my
23 past and that's what they judge me on. So that's just
24 something I got to deal with now.

25 THE COURT: Well, Mr. Cowan, they did have

1 witnesses who came in who put you at the scene with weapons
2 and that. So, of course, that is a matter for the jury to
3 determine not for the Court. So the Court doesn't make those
4 decisions. And the jury has made that decision and found you
5 guilty of these charges.

6 And I always try to advise people who are pleading
7 guilty before me, I make sure everyone knows who's getting a
8 serious or most serious offense. If they plead guilty to that
9 I make sure they understand what that means because it's an
10 important thing, and you have gotten at least 2 previous
11 strikes against you, and more than 2 it looks like, but at
12 least 2, and they served you with notice. So really the
13 Court's hand are tied in that regard.

14 So in case number 2005-GS-04-696, Sammy Kay Cowan
15 having been found guilty by a jury for the offense of murder,
16 this being a 3rd strike against him, having been properly
17 notified by the State of their intent to seek life without
18 parole on the 3 strikes rule, the sentence of the Court is you
19 be committed to the State Department of Corrections for a
20 determinate term of life without parole. You are given credit
21 for any jail time that you served on this charge.

22 In case number 2005-GS-04-696, Sammy Kay Cowan
23 having pled guilty [sic] to possession of a firearm during the
24 commission of a violent crime, the sentence of the Court is
25 you be committed to the State Department of Corrections for a

1 determinate term of 5 years. This sentence will run
2 concurrent, and again you're given credit for time served.

3 MS. THOMASON: Your Honor, I may be wrong but I
4 think you said pled guilty.

5 THE COURT: I beg your pardon. I probably did say
6 that. I thank you for correcting me.

7 Let the record be clear on that that he was found
8 guilty by a jury of possession of a firearm during the
9 commission of a violent crime and is sentenced accordingly.

10 I appreciate you correcting me there. Thank you.

11 Thank you. We'll be adjourned.

12 (WHEREUPON, the trial of this case was concluded.)

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C E R T I F I C A T E

I, Sharon L. Vizer-Hanks, Official Court Reporter
for the 14th Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had and
the evidence introduced in the trial of the captioned case in
Circuit Court on the 14th and 15th day of November 2005.

I do further certify that I am neither of kin,
counsel nor have an interest to any party hereto.

January 17, 2007


SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

DOCKET NO. 2005-GS-04-696

The State of South Carolina,
ANDERSON

County of _____

COURT OF GENERAL SESSIONS

APR 19 2005 TERM _____

RLC THE STATE

Sammy Kay Cowan

COMMITMENT

11-16-05/comp

342
WITNESSES
ACSD/S. REEVES

ARREST WARRANT NO. H-109665
I-852119

ACTION OF GRAND JURY

TRUE BILL

APR 19 2005

Foreman of Grand Jury

Foreperson

VERDICT

guilty murder
guilty possession of a
firearm

Sgt. T. Ach 11/15/05
Date:

Indictment for

Count One - MURDER
16-3-0010/16-3-0020 [0116]

Count Two - POSSESSION OF A FIREARM DURING
THE COMMISSION OF A VIOLENT CRIME
16-23-0490 [0549]

STATE OF SOUTH CAROLINA)
ANDERSON)
COUNTY OF _____)

INDICTMENT FOR
Ct. One - Murder
Ct. Two - Possession of a Firearm During
The Commission of a Violent Crime

At a Court of General Sessions, convened on APR 19 2005,
the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE

MURDER

That Sammy Kay Cowan did in Anderson County, South Carolina, on or about February 6, 2005, feloniously, wilfully and with malice aforethought, kill one Frederick M. Penn by means of shooting him with a handgun and the said victim died as a proximate result thereof.

COUNT TWO

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

That Sammy Kay Cowan did in Anderson County, South Carolina, on or about February 6, 2005, possess a firearm during the commission of a violent crime, to wit: Murder. All in violation of Section 16-23-490, Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Ramel L. Campbell
asst. SOLICITOR

344-2 OF SOUTH CAROLINA

COUNTY OF ANDERSON

STATE v SAMMY KAY COWAN

AKA:

Race/Sex: B M Age: 32

DOB:

Address:

City, State, Zip ANDERSON SC 29625

DL# SID: SC00667185

) IN THE COURT OF GENERAL SESSIONS

) INDICTMENT/CASE #

)

)

) A/W#: H109665

) Date of Offense: 02/06/05

) S.C. Code: 16-03-0010

CDR Code #: 0116

) CASE RESTORED ☐

) SENTENCE ☐ PLEA ☒ TRIAL



In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS TO:

Murder

in violation of 16-3-10 of the S.C. Code of Laws, bearing CDR Code #: 011116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

Charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Rome L. Campbell

Chrissy Adams

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ~~X~~ State Department of Corrections
☐ County Detention Center, for a determinate term of LIFE WITHOUT PAROLE days/months/years or
☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
provided that upon the service of _____ days/months/years and/or payment of \$ _____
plus costs and assessments as applicable*, the balance is suspended with probation
for _____ months/years and subject of South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentences on: _____

☒ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied
by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine.....	\$	
14-1-206 - Assessments (107.5%)	\$	
14-1-211 (A)(1) Conv. Surcharge	\$100	\$ 100
14-1-211 (A)(2) DUI Surcharge	\$100	\$
56-5-2995 (DUI Assessment)	\$12	\$
35.13 (Public Def/Prob)	\$500	\$
73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25
33.7, 1B TP (Drug Court Surcharge)	\$100	\$
50-21-114 (BUI Breath Test Fee)	\$50	\$
56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% County(if paid in installments)	\$	
TOTAL	\$	\$ 125

Cathy M. Phillips

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)



PTUP _____ time served pursuant to S.C. Code 24-13-40

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be paid in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

Jeff. [Signature]
Presiding Judge

Judge Code: 011113

Sentence Date 11/15/05

Court Reporter S. [Signature] Code #: 1111

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

STATE v SAMMY KAY COWAN

AKA:

Race/Sex: B M Age: 32

DOB: SSN:

Address:

City, State, Zip ANDERSON SC 29625

DL# SID: SC00667185

) IN THE COURT OF GENERAL SESSIONS 345
) INDICTMENT/CASE #

20 05 -GS-04- 696

) A/W#: 1852119

) Date of Offense: 02/06/05

) S.C. Code: 16-23-0490 CDR Code #: 0549

) CASE RESTORED ☐

SENTENCE ☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS TO:

Possession of a firearm during the Commission of a violent

in violation of 16-23-490 of the S.C. Code of Laws, bearing CDR Code #: 01514191

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

Charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Rachel Campbell

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections,
☐ County Detention Center, for a determinate term of 5 days/months/years or
☐ under the Youthful Offender Act not to exceed years and/or pay a fine of \$
provided that upon the service of days/months/years and/or payment of \$
plus costs and assessments as applicable*, the balance is suspended with probation
for months/years and subject to South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentences on: 05-65-04-696
The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied
by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine.....	\$	
14-1-206 - Assessments (107.5%)	\$	
14-1-211 (A)(1) Conv. Surcharge	\$100	\$
14-1-211 (A)(2) DUI Surcharge	\$100	\$
56-5-2995 (DUI Assessment)	\$12	\$
35.13 (Public Def/Prob)	\$500	\$
73.3, 1B TP (Law Enforce. Funding)	\$25	\$
33.7, 1B TP (Drug Court Surcharge)	\$100	\$
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56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% County (if paid in Installments)	\$	
TOTAL	\$	

Cathy M. Phillips

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

PTUP time served pursuant to S.C. Code 24-13-40 t
days/hours Public Service Employment

Obtain GED

Attend Voc Rehab, or Job Corps

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be paid in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund.

Other:

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 011113

Sentence Date 11/15/05

Court Reporter S. Viger-Harris Code #: 1111

STATE OF SOUTH CAROLINA)

County of ANDERSON)

IN THE COURT OF COMMON PLEAS

Sammy K. Cowan #214656)

Full name and prison number (if any) of Applicant)

Case No.: #2009CP0400319

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

JAN 27 2009

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 answers to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence Anderson County Court of General Sessions, Anderson, South Carolina 29622
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2005-GS-04-696 - Murder
 - (b) 2005-GS-04-697 - Possession of a weapon during the commission
 - (c) of a violent crime.

FILED-CLERK'S OFFICE
ANDERSON SC
2009 JAN 27 PM 3:00
COMMON PLEAS
GENERAL SESSIONS

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) November 14, 2005 - Life without parole, 5 - years concurrent
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty xxxxxxxx _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 1, 2008 - Filed October 14, 2008
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2008-UP-577
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

COMMON PLEAS AND
GENERAL SESSIONS

2008 JAN 27 PM 3:08

FILED-CLERK'S OFFICE
ANDERSON SC

- (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) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment - A, attached
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

FILED-CLERK'S OFFICE
ANDERSON SC
JAN 27 P. 3: 08
COMM. HEARS AND
GENERAL SESSIONS

(c) the disposition thereof:

N/A

i.

ii.

iii.

(d) the date of each such disposition:

N/A

i.

ii.

iii.

(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) This is the Applicant's first opportunity to raise such issues.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

N/A

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. Nancy Jo Thomason, Esquire, PO Box 4025, Anderson
South Carolina 29622

ii. Katherine H. Hudgins, Esquire, 1330 Lady Street
Suite 401, Columbia, SC 29201-3332

iii. Robert Gamble, Esquire, Public Defender's Office
301 Camson Rd., Anderson, S.C. 29625

(b) the proceedings at which each such attorney represented you:

i. 17 (b) and (c)

ii. 17 (d)

iii. 17 (a)

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2009 JAN 27 P 3:08
COMMON PLEAS AND
GENERAL SESSIONS

19. State clearly the relief you seek in filing this application:
 I request that this Court reverse the decision of the trial court and
remand this case to the trial court for a new trial, any other relief
this Court deems just and proper.
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of McCormick)

I, Sammy K. Cowan #214656, 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.

Sammy K. Cowan

SWORN to and subscribed before me this 21
 day of January, 2009.

Jennifer C Franklin (L.S.)
 Notary Public

My Commission Expires: 01-31-2010

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 COMMON PLEAS AND
 GENERAL SESSIONS

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Sammy K. Cowan #214656, 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.

Sammy K. Cowan
Applicant

SWORN or affirmed to and subscribed before me this
21 day of January, 2009.

Jennifer C. Frankler
Notary Public

My Commission Expires: 01.31.2010

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COMMON PLEAS AND
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(1) Counsel was ineffective for failing to file a direct appeal when applicant asked counsel to appeal the jury's decision counsel told applicant he could not appeal and suggest that applicant file a PCR.

(2) Counsel was ineffective during preliminary hearing, where counsel failed to file any motions to see evidence of the statements the state claimed as evidence.

(3) Counsel was ineffective for failing to subpoena the tape recordings of phone conversations, allegedly made by the applicant during pretrial detention at the county jail implicating himself in this crime, for impeachment purposes.

(4) Counsel was ineffective during the preliminary hearing, where the state failed to establish any connections whatsoever between the applicant and this crime, counsel failed to file motions on behalf of the applicant for dismissal of the charges against him, after being asked several times by the hearing judge whether counsel wanted to file any motions.

(5) Counsel was ineffective for failing to require the applicant's presence at trial when the jury sent a note, inquiring about "Charles R. Sullivan," during their deliberation, and the judge answered the jury's question without the applicant being present. Counsel was ineffective for failing to ask for a mistrial.

(6) Counsel was ineffective for failing to object to the testimony of Jostavious Williams, in which he stated that his lawyer worked a deal with the prosecutor to drop a new drug charge that he had pending to testify against applicant. During deliberation jury sent a note to hear his testimony, counsel was ineffective for failing to ask for a mistrial.

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COMMON PLEAS AND
GENERAL SESSIONS

(7) Counsel was ineffective for failing to argue that "Kinshaba Simmons" states key witness testimony was biased because of pending charges being dismissed against him for his testimony, and failing to investigate the circumstances surrounding his testimony for impeachment purposes.

(8) Counsel was ineffective for failing to subpoena witnesses to testify on behalf of witness defense.

(9) Counsel was ineffective for failing to argue that there was not enough evidence to convict applicant of the charges. The evidence clearly showed that applicant was not involved in any altercation with the victim inside or outside. The state didn't have any physical evidence nor motive to link applicant to this crime.

(10) Counsel was ineffective for failing to argue when the trial judge instructed the jury that they could not find applicant guilty of one charge and not the other when there was never a weapon to charge applicant with possession of a firearm.

(11) Counsel was ineffective for failing to object at trial. Applicant lost appellate review of his fourth amendment claim due to counsel failure to object to introduction of the questioned testimony's at trial. Counsel effectively deprived the applicant of the right to appeal.

(12) Counsel was ineffective for failing to object to the testimony Thomas McDonald "jail house informant" who denied under oath that he didn't receive any promise of leniency.

Conclusion

Because counsel denied the applicant his sixth amendment right to the effective assistance of counsel and his fourteenth amendment right to due process of law was violated, the applicant ask that an evidentiary hearing be convened in this matter. Sharper V. State, 279 S.C. 264, 304 S.E.2d 247 (1983).

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The Applicant request that this Honorable Court appoint counsel to represent him in this matter. See Rule 71.1 (d) of the South Carolina Rules of Civil Procedure.

Date: 1-19-09

Respectfully submitted,

Sammy Cowan #214656

Sammy Cowan
McCI F-2 A-side
386 Redemption Way
McCormick, SC 29899
Applicant

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COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Sammy K. Cowan, #214656

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE 10TH JUDICIAL CIRCUIT
) Case No.: 2009-CP-04-0319

) **RETURN AND REQUEST FOR**
) **APPOINTMENT OF COUNSEL**

Respondent, making its Return to the application for post conviction relief (PCR) filed January 27, 2009, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted at the April 2005 term of the Anderson County Grand Jury for murder (2005-GS-04-696) and possession of a firearm during the commission of a violent crime (2005-GS-04-696). Nancy Jo Thomason, Esquire, represented him. On November 14-15, 2005, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable Lee S. Alford sentenced him to confinement in prison for Life for murder and five (5) years for possession of a firearm during the commission of a violent crime.

A Notice of Appeal was filed on Applicant's behalf. On October 14, 2008, the South Carolina Court of Appeals dismissed the appeal, after a thorough review of the record. The Remittitur was issued October 30, 2008.

Attached herewith and incorporated herein by reference are the records of the Anderson

County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the appellate court records, and the trial transcript.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failure to file a direct appeal—Applicant asked for appeal, counsel allegedly said he could not appeal.
 - b. "Failed to file any motions to see evidence of the statements the state claimed as evidence."
 - c. "Failing to subpoena the tape recordings of phone conversations, allegedly made by Applicant during pretrial detention..."
 - d. "Failed to file motions on behalf of the Applicant for dismissal of the charges against him..."
 - e. "Failing to require Applicant's presence at trial" when jury asked a question of the judge during deliberations;
 - f. "Failing to object to testimony" of a witness who stated that his lawyer worked a deal with the prosecutor to drop a new drug charge that he had pending to testify against Applicant.
 - g. "Failing to request a mistrial"
 - h. Failing to argue bias of state's witness;
 - i. Failing to subpoena witnesses on Applicant's behalf;
 - j. Failing to content jury instructions;
 - k. Failing to object at trial and preserve issues for appellate review.

III.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d

674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), citing Strickland.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry, Id.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Here, the Applicant also specifically claims that he was denied effective assistance of counsel because his trial attorney did not appeal his conviction. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Jones v. State, 677 S.E.2d 20 (2009). The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds that the Applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme

Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Respondent submits that this allegation is totally frivolous and demands strict proof thereof. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel.

VI.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that a hearing be held.

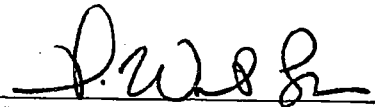
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
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Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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July 8, 2009.

State of South Carolina) In the Court of Common Pleas
 County of Anderson) Case No: 2009-CP-04-0319

Sammy Kay Cowan,)
 Applicant,)
 -vs-) Transcript of Record
 State of South) Post-Conviction Relief
 Carolina,) Hearing
 Respondent.)

June 5, 2012
 Anderson, South Carolina

B e f o r e:

The Honorable Alexander S. Macaulay, Judge.

A p p e a r a n c e s:

C. Rauch Wise, Esq.
 Attorney for the Applicant

Kaelon E. May, Esq.
 Assistant Attorney General
 Attorney for the Respondent/State

Robin Sue Hild, FCRR, RPR
 Circuit Court Reporter

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1 ** Start of Requested Certified Transcript of Record **

2 THE COURT: Is the State ready to proceed?

3 MS. MAY: Yes, Your Honor.

4 MR. WISE: Defense is ready.

5 THE COURT: All right. This is the case of Sammy

6 K. Cowan versus the State of South Carolina,

7 2009-CP-04-0319. Mr. Wise is here on behalf of the

8 Applicant, Ms. May is here on behalf of the State.

9 Is there anything from the State before we begin?

10 MS. MAY: No, Your Honor.

11 THE COURT: Mr. Wise, what are the grounds for...

12 MR. WISE: The grounds for ineffective assistance
13 of counsel are for failing to get a 9-1-1 tape enhanced
14 so that you could recognize the voices better. There
15 was a Cross-Examination in which hearsay testimony was
16 admitted by Officer Reeves that would imply to the Jury
17 that a lot of people have been interviewed and basically
18 all of them said Sammy did it, or, to be more exact,
19 another individual did not do it who we think is the
20 prime suspect.

21 And then the failure of the State to give to
22 Ms. Thomason the full rap sheet on one of the witnesses
23 involved in this as an impeachable element to an
24 impeachable record that would have been helpful.

25 And we want to put on the record, too, Your Honor,

1 Mr. Cowan in many respects has probably been of more
2 assistance to me than most people I represent even
3 though he's in jail. He gave me many leads to pursue,
4 one of whom he discovered shortly after he was
5 convicted, that one of the witnesses against him had two
6 charges dismissed, it was Jocktavious Williams, had had
7 two charges dismissed shortly after he was convicted.

8 We looked into the, to determine whether or not
9 Mr. Williams was promised anything in exchange for that,
10 and Mr. Powers and myself interviewed Mr. Williams and
11 Mr. Williams denied any deal was made for him and we
12 released him from his subpoena for that.

13 So, but with that clarification, those are the
14 three grounds that we're basically pursuing.

15 THE COURT: Let's see. So failure to get the
16 audiotape for voice analysis --

17 MR. WISE: It's the 9-1-1 not for voice analysis
18 but enhanced so that you could hear the voices better,
19 not amplified but clarified. Noise reduction.

20 THE COURT: Enhancement or and analysis or
21 enhancement. The second one was failure to --

22 MR. WISE: Failure to object to a statement by
23 Officer Reeves that of all the witnesses interviewed, no
24 one identified Kinshaba Simmons as being the shooter. I
25 mean, that would imply that a lot of people were

Cowan v. State -- PCR Hearing 06/05/2012

1 interviewed when I don't think that's really a correct
2 statement of how this case was investigated.

3 And third was the failure of the State to give
4 Ms. Thomason a true rap sheet on Kinshaba Simmons
5 because he had been arrested for a burglary that was
6 pled down to a trespassing charge.

7 THE COURT: All right.

8 MR. WISE: And assault and battery on his
9 girlfriend.

10 THE COURT: ABHAN or...

11 MR. WISE: Just simple assault and battery.

12 THE COURT: All right. Failure to enhance the
13 tape, failure to object to the Officer's statement that
14 no one else was identified from all of those
15 interviewed, and failure to provide the conviction
16 record of witnesses.

17 All right. You may call your first witness.

18 MR. WISE: I'd like to call Mr. Jimmy Powers first.

19 THE CLERK: Please raise your right hand.

20 (The Witness was sworn by the Clerk of Court.)

21 THE CLERK: Have a seat on the witness stand.

22 //

23 //

24 //

25 //

1 Whereupon,
2 Jimmy Powers
3 Having first been duly sworn, was examined and testified
4 as follows:
5 Direct Examination by Mr. Wise:
6 THE COURT: If you would please, sir, give us your
7 full name, spelling your last name.
8 THE WITNESS: Jimmy Wayne Powers, P-o-w-e-r-s.
9 By Mr. Wise:
10 Q. Mr. Powers, where do you live?
11 A. Greenwood.
12 Q. And what is your current occupation?
13 A. I'm a Private Investigator.
14 Q. And how long have you been doing that?
15 A. Since 2006.
16 Q. All right. Did you have occasion to obtain the
17 9-1-1 tape of this particular case?
18 A. I did.
19 Q. All right. And tell us, if you would, what that
20 tape basically was about.
21 A. It was a 9-1-1 call from Club Envy the night that
22 Fred Penn was shot.
23 Q. All right. And the original tape, how clear was
24 it?
25 A. It was, it was pretty scratchy, it had some

1 background noise.

2 Q. And you reviewed the transcript from this case
3 also, haven't you?

4 A. Yes, sir.

5 Q. And in the transcript there is an allegation of
6 some comments being made on the tape?

7 A. Yes, sir.

8 Q. All right. When you listened to the original tape,
9 were you able to determine on that exactly what was
10 clearly said on that?

11 A. No.

12 Q. What process did you go through to clarify this
13 particular tape?

14 A. I got some simple filtering software that would
15 filter out some background noise where the voices could
16 be heard better. And when, when I did that, I compared
17 what I could hear to what was in the transcript, and --

18 Q. All right. Go back. What was in the transcript?

19 A. The transcript, I believe, Allen Randolph Johnson
20 stated that Mr. Cowan came behind him and was saying,
21 "We're gonna do this Detroit style. We run this."

22 And, when I was able to filter out the background
23 noise, the only thing that could be heard was, "We run
24 this."

25 Q. All right. "We run this"?

1 A. "We run this."

2 Q. All right, sir. Is it -- from the timing of the
3 9-1-1 call and reviewing Mr. Johnson's testimony, would
4 any of that conversation not have been on the 9-1-1 call
5 because of the timing of the call? Or does my question
6 even make sense?

7 A. Restate your question again, please.

8 Q. I'll try. From listening to the 9-1-1 call and
9 reviewing the transcript of when things happened, is
10 there any chance that the first part of that sentence
11 would not be on that 9-1-1 tape?

12 A. I don't think so, because he was already talking to
13 the dispatcher when, when he alleged that this was said.

14 Q. Okay. Now, could you hear anything at all there
15 about "Detroit"? "We're gonna do this Detroit style"?

16 A. No.

17 Q. All right. Was that significant in this case?

18 A. Yes.

19 Q. And why is that?

20 A. Because "Detroit" is Mr. Cowan's nickname.

21 Q. All right. That's his nickname?

22 A. Yes, that's his street name.

23 Q. Did that come out during the trial?

24 A. Yes.

25 Q. Okay. Now, in investigating this case did you also

1 have a chance to talk to several of the witnesses who
2 testified at the original trial?

3 A. Yes.

4 Q. From your listening to the tape, were you able to
5 identify any voice on the tape that to you sounded like
6 someone from the, one of the witnesses you talked to?

7 A. The voice I heard --

8 MS. MAY: Your Honor, I'm gonna object. I don't
9 know if he has training in recognizing voices, or, I
10 mean, how clear the tape is --

11 MR. WISE: I can play the tape in a second. And
12 actually I probably should ask another question first.

13 THE COURT: All right. Let's do that then.

14 By Mr. Wise:

15 Q. Did you have a chance to talk to someone that,
16 after listening to the tape, whose voice sounded
17 familiar?

18 A. I did.

19 Q. All right. And what voice were you able to
20 identify on that?

21 A. Kinshaba Simmons.

22 Q. All right. Did it sound at all like Sammy Cowan?

23 A. It did not.

24 Q. Have you had a chance to talk to Sammy Cowan?

25 A. Yes.

1 Q. On more than one occasion?

2 A. Yes.

3 Q. All right. And you have become familiar with his
4 voice?

5 A. Yes.

6 MR. WISE: All right. Thank you.

7 Cross-Examination by Ms. May:

8 Q. Mr. Powers, there were multiple calls to 9-1-1 that
9 night; is that correct?

10 A. I only remember one.

11 Q. You only remember one? Okay.

12 And was it -- the method that you used, was that a
13 lot more clear than the original tape?

14 A. Not a lot more. I was just able to filter out a
15 little bit of the background noise and you could, you
16 could hear what was said, what was being said.

17 Q. But was it still scratchy, just less scratchy?

18 A. Yes.

19 (Counsel confer.)

20 THE COURT: This is a witness that listened to the
21 tape and is the basis of his testimony. Why not
22 introduce it?

23 MR. WISE: Excuse me?

24 THE COURT: Why not introduce it?

25 MR. WISE: I was getting ready to. I meant to and

1 forgot to.

2 THE COURT: All right. Let's go ahead and do that.

3 MR. WISE: It's on a thumb drive.

4 (Whereupon, the 9-1-1 tape on a thumb drive was
5 played for the Court.) *** NOT TRANSCRIBED ***

6 THE WITNESS: It was at the very beginning when
7 the -- does anyone need to hear it again?

8 MR. WISE: No.

9 THE COURT: Mr. Wise, how are we gonna preserve
10 that for the record?

11 MR. WISE: We had a CD but we forgot it,
12 unfortunately. We can leave that. No problem.

13 THE COURT: Let's do that.

14 MR. WISE: No problem.

15 (The Court Reporter conferred with the Court off
16 the record.)

17 THE COURT: Do you have any objection to Mr. Powers
18 recording the thumb drive to a CD?

19 MS. MAY: No, Your Honor.

20 THE COURT: Without objection we will burn a CD
21 before we leave the courtroom.

22 MR. WISE: All right.

23 THE COURT: Have we got facilities to do that here?

24 MR. WISE: Yes, sir, Your Honor.

25 THE COURT: All right. Very good.

1 By Ms. May:

2 Q. Mr. Powers, just because the words, those words
3 "Detroit" weren't on the tape doesn't mean they weren't
4 said, correct?

5 A. We didn't hear them, and in the court transcript,
6 the witnesses said that they were there on the 9-1-1
7 tape.

8 MS. MAY: I have no further questions. Thank you.

9 MR. WISE: Thank you. You can come down.

10 (The Witness left the witness stand.)

11 THE COURT: All right. Can he go somewhere and...

12 MR. WISE: He can do it right here.

13 THE COURT: Okay. All right.

14 MR. WISE: I'd like to call Nancy Jo Thomason.

15 THE CLERK: Would you raise your right hand.

16 (The Witness was sworn by the Clerk of Court.)

17 Whereupon,

18 Nancy Jo Thomason

19 Having first been duly sworn, was examined and testified
20 as follows:

21 Direct Examination by Mr. Wise:

22 THE COURT: If you would please, ma'am, give us
23 your full name, spelling your last name for the record.

24 THE WITNESS: Nancy Jo Thomason. Legally it's
25 Cannon now, but I still go by Thomason.

1 THE COURT: Thank you, ma'am.

2 By Mr. Wise:

3 Q. Ms. Thomason, you represented Sammy Cowan?

4 A. I did.

5 Q. All right. And you tried the case back in I
6 believe November of 2005 --

7 A. Yes.

8 Q. -- is that correct?

9 A. That's right.

10 Q. All right. I believe you had a chance to review
11 the transcript a little bit today?

12 A. I have.

13 Q. Did it refresh your memory about the case?

14 A. It's weird. I don't have a lot of independent
15 recollection of this case, and usually with a trial,
16 once I start glancing over the transcript, it kind of,
17 you know, brings it all back to me. But I've read
18 through the transcript, the important parts. I can't
19 say that I have a lot of independent recollection, no.

20 Q. Okay. Tell us, if you would, just some background
21 about this case and how it arose and so forth.

22 A. Uh-huh. Yeah. I know I was appointed, or asked --
23 I was appointed by the Court and asked by the Public
24 Defender, Robert Gamble, to take the case. I don't
25 remember why there was a conflict with the Public

1 Defender's Office that they would have asked me to take
2 it because he was the only Defendant.

3 Q. All right.

4 A. But for whatever reason I became his lawyer as a
5 Public Defender.

6 Q. Okay.

7 A. I was appointed to represent him.

8 Q. Tell us a just little bit about the factual
9 background of this case.

10 A. There was a shooting at Club Envy and supposedly
11 there were several witnesses who accused Sammy of being
12 the one who did the shooting.

13 Q. And was there anything unusual in the case in the
14 sense of who had had an argument with the victim and who
15 had not had an argument with the victim?

16 A. Yeah. I mean, there had been an argument in the
17 bar. One guy had actually gotten thrown out of the bar
18 and he came back to the bar.

19 Q. That would have been Kinshaba Simmons?

20 A. Correct.

21 Q. Okay.

22 A. He came back to the bar, had an argument with the
23 decedent. They went outside, and the decedent was shot
24 after they got thrown out of the bar together for being
25 in whatever fight they were in.

1 Q. Okay. And I believe there was one person, though,
2 who testified that Sammy was in a fight with the
3 decedent, and that was Mr. Simmons?

4 A. Right.

5 Q. Okay. No one else confirmed that?

6 A. Correct.

7 Q. All right. And I believe Randy Johnson was kind of
8 the security guard?

9 A. He's the guy that testified, I don't know what he
10 was.

11 Q. Right. And his testimony was based upon a story
12 from an employee as far as the fighting and so forth is
13 concerned?

14 A. I think he is the one who said that he threw the
15 two of them out of the bar.

16 Q. I believe to be exact he testified he first
17 escorted Mr. Simmons out and then later escorted
18 Mr. Penn out after he had a chance to get to his car, I
19 believe was the phrase he used.

20 A. No. I think there was somebody else they had
21 thrown out earlier. Hang on. Maybe I'm wrong. But I
22 thought it was -- who was the other employee of the bar?

23 Q. Jones, I believe.

24 A. McDonald? McDonald. I think McDonald is the one
25 who said he had thrown Kinshaba out but didn't know how

1 he got back. Somebody else threw him out.

2 Q. Mr. Johnson threw him out last?

3 A. Correct. Mr. Johnson threw him out the second
4 time.

5 Q. And I believe Mr. Johnson testified that he had
6 escorted Mr. Simmons out first, and his policy was to
7 let one get to their car before he threw the other one
8 out?

9 A. I don't remember that.

10 Q. Just a second. Let me find it here, one second.

11 All right. Look in the transcript, Page 85, Line
12 8 --

13 A. Okay.

14 Q. -- where it says that Mr. Simmons was escort- -- I
15 believe he says Simms --

16 A. Yeah.

17 Q. -- but it's really Simmons --

18 A. Uh-huh.

19 Q. -- was escorted first.

20 But they give to one of the people, one of the
21 persons an opportunity to get out -- get to their
22 vehicle and leave, and then proceed to escort the second
23 person?

24 A. Right. That's what he testified to.

25 Q. Correct. So his policy was to escort Mr. Simmons

1 out first and wait a while and then Mr. Penn?

2 A. Uh-huh.

3 Q. All right. Now, the testimony was also that people
4 who came into the bar were searched?

5 A. Correct.

6 Q. All right. And they were searched for weapons.
7 Correct?

8 A. Correct.

9 Q. All right. And both Mr. Simmons and Mr. Cowan had
10 been searched according to Mr. Johnson's testimony?

11 A. I remember that, I think.

12 Q. Okay. Now, so was there some conflict in the
13 testimony also among the various witnesses about the
14 number of guns involved?

15 A. Yeah. And again, I'm recollecting this from what I
16 reread today --

17 Q. Right.

18 A. -- not from remembering the actual trial.

19 But there's a portion where I cross-examined one of
20 the witnesses about the fact that it was a semiautomatic
21 weapon, he called it a 9-millimeter.

22 Q. Right.

23 A. And I think what really was used ultimately was a
24 revolver.

25 Q. Or, if it had been a semiautomatic, there would

1 have been a shell --

2 A. There would have been some shell casings --

3 Q. There would have been some shells?

4 A. There would have been some shells, yes.

5 Q. And some identified it as a semiautomatic, some
6 identified it as a revolver. And some said he had one
7 gun, some said he had two.

8 A. Correct.

9 Q. And there were just so many inconsistencies in the
10 testimony?

11 A. There was.

12 Q. So the witnesses in this case were very much
13 inconsistent?

14 A. Yes, they were.

15 Q. All right. Were you able to listen to the original
16 9-1-1 tape enough to tell whether or not that was
17 Kinshaba Simmons' voice or Mr. Cowan's voice?

18 A. I don't have any independent recollection of
19 listening to the 9-1-1 tape before the trial. I know I
20 did. I mean, I had to have. And I don't recall having
21 any concern about who was what or who said what.

22 In looking at the transcript today, based on what
23 you had initially said, I think that was one of the
24 things I was honing in on in my Cross-Examination of
25 Mr. Johnson because I kept asking him, You've testified

1 that Mr. Cowan made these comments, but yet you don't
2 hear those comments on the 9-1-1 call.

3 So, I am presuming -- and of course the transcript
4 of the 9-1-1 tape is not in the record.

5 Q. Right.

6 A. The 9-1-1 tape was played for the Jury but it was
7 not transcribed for the Jury or for our use.

8 But that's one of the things on Page 99 that I
9 cross-examined him about, was you could hear what else
10 was going on in the background. You have testified that
11 he said these things, but you can't actually hear that
12 on the tape, can you?

13 And then he tries to go back and say, No, that was
14 said before I actually dialed 9-1-1.

15 Q. And that kind of really didn't fit the scenario,
16 did it?

17 A. No, it didn't.

18 Q. Now, did you ever have anyone who was familiar with
19 Kinshaba Simmons' voice to listen to the 9-1-1 tape to
20 see if they could identify it?

21 A. No.

22 Q. All right. Turning to page 242 of the transcript.

23 A. Uh-huh.

24 Q. During Officer Reeves' testimony --

25 A. Uh-huh.

1 Q. -- a question was asked by Mr. Campbell of, During
2 your conversation, meaning Officer Reeves, with any
3 witnesses that you interviewed or the Sheriff's
4 Department interviewed, was any other suspect's name
5 listed other than Mr. Cowan as the shooter?

6 Do you see that?

7 A. Uh-huh.

8 Q. And he answered: No, sir.

9 A. Uh-huh.

10 Q. And you didn't raise an objection to that as being
11 hearsay?

12 A. I didn't.

13 Q. All right. And that was the equivalent of Officer
14 Reeves saying that every witness he had interviewed had
15 not identified any person other than Mr. Cowan.
16 Correct?

17 A. Well, looking at it in hindsight, in black and
18 white, I can see --

19 Q. Isn't that the concept of hearsay in the negative
20 from law school?

21 A. Well, I guess, yeah. Yeah, I see what you're
22 saying.

23 Q. Okay. So that would be hearsay in the negative and
24 there's no objection to it?

25 A. Correct.

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1 Q. And the Jury could imply from that that more
2 witnesses had been interviewed than who testified in the
3 courtroom?

4 A. I guess they could have, yeah.

5 Q. Because it wasn't limited to the witness who
6 testified?

7 A. Correct.

8 THE COURT: Where is that in the transcript?

9 MR. WISE: That is Page 242 of the transcript,
10 Lines 16 through 20. Actually, it's 16 through 22
11 because they fall into the question of, Did anybody say
12 that Mr. Simmons was the shooter?

13 And the answer was: No, sir.

14 By Mr. Wise:

15 Q. You had requested a record on the -- a rap sheet on
16 the record of the individuals involved from the
17 Solicitor's Office?

18 A. I did.

19 Q. And you've got something on Kinshaba Simmons, but
20 it was back a number of years ago?

21 A. I haven't looked at that since the trial. I have
22 them here but I haven't looked at them. Do I need to
23 look at it?

24 Q. You've got the rap sheets?

25 A. I've got the rap sheets on all of the witnesses

1 clipped together here. Let me find him.

2 There were a lot of rap sheets from these
3 witnesses. I don't see Kinshaba's in my paperwork here.
4 Can I look at your copy?

5 Q. Well, I haven't got a copy of the rap sheet, but
6 I've got something else I wanted to show you.

7 A. Okay.

8 Q. Were you aware of the fact that, or have you been
9 made aware of the fact that in September of '04 he had
10 been basically charged with burglary and kidnapping?

11 A. I don't really have any idea.

12 Q. I hand you an Incident Report and a Clerk of Court
13 Docket Sessions Inquiry for Mr. Kinshaba Simmons and ask
14 you to review those two documents.

15 A. This first document looks like it shows that
16 Kinshaba Velon (phonetic) Simmons was arrested on March
17 12, 2005, for burglary.

18 Q. All right. Now, were you aware of ---

19 A. It says dismissed, *nolle pros'd*.

20 Q. Now, were you aware of that, being arrested for
21 that charge prior to this trial?

22 A. I can't say that I was or I wasn't. I mean, if it
23 had been dismissed, I don't know that I could have used
24 it anyway.

25 Q. All right. Were you aware that he had pled guilty

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1 to entering premises without permission and assault and
2 battery? And I hand you four sheets that would show
3 that on it.

4 A. This looks like on April 13th of '05 he pled guilty
5 to trespassing.

6 Q. Right.

7 A. One looks like April 13th and one looks like April
8 17th. Simple assault and battery and --

9 Q. Entering premises without --

10 A. It says trespassing on the sentencing sheet.

11 Q. Right.

12 A. Yeah. It's not the same statute number.
13 Trespassing and simple assault and battery.

14 Q. If, while this case was pending, Mr. Simmons, who
15 is testifying for the State, had had a serious burglary
16 charge reduced down to trespassing, would that have been
17 significant to you?

18 A. Yes.

19 Q. Okay. But you have no record in your file --

20 MR. WISE: Excuse me. I'd like to introduce --

21 THE COURT: Let's see. Mr. Powell isn't back yet
22 with the CD?

23 MR. WISE: Sir?

24 THE COURT: Mr. Powell isn't back with the CD.

25 We'll go off the record now so she can mark them.

1 (Discussion off the record.)

2 (Applicant's Exhibit # 2, Incident Report, was
3 marked for identification.)

4 (Applicant's Exhibit # 3, Indictment
5 2005-GS-04-594, was marked for identification.)

6 (Applicant's Exhibit # 4, Indictment
7 2005-GS-04-595, was marked for identification.)

8 (Applicant's Exhibit # 5, Inquiry, Clerk of Court,
9 was marked for identification.)

10 THE COURT: All right. We're back on the record.
11 Start with the CD.

12 MR. WISE: All right. Your Honor, we do have the
13 CD made from the jump drive which is Defendant's Exhibit
14 1, and we'd like to move that into ---

15 THE COURT: Of course, we haven't heard it yet,
16 but...

17 MS. MAY: No objection.

18 THE COURT: All right.

19 MR. WISE: Then we have, for Defendant's 2, the
20 Incident Report involving Kinshaba Simmons from
21 September 9th, 2004.

22 THE COURT: Any objection?

23 MS. MAY: What was the charge on that?

24 MR. WISE: The burglary charge.

25 THE COURT: Any objection?

1 MS. MAY: No objection.

2 MR. WISE: And then we have Exhibits 3 and 4, which
3 are the Indictments that he ultimately pled to.

4 MS. MAY: No objection.

5 MR. WISE: Three and 4 are the Indictments.

6 And then Number 5, the Document Inquiry from the
7 Clerk of Court's Office and the charges that were
8 ultimately *nolle pros'd*.

9 MS. MAY: No objection.

10 (Applicant's Ex. # 1, CD of 9-1-1 call made from
11 jump drive, was marked for identification and
12 received in evidence.)

13 (Applicant's Ex. # 2, Incident Report, 9-9-04, was
14 received in evidence.)

15 (Applicant's Ex. # 3, Indictment, was received in
16 evidence.)

17 (Applicant's Ex. # 4, Indictment, was received in
18 evidence.)

19 (Applicant's Ex. # 5, Inquiry from Clerk's Office
20 about arrest, was received in evidence.)

21 THE WITNESS: Am I answering a question?

22 By Mr. Wise:

23 Q. You said you wanted to look at them.

24 A. Yes, okay.

25 Q. Are you ready now?

1 A. Yes.

2 Q. Okay. You had filed a *Brady* Motion in this case?

3 A. I did.

4 Q. Any reduced charges against a witness would be
5 potentially *Brady* material?

6 A. Absolutely.

7 Q. And those documents I handed you involving the
8 Incident Report back from 2009 that resulted in the
9 burglary charge. Do you see that?

10 A. Yes. The incident date is September 4 -- September
11 9th, 2004.

12 Q. Correct.

13 A. He wasn't arrested until March of 2005.

14 Q. Okay.

15 A. But the Incident Report names him as a subject in
16 September of 2004.

17 Q. So he was arrested after this incident at the Club
18 Envy?

19 A. Yes.

20 Q. All right. Would that incident, do you think that
21 would have been proper *Brady* material for you to know
22 about in examining Kinshaba Simmons?

23 A. Absolutely. I'm looking at the NCIC report that
24 was given to me by the Solicitor's Office, I have it in
25 my file --

1 Q. Okay.

2 A. -- and, you know, they do it via Internet.

3 Q. Right.

4 A. And it looks like the day this was printed, it
5 says -- the date at the bottom says October 24th, 2005,
6 which makes sense because they typically don't give them
7 to you until the day of trial --

8 Q. Correct.

9 A. -- and so that would have been in preparation of
10 this trial.

11 Q. Right.

12 A. It comes up in November of '04. This doesn't even
13 show -- the SLED Inquiry doesn't even show an arrest
14 after 2003. He had two arrests in 2003.

15 Q. All right. Let me see that.

16 A. (Handing.) He had two arrests in 2003. He had two
17 arrests in 2003, but it doesn't show anything else.

18 Q. And this is what the State gave you?

19 A. That's what the State gave me.

20 MR. WISE: All right. I'd like to introduce this.

21 MS. MAY: No objection.

22 THE COURT: And without objection, that would be
23 what, 6?

24 MR. WISE: Six.

25 THE COURT: Applicant's Exhibit 6 will be admitted.

- 1 (Applicant's Ex. # 6, NCIC report on Kinshaba
2 Simmons, was marked for identification and received
3 in evidence.)
- 4 By Mr. Wise:
- 5 Q. Is the credibility of witnesses important?
- 6 A. Utmost importance.
- 7 Q. All right. And the Jury -- do you remember how
8 long the Jury deliberated?
- 9 A. I don't.
- 10 Q. But would you agree with about four and a half
11 hours?
- 12 A. That's -- okay.
- 13 Q. Okay. And I believe they asked for some testimony
14 be repeated --
- 15 A. They did.
- 16 Q. -- played back for them?
- 17 A. (Nodded head.)
- 18 Q. All right. And your basic argument was that, based
19 on the fact that these were not good, credible
20 witnesses?
- 21 A. Yes. As I say, I think almost every witness who
22 testified, including the guys who were just bouncers at
23 the club, had records. They had all pled guilty to
24 something.
- 25 Q. Okay. And the fact that Mr. Simmons had been

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1 arrested for a burglary charge after this occurred, do
2 you think that would have been significant to you?

3 A. Well, yeah. I mean, I specifically made a big deal
4 about one of the witnesses getting a deal, I think
5 getting into Mental Health Court --

6 Q. Right.

7 A. -- instead of having to go to prison on a
8 particular charge. And, you know, of course, the
9 inference I was making to the Jury was their testimony
10 has been bought by the Solicitor's Office. And so had I
11 known that Kinshaba had a burglary charge and been
12 allowed to plead to trespassing, I would have made just
13 as much of a big deal about that as I did the other
14 guys.

15 MR. WISE: Okay. Thank you.

16 THE COURT: Cross-examine?

17 MS. MAY: May it please the Court, Your Honor.

18 Cross-Examination by Ms. May:

19 Q. Ms. Thomason, just briefly, were you able to meet
20 with Mr. Cowan multiple times to work on the case?

21 A. I did.

22 Q. And did he provide you any witnesses or leads for
23 investigation?

24 A. He did.

25 Q. Okay. And can you state that briefly?

1 A. He gave me several names to talk to. The Public
2 Defender's Office paid an investigator to work with me
3 on this case, his name was Jody McCurley. He was
4 retired law enforcement, retired actually from the
5 Solicitor's Office and was working as a Private
6 Investigator licensed here in Anderson County, and they
7 paid him to be my investigator for the case.

8 He talked to every witness that had been identified
9 by the Solicitor's Office, looked for other witnesses
10 who were there the night of the incident, and, of
11 course, interviewed any witnesses that Sammy had told us
12 about.

13 In fact, I've got notes, one of my notes, chicken
14 scratches to make sure I talked to Sammy about a
15 positive witness for Sammy that wouldn't call Jody back,
16 and I wanted to make sure that I told Sammy that it's
17 okay to tell whoever this is to make sure they talk to
18 Jody. I guess they were a little bit hinky about
19 talking to an investigator. Jody thoroughly
20 investigated the case for me at the time.

21 Q. And did you discuss Investigator McCurley's
22 findings with Mr. Cowan?

23 A. I did.

24 Q. And did Mr. Cowan provide any statements to the
25 police when he was arrested or after he was arrested?

1 Do you recall?

2 A. I don't remember. I don't think he did, but I
3 don't remember.

4 Q. And, with regard to the 9-1-1 tape, did you have
5 any kind of strategy of how you were gonna attack that?

6 A. Well, I mean, it was what it was. I mean, you
7 could either hear or not hear. And I don't recall
8 questioning whether or not what was being said on the
9 tape was what people were saying was being said.

10 After rereading the transcript, what it appears the
11 argument I was making during my Cross-Examination was
12 the witnesses were just flat-out lying; that, you know,
13 they were saying to the Solicitor, to the Jury and Court
14 one thing, and that wasn't supported by what the Jury
15 heard coming from the 9-1-1 tape.

16 Q. And, with regard to Officer Reeves' statement that
17 no one identified, I believe, Mr. Cowan --

18 A. Uh-huh.

19 Q. -- can you explain why you wouldn't object or why
20 you wouldn't have objected?

21 A. I don't know. I didn't remember that; didn't,
22 didn't recall it until I read it again today.

23 Q. Do you think, had you objected, it would have
24 changed the ultimate outcome of the trial?

25 A. No. I don't think it would have had a huge impact

1 on what ultimately happened with the trial. I think you
2 could make arguments for and against me making a big
3 deal about that. I think, you know, from one side you
4 can argue, just let it go and jump up and down and
5 holler about the witnesses who were here and lied and
6 weren't being trustworthy and honest; or had I objected
7 to it and made a big deal about it, that it might have
8 caught the Jury's attention that, yeah, there were these
9 other people that were interviewed, and maybe the Judge
10 would have allowed the Solicitor to go into more
11 specifics. So I think there's argument that it could
12 have helped Mr. Cowan or it could have hurt Mr. Cowan
13 based on what would have happened next.

14 Q. Okay. And did you discuss how, your trial strategy
15 with Mr. Cowan?

16 A. I mean, I think we talked about the fact that, you
17 know, our objective was to discredit the witnesses
18 because the case was entirely based on were these
19 eyewitnesses being honest. There was absolutely nothing
20 else whatsoever that linked Mr. Cowan to this crime
21 other than the fact that eyewitnesses said he was the
22 shooter.

23 Q. And I believe, going back to the 9-1-1 tape, you
24 brought out in your Cross-Examination of Mr. Johnson
25 that you couldn't hear "Detroit" I believe is what the

1 testimony was?

2 A. Uh-huh. Yes, ma'am.

3 Q. And, with regard to Mr. Simmons' rap sheet, I
4 believe you stated knowing that, you would have brought
5 that out when you brought out his other prior
6 convictions?

7 A. Uh-huh. I find that very troubling that I did not
8 get the right information from the Solicitor's Office.
9 That's their obligation to provide that to me. And it's
10 obvious, having seen this today, I wasn't given the
11 correct information.

12 Q. Based on the facts of the case and the evidence
13 that was submitted, do you think, had you presented that
14 or cross-examined Mr. Simmons on that, that it would
15 have altered the outcome of the trial?

16 A. I can't remember. I mean, I don't have a checklist
17 in my head right now, but I know there were at least two
18 of the witnesses that I was able to establish they
19 basically got a deal for his testimony. The one guy who
20 was able to go through Mental Health Court versus having
21 jail time. The other guy that testified about talking
22 to the cops because Mr. Byrholdt, his lawyer, called him
23 and told him to.

24 If Kinshaba had also gotten a deal and I had been
25 able to argue that every single witness who was not an

1 official of the bar, meaning the bouncer guys, but all
2 the other supposed witnesses had a motive to testify
3 against Sammy, I think cumulatively you can't ignore
4 that that would have been a big deal.

5 But I'm saying to you right now, it would take me a
6 few minutes to sit back and list all the witnesses and
7 draw that conclusion. But I'm thinking that Kinshaba,
8 if I could have checked him off as, yeah, he's got a
9 reason to lie, that would have been almost all of them
10 that had been given a deal of some sort.

11 Q. And, with regard to the 9-1-1 tape, whether -- I
12 believe you were asked on Direct whether you had anyone
13 who was familiar with Mr. Simmons' voice to try to
14 identify it on the 9-1-1 tape. Did you feel a need to
15 obtain someone to do that?

16 A. It, it never occurred to me to have any analysis
17 done on the 9-1-1 tape.

18 Q. And I believe Mr. Cowan did not testify; is that
19 correct?

20 A. That is correct.

21 Q. Okay. And do you believe that, and getting the
22 9-1-1 tape enhanced would have helped Mr. Cowan's
23 defense based on what you heard today?

24 A. I don't think so.

25 MS. MAY: Your Honor, I have no further questions

1 of this Witness.

2 MR. WISE: Just a couple questions on Redirect.

3 Redirect Examination by Mr. Wise:

4 Q. Ms. Thomason, Jocktavius Williams was the witness
5 that had the pending drug charges?

6 A. What page are you on?

7 Q. I'm on Page 197, Line 12, where you asked the
8 question.

9 A. Yes, sir.

10 Q. And he basically said that he was testifying to get
11 rid of those charges?

12 A. Well, he's not the Mental Health guy. That's
13 Bruce's client. Yeah, yeah, yeah. He's Bruce's client.

14 Q. Right.

15 A. Bruce is the one that called him over and told him
16 to cooperate.

17 Q. And I believe you asked the question (reading):

18 Isn't it true that you gave the statement because
19 of some charges or other drug charges you had been
20 charged with and your lawyer told you you needed to
21 cooperate with law enforcement so you don't get into
22 trouble because this is your second shot at another
23 charge; isn't that true?

24 And he said, Yes, ma'am?

25 A. That's correct.

1 Q. All right. And he got in trouble right after being
2 put on probation?

3 A. I don't know. If you say so.

4 Q. You don't know?

5 A. I don't remember that.

6 Q. All right. And were you aware that ultimately
7 those two drug charges were dismissed against him?

8 A. No. I did ask him about whether or not he had been
9 convicted on the new charges yet and he said no.

10 Q. He said no. So were you aware that they were
11 dismissed on November 17th of 2005?

12 A. No. But I, I find it both interesting and not
13 surprising.

14 MR. WISE: Okay. I would like to introduce these
15 two true copies.

16 MS. MAY: Your Honor, I'm gonna object based on the
17 fact that this is after the trial happened. I don't
18 think it's relevant.

19 THE COURT: That would be after discovery.

20 MR. WISE: Well, yeah, it would be.

21 THE COURT: All right. Well, with that observation
22 I'm still going to admit them. What's the number on
23 them?

24 MR. WISE: These would be...

25 THE COURT REPORTER: Seven and 8.

1 MR. WISE: Applicant's Exhibits 7 and 8.

2 THE COURT: All right. Applicant's Numbers 7 and 8
3 are admitted.

4 (Applicant's Ex. # 7, Case Disposition History of
5 Jocktavious Williams, 8882665, was marked for
6 identification and received in evidence.)

7 (Applicant's Ex. # 8, Case Disposition History of
8 Jocktavious Williams, H113381, was marked for
9 identification and received in evidence.)

10 By Mr. Wise:

11 Q. In answer to the questions from the State
12 concerning the hearsay in the negative, you made the
13 statement that if you had objected, the State may have
14 been able to go into more specifics. What did you think
15 the State might be able to go into?

16 A. Well, let me be clear. First of all, I don't
17 remember when it happened what I thought. I mean, I
18 don't -- I didn't recall it happening, okay, so I
19 don't -- I can't put myself back in the place of where I
20 was that day.

21 Sitting here now -- what page is it on again?

22 Q. 242.

23 A. Sitting here now looking at it and thinking, Wow,
24 maybe I should have objected to that, um, had I
25 objected, and, number one, it's already out there and

1 the Judge would have told them to disregard it but it's
2 already out there; and had Mr. Campbell rephrased his
3 question to say: Okay, Mr. Reeves, how many witnesses
4 do you think that you and the other Deputies talked to?
5 And if he had said, you know, at least 50 --

6 Q. Uh-huh.

7 A. -- and then he had said, Well, did anyone, you
8 know, name any other suspect, and he had said no, I
9 think that he probably could have gotten that in, even
10 if he didn't mention Mr. Cowan as being the only
11 Defendant. Then you've got the Jury thinking, well, 50
12 people, you know, none of them named anybody else.

13 I guess I'm just worried that had I objected to it,
14 would it have brought more attention to it, would the
15 Jury have considered it more important than it was?
16 Maybe they glossed right over it the same way I did. I
17 don't know.

18 Q. So then if he had named a number of witnesses, it
19 would not have been hearsay in the negative?

20 A. I think he could have testified how many people
21 they talked to.

22 Q. I agree.

23 A. And I think that he could have asked a question
24 that would have allowed the Detective to answer that
25 they didn't get any other leads or any other suspects.

1 Maybe I'm wrong.

2 Q. All right. That would be the equivalent of every
3 one of the Officers saying, Every witness I talked to
4 named Sammy Cowan as the shooter. Correct?

5 A. Not necessarily.

6 Q. All right. And every witness I talked to did not
7 name Kinshaba Simmons as the shooter?

8 A. No. I mean, I'm trying to think like a prosecutor
9 and what would I have asked if I was trying to get
10 across that same point, how could I have gotten it in.

11 I think I could have asked: In all that
12 investigation and everybody that you all spoke to, were
13 there any other leads that you should have followed up
14 on? Were there, you know, where there other -- or did
15 you follow up on any other leads?

16 And I think there's a way that you could have
17 gotten away from asking about Sammy or Kinshaba.

18 Q. Right.

19 A. And again, I'm second-guessing this seven years
20 later. I didn't have these thoughts at the time of the
21 trial and I don't want you to think that I did because I
22 didn't.

23 But I think you could argue sitting here today that
24 my objection could have helped him, it could have hurt
25 him.

1 Q. Okay. But as a practical matter, having an Officer
2 say, I talked to a bunch of witnesses and nobody stated
3 that Mr. Simmons was the shooter, would be hearsay in
4 the negative and not admissible?

5 A. Did anybody say that Mr. Simmons was the shooter?
6 His answer was: No, sir.

7 Q. And that would have been hearsay in the negative
8 and not admissible?

9 A. Yes, I believe so.

10 MR. WISE: Thank you.

11 THE COURT: Recross?

12 MS. MAY: I have no further questions.

13 (The Applicant conferred with his counsel off the
14 record and out of the hearing of others.)

15 THE COURT: Very good. You may step down.

16 (Discussion off the record.)

17 MR. WISE: Thank you, Your Honor.

18 MS. MAY: No questions, Your Honor.

19 (The Witness left the witness stand.)

20 THE COURT: All right. You may call your next
21 witness.

22 MR. WISE: I call Mr. Cowan.

23 THE COURT: All right. I'll tell you what. It's
24 almost 2:00. We haven't had a break the whole morning.
25 And I also have something else I need to take up. I am

1 going to suggest that we break for lunch and be back at
2 a quarter to three.

3 MR. WISE: I have no objection.

4 THE COURT: All right. Without objection you may
5 be excused.

6 (A luncheon recess occurred at 1:45 p.m.)

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1 Afternoon Proceedings

2 2:55 p.m.

3 THE COURT: All right. We're back on the record in
4 the matter of Sammy Kay Cowan versus the State,
5 2009-CP-04-319.

6 Call your next witness.

7 MR. WISE: I call Sammy Cowan.

8 THE CLERK: Would you please raise your right hand.

9 (The Witness was sworn by the Clerk of Court.)

10 Whereupon,

11 Sammy Cowan

12 Having first been duly sworn, was examined and testified
13 as follows:

14 Direct Examination by Mr. Wise:

15 THE CLERK: If you would please, sir, state your
16 full name, spelling your last name for the record.

17 THE WITNESS: Sammy Kay Cowan.

18 By Mr. Wise:

19 Q. Mr. Cowan, how old are you?

20 A. 40 years of age.

21 Q. Excuse me?

22 A. 40 years of age.

23 Q. And are you from Anderson originally?

24 A. No. I was born in Anderson.

25 Q. Born where?

- 1 A. Born in Anderson, South Carolina.
- 2 Q. Born in Anderson?
- 3 A. Yes, but I was raised in Detroit.
- 4 Q. You lived in Detroit?
- 5 A. Detroit, Michigan, yeah.
- 6 Q. For how long?
- 7 A. For probably about 18 years.
- 8 Q. Okay. Mr. Cowan, Superbowl Sunday of 2005, did you
- 9 shoot Fred Penn?
- 10 A. No, I did not.
- 11 Q. You were at that party that day?
- 12 A. Yes, sir.
- 13 Q. Okay. You sat through your trial in November of
- 14 2005?
- 15 A. Yes.
- 16 Q. All right. How helpful do you think it would have
- 17 been to your case had Ms. Thomason known of those
- 18 charges that Kinshaba -- Kinshaba -- how do you
- 19 pronounce his first name?
- 20 A. Kinshaba.
- 21 Q. -- Kinshaba Simmons had been able to reduce down?
- 22 A. It would have been real helpful because his
- 23 credibility was on the stand and it was an important
- 24 issue to the case, and the Jury was entitled to know of
- 25 it.

1 Q. All right. Now, you had gotten some discovery from
2 Ms. Thomason in this case?

3 A. Yes.

4 Q. Some statements?

5 A. Yes.

6 Q. Do you remember when it was that Mr. Simmons was
7 arrested?

8 A. Well, he was arrested March the 12th. He wrote a
9 statement February the 7th, the date after this incident
10 happened.

11 Q. Right, uh-huh.

12 A. And he had a charge pending September 10th of 2004.
13 And they arrested him again March the 12th, 2005.

14 Q. Right.

15 A. And, while he was arrested on the burglary and
16 assault charge, he wrote the second statement.

17 Q. And have you got that statement with you?

18 A. Yes.

19 Q. And this is the second statement he wrote?

20 A. Yes.

21 Q. All right.

22 A. And it clearly showed that he was incarcerated on
23 them charges at the time he wrote the second statement.

24 MR. WISE: All right. Okay.

25 (Counsel confer.)

1 By Mr. Wise:

2 Q. Where did you get your copy of the statement from?

3 A. I got it -- it came from -- you got it from Nancy
4 Jo and I got it from her.

5 Q. Okay. It came from Nancy Jo?

6 A. Yes.

7 Q. All right.

8 (Applicant's Ex. # 9, Simmons' second statement
9 dated 3/16/05, was marked for identification.)

10 MR. WISE: Your Honor, I would move to introduce
11 Applicant's Number 9.

12 MS. MAY: Without objection.

13 THE COURT: Without objection, so admitted.

14 (Applicant's Ex. # 9 was received in evidence.)

15 By Mr. Wise:

16 Q. Who took that statement from Mr. Simmons in March
17 of 2005?

18 A. Investigator Reeves.

19 Q. All right. Was he the Chief Investigator in your
20 case?

21 A. Yes.

22 Q. Okay. Now, you've listened to the 9-1-1 tape in
23 the courtroom during your trial?

24 A. Yes.

25 Q. And did you have an opportunity to also listen to a

1 clarified version of it from Mr. Powers?

2 A. Yes, sir.

3 Q. When you listened to Mr. Powers' copy, were you
4 able to recognize the voice on there?

5 A. Yes, I was.

6 Q. And who was that?

7 A. It was Kinshaba Simmons' voice.

8 Q. Any doubt in your mind about that?

9 A. There's no doubt in my mind.

10 Q. All right. From the testimony in this case, based
11 on what Mr. Johnson testified, is the person who did the
12 shouting do the shooting?

13 A. I mean, yes. That's basically what he's saying the
14 person that he saw with a gun shouting "We run this, we
15 run this. We gonna do it Detroit style." He wrote that
16 statement, that statement was second. He wrote two
17 statements. And in the second statement he wrote, the
18 next thing that come to mind was the guy I saw with the
19 gun. He stated: We run this, we run this. We gonna do
20 this Detroit style in South Carolina.

21 Q. All right. And also there's an issue that's been
22 raised in this hearing today, the question of whether or
23 not certain hearsay statements should have been admitted
24 by the Officer when he stated that no one identified
25 Kinshaba Simmons as the shooter. Do you remember that,

Cowan v. State -- PCR Hearing 06/05/2012 -- Cowan/Direct

1 the argument on that?

2 A. Yes.

3 Q. All right. Do you understand all of that?

4 A. I do now.

5 Q. Okay. All right. And did you at the time of the
6 trial?

7 A. No, I didn't.

8 Q. Okay. Do you think it hurt your case to have the
9 Officer say to all of the witnesses that he talked to
10 and then identify Kinshaba Simmons as the witness?

11 A. Yes, I think it did.

12 Q. And then say all the witnesses we talked to
13 identified you as the shooter?

14 A. Yes.

15 Q. Okay. Do you think these errors would have made a
16 difference in your trial?

17 A. Man, it would have made a great difference.

18 Q. The Jury was out about how long? Do you remember?

19 A. About four and a half hours.

20 Q. All right. Four and a half hours?

21 A. Yes.

22 Q. And you didn't testify?

23 A. No, I didn't.

24 Q. Because you had a criminal record at the time?

25 A. Yes, sir.

1 Q. And still do?

2 A. Yeah. That's what they was focusing on, my past.

3 Q. And that was one reason you chose not to testify?

4 A. That was on advice of my counsel, Nancy Jo, at the
5 time not to testify.

6 Q. Now, you are asking this Court to grant you a new
7 trial on these errors that occurred in your trial?

8 A. Yes.

9 Q. Okay. Do you recall whether or not there were any
10 witnesses that testified in your case that had, other
11 than law enforcement, that had any sort of, or any key
12 witness that did not have a serious criminal record?

13 A. No, I don't. Once the arguments --

14 Q. Okay. And when did you learn that Jocktavious
15 Williams had his charges dismissed that were pending at
16 the time of trial?

17 A. I learned just like two years after. I got a copy
18 of the two charges that he had gotten dropped.

19 Q. And you were able to obtain copies of the records
20 on that?

21 A. Yes.

22 Q. And it was a good while after your conviction?

23 A. Yes. He had a charge pending July 30 of 2004, and
24 he caught two new drug charges in April of 2005. They
25 dropped the charge from 2004 April the 7th, 2005.

1 Q. All right. So he pled April 7th?

2 A. Right. He pled to probation.

3 Q. Right.

4 A. And two days later then he caught two new drug
5 charges, which was dropped two days after testifying
6 against me.

7 Q. Two days after --

8 A. Yes.

9 Q. -- your trial was over?

10 A. Yes.

11 MR. WISE: Okay. Thank you.

12 MS. MAY: I don't have any questions.

13 THE COURT: Very well. You may step down, sir.
14 Thank you.

15 (Witness leaves stand.)

16 MR. WISE: That's it for the Applicant, Your Honor.

17 THE COURT: All right. Anything from the State?

18 MS. MAY: Your Honor, we don't have any witnesses
19 to call. However, I was not given notice of these
20 claims of *Brady* violations and prosecutorial misconduct.
21 Rame Campbell was the Solicitor on this case, and I
22 would like to request for the record to be left open in
23 order to obtain an Affidavit from Mr. Campbell
24 addressing these allegations. He's not here today.
25 He's on vacation.

1 MR. WISE: We discussed that earlier and we have no
2 objection to that, Your Honor. We hopefully can do it
3 with an Affidavit rather than have to take his live
4 testimony. I know Mr. Campbell. That should be doable.

5 THE COURT: Very good. All right. So this matter
6 will be continued. Or do you want to continue -- do you
7 have any other testimony?

8 MR. WISE: No.

9 MS. MAY: No.

10 THE COURT: So that does close the testimony except
11 for any additional from Mr. Campbell?

12 MR. WISE: If the Affidavit isn't sufficient, we
13 may have to take a quick deposition and we'll send it to
14 you.

15 THE COURT: Very good.

16 MR. WISE: Okay.

17 THE COURT: All right. So this matter will be
18 continued.

19 MR. WISE: All right.

20 MS. MAY: Your Honor, I would like to inform the
21 Court that Ms. Naggy (Phonetic) Anderson, the victim's
22 mother in the case, is here, present.

23 THE COURT: All right. Ms. Anderson, we're not
24 going to take any further testimony, but I do want to
25 note for the record that you are -- did you testify at

1 the trial?

2 VICTIM'S MOTHER: No, sir.

3 THE COURT: All right. Well, I'm gonna note for
4 the record that you were here today to testify. And you
5 are on behalf of your son; is that right?

6 VICTIM'S MOTHER: Yes, sir.

7 THE COURT: All right. That will be noted for the
8 record. Thank you, ma'am. Thank you, ma'am.

9 All right. This will conclude the proceedings for
10 this afternoon on this particular case.

11 I might tell you now, just sort of, my impression
12 is going to be that I'm going to, and I think the better
13 way to do it is proposed Orders rather than a Memorandum
14 and then have to go back. But I am gonna suggest that
15 you all be prepared to submit proposed Orders once the
16 record is complete.

17 MR. WISE: Okay. Thank you.

18 (Whereupon, the Post-Conviction Relief Hearing was
19 adjourned at approximately 3:06 p.m.)

20 ** End of Requested Certified Transcript of Record **

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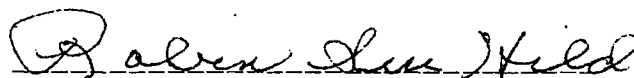
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Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the Post-Conviction Relief hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Anderson County, South Carolina, on the 5th day of June, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 3, 2013


Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

DEC-27-20 10:56 AM FROM: HNU LERK U LUNAKI

AGENCY 1.0.
SC0849109

INCIDENT REPORT

04-18768

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SEP 12 2012

Jimmy Campbell

Applicant

EXHIBIT NO. 5

Robin Hild

॥ श्रीगणेशाय नमः ॥

☐ ORIGINAL REPORT ☐ MODIFIED ORIGINAL	☐ SUPPLEMENTAL REPORT ☐ CASE STATUS CHANGE	☐ ADDITIONAL VICTIMS ☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL RECOVERED PROPERTY	PAGE 2 of 2 PAGES

VICTIM #1 OVERFLOW ☐ COMPLAINT ☐ VICTIM # ☐ SUBJECT # ☐ RUNAWAY ☐ WANTED ☐ SUSPENDED ☐ JAIL ☐ ELIMINATED	NAME (LAST, FIRST, MIDDLE) DAWSON, SANQUENETTA HEIGHT: 5'00" WEIGHT: 110 RACE: BLK SEX: BRO DOB: 02/25/2025	VICTIM #2 OVERFLOW ☐ COMPLAINT ☐ VICTIM # ☐ SUBJECT # ☐ RUNAWAY ☐ WANTED ☐ SUSPENDED ☐ JAIL ☐ ELIMINATED	NAME (LAST, FIRST, MIDDLE) ANDERSON HEIGHT: 5'00" WEIGHT: 110 RACE: BLK SEX: BRO DOB: 02/25/2025

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DOCKET NO. 2005-GS-04-594

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

TERM

THE STATE

CAT
vs.

KINSHABA MALONGO SIMMONS



ARREST WARRANT NO. _____ REF. I710934

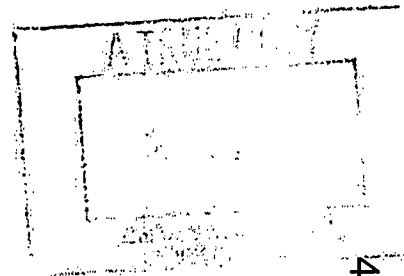
ACTION OF GRAND JURY

Foreman of Grand Jury

VERDICT

Indictment for

ENTERING PREMISES WITHOUT
PERMISSION (TRESPASSING)
16-11-610 [0652]



FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR
ENTERING PREMISES WITHOUT
PERMISSION (TRESPASSING)
16-11-610 [0652]

At a Court of General Sessions, convened on _____,
the Grand Jurors of ANDERSON County present upon their oath:

ENTERING PREMISES WITHOUT PERMISSION

That Kinshaba Malongo Simmons did in Anderson County on or about
September 10, 2004, without legal cause or good excuse; enter dwelling of Willie Bell
Gaines at [REDACTED] without the consent of the owner, Willie Bell Gaines. All
in violation of Section 16-11-610, *Code of Laws of South Carolina, (1976)*, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

Catherine Turner
SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
STATE v KINSHABA MALONGO SIMMONS
AKA: _____

Race/Sex: B M Age: 25

DOB: _____

Address: _____

City, State, Zip _____

DL# _____ SID: SC01057034

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE #

20 05-GS-04-594

) A/W#: 1710934 (Ref) Direct Ind.

) Date of Offense: 09/10/04

) S.C. Code: 16-11-0311 CDR Code #: 0079

) CASE RESTORED ☐

SENTENCE ☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO:

Trespassing

in violation of 16-11-610 of the S.C. Code of Laws, bearing CDR Code #: 0165121

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

Charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury.

Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Catherine Dunsen

Solicitor

Kinshaba Simmons

Defendant

William L. Phillips

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections,
☒ County Detention Center, for a determinate term of 30 days/months/years or
☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
provided that upon the service of _____ days/months/years and/or payment of \$ _____
plus costs and assessments as applicable*, the balance is suspended with probation
for _____ months/years and subject to South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 4/13/05
☒ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied
by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine.....	\$	_____
14-1-206 - Assessments (107.5%)	\$	_____
14-1-211 (A)(1) Conv. Surcharge	\$100	<u>100</u>
14-1-211 (A)(2) DUI Surcharge	\$100	\$
56-5-2995 (DUI Assessment)	\$12	\$
35.13 (Public Def/Prob)	\$500	\$
73.3, 1B TP (Law Enforce. Funding)	\$25	<u>25</u>
33.7, 1B TP (Drug Court Surcharge)	\$100	\$
50-21-114 (BUI Breath Test Fee)	\$50	\$
56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% County (if paid in Installments)	\$	\$
TOTAL	\$	<u>125</u>

Cathy M. Phillips

Clerk of Court/Deputy Clerk

PTUP _____ time served pursuant to S.C. Code 24-13-40
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be paid in equal, consecutive weekly/monthly

pmts. of \$ 10 beginning 6-3-05

\$ _____ paid to Public Defender Fund.

Other: _____

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 0112151

Sentence Date 4/13/05

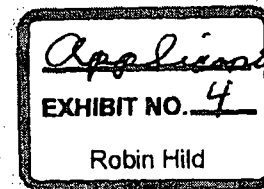
Court Reporter Brady

Code # _____

DOCKET NO. 2005-GS-04-595

The State of South Carolina,

County of ANDERSON



COURT OF GENERAL SESSIONS

TERM

THE STATE

CAT.

KINSHABA MALONGO SIMMONS

ARREST WARRANT NO. REF. I710934

ACTION OF GRAND JURY

Foreman of Grand Jury

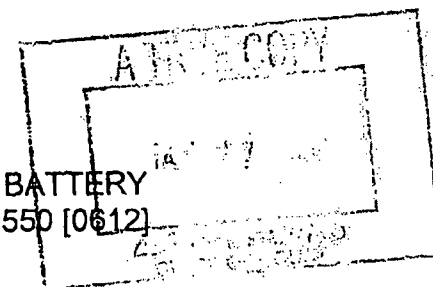
VERDICT

Foreman of Petit Jury

Date

Indictment for

SIMPLE ASSAULT & BATTERY
C/L 22-05-0150, 03-0550 [0612]



4-13-05/emp

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

INDICTMENT FOR
SIMPLE ASSAULT & BATTERY
C/L 22-05-0150, 03-0550 [0612]

At a Court of General Sessions, convened on _____,
the Grand Jurors of ANDERSON County present upon their oath:

SIMPLE ASSAULT AND BATTERY

That Kinshaba Malongo Simmons did in Anderson County on or about
September 10, 2004 commit an assault and battery upon the victim, Willie Bell Gaines
by hitting the victim with his hand.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.


SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
STATE v KINSHABA MALONGO SIMMONS

AKA: _____

Race/Sex: B M Age: 25

DOB: _____

Address: _____

City, State, Zip _____

DL# _____ SID: SC01057034

) IN THE COURT OF GENERAL SESSIONS
) INDICTMENT/CASE #
)

2005-GS-04-595
) A/W#: 1710934 (Ref) Direct Ind.

) Date of Offense: 09/10/04

) S.C. Code: 16-11-0311 CDR Code #: 0079

) CASE RESTORED ☐) SENTENCE ☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO:

Simple Assault & Battery

in violation of C/L of the S.C. Code of Laws, bearing CDR Code #: 01612
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45
Charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury.Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Catherine Duncanson

Solicitor

Kinshaba Simmons

Defendant

Phillips

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections,
☒ County Detention Center, for a determinate term of 30 days/months/years or
☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
 provided that upon the service of _____ days/months/years and/or payment of \$ _____
 plus costs and assessments as applicable*, the balance is suspended with probation
 for _____ months/years and subject to South Carolina Department of Probation.
 Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: _____
☒ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied
 by the State Department of Corrections 31 day

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
 Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☒ set by SCDPPPS

Recipient: _____

*Fine.....	\$	
14-1-206 - Assessments (107.5%)	\$	
14-1-211 (A)(1) Conv. Surcharge	\$100	<u>100</u>
14-1-211 (A)(2) DUI Surcharge	\$100	
56-5-2995 (DUI Assessment)	\$12	
35.13 (Public Def/Prob)	\$500	
73.3, 1B TP (Law Enforce. Funding)	\$25	<u>25</u>
33.7, 1B TP (Drug Court Surcharge)	\$100	
50-21-114 (BUI Breath Test Fee)	\$50	
56-5-2942(J) (Vehicle Assessment)	\$40/ea	
3% County (if paid in Installments)	\$	
TOTAL	\$	<u>125</u>

Cathy M. Phillips

Clerk of Court/Deputy Clerk
SCCA/217(7'2003)
 PTUP _____ time served pursuant to S.C. Code 24-13-40 to
 Obtain GED _____ days/hours Public Service Employment

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

 Fine may be paid in equal, consecutive weekly/monthly
 pmts. of \$ 10 beginning 10-9-05
 \$ _____ paid to Public Defender Fund.

Other: _____

☐ Appointed PD or other counsel, 35.13 TP
 Requires \$500 be paid to Clerk during probation.

Presiding Judge _____ Judge Code: _____

Sentence Date 4/17/05Court Reporter D. Brady Code #: _____

4-13-05

8/21/07
CLERKW15Clerk of Court - General Sessions
Case Docket InquiryGSS033
FMT01

Indictment #: GS 04

Warrant/Ticket #: I710934

Defendant: SIMMONS, KINSHABA MALONG
NO FIXED ADDRESS

Soc Sec: [REDACTED]

ANDERSON SC

Sex: M Race: B DOB: [REDACTED]

PI #: [REDACTED]

Date of Arrest: 3/12/2005 Rcvd by Coc: 3/16/2005 Summary Judge: 999

Offense of

Conviction: cts 1 79 BURGLARY / BURGLARY (AFTER JUNE 20, 19

Disposition: 4/13/2005 4 DISM/NOL PROS/PROS E

Court Reporter:

Disposed by: 97 SOLICITOR/MSTR IN EQ

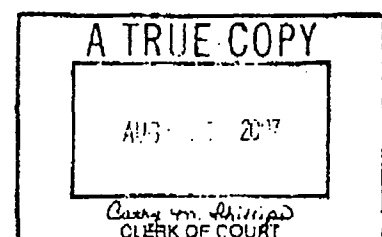
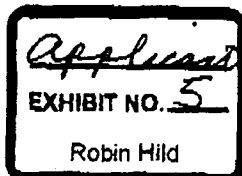
Add Sent to Scca: 3/30/2005
Last Chg Date: 4/13/2005
Chg Sent to Scca: 4/18/2005

Sentence/Explanation:

Commands: F1-Exit F2-Previous

ATRU

SEP 12 2012



Print LEMS Web Message ICHR 003F1A85F7 from SCCH

Page 1 of 4



ICHR 003F1A85F7 from SCCH

ANDSL409

.ICHR.003F1A85F7.SCCH.20051024 14:11:44

TO: ANDSL409-10765 20051024 14:11:44 003F1A85F7
FROM: SCCH-1738231 20051024 14:11:43

ICHR REQUEST FOR RAP SHEET

ORI-SC004015A SID-SC01057034 PUR-C

ATN-CAMPBELL, R

A TRUE COPY

SEP 12 2012

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING
AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-10/24/2005 TIME-14:21:17

REQ ORI-SC004015A ANDERSON CRCT SOL

SID-SC01057034 FBI-5193986B2

NAME-SIMMONS, KINSHABA MALONGO

SEX-M RACE-B

HEIGHT-510 WEIGHT-180 EYES-BRO HAIR-BLK SKIN-MED BORN-SC

FPC-DO151415161311161617

HENRY-15 O 1 U 000 16

M 17 U 000

PHOTOGRAPH AVAILABLE

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

* DNA - TAKEN

DATE RECORD ENTERED--04/25/1996

DATE OF LAST UPDATE--03/15/2005

ADDITIONAL IDENTIFIERS

NAME	BIRTH DATES	MARKS	SOC SEC	MISC NUM
SIMMONS, KINAHABA M				

SIMMONS, LAKALIL MAKIMBUS

SIMMONS, PUNKIN

SIMMONS, KINSHABA MOLONGO

SIMMONS, KINAHABA MALONG

CONTRIBUTOR/SUBJECT

DOA/RCVD CHARGE/DISPOSITION/ETC

SIMMONS, KINSHABA MALONGO

12/02/1995

SC0040100 ANDERSON PD

CASE-95-27240

WARR-E561033

ARREST CHARGE 01-ASSAULT AND
BATTERY W/I TO KILL

WARR-E561034

ARREST CHARGE 02-ASSAULT AND
BATTERY W/I TO KILL

WARR-E561032

ARREST CHARGE 03-ATTEMPTED
ARMED ROBBERY

CIT-16-11-330(B) FELONY

DOC-96GS0400178 WARR-E561032

COURT CHARGE 01-ATTEMPTED
ARMED ROBBERYCOURT DISP-CONVICTED; YOA NOT
TO EXCEED 6 YEARS

COURT DATE-06/18/1996

CIT-C/L,



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Page 2 of 4

DOC-96GS0400177 WARR-E561033

COURT CHARGE 02-ASSAULT WITH
INTENT TO KILL
COURT DISP-CONVICTED; YOA NOT
TO EXCEED 6 YEARS
COURT DATE-06/18/1996

CIT-C/L,

DOC-96GS0400176 WARR-E561034

COURT CHARGE 03-ASSAULT WITH
INTENT TO KILL
COURT DISP-CONVICTED; YOA NOT
TO EXCEED 6 YEARS
COURT DATE-06/18/1996

SIMMONS, KINSHABA MOLONGO
SC0040000 ANDERSON CNTY SO
CASE-960140
WARR-E286326

05/19/1996

ARREST CHARGE 01-ASSAULT &
BATTERY, HIGH & AGGRAVATED
NATURE
OFFENSE DATE-05/19/1996
PHOTOGRAPH AVAILABLE

CIT-C/L,

DOC-00GS04 WARR-E286326

COURT CHARGE 01-ASSAULT/BATTE
RY OF HIGH AND AGGRAVATED
NATURE
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-08/20/1996

SC004015C PERRY RECPT & EVAL
CASE-233791

06/20/1996 CUSTODY STATUS-RECEIVED
START DATE-06/20/1996

COURT CHARGE 01-ASSAULT WITH
INTENT TO KILL 2CTS
COURT DISP-CONVICTED; YOA 5C
EACH CONCURRENT
COURT CHARGE 02-ATTEMPTED
ARMED ROBBERY
COURT DISP-CONVICTED; YOA 5C
CONCURRENT

SIMMONS, LAKALIL MAKIMBUS
SC0040100 ANDERSON PD
CASE-9812910
WARR-96620AV

06/11/1998

ARREST CHARGE 01-SIMPLE POSSE
SSION OF MARIJUANA
OFFENSE DATE-06/11/1998
PHOTOGRAPH AVAILABLE
COURT CHARGE 01-SIMPLE POSSES
SION OF MARIJUANA
COURT DISP-CONVICTED; SENTENCE
UNKNOWN
COURT DATE-06/12/1998

WARR-96620AV

SIMMONS, KINSHABA MALONGO
SC0040100 ANDERSON PD
WARR-62303BC

01/11/1999

ARREST CHARGE 01-DISORDERLY
CONDUCT
OFFENSE DATE-01/11/1999
PHOTOGRAPH AVAILABLE

WARR-62302BC

ARREST CHARGE 02-PROWLING
OFFENSE DATE-01/11/1999

Print LEMS.Web Message ICHR 003F1A85F7 from SCCH

Page 3 of 4

WARR-F895295

ARREST CHARGE 03-BURGLARY
FIRST DEGREE (STATE)
OFFENSE DATE-01/11/1999

WARR-F895296

ARREST CHARGE 04-ASSAULT
WITH INTENT TO KILL (STATE
)
OFFENSE DATE-01/11/1999

WARR-E743718

ARREST CHARGE 05-ASSAULT AND
BATTERY

CIT-16-17-530 MISDEMEANOR
DOC-R84 WARR-62303BC

COURT CHARGE 01-PUBLIC DISORD
ERLY CONDUCT
COURT DISP-CONVICTED;20D OR
\$199

CIT-N/A
DOC-R84 WARR-62302BC

COURT CHARGE 02-PROWLING
COURT DISP-CONVICTED;30D OR
\$373

CIT-16-3-620(2) FELONY
DOC-99GS0400477 WARR-F895296

COURT CHARGE 03-ASSAULT AND
BATTERY WITH INTENT TO
KILL
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-02/03/2000

CIT-16-11-311
DOC-99GS0400476 WARR-F895295

COURT CHARGE 04-BURGLARY
(AFTER JUNE 20, 1985) -
FIRST DEGREE
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-02/03/2000

SC040055C R & E CENTER COLA
CASE-233791

03/15/1999 CUSTODY STATUS-RECEIVED
START DATE-03/15/1999
COURT CHARGE 01-YOUTHFUL
OFFENDER PAROLE REVOCATOR
COURT DISP-CONVICTED;SERVING
TIME

SIMMONS, KINSHABA MALONGO
SC0040100 ANDERSON PD
CASE-0014657
ATN-
WARR-24187BM

06/26/2000

ARREST CHARGE 01-PROWLING
OFFENSE DATE-06/26/2000

CIT-N/A-MISDEMEANOR
WARR-24187BM

COURT CHARGE 01-PROWLING
COURT DISP-CONVICTED;\$373 OR
30 DAYS
COURT DATE-06/27/2000

ATN

SIMMONS, KINSHABA MALONGO
SC0230000 GREENVILLE CNTY SO
CASE-177271
ATN-
WARR-G444504

07/08/2000

ARREST CHARGE 01-PETIT LARCEN
Y

Print LEMS Web Message ICHR 003F1A85F7 from SCCH

Page 4 of 4

DOC-R84 WARR-G444504

PHOTOGRAPH AVAILABLE
COURT CHARGE 01-PETTY LARCENY
COURT DISP-CONVICTED; SENTENCE
UNKNOWN
COURT DATE-10/16/2000
ATN-

SIMMONS, KINSHABA MALONGO 01/05/2003
SC0040000 ANDERSON CNTY SO
ATN-
WARR-I137150
CIT-16-11-520(B)(3)-MISDEMEANOR

ARREST CHARGE 01-MALICIOUS
INJURY TO PROPERTY
OFFENSE DATE-01/05/2003
PHOTOGRAPH AVAILABLE

CIT-16-11-520(B)(3)-MISDEMEANOR
DOC-R84 WARR-I137150

COURT CHARGE 01-MALICIOUS
INJURY TO PROPERTY
COURT DISP-CONVICTED; UNKNOWN
ATN-

SC040015C SC DEPT CORRECTIONS 02/06/2003 CUSTODY STATUS-RECEIVED
CASE-233791
CIT-N/A-UNCLASSIFIED

COURT CHARGE 01-PAROLE REVOCATION
COURT DISP-CONVICTED; SERVING
TIME
ATN-500300027496

BASED ON SEARCH OF SCLED CJICS CCH FILE USING SID/SC01057034
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJICS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION

INQUIRY WILL BE FORWARDED TO: NCIC WANTED PERSONS

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN
SOUTH CAROLINA

INFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110
(C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR
ACQUIRE A HANDGUN.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

** SC CJICS END OF RECORD **

STATE OF SOUTH CAROLINA)

0000GS04
INDICTMENT NUMBER

COUNTY OF ANDERSON)

B882665
CASE NUMBER

CASE DISPOSITION HISTORY

A TRUE COPY

SEP 12 2012

Defendant:Williams, Jocktavius
Marquese

SS# [REDACTED]

DOB: [REDACTED]

Sex: M
Race: BDL#: [REDACTED]
DL State: SC

ANDERSON, SC

Date of Arrest: April 12, 2005

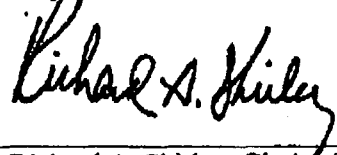
Filed with Clerk: April 12, 2005

Offense Description: DRUGS / POSS. OF 28G (1 OZ) OR LESS OF

Disposition: Nolle Prosequi

Disposition Judge: Solicitor / Master In Equity G S And C P

Disposition Date: November 17, 2005

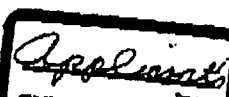


Richard A. Shirley, Clerk of Court

General Sessions, Anderson County

A TRUE COPY

MAY 31 2012


CLERK OF COURT
EXHIBIT NO. 7
Robin Hild

STATE OF SOUTH CAROLINA)

0000GS04
INDICTMENT NUMBER

COUNTY OF ANDERSON)

H113381
CASE NUMBER

CASE DISPOSITION HISTORY

Defendant:Williams, Jocktavius
Marquese

SS# [REDACTED]

DOB: [REDACTED]

Sex: M
Race: B

DL#: [REDACTED]

DL State: SC

ANDERSON, SC

A TRUE COPY

SEP 12 2012

Date of Arrest:

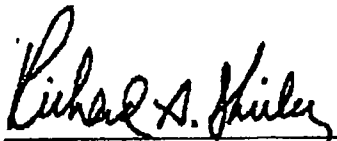
Filed with Clerk: April 12, 2005

Offense Description: DRUGS / POSS. OF OTHER CONTROLLED SUB:

Disposition: Nolle Prosequi

Disposition Judge: Solicitor / Master In Equity G S And C P

Disposition Date: November 17, 2005



Richard A. Shirley, Clerk of Court

General Sessions, Anderson County

A TRUE COPY

MAY 31 2012


CLERK OF COURTApplied
EXHIBIT NO. 8

Robin Hild

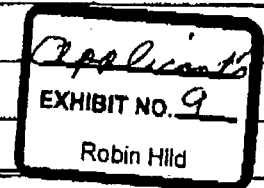
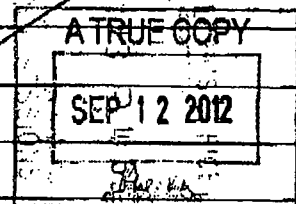
1411 Lewis St.
Anderson SC 29624

Date 3/16/2005 Page No. 1

STATEMENT OF:

~~XKS~~
Inv. ST Reeves is writing this statement for me in my own words. On 2/6/2005 I was at club enoy on El Sautin in Anderson while outside around 11:30pm myself and Fred Penn were outside of the club and we had words and were about to be a fight between us. Then "Detroit" Sany Gance came around the corner of the front entrance with 2 revolvers one in each hand and shot Fred Penn about 5 times. Me and Fred were almost ^{KS} locked up when he shot Fred. I know that James Brock ~~Brock~~ "Elroy" who stays on Warden Ave, Monte Brawner "Bookie" and "Tacheez" Chukcales were all within about 6 feet of me and Fred when "Detroit" shot Fred. Chris Bell was at the club but I don't know if he was outside to see any of this or not. I left the club in my car and went home. I know I saw "Red" Samuel Glover + the ^{club} ~~club~~ ^{XKS} carter and "Red" have his black Q45 Infiniti to the club. ~~KS~~

True copy KS



~~XKS~~ *[Signature]*

~~XKS~~ Kinshaba Simmons

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	
Sammy Cowan,	)	CASE NO.: 2009-CP-04-0319
	)	
	)	
	)	
vs.	)	
	)	
	)	AFFIDAVIT OF RAME L. CAMPBELL
	)	
State of South Carolina,	)	
	)	
Defendants.	)	
	)	

PERSONALLY APPEARED before me, Rame L. Campbell, Esquire, who being first duly sworn, deposes and states as follows:

1. That I am an Assistant Solicitor with the Tenth Judicial Circuit Solicitor's Office in Anderson County. I've been admitted to the practice of law in the State of South Carolina since 1997.
2. That I am the Assistant Solicitor who tried Sammy Cowan for murder. He was found guilty and sentenced to life on November 15, 2005. He was represented at trial by Nancy Jo Thomason, Esquire.
3. That my office submitted our answer to discovery initially on April 15, 2005. Supplemental Discovery was provided to the defense on September 15, 2005, October 28, 2005, November 2, 2005, and November 7, 2005. I have attached those transmittal letters to this affidavit.

4. That Kinshaba Simmons was a State witness in the trial of this case. His purpose in testifying was for identification of Cowan as the shooter and to tell – from his point of view – what he witnessed and observed at the night club when the victim was shot and ultimately died as a result of being shot by Cowan.
5. That while I have no general recollection in this case, my general practice is to provide the defense a copy of the witness's criminal history before they testify at trial. I believe in the trial of this case that I brought out Mr. Simmons's past criminal history on direct examination. Furthermore, I believe that the defense also impeached him with his prior criminal record.
6. That at the time of the trial, Mr. Simmons did not have any pending charges in Anderson County or anywhere else that I was aware of. Mr. Simmons did have a case pending with my office earlier in the year that was handled by another Assistant Solicitor, Catherine Huey. Mr. Simmons pled guilty to those charges on or about April 17, 2005. I had no knowledge of this and I was not involved in any plea deal he may have received. This was not a consideration of mine when I used him as a witness.
7. That Mr. Simmons was an uncooperative witness. I had him personally served by subpoena to testify on October 27, 2005. He failed to appear on November 14, 2005 and Judge Lee S. Alford issued a bench warrant for his arrest on that date. I have attached the warrant to this affidavit. Mr. Simmons was arrested after that and brought to court to testify. No offers or consideration were made or given to him in order to make Mr. Simmons testify.

8. That my general practice is not to issue a witness list to the defense before the trial of a case. All of the State's potential witnesses are listed in the provided discovery. A list of potential state witnesses was submitted to the trial judge at the time this case was called for trial. This was done in order to see if anyone in the jury panel had any relationship with any of the named witnesses. This would have been both for the State and the Defense. Mr. Simmons's name would have been mentioned then and it was also provided earlier in the discovery materials.

Rame L. Campbell
Rame L. Campbell
Assistant Solicitor

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 21st DAY OF JUNE, 2013.

Shanna C. Rose
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9-12-2016

STATE OF SOUTH CAROLINA: IN THE COURT OF COMMON PLEAS
 COUNTY OF ANDERSON ANDERSON SC FOR THE TENTH JUDICIAL CIRCUIT

2015 APR - 7 A 11: 08 Case No. 2009-CP-04-319

Sammy Cowan, a/k/a
 Sammy Kay Cowan,
 S.C.D.C. No. 214656,

COMMON PLEAS AND
 GENERAL SESSIONS

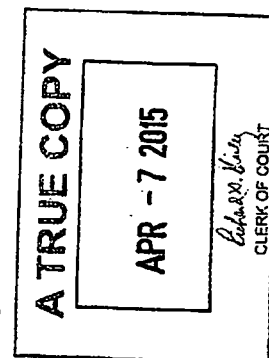
Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL



This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 27, 2009. Respondent made its Return on July 8, 2009. An evidentiary hearing into the matter was convened on June 5, 2012 at the Anderson County Courthouse. The Applicant was present and represented by C. Rauch Wise, Esquire. The Respondent was represented by Kaelon May, Esquire, of the Office of the Attorney General. Applicant, his trial counsel, and private investigator, Jimmy Powers, testified at the hearing.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court on November 16, 2005. The Applicant was indicted at the April 2005 term of the Anderson County Grand Jury for Murder (2005-GS-04-696) and Possession of a Firearm by a Convicted Felon (2005-GS-04-2157). He was represented by his trial counsel, Nancy Jo Thomason, Esquire, and, on November 14, 2005, Applicant underwent trial and was found guilty as indicted. He was sentenced by the Honorable Lee S. Alford to life imprisonment for murder and five years

imprisonment for possession of a firearm by a convicted felon. The sentences were to be served concurrently.

A Notice of Appeal was filed on the Applicant's behalf, and his Appeal was perfected. Applicant was represented by Katherine Hudgins, Esquire, of the Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion, Op. No. 08-UP-577 (filed on October 14, 2008). The Remittitur was issued October 30, 2008.

At the PCR hearing, Applicant moved forward on the following allegations:

1. Ineffective assistance of counsel:
 - a. failure to investigate the 911 tapes by having them enhanced.
 - b. failure to object to hearsay testimony from Detective Steven Reeves.
2. Prosecutorial Misconduct:
 - a. failure to object to prosecutorial misconduct where solicitor did not provide full details of State witness Kinshaba Simmons' rap sheet.
 - b. failure to investigate State witness Joctavious Williams' pending charges.

SUMMARY OF TESTIMONY

Applicant testified at the PCR hearing stating that he was originally from Detroit, Michigan. Applicant stated he was innocent and did not fatally shoot the victim, Fred Penn. Applicant further stated he had listened to the emergency dispatch recording that captured audio from the offense at trial and again at the hearing. Applicant also stated that trial counsel should have objected to Detective Reeves' hearsay statement at trial. Applicant believed an objection to the alleged hearsay statement would have been outcome determinative because the jury deliberated for over four hours.

Applicant stated the solicitor withheld State witness Kinsahaba Simmons' March 2005 prior convictions. Applicant stated that he additionally learned State witness Joctavious Williams had his pending charges dismissed after Applicant's trial. Applicant stated Detective Reeves took his statement. Applicant asserted it would have benefited his case to have Simmons' rap sheet at trial.

At the PCR hearing, Jimmy Powers testified on behalf of Applicant that he lived in Greenwood, South Carolina, and was employed as a private investigator. Powers further stated that he had obtained and analyzed the emergency dispatch recording presented at trial and that the audio on the original tape was distorted, which included scratchy sounds and background noise. Powers additionally obtained a transcript of the statements made on the tape and had the tape enhanced to filter out the background noise. Powers stated he interpreted the statement on the tape, "we run this," as coming from State witness Allen Johnson. Powers also stated that no one made the statement, "we do this Detroit style," on the tape. Powers stated he spoke to several witnesses who had testified at Applicant's trial, and that the witnesses did not identify Applicant's voice on the tape. The enhanced 911 tape was entered into evidence.

At the PCR hearing, the trial counsel, Ms. Thomason, testified. Trial counsel was appointed to represent Applicant because the Tenth Circuit Public Defender's Office was conflicted off of the case. Trial counsel utilized a private investigator provided by the Public Defender's Office in investigating Applicant's case and preparing for trial. Trial counsel discussed complications with Applicant regarding potential witnesses who would not cooperate with her investigation.

Trial counsel summarized the incident that led to Applicant's arrest and conviction. There had been a shooting outside a local night club, Club Envy, where an argument had occurred

between Simmons and the victim inside of the establishment. As a result of the altercation, the security guard, Allen Johnson, had removed them from the establishment. Johnson, along with other eyewitnesses, placed Applicant at the scene of the offense.

Trial counsel testified she reviewed the 911 tape prior to trial. Trial counsel did not have difficulty determining and identifying the voices on the tape. Trial counsel testified that she did not find that an additional investigation of the 911 tapes by having them enhanced was necessary or would be helpful. The jury only heard the recording, without the aid of the transcript. Trial counsel also was unable to locate any potential witnesses to identify Simmons' voice on the recording. Trial counsel testified she cross-examined Johnson on discrepancies between his trial testimony of comments Applicant made at the scene, and comments captured on the 911 recording.

Trial counsel testified she was not convinced she erred by failing to object to an alleged hearsay testimony from Detective Reeves. At trial, Detective Reeves testified that during his investigation of the victim's death, no witness identified a third party as the shooter. (Trial Tr. p. 242, lines 16-22). Trial counsel stated an objection could have been more harmful than beneficial to Applicant's case.

Trial counsel testified she received rap sheets of State witnesses prior to trial. Trial counsel testified Simmons' 2001 charges for burglary and kidnapping had been *nolle pros'd*. Trial counsel stated the dismissed charges did not constitute admissible impeachment material. Simmons' 2005 convictions for trespassing and simple assault and battery were disclosed to trial counsel, but she was unaware a *nolle pros'd* burglary charge accompanied those convictions. A copy of the rap sheet provided to trial counsel by the Solicitor's Office was submitted into evidence as Applicant's Exhibit 6. Applicant additionally submitted the disposition sheet for the

nolle pros'd burglary charge as Applicant's Exhibit 5. The disposition sheet indicated Applicant was arrested for burglary on March 12, 2005. The record of the arrest was processed on March 30, 2005. The charge was *nolle pros'd* on April 13, 2005. The record of the disposition was processed on April 18, 2005. Trial counsel testified the burglary charge constituted *Brady* material that would have been useful in her presentation of Applicant's case.

Subsequent to the PCR hearing, Respondent submitted Asst. Solicitor Rame Campbell's affidavit regarding his General Sessions involvement in Applicant's case. He provided trial counsel discovery on April 15, 2005 followed by four supplemental discovery disclosures prior to the State calling its case for trial. Asst. Solicitor Campbell called Simmons as a State's witness at trial. He recalled Simmons' disclosure of prior convictions to the jury. Asst. Solicitor Campbell had no knowledge of Simmons' 2005 charges while prosecuting Applicant's case. He stated that a different solicitor handled the disposition of Simmons' 2005 charges. Asst. Solicitor Campbell did not engage in plea negotiations with Simmons. He stated, "this was not a consideration of mine when I used him as a witness" at Applicant's trial. Furthermore, he stated Simmons' was an uncooperative witness. Simmons ignored a subpoena to testify at Applicant's trial on November 14, 2005. As a result, Simmons was picked up on a bench warrant issued by the trial judge and testified on November 15, 2005.

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625, *citing Strickland, supra*. 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and exhibits from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

I.

A.

This Court finds Applicant failed to meet his burden to prove trial counsel was ineffective for not further investigating the emergency dispatch recording. This Court finds trial counsel's testimony on the matter more credible than Applicant's testimony. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (citing *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007)). Trial counsel reviewed the tape prior to trial and stipulated to its admission as evidence. (Trial Tr. p.49; p.56). At the PCR hearing, trial counsel testified the enhanced recording would not have benefited Applicant's defense. This Court agrees. At trial, Johnson testified to witnessing Applicant enter the immediate area where the victim was slain moments prior to hearing the fatal shots. (Trial Tr. p.87). Johnson testified Applicant exclaimed, "When he went past me he turned to, like, the left side. I saw the gun down in his left hand, down on his left side, screaming we run this "sh" Detroit style. This is south side. I done killed one of your boys and I don't mind doing it again." (Trial Tr. p.87, lines 14-18). (Trial Tr. p.88). This Court finds trial counsel strategically utilized the emergency dispatch recording during her cross-examination of Johnson. (Trial Tr. pp.99-101). Trial counsel questioned Johnson on his delayed disclosure of Applicant's involvement in the offense. This Court finds trial counsels tactics here were a matter of sound trial strategy. *See Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992) (where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel). *See Also Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (recognizing that "[c]ourts

must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel."").

Furthermore, Applicant failed to prove how trial counsel's alleged deficiency on the matter resulted in prejudice. Trial counsel was not provided any potential witnesses that could have identified Simmons' voice on the recording. Applicant failed to produce testimony from any witness on the identification. Therefore, this Court finds the allegation rests on hearsay and speculation. *See Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995) (applicant's allegations, alone, will not support a finding of prejudice when applicant claims counsel was ineffective for failing to investigate witnesses; instead, applicant must show the results of an investigation would have resulted in a different outcome at trial. Mere speculation and conjecture on the part of respondent is insufficient.). This Court finds an enhancement of the emergency dispatch recording would have produced an ancillary benefit at best to Applicant's defense. The enhanced evidence would have not diminished the eyewitness identification testimony of Applicant's involvement in the victim's murder. Therefore, this allegation is denied and dismissed.

B.

This Court finds Applicant failed to meet his burden to prove trial counsel was ineffective for not objecting to Detective Reeves' alleged improper hearsay testimony. Applicant failed to prove the testimony was improper. *State v. Brown*, 317 S.C. 55, 63, 451 S.E.2d 888, 894 (1994) (citing *United States v. Love*, 767 F.2d 1052 (1985) ("An out of court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken.")). (Trial Tr. p.242, lines 16-20). Additionally, trial counsel provided sound trial strategy on the matter. Trial counsel testified she did not want to risk focusing the jury's

attention to prior testimony that Applicant was the only person armed at the scene of the offense. *See Stokes*, 308 S.C. at 546, 419 S.E.2d at 778.

Furthermore, Applicant failed to prove how trial counsel's alleged deficiency on the matter resulted in prejudice. Detective Reeves' testimony was cumulative to other testimony presented at trial. *See State v. Haselden*, 353 S.C. 190, 577 S.E.2d 445 (2003) (when evidence is improperly admitted it is harmless error where it is merely cumulative). Therefore, this allegation is denied and dismissed.

C.

Last, Applicant failed to meet his burden to prove the solicitor's disclosure of State witness Simmons' prior criminal history constituted a *Brady* violation. "A *Brady* claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). This Court finds Applicant failed to prove the non-disclosure of Simmons' 2005 convictions for trespassing and simple assault and battery equated to a *Brady* violation. Rule 609(a)(2), SCRE, stipulates evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regarding the punishment. Applicant failed to prove the convictions would have been admissible for impeachment purposes. *See State v. LaBarge*, 275 S.C.168, 288 S.E.2d 278 (1980) (holding trial judge did not err finding a witnesses convictions for disorderly conduct and trespassing, among other related convictions, were not admissible for impeachment purposes.). Additionally, the allegedly withheld impeachment evidence was not material because it was cumulative. Simons' prior convictions for armed robbery and assault

with intent to kill were disclosed to the jury. (Trial Tr. p.182). Additionally, Simons testified to drug use. (Trial Tr. p.183). See *State v. Black*, 400 S.C. 10, 732 S.E.2d 880 (citing *Mason v. State*, 756 P.2d 612 (Okla. Crim. App. 1988) ("erroneous admission of a prior manslaughter conviction was harmless error where the witness was already impeached by other evidence of prior conviction.")).

Second, this Court finds Applicant failed to prove the solicitor intentionally withheld any alleged clandestine plea agreements with State witnesses Simmons and Williams. "Under the Due Process Clause, prosecutors have a duty to provide an accused with favorable evidence, including any plea agreement involving testifying accomplices, which is material to either guilty or punishment." *United States v. Bagley*, 473 U.S. 667, 105 S. Ct. 3375 (1985). "The trial court may determine, through testimony of [the witness], the solicitor, and other parties with knowledge of the facts, the circumstances of the alleged promise. A decision can then be made on the basis of the facts as they are determined to be, not on the basis of speculation." *State v. Hinson*, 293 S.C. 406, 408, 361 S.E.2d 120, 121 (1987)

This Court finds the solicitor statement credible and convincing. This Court finds the solicitor is an experienced trial attorney with a thorough understanding of criminal procedure. The solicitor told the trial judge he complied with Rule 5 and *Brady*. (Trial Tr. p.58). Furthermore, the solicitor provided the NCIS reports of State witnesses to trial counsel. (Trial Tr. p.57). Trial counsel also requested NCIS reports for the State's potential rebuttal witnesses. Trial counsel stated, "[The solicitor] will give [the rap sheets] to me. I'm not worried about that." (Trial Tr. p.57, lines 9-10). Additionally, the trial record further corroborates the solicitor's statement that Simmons was an uncooperative witness. He was present and testified at Applicant's trial pursuant to a bench warrant issued by the trial judge. Upon review of the record,

this Court finds the incomplete NCIS report on Simmons provided to trial counsel was attributed to a clerical error. The Anderson County Clerk of Court's recorded disposition of the 2005 burglary charge, as evidenced in Applicant's Exhibit 5, lists the defendant as "Simmons, Kinshaba Malong." In contrast, the NCIS report of the witness listed his name as "Simmons, Kinshaba Malongo. The report also listed five other additional identifiers. None of the six names matched the name provided in the Clerk's recorded disposition of the 2005 burglary charge.

Applicant also failed to prove the solicitor withheld details of Williams' guilty plea negotiations from plea counsel. Under the crucible of cross-examination, Williams candidly testified he anticipated receiving consideration on his pending charges for aiding law enforcement in Applicant's case. (Trial Tr. p.197). Thus, Applicant failed to prove prosecutorial misconduct. Furthermore, Applicant failed to show how the alleged *Brady* violations constituted prejudice. Therefore, these allegations are denied and dismissed.

II.

This Court finds Applicant also failed the second prong of *Strickland* – that he was prejudiced by trial counsel's performance. Both employees of Club Envy testified to witnessing Applicant run with a gun to an area blocked from their view where the victim was just prior to hearing gun shots. (Trial Tr. p.87; p.116). This Court finds overwhelming evidence of guilt supports Applicant's conviction. See *Franklin v. Catoe*, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial.). Johnson testified he heard Applicant exclaim he did not mind killing someone else again prior to phoning the police. (Trial Tr. p.87). Craig Williford testified Applicant told him to distance himself from the victim while Applicant held two guns. (Trial Tr. p.142). Williams testified he witnessed

Applicant draw two guns when Applicant engaged Williford. (Trial Tr. p.193). Williams testified he witnessed Applicant shoot the victim. Simmons also testified he witnessed Applicant shoot the victim. (Trial Tr. p.172-3). Natasha Reed testified that an unknown man approach Simmons and the victim while armed. (Trial Tr. p.201).

Furthermore, Thomas McDonald testified Applicant confessed to the murder twice while in custody. (Trial Tr. p. 209; p. 210). McDonald testified Applicant told him he originally planned to flee Anderson and travel back to Detroit, Michigan after committing the murder. (Trial Tr. p.210). McDonald testified Applicant told him he changed plans and traveled to Athens, Georgia where Applicant knew a girl. (Trial Tr. p.210). Evidence of flight was presented that corroborated McDonald's testimony. Michael Murphy testified he was an employee with Greyhound Bus. (Trial Tr. p.156). Murphy testified a bus ticket departing from Atlanta, Georgia and arriving in Bowling Green, Kentucky was purchased by a "Sam Cowan" on February 7, 2005, one day after the murder. (Trial Tr. p.157-9). Murphy testified the ticket was not used. (Trial Tr. p.159). Murphy testified a second bus ticket departing from Atlanta, Georgia and arriving in Athens, Georgia was also purchased by a "Sam Cowan." (Trial Tr. 159). Applicant's girlfriend, Francis Fleming, testified Applicant phoned her from a bus station and asked for money. (Trial Tr. 227). Information obtained from Fleming was used to locate Applicant. (Trial Tr. 239-40). Thus, this Court finds any alleged error committed by trial counsel could not have affected the outcome of Applicant's trial.

III.

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. *Janasik v. Fairway Oaks Villas*



Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." *Lyles v. BMI, Inc.*, 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

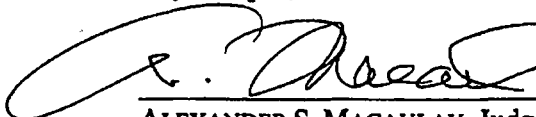
This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; *Bray v. State*, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS, THEREFORE, ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED and DISMISSED with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND, IT IS SO ORDERED this 2nd day of April, 2015.

Walhalla, South Carolina


ALEXANDER S. MACAULAY, Judge

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COMMON PLEAS AND
GENERAL SESSIONS

**Sammy Cowan, a/k/a
Sammy Kay Cowan,
S.C.D.C. No. 214656,**

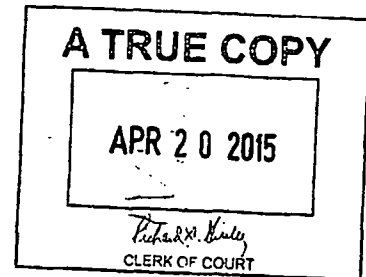
Applicant,

VS.

State of South Carolina,

Respondent.

COMMON PLEAS AND GENERAL SESSIONS



**RULE 59 MOTION TO ALTER, AMEND
or NEW TRIAL**

2009-CP-04-00319

TO: J. WALT WHITMIRE, Assistant Attorney General:

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 59 of South Carolina Rules of Civil Procedure the Applicant Sammy Cowan hereby moves the Court to alter or amend or grant a new hearing to the Applicant and reverse the decision entered by the Court on April 7, 2015. This Motion is based upon the following:

1. The Post Conviction Relief Court erred in concluding "trial counsel stated the dismissed charges did not constitute admissible impeachment material". In fact, trial counsel on page 28 and 29 testified that she thought the burglary charge would have been significant benefit to the Applicant in impeaching the credibility of the witness.

2. The Post Conviction Relief Court erred in concluding that Applicant failed to produce testimony from any witness on the identification of the voice of Kinshaba Simmons when the

investigator for the Applicant testified on page 9 of the post conviction relief hearing testified that he could identify Kinshaba Simmons voice on the tape.

3. The Post Conviction Relief Court erred in concluding "the enhanced evidence would not have diminished the eye witness identification testimony of Applicant's involvement of the victim's murder" when the enhanced tape clearly shows that the testimony of one or more of the eye witnesses was not correct.

4. The Post Conviction Relief Court erred in determining that Detective Reeves' statement was admissible because it was often for limited purposes explaining why a government investigation was undertaken. The error being the statement was not admitted for that purpose but for the purpose of showing that no other witness identified Kinshaba Simmons as being the shooter and was therefore hearsay and not admissible. This being in violation of the right of confrontation under the state and federal constitutions.

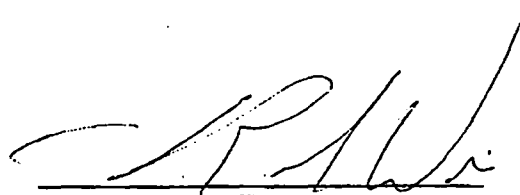
5. The Post Conviction Relief Judge erred in holding the record of Kinshaba Simmons was not prejudicial due to the fact that the Solicitor's Office did not intentionally withhold any document. The error in this being that an action by the Officers in not providing the Solicitor's Office with the proper information to impeach a witness is a violation of *Brady vs. Maryland* 373 U.S. 83 (1963) and *Kyles vs. Whitley* 514 U.S.419 (1995).

6. The Post Conviction Relief Court erred in concluding that the evidence against the Applicant was overwhelming when no physical evidence connected the Applicant to the murder. With the proper criminal record of Kinshaba Simmons, all of the witnesses against the Applicant had a motivation to testify favorably for the State.

Fore the forgoing reasons, the Applicant requests that this Court re-hear this matter and issue an order granting the relief requested by the applicant and grant him a new trial

in this matter.

April 15th, 2015



C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Applicant

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COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
Sammy Cowan, a/k/a	)	C.A. No. 2009-CP-04-0319
Sammy Kay Cowan,	)	
S.C.D.C. No. 214656	)	
	)	
Applicant,	)	
	)	RETURN TO APPLICANT'S MOTION
	)	TO ALTER OR AMEND THE JUDGMENT
v.	)	
	)	
State of South Carolina,	)	
Respondent.	)	

Respondent, by and through undersigned counsel, making its Return to Applicant's "Rule 59(e) SCRCF, Motion to Alter or Amend," would respectfully show unto this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted at the April 2005 term of the Anderson County Grand Jury for Murder (2005-GS-04-969) and a firearms provision (2005-GS-04-2157). He was represented by Nancy Jo Thomason, Esq. Applicant proceeded to trial on November 14, 2005 before the Honorable Lee S. Alford and was found guilty as indicted. Judge Alford sentenced Applicant to a term of life imprisonment.

A Notice of Appeal was filed on Applicant's behalf and perfected by Kathrine Hudgins, Esq., of the Office Indigent Defense. The South Carolina Court of Appeals affirms Applicant's convictions and sentences in an unpublished opinion. State v. Sammy Cowan, Op. No. 08-UP-577 (filed on October 14, 2008). The Remittitur was issued on October 30, 2008.

II.

On January 27, 2009, Applicant filed a timely Application for Post-Conviction Relief (PCR). An evidentiary hearing into the matter was convened on June 5, 2012. Applicant was present and was represented by C. Rauch Wise, Esq. Respondent was represented by Kaleon May, Esq., of the Office of the Attorney General. At the conclusion of the hearing, this Court took the case under advisement. Undersigned counsel for Respondent subsequently obtained the transcript from the hearing and provided it to the necessary parties. An order of dismissal with prejudice was entered and filed on April 7, 2015. Applicant filed its post-trial motion on April 15, 2015. This Return follows.

III.

In his motion, Applicant asks this Court to reconsider its ruling regarding three points of contention concerning this Court's conclusions of law and on three points of contention concerning this Court's findings of fact. Respondent submits that this Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits that this Court properly ruled on all issues presented at the post-conviction relief hearing and Applicant's motion should be denied.

[Signature block on following page]

IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

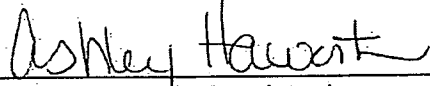
April 29th, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
	)	
	)	2009-CP-04-0319
SAMMY COWAN, #214656	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Applicant's Motion to Alter or Amend the Judgment** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. C. Rauch Wise, Esquire
 305 Main St.
 Greenwood, SC 29646

DATED this 29th day of April, 2015.



 Ashley Haworth, Legal Assistant
 For Respondent

9452

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STATE OF SOUTH CAROLINA
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COUNTY OF ANDERSON
COMMON PLEAS AND
GENERAL SESSIONS
Sammy Cowan, a/k/a
Sammy Kay Cowan,
S.C.D.C. No. 214656

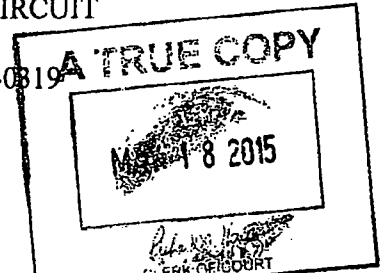
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

C.A. No. 2009-CP-04-0319



ORDER DENYING APPLICANT'S MOTION
TO ALTER OR AMEND THE JUDGMENT

This matter comes before this Court by way of Applicant's "Rule 59(e) Motion to Alter or Amend" asking this Court to alter or amend its Order of Dismissal denying Applicant post-conviction relief.

I.

An evidentiary hearing into the matter was convened on June 5, 2012. Applicant was present and was represented by C. Rauch Wise, Esq. Respondent was represented by Kaleon May, Esq., of the Office of the Attorney General. At the conclusion of the hearing, this Court took the case under advisement. Respondent subsequently obtained the transcript from the hearing and provided it to the necessary parties. Pursuant to this Court's review of the Record, testimony, and evidence presented at the PCR hearing, an order of dismissal with prejudice was entered and filed on April 7, 2015. Applicant filed its post-trial motion on April 15, 2015. Respondent's Return followed.

II.

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This Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds that there is no basis for altering or amending its prior ruling. Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes that if the Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 14th day of May, 2015


ALEXANDER S. MACAULAY
Presiding Judge
Tenth Judicial Circuit

W. D. Wells, South Carolina

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