

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Honorable Frank R. Addy, Circuit Court Judge

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S.C. SUPREME COURT

J'COREY SUAVE HULL-KILGORE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001682

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APPENDIX

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## Jury qualification

1 (Proceedings May 18, 2010)

2 THE COURT: Next case is what?

3 MR. BULSA: State vs. J'Corey Kilgore.

4 THE COURT: Any matters to address before the jury  
5 panel is brought around?

6 MR. BULSA: None by the state, Your Honor.

7 MR. ALLEN: No, Your Honor.

8 THE COURT: Okay. Bring them around.

9 (The following takes place in the presence of the jury  
10 venire.)

11 THE COURT: Good afternoon, ladies and gentlemen.

12 I apologize for the delay in having you brought in.  
13 We've got a jury deliberating, and they had to this  
14 morning -- they told us they needed to have some testimony  
15 replayed. So we had to bring them back to have that  
16 testimony replayed. And so that's why we've been delayed  
17 in having you brought around.

18 But we are now ready to begin with jury selection in  
19 the next case that will require some of your participation.  
20 And the title of that case is the State vs. J'Corey Suave  
21 Hull-Kilgore.

22 Mr. Hull-Kilgore has been charged by the state with  
23 having committed the crime of murder. The state alleges  
24 that on or about May the 24th of 2008 Mr. Hull-Kilgore did  
25 wilfully and with malice aforethought kill one Courtney

## Jury qualification

1 Ralpheal Rogers by shooting him with a handgun and that he  
2 died as a proximate result of that gunshot wound.

3 As to that charge and that indictment he's entered a  
4 plea of not guilty. And as you are aware, that plea of not  
5 guilty places upon the state the burden of proving his  
6 guilt to the satisfaction of 12 jurors beyond a reasonable  
7 doubt. So we're going to select 13 of you -- 12 primary  
8 jurors and one alternate juror -- to participate in the  
9 trial of the case.

10 Again, prior to that selection I'll ask you some  
11 questions, the purpose of the questions being to determine  
12 whether or not there's a reason why any one of you jurors  
13 should not be selected to participate in the trial of this  
14 particular case. And so during the course of this process  
15 if you have some reason why you think you could not be fair  
16 in this particular case I'll need for you to let me know of  
17 that fact.

18 Again, first of all, I'll be introducing some people  
19 to you -- the defendant, some family members perhaps of the  
20 person alleged to be the victim, the lawyers and each of  
21 the potential witnesses to be called in the case.

22 If you know any of these people, you have any  
23 connection with them, please stand as that name is  
24 called or they are introduced. And we'll determine what  
25 that relationship is and whether it would affect your

Jury qualification

1 judgment in the case.

2 First of all, as I told you, the defendant, the person  
3 who is accused of the crime of murder, is J'Corey Suave  
4 Hull-Kilgore.

5 Mr. Hull-Kilgore, if you will, please stand and face  
6 the jury panel.

7 (Whereupon, the defendant stood.)

8 THE COURT: Thank you. Be seated.

9 He is represented by Clay Allen who is the circuit  
10 public defender for the 7th Judicial Circuit.

11 (Whereupon, Mr. Allen stood.)

12 THE COURT: The person who is alleged to have been the  
13 victim is Courtney Ralpheal Rogers.

14 Do we have Mr. Rogers' family members present?

15 MR. BULSA: Yes, sir. They're behind me.

16 THE COURT: All right. Let me ask y'all if you will  
17 to please stand so the jury can see who you are, and that  
18 way they might identify who Mr. Rogers was.

19 (Whereupon, the victim's family stood.)

20 THE COURT: Thank you.

21 The prosecutor presenting the case on behalf of the  
22 state is Derrick Bulsa. He's an assistant circuit  
23 solicitor for the 7th Judicial Circuit.

24 (Whereupon, Mr. Bulsa stood.)

25 THE COURT: The following persons are potential

## Jury qualification

1 witnesses. That doesn't necessarily mean they will all  
2 testify. But they are potential witnesses. So we list  
3 them all in the event they are called we'll determine if  
4 you have any connection with any of these folks -- blood,  
5 marriage, business, social, religious or any connection  
6 whatsoever, whether you've met them or know them in some  
7 fashion.

8       The following persons are potential witnesses: Keevin  
9 Anderson. And if the witness is present, please stand.  
10 And if the witness is not present when the name is called  
11 and you're not -- you know somebody or you think you know  
12 somebody by that name, just stand. And we will try to  
13 identify that person better for you to be certain if that's  
14 the person you may know.

15       Mylnor Beach, Department of Public Safety; Randy  
16 Bogan, Spartanburg County Coroner's Office; Doris Boozer,  
17 Public Safety Department, Spartanburg Public Safety; Cheryl  
18 Boyd, Spartanburg Public Safety; Lakeisha Brewton; Toni  
19 Broome, state law enforcement division; Derrick Canada,  
20 Spartanburg Public Safety; Sandra Dandy; Patrick Davis; Dan  
21 DeFreese, state law enforcement division; Randy Hardy,  
22 Spartanburg Public Safety Department; James Hull-Kilgore;  
23 Brad James, Spartanburg County Sheriff's Department; Julie  
24 James, Spartanburg Public Safety Department; D'Angelo  
25 Miller; Dwight Mills; Taquil Nabors; Louis Nelson,

## Jury qualification

1 Spartanburg Public Safety; Russell Porter, Spartanburg  
2 Public Safety; Demetrius Reid; Jamarcus Rogers; Leslie  
3 Smith, Spartanburg Public Safety; Freddie Thompson, the  
4 Spartanburg Communications; Lindsay Thompson, state law  
5 enforcement division; Mike West, Spartanburg  
6 Communications; Courtney Westfall, Spartanburg Public  
7 Safety Department; John David Wren, Spartanburg Regional  
8 Medical Center, pathologist; Wendy Alley; Brandon Arledge;  
9 James Arledge; Juanita Hull; Javaris Hull-Smith; Ronald  
10 Rice; Lou Mathis Jones; Reginald Spurgeon; Kathleen Amick;  
11 Amy Stephens; and Scott Worsham.

12 Any other potential witnesses on behalf of the state?

13 MR. BULSA: No, Your Honor.

14 THE COURT: The defendant?

15 MR. ALLEN: No, Your Honor.

16 THE COURT: All right. I've got two jurors standing.  
17 If you'll give me your name and your number, please, ma'am,  
18 and tell me how that -- or tell me what person you know.

19 JUROR NO. 15: No. 15. Can I come up?

20 THE COURT: Yes, ma'am.

21 (Bench conference held off the record with Juror No.  
22 15 and counsel.)

23 THE COURT: All right. We've got Juror No. 15 is  
24 excused from service in this case.

25 JUROR NO. 71: Juror No. 71, sir, Daniel Harrell.

## Jury qualification

1 9-1-1 dispatcher. I know all of the officers involved, the  
2 coroner's office, Freddie Thompson, Mike West with the  
3 communications, officer, my supervisor. And I may have  
4 also been one of those 9-1-1 calls in this case. I'm not  
5 sure.

6 THE COURT: All right. Well, would any of that have  
7 any bearing upon a decision that you might make in the  
8 case?

9 JUROR NO. 71: No, sir.

10 THE COURT: All right. Thank you. You may be seated.  
11 Yes, ma'am.

12 JUROR NO. 157: I'm Juror No. 157, Christi Stanton.  
13 And I do know Ms. Garrett.

14 THE COURT: Okay. Would that have any bearing upon  
15 your decision in the case?

16 JUROR NO. 157: No, sir.

17 THE COURT: Okay. Thank you. Be seated.

18 This is a case, as you have been told, involving the  
19 death of Courtney Ralpheal Rogers.

20 The state alleges that Mr. Hull-Kilgore shot him with  
21 a handgun resulting in his death; and it is alleged to have  
22 occurred back on May the 24th of 2008 at a location on East  
23 Columbia Avenue here in Spartanburg.

24 Does any member of the jury panel think you might have  
25 heard, seen or read anything about the facts or

Jury qualification

1 circumstances that might relate to this case from any  
2 source, whether it be television, radio or newspaper or  
3 just individuals discussing the case?

4 Has any juror been exposed to any type of information  
5 that might relate to this particular case or this  
6 particular event? If so, please stand.

7 (No response.)

8 THE COURT: Yesterday I asked if any member of the  
9 jury panel was related by blood or marriage to any type of  
10 law enforcement officer, whether it be civilian or  
11 military. And the following jurors responded to the  
12 question. I'll read out those numbers. And I need to find  
13 out if there's anybody else that is related by any fashion  
14 or connected with in any way a law enforcement officer,  
15 civilian or military.

16 The ones that responded yesterday were Jurors 148,  
17 164, 119, 22, 150, 34 and 71.

18 Are there any additional jurors that did not respond  
19 to that question yesterday that need to respond now?

20 Yes, sir.

21 JUROR NO. 94: Juror No. 94. My nephew is a South  
22 Carolina highway patrolman.

23 THE COURT: Would that have any bearing upon your  
24 decision in this case?

25 JUROR NO. 94: No, sir.

## Jury qualification

1 THE COURT: Thank you. Be seated.

2 Yes, sir.

3 JUROR NO. 59: Juror 59. My stepson is a deputy  
4 sheriff in West Virginia.

5 THE COURT: Would that have any bearing upon your  
6 decision in this case?

7 JUROR NO. 59: No, sir.

8 THE COURT: Thank you. Be seated.

9 Yes, ma'am.

10 JUROR NO. 17: No. 17. My sister is a solicitor  
11 general for Gainsville County.

12 THE COURT: And would that have any bearing upon your  
13 decision in this case?

14 JUROR NO. 17: No, sir.

15 THE COURT: Thank you. Be seated.

16 I also asked yesterday if any member of the jury panel  
17 or any members of your immediate family had ever been the  
18 victim of or ever been accused of the commission of any  
19 type of crime that might be characterized or described as a  
20 violent crime.

21 And I included in that definition the crimes of  
22 murder, manslaughter, armed robbery, burglary, criminal  
23 sexual conduct, criminal domestic violence of a high and  
24 aggravated nature or any other similar type of criminal  
25 offense.

## Jury qualification

1           And those responding to that question yesterday  
2 included Jurors Nos. 93, 148, 164, 119, 179, 15, 12, 86,  
3 149 and 75.

4           Are there any other jurors that need to respond to  
5 that question? If so, please stand.

6           JUROR NO. 76: I responded yesterday.

7           THE COURT: What was your number?

8           JUROR NO. 76: Seventy-six.

9           THE COURT: Seventy-six. And how does that question  
10 relate to you?

11          JUROR NO. 76: I was a victim of an armed robbery.

12          THE COURT: Okay. Would that have any bearing upon  
13 your decision in this case?

14          JUROR NO. 76: No.

15          THE COURT: All right. Thank you, ma'am. You may be  
16 seated.

17          Yes, ma'am.

18          JUROR NO. 110: 110. I've also -- yesterday.

19          THE COURT: All right. And you were a victim of what?

20          JUROR NO. 110: Of armed robbery.

21          THE COURT: Would that have any bearing upon your  
22 decision in this case?

23          JUROR NO. 110: Yes, sir. It does.

24          THE COURT: Okay. You don't think you could be fair  
25 to one side or the other under any circumstances?

## Jury qualification

1 JUROR NO. 110: No, sir.

2 THE COURT: All right. We'll excuse you from service  
3 in the case.

4 All right. Is there any member of the jury panel who  
5 is a member of or who contributes time or money to any type  
6 of organizations that might be characterized as law  
7 enforcement or victims' advocacy groups or law enforcement  
8 support organizations?

9 Those might include Mothers Against Drunk Drivers,  
10 Citizens Against Violent Crimes, the honorary sheriffs'  
11 association, the troopers' association, neighborhood watch  
12 or any similar type of organization. Do you belong to any  
13 or contribute time or money to any of those types of  
14 organizations? If so, please stand.

15 All right. And your name, please, sir.

16 JUROR NO. 10: No, 10, David Bettencourt. I  
17 contribute to both the sheriffs and the state troopers.

18 THE COURT: Would that have any bearing upon your  
19 decision?

20 JUROR NO. 10: No, Your Honor.

21 THE COURT: Thank you. Be seated.

22 Yes, ma'am.

23 JUROR NO. 83: Juror No. 83, Marilyn Foster. And I'm  
24 a member of the neighborhood association and contribute  
25 time to the Cleveland-Northside Association.

## Jury qualification

1 THE COURT: And would that have any bearing upon your  
2 decision?

3 JUROR NO. 83: It would not.

4 THE COURT: And your number was 83.

5 JUROR NO. 83: Eighty-three.

6 THE COURT: Okay. Thank you, ma'am.

7 Has anyone, any member of the jury panel, ever been  
8 involved in a criminal case that was handled by the  
9 7th Judicial Circuit Solicitor's Office and/or the  
10 7th Judicial Circuit Public Defender's Office where you  
11 were subpoenaed or asked to appear and testify in the case  
12 as a witness either for the state or for the defense?

13 Has anyone participated in a case that was handled by  
14 the solicitor's office or the public defender's office and  
15 you were called to testify for one side or the other? If  
16 so, please stand.

17 (No response.)

18 THE COURT: I told you basically what the case is  
19 about and who the parties are and the witnesses are and  
20 what the event is alleged to be.

21 Understanding those facts, is there any member of the  
22 jury panel that knows of any reason whatsoever why you  
23 could not be fair and impartial if you were called upon to  
24 serve as a juror in this particular case? If so, please  
25 stand.

## Jury qualification

1 Yes, ma'am. You are 106.

2 JUROR NO. 106: Yes, sir.

3 THE COURT: All right. And the reason that you would  
4 give today, is it the same that you gave yesterday?

5 JUROR NO. 106: Yes, sir.

6 THE COURT: All right. Juror 106 is excused from  
7 service in this particular case.

8 Anyone else?

9 (No response.)

10 THE COURT: Any other questions requested by the  
11 state?

12 MR. BULSA: No, Your Honor.

13 THE COURT: By the defendant?

14 MR. ALLEN: No, Your Honor.

15 THE COURT: All right. Draw us a jury, please, ma'am.

16 THE CLERK: 119, Brittany Miller.

17 What says the state?

18 MR. BULSA: Please excuse the juror in this case.

19 THE CLERK: No. 87, Jamie Houck.

20 What says the state?

21 MR. BULSA: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. ALLEN: Please seat Mr. Houck.

24 THE CLERK: No. 14, Jason Bradberry.

25 What says the state?

## Jury qualification

1 MR. BULSA: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. ALLEN: Please excuse Mr. Bradberry in this case.

4 THE CLERK: 138, Patricia Quiller.

5 What says the state?

6 MR. BULSA: Please excuse the juror in this case.

7 THE CLERK: Fifty-nine, David Foster.

8 What says the state?

9 MR. BULSA: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. ALLEN: Please excuse Mr. Foster in this case.

12 THE CLERK: Twenty-six, Toria Smith.

13 What says the state?

14 MR. BULSA: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. ALLEN: Please seat Ms. Smith in this case.

17 THE CLERK: Twenty-three, Jerry Burrell.

18 What says the state?

19 MR. BULSA: Please present the juror.

20 THE CLERK: What say the defense?

21 MR. ALLEN: Please seat Mr. Burrell.

22 THE CLERK: 103, Steffen Lehnert.

23 What says the state?

24 MR. BULSA: Please present the juror.

25 THE CLERK: What say the defense?

## Jury qualification

1 MR. ALLEN: Please seat Mr. Lehnert.  
2 THE CLERK: Seventeen, Shannon Brooks.  
3 What say the state?  
4 MR. BULSA: Please present the juror.  
5 THE CLERK: What say the defense?  
6 MR. ALLEN: Please excuse Ms. Brooks in this case.  
7 THE CLERK: No. 3, Robert Arvanites.  
8 What say the state?  
9 MR. BULSA: Please present the juror.  
10 THE CLERK: What say the defense?  
11 MR. ALLEN: Please seat Mr. Arvanites.  
12 THE CLERK: 140, Brenda Rice.  
13 What say the state?  
14 MR. BULSA: Please present the juror.  
15 THE CLERK: What say the defense?  
16 MR. ALLEN: Please seat Ms. Rice.  
17 THE CLERK: No. 30, Katrina Case.  
18 What say the state?  
19 MR. BULSA: Please excuse the juror in this case.  
20 THE CLERK: No. 19, Bradley Brunson.  
21 What say the state?  
22 MR. BULSA: Please present the juror.  
23 THE CLERK: What say the defense?  
24 MR. ALLEN: Please excuse Mr. Brunson in this case.  
25 THE CLERK: 157, Christi Stanton.

## Jury qualification

1           What say the state?

2           MR. BULSA: Please present the juror.

3           THE CLERK: What say the defense?

4           MR. ALLEN: Please excuse Ms. Stanton in this case.

5           THE CLERK: No. 12, Shirley Bogle.

6           What say the state?

7           MR. BULSA: Please present the juror.

8           THE CLERK: What say the defense?

9           MR. ALLEN: Please seat Ms. Bogle.

10          THE CLERK: No. 9, Craig Belanger.

11          What say the state?

12          MR. BULSA: Please present the juror.

13          THE CLERK: What say the defense?

14          MR. ALLEN: Please excuse Mr. Belanger.

15          THE CLERK: Forty-one, Bridget Davis.

16          What say the state?

17          MR. BULSA: Please present the juror.

18          THE CLERK: What say the defense?

19          MR. ALLEN: Please seat Ms. Davis.

20          THE CLERK: Thirteen, Michael Bond.

21          What say the state?

22          MR. BULSA: Please present the juror.

23          THE CLERK: What say the defense?

24          MR. ALLEN: Please excuse Mr. Bond.

25          THE CLERK: No. 5, Cecil Ballew.

## Jury qualification

1           What say the state?

2           MR. BULSA: Please present the juror.

3           THE CLERK: What say the defense?

4           MR. ALLEN: Please seat Mr. Ballew.

5           THE CLERK: Eighty-six, Jeffrey Hopkins.

6           What say the state?

7           MR. BULSA: Please present the juror.

8           THE CLERK: What say the defense?

9           MR. ALLEN: Please -- excuse me. Please seat

10          Mr. Hopkins.

11          THE CLERK: 102, Brittany Kirby.

12          What say the state?

13          MR. BULSA: Please excuse the juror in this case.

14          THE CLERK: Eighty-three, Marilyn Foster.

15          What say the state?

16          MR. BULSA: Please excuse the juror in this case.

17          THE CLERK: Seventy-six, Gisele Hastings.

18          What say the state?

19          MR. BULSA: Please present the juror.

20          THE CLERK: What say the defense?

21          MR. ALLEN: Please excuse Ms. Hastings in this case.

22          THE CLERK: 174, Thomas Veverka.

23          What say the state?

24          MR. BULSA: Please present the juror.

25          THE CLERK: What say the defense?

## Jury qualification

1 MR. ALLEN: Please seat Mr. Veverka.  
2 THE CLERK: Ninety-five, Melissa Johnson.  
3 What say the state?  
4 MR. BULSA: Please present the juror.  
5 THE CLERK: What say the defense?  
6 MR. ALLEN: Please excuse Ms. Johnson.  
7 THE CLERK: Eighteen, William Bruce.  
8 What say the state?  
9 MR. BULSA: Please present the juror.  
10 THE CLERK: What say the defense?  
11 MR. ALLEN: Please seat Mr. Bruce.  
12 THE COURT: This will be for the alternate.  
13 THE CLERK: 149, Anthony Smith.  
14 What say the state?  
15 MR. BULSA: Please present the juror.  
16 THE CLERK: What say the defense?  
17 MR. ALLEN: Please excuse Mr. Smith in this case.  
18 THE CLERK: Ninety-three, Henry Jarboe.  
19 What say the state?  
20 MR. BULSA: Please present the juror.  
21 THE CLERK: What say the defense?  
22 MR. ALLEN: Please excuse Mr. Jarboe.  
23 THE CLERK: 122, Charlotte Morgan.  
24 What say the state?  
25 MR. BULSA: Please present the juror.

## Jury qualification

1 THE CLERK: What say the defense?

2 MR. ALLEN: Please seat Ms. Morgan.

3 THE COURT: All right. Those who have been selected,  
4 I'll ask you to please go with a bailiff to a jury room.  
5 And I will bring you back in just a few minutes to excuse  
6 you for lunch.

7 (The following takes place outside the presence of the  
8 jury.)

9 THE COURT: Are there any matters to be addressed  
10 regarding jury selection by the state?

11 MR. BULSA: No, Your Honor.

12 THE COURT: By the defendant?

13 MR. ALLEN: No, Your Honor.

14 (Whereupon, the remaining members of the jury venire  
15 were excused.)

16 THE COURT: All right. Bring this jury back, please.

17 (The following takes place in the presence of the  
18 jury.)

19 THE COURT: We're going to break for lunch now, so  
20 we'll be excusing you.

21 Let me caution you as you leave at no time are you  
22 permitted to discuss this case in any fashion whatsoever  
23 with any person whatsoever. That includes your fellow  
24 jurors and anyone else.

25 You can only discuss the case when you're involved in

Jury qualification

1 jury deliberations, and that won't be until the trial's  
2 conclusion. So during the lunch recess do not discuss this  
3 case in any fashion whatsoever with any person whatsoever.

4 Also, you're not permitted to ever conduct your own  
5 research or do your own investigation into any issue that  
6 might arise during the trial or attempt to find out any  
7 information about this case.

8 You have to base your decision in any case on the  
9 evidence and the testimony that's received during the  
10 trial. You're not permitted to be influenced by any  
11 outside consideration.

12 So during the trial no discussions, no research, no  
13 investigation. And I mean nothing, from whether it be  
14 newspaper, radio, television, internet. No research nor  
15 investigation at all, and no discussions.

16 Do have a good lunch, and please report to your jury  
17 room at 2:30, at 2:30 this afternoon. Have a good lunch.

18 (The following takes place outside the presence of the  
19 jury.)

20 THE COURT: All right. Hull-Kilgore is recessed until  
21 2:30 this afternoon.

22 (Whereupon, a recess was taken.)

23 THE COURT: Are there any matters we need to address  
24 before the jury is brought in?

25 MR. BULSA: No, Your Honor.

1 MR. ALLEN: No, Your Honor.

2 THE COURT: All right. I know we've got the courtroom  
3 full of spectators and people that might be interested in  
4 this case, and that's fine. I'll be happy for you to stay  
5 and observe.

6 However, there will be no disruptions in this  
7 courtroom. If you can't control yourself, you think you've  
8 got to carry on a conversation or you've got to react to a  
9 witness' testimony, you need to take it outside, because if  
10 you don't comply with the requirements of this courtroom  
11 you will be arrested and taken to jail yourself. So if  
12 anybody thinks they can't control themselves, I suggest you  
13 leave now.

14 All right. Bring the jury in. Ask Mr. Arvanites --  
15 and I am not sure that's how he pronounces it. You can ask  
16 him. But it's Juror No. 3. I think it's Arvanites.

17 And there also will not be a lot of coming and going.  
18 When you come in, you stay until we recess, and then you  
19 can leave. We're not going to just keep opening and  
20 closing that door. It's not a revolving door.

21 (The following takes place in the presence of the  
22 jury.)

23 THE COURT: Sir, is your name pronounced Arvanites?

24 THE FOREMAN: It is Arvanites.

25 THE COURT: Arvanites.

1 THE FOREMAN: Yes, sir.

2 THE COURT: Okay. Mr. Arvanites, I'm going to ask you  
3 to serve as the foreperson of this jury. And as the  
4 foreperson you'll have three specific duties that none of  
5 the other jurors will have.

6 No. 1, you'll be asked to serve as the spokesperson  
7 for the jury. And so if during the trial something arises  
8 that needs to be brought to my attention, you or a fellow  
9 juror has some difficulty or problem or question, if you'll  
10 let the bailiff know, he will let me know, and I'll address  
11 that issue or answer that question.

12 Secondly, you'll be called upon to preside over jury  
13 deliberations when the time comes. That of course will not  
14 be until the end of the trial after all of the evidence has  
15 been received and I have instructed you on the law that's  
16 applicable in this case. But when the time does come for  
17 jury deliberations you will preside over that process in  
18 the jury room simply to ensure that those deliberations are  
19 carried out in some orderly fashion.

20 And, thirdly, you'll actually write the verdict or the  
21 decision of the jury. You'll do that a verdict form that  
22 I'll provide you at the trial's conclusion on which you  
23 will indicate the jury's unanimous decision.

24 Now, the foreperson has those specific duties that  
25 I've just indicated. That does not however mean that he is

1 any more important than any of you other jurors, because  
2 the decision of a jury is the unanimous consensus opinion  
3 of all 12 jurors. And so each of you will have an equal  
4 say and an equal vote in what the ultimate decision will be  
5 in this case.

6       Someone simply has to be delegated those  
7 responsibilities that I have just indicated, and I have  
8 delegated those to Mr. Arvanites in appointing him as the  
9 foreperson.

10       But each of you jurors are equally important so far as  
11 the decision is concerned, because, as I've stated, the  
12 verdict has to be unanimous. All 12 of you must be in  
13 agreement.

14       Now, Ms. Morgan, you've been selected as an alternate  
15 juror. And the function of an alternate juror is to take  
16 the place of one of the original 12 if during the trial one  
17 of these original 12 cannot continue to serve for some  
18 reason.

19       And if one of the original 12 is called away because  
20 of an illness or an emergency or some other reason that  
21 precludes them from continuing, then you would be called  
22 upon to take that person's place. In that event you become  
23 the 12th juror. And in that event you would participate  
24 throughout the trial including the jury deliberations.

25       If when the time comes for jury deliberations the

Jury sworn

1 original 12 are able to participate, then your service  
2 ends, and you would not participate any further because the  
3 decision of a jury is that of 12, and no more than 12 can  
4 participate in that deliberation process.

5 But it is important that you pay just as careful  
6 attention as we ask of all of the jurors in the case  
7 because it does occur from time to time for one reason or  
8 another one of the original 12 may be unable to continue.  
9 In that event you become the 12th.

10 So we do appreciate your participation as an  
11 alternate, just as we appreciate the participation of each  
12 of you jurors who have been selected for the purpose of  
13 deciding the verdict in this particular case.

14 You may swear the panel.

15 (Whereupon, the jury was duly sworn.)

16 THE COURT: All right. Ladies and gentlemen, as you  
17 know, you have been selected to decide the verdict in the  
18 case of the State vs. J'Corey Suave Hull-Kilgore.

19 As you are aware, he has been accused by the  
20 prosecutor of having committed the crime of murder.

21 They allege by way of the indictment which I explained  
22 to you and read from prior to your selection that the  
23 defendant did here in Spartanburg County on or about May  
24 the 24th of 2008 wilfully and with malice aforethought kill  
25 one Courtney Ralpheal Rogers by shooting him with a handgun

1 and that he died as a proximate result of that gunshot  
2 wound.

3       As you also know, as to that charge contained in the  
4 indictment the defendant has entered a plea of not guilty.  
5 And a plea of not guilty places upon the state the burden  
6 of proving the allegations that they have set forth in that  
7 indictment, the burden of proving each of the essential  
8 elements of the crimes they allege the defendant has  
9 committed; and therefore the burden is upon the state to  
10 establish the defendant's guilt to the satisfaction of you  
11 12 jurors beyond a reasonable doubt before any verdict of  
12 guilty could be returned.

13       Every person accused of a crime, and it does not  
14 matter how serious the offense might be -- every person  
15 accused of a crime is always presumed to be innocent of  
16 that charge.

17       That presumption of innocence remains with any  
18 defendant, as it does with this defendant, from the time  
19 that he is placed under arrest and throughout the course of  
20 the criminal process and even throughout the course of the  
21 actual trial in the case that is now beginning.

22       That presumption of innocence will be with  
23 Mr. Hull-Kilgore even when you go back into your jury room  
24 to begin with your deliberations in this case at the  
25 trial's conclusion. And it'll be with him in that jury

1 room, and it'll be with him forever unless you 12 jurors  
2 determine that he's no longer entitled to that presumption  
3 of innocence.

4 In other words, after you've carefully considered the  
5 evidence, and from that evidence you determine what you  
6 believe to be the true facts as they relate to these  
7 allegations, and upon deciding those facts you apply the  
8 law that I will have provided you, if you 12 jurors  
9 unanimously determine that his guilt has been proven beyond  
10 a reasonable doubt, then he would no longer be entitled to  
11 that presumption of innocence. But it's only if, unless  
12 and until you are satisfied of his guilt beyond a  
13 reasonable doubt that the presumption of innocence would no  
14 longer be applicable.

15 Now, the way the trial will proceed is that in a  
16 moment the lawyers are going to address you in what are  
17 called opening statements.

18 There are two occasions in the trial of a case where  
19 lawyers can address the jury, and that is at the beginning  
20 of the trial before any evidence is introduced and then  
21 again at the conclusion of the trial after all of the  
22 evidence has been received.

23 Keep in mind however that the evidence upon which you  
24 will base your decision comes in between the opening and  
25 the closing statements of the lawyers. And therefore what

1 the lawyers tell you in those statements is not to be  
2 considered by you as any evidence upon which you will base  
3 a decision, and that's because the lawyers aren't witnesses  
4 to anything.

5       They're not going to be telling you anything they know  
6 about this case of their own personal knowledge or  
7 perception like witnesses will be. They're not going to be  
8 taking the witness stand and testifying under oath and be  
9 subjected to direct and cross-examination like each witness  
10 will be. And so what they tell you is not to be considered  
11 by you as evidence. You should listen however to what they  
12 say because those statements do serve a purpose.

13       The opening statements will serve to provide you with  
14 a basic understanding as to what this case is about from  
15 both the perspective of the state and the defense so that  
16 you'll have some context in which to place the evidence  
17 that we will be receiving shortly thereafter.

18       The closing statements occur after all of the evidence  
19 has been received. And, again, as I've stated, while those  
20 statements are not evidence it does permit the lawyers an  
21 opportunity to discuss with you the evidence that has been  
22 seen and heard during the trial. And through that  
23 discussion each will have an opportunity to try to persuade  
24 you or to convince you that that evidence does or does not  
25 support a particular decision.

1           The state will go forward first in its presentation of  
2 evidence. Once they have concluded a defendant has the  
3 same opportunity to testify and to present evidence if he  
4 or she wished to do so, but a defendant in a criminal trial  
5 is never under any obligation to testify or present  
6 evidence.

7           And in a case where a defendant does not testify or  
8 call witnesses, that's not something that the jury can  
9 consider in any way whatsoever in your deliberations or in  
10 your determination as to whether or not his guilt has been  
11 proven beyond a reasonable doubt. And that's because, as  
12 I've stated, the burden is on the state to prove that the  
13 defendant is guilty.

14           The burden is never upon a person charged with a crime  
15 to prove that they are not guilty or to prove that they are  
16 innocent because in some cases that might not even be  
17 possible.

18           So while a defendant does not have to testify or call  
19 any witnesses, he is afforded such an opportunity should he  
20 or she wish to do so.

21           After all of the evidence has been received and after  
22 you've heard from the lawyers in their final summations, I  
23 will then instruct you fully on the law as it relates to  
24 the criminal law in general and as it relates to this  
25 particular crime specifically, after which you'll be asked

1 to go back and begin with your deliberations.

2 Through that process you'll examine all of the  
3 evidence, you'll exercise good judgment and common sense in  
4 determining what you believe to be the true facts.

5 Upon deciding the facts you'll apply the law that I  
6 will have provided you, and you will determine whether or  
7 not the defendant's guilt has been proven beyond a  
8 reasonable doubt. If it has, then your verdict is guilty.  
9 If it has not, then your verdict is not guilty.

10 All that we ask for you to do is to pay careful  
11 attention throughout the course of the trial from the  
12 beginning until the end.

13 I expect there will be a number of witnesses that are  
14 going to testify. It's quite natural that average people  
15 have a tendency to pay more close attention to the first  
16 thing that they see or hear, or perhaps the last thing you  
17 see or hear. And sometimes you kind of lose interest in  
18 the middle somewhere. Everybody does that.

19 But you today have been selected for a very special  
20 purpose, and you can't do what you might ordinarily do if  
21 you're just relaxing on the back porch.

22 You have to pay careful attention, because whether it  
23 be the first witness or a last witness or some witnesses in  
24 between, you never know what is going to be the most  
25 important testimony or fact to be established.

1           You'll make that determination, but it may come at any  
2 point during the course of the trial. So that's why you  
3 have to be certain that you pay careful attention  
4 throughout the trial from the beginning until the end.

5           Also, there might be a number of witnesses that  
6 testify. And you have the prerogative to assess witness  
7 credibility. In other words, you've got a right to accept  
8 a witness' testimony as being truthful and accurate or  
9 believable or reject it as not being accurate, not being  
10 believable.

11           But the only way you can fairly evaluate a witness'  
12 testimony is by carefully listening to all of the witnesses  
13 so that when you do go back and you do begin your  
14 deliberations and discussions about the case you'll be in a  
15 proper position to be able to fairly evaluate a witness'  
16 testimony in light of not just that witness' testimony but  
17 in light of all of the testimony and all of the evidence in  
18 the case. So pay careful attention throughout the course  
19 of the trial.

20           And of course it will also important that you keep an  
21 open mind throughout the course of the trial. And that  
22 just means that you're not to begin making up your minds or  
23 formulating your opinions as to what you think the ultimate  
24 decision in this case ought to be until all of the evidence  
25 has been received, until I have instructed you on the law

## Opening statements

1 that's applicable in this case and until you've been asked  
2 to go back and begin with your deliberations. That is the  
3 process that is designed for you 12 jurors to arrive at a  
4 fair and just decision.

5 So I do want to thank you in advance for your careful  
6 attention. I'll ask that you please give the lawyers your  
7 attention now as they give you their opening statements.

8 Mr. Bulsa.

9 MR. BULSA: Thank you, Your Honor.

10 Good afternoon, ladies and gentlemen.

11 On May the 24th of 2008 Courtney Rogers lost his life.  
12 That was just 12 days after his 19th birthday.

13 He had stopped at a house on East Columbia Avenue on  
14 the south side of Spartanburg in the city limits of  
15 Spartanburg. He'd seen some people he knew out in the yard  
16 and made a tragic decision that night because he stopped.

17 This case is about who shot him. He was found after  
18 he himself called 9-1-1 about a block away from that  
19 location.

20 The police responded based upon his 9-1-1 call and  
21 found him and found a friend there tending to him and had  
22 to do some investigation just to find out where the  
23 incident actually occurred.

24 The police found out that it was at East Columbia  
25 Avenue and went to the house, and it was all the people

## Opening statements

1 that had been there basically left except the people who  
2 lived there.

3 Sandra Dandy stayed there with a couple of her  
4 daughters. She had a boyfriend that stayed over there  
5 sometimes. Ms. Dandy was there with her boyfriend when the  
6 police arrived.

7 The police began to investigate the crime scene, began  
8 to identify who was at the scene and had fled. And they  
9 started getting these people in and questioning them.

10 You're going to hear from a number of witnesses,  
11 ladies and gentlemen. And I'm going to tell you up front  
12 some of these witnesses are in jail. They've got criminal  
13 records. They're going to come in here in orange, orange  
14 jumpsuits. But I ask that you listen to them, judge their  
15 credibility based on what they know.

16 This case is about who shot Courtney Rogers. These  
17 witnesses all have different perspectives, different  
18 vantage points and different reasons for testifying. Some  
19 of them wouldn't cooperate with the police initially.

20 The state doesn't choose its witnesses, but we have to  
21 seek justice. The case is about justice for Courtney's  
22 family who are seated behind me. Y'all saw them when they  
23 stood up. This case is about justice and who shot  
24 Courtney.

25 What you're going to hear from all of the witnesses is

## Opening statements

1 a consistent story that the defendant is the one who had  
2 the gun and the defendant is the one that shot Courtney  
3 Rogers. And just like everybody else that fled that  
4 residence, he fled as well.

5 So I ask that you pay close attention and listen to  
6 the facts from each witness. You're going to have direct  
7 eyewitness testimony from these witnesses. You're going to  
8 have some circumstantial and scientific evidence connecting  
9 the murder weapon to the crime scene and connecting the  
10 victim's blood to the crime scene.

11 So you have both types of evidence. You have to weigh  
12 that at the conclusion after the judge gives you the  
13 charge.

14 This is a very important trial. I thank you for your  
15 attention.

16 THE COURT: Mr. Allen.

17 MR. ALLEN: Thank you, Your Honor.

18 The testimony you're about to hear in this case, the  
19 state's case against Corey Hull-Kilgore, will not as you  
20 listen to it be that consistent.

21 Ladies and gentlemen, the testimony I expect you to  
22 hear in this case will indicate that a number of young men  
23 and women were at Ms. Dandy's house on East Columbia  
24 Avenue, the south part of Spartanburg just off South Church  
25 Street.

## Opening statements

1           Testimony you're about to hear will also indicate that  
2 at some point during the day Corey -- he's the defendant.  
3 His official name is J'Corey, but he goes by Corey -- was  
4 there, as was his brother James.

5           But you'll also hear some testimony during the course  
6 of this trial to indicate that Corey left and went home.  
7 And I suspect that you'll hear some testimony indicating  
8 that Corey left before Courtney Rogers arrived.

9           Ladies and gentlemen, the testimony you will hear as  
10 alluded to by the solicitor will indicate that a variety of  
11 these witnesses that they will be calling to the stand did  
12 not say anything or did not indicate that they knew  
13 anything about this case at the very beginning.

14           And later on as the investigation -- as they  
15 investigated it and questioned them even further, you will  
16 hear testimony they began to change their stories. And I  
17 suspect that you may even hear some testimony that will be  
18 different from what they ultimately told the police when  
19 you listen to them today.

20           But, ladies and gentlemen, there is one important fact  
21 that I want everyone to understand. Corey Hull-Kilgore is  
22 presumed innocent.

23           One way to look at this -- I know the judge has  
24 explained this to you or talked to you about it -- but one  
25 way to look at this and the way I ask you to look at it is

## Opening statements

1 that after I finish talking today in my opening  
2 statement -- this won't happen by the way, but this is  
3 going to give you the frame of reference -- if you were  
4 asked to go out and decide based on what the solicitor and  
5 I said happened, there's only one verdict to return, and  
6 that's a verdict of not guilty, and that's because Corey is  
7 presumed be innocent, and you haven't heard any evidence  
8 indicating anything different. And that's how I ask you to  
9 start.

10 The state has the burden of proof to prove their  
11 claim, their charge, against Corey beyond a reasonable  
12 doubt.

13 While I suspect that during the course of this trial  
14 you will hear a number of witnesses indicate or say that  
15 Corey did it, I'll be asking you as we go through this  
16 trial to think about and consider their credibility, what  
17 they told the officers earlier, what they're saying now and  
18 how their story changed.

19 One thing you will not hear during the course of this  
20 trial is that you will not hear any scientific evidence  
21 that will link Corey to this crime.

22 While you may hear some scientific evidence about the  
23 blood sample, you may hear some evidence about the gun and  
24 about a cartridge that was found, none of this evidence is  
25 going to indicate to you one way or the other about what

Dr. John David Wren  
Direct examination by Mr. Bulsa

1 Corey did or did not do, which brings me back to my first  
2 point which is the credibility of these various witnesses  
3 who claim to have seen it. It's very important and it's  
4 key to this case.

5 Ladies and gentlemen, as the judge has indicated,  
6 Corey and I do not need to prove his innocence. We start  
7 from that presumption. And as the judge said, that  
8 presumption does not leave him unless and until the state  
9 can convince you all unanimously of his guilt.

10 So I'm going to ask you to listen carefully to this  
11 case. And at the conclusion of this case I will come back  
12 before you and explain to you why Corey is still innocent,  
13 why Corey is not guilty and why there is plenty of  
14 reasonable doubt in this case. Thank you.

15 MR. BULSA: The state calls Dr. David Wren.

16 DR. JOHN DAVID WREN, having  
17 been first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. BULSA

19 Q Good afternoon, Doctor.

20 A Hello.

21 Q Would you please introduce yourself to the jury?

22 A My name is John David Wren.

23 Q What is your profession?

24 A I'm a physician specializing in pathology.

25 Q How long have you been a pathologist?

Dr. John David Wren  
Direct examination by Mr. Bulsa

1 A I started my residency training February the 1st,  
2 1982.

3 Q You've testified in multiple trials.

4 A Yes.

5 Q As an expert in forensic pathology?

6 A Yes, all over the state.

7 MR. BULSA: Your Honor, I would offer Dr. Wren as an  
8 expert in forensic pathology.

9 MR. ALLEN: Stipulate to that expertise.

10 THE COURT: He is so qualified.

11 Q And one of your duties as a pathologist is to conduct  
12 autopsies for law enforcement?

13 A Yes, sir.

14 Q And in this case did you conduct an autopsy upon  
15 Courtney Rogers?

16 A Yes, I did. I did the autopsy on May the 25th of 2008  
17 beginning at 10:00 a.m. in the Spartanburg Regional Medical  
18 Center Autopsy Room.

19 Q When you conduct an autopsy what are you looking for?

20 A We look for -- it's a medical-legal autopsy. And we  
21 not only look for medical problems, and-but we also look  
22 for trace evidence. And in it we try to correlate the  
23 history with what we found.

24 Q Do you take a sample of the victim's blood for  
25 preservation and use for further testing?

Dr. John David Wren  
Direct examination by Mr. Bulsa

1 A Yes, I do. At the start of the autopsy, and sometimes  
2 even before depending how long it will be before the  
3 autopsy is performed, we get blood for toxicology, as well  
4 as other legal studies.

5 Q And is that turned over to the coroner's investigator?

6 A We usually take three tubes of blood. It's  
7 anticoagulated blood, meaning that it has a fixative in  
8 there that keeps the blood from clotting. And we lock it  
9 in a refrigerator in the morgue until a coroner's  
10 representative checks it out and either takes it to SLED or  
11 sends it to the national medical services for toxicology.

12 Q Are those just placed in test tubes?

13 A Yes. Or they're blood tubes.

14 Q Blood tubes?

15 A Vacuum-sealed containers.

16 Q All right. And that would have been done in this  
17 case.

18 A Yes.

19 Q And then once you began examining Mr. Roger's body did  
20 you find any gunshot wounds?

21 A Yes. He had an entrance gunshot wound in the lower  
22 portion of his left neck just above the collarbone. And he  
23 had an exit in his right -- left back.

24 Q Was he dressed when he came to your --

25 A Pardon?

Dr. John David Wren  
Direct examination by Mr. Bulsa

1 Q To your office -- was the victim dressed?

2 A Yes. Well, actually, no, he wasn't dressed. He had  
3 been brought to the emergency room after he had collapsed,  
4 and resuscitation attempts were made, including opening the  
5 chest up to see if they -- what kind of injuries he might  
6 have had, to see if they could stop those injuries from  
7 bleeding.

8 Q Okay. So they actually tried to save his life.

9 A Yes.

10 Q Unsuccessful. Were the clothes sent with his body to  
11 your office?

12 A No.

13 Q The bullet wound that you described, do you have an  
14 opinion as to how close --

15 A It was relatively close because gunshot wounds are,  
16 are classified three basic ways.

17 One is distant, meaning that the gun -- the barrel of  
18 the gun or the weapon is so far away from the individual  
19 that the only thing that one sees is the projectile hole.

20 Then the second classification is contact, meaning  
21 that the barrel is up against the body. And it can either  
22 be loose contact, meaning that it wasn't pressed into the  
23 skin but it was up against the skin, and tight contact.

24 Now, we see things at the autopsy that we can tell  
25 whether it was loose or tight contact.

Dr. John David Wren  
Direct examination by Mr. Bulsa

1           And then in between those two for a short distance,  
2 depending on the weapon itself, as a weapon is discharged  
3 burning powder, as well as soot, will exit the barrel  
4 behind the projectile. And it will deposit on any object  
5 that's in the way for the distance that it will travel.  
6 And handguns -- it usually will not travel more than ten  
7 inches.

8           So those wounds that we can see either on clothing or  
9 on the body itself, that we can see either burning powder  
10 that has hit the skin -- and called little abrasions --  
11 that's called tattooing -- or if we see soot where the, the  
12 smoke that comes out has actually deposited on the skin,  
13 it's called soot deposition. If we see either one of those  
14 we call it intermediate gunshot con -- intermediate gunshot  
15 wound.

16           Now, the only way one can tell exactly how far it is  
17 is to take the weapon with the same type of ammunition and  
18 fire it at a target. And that's done usually at SLED by a  
19 ballistics expert.

20           And they will come -- start it, contact, and then back  
21 up until no powder or soot, no burning powder or soot, is  
22 deposited on a light-colored object that they use to fire  
23 against. And once that distance is reached if you -- one  
24 can't tell how far it was away.

25           Now, in this case his entrance gunshot wound was in

Dr. John David Wren  
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1 his neck, and that's not a flat object. So it will have  
2 two dimensions. It'll have one dimension that's more flat.  
3 And one that's where the skin is curved will be a narrower  
4 distance.

5 In this case the deposition was powder stifling. And  
6 it measured one-and-a-quarter inch by one inch in overall  
7 dimensions. And it was mostly superior, meaning toward the  
8 head, from the wound, so that, not only that, but the fact  
9 that the projectile came out lower indicated that the  
10 weapon was higher than, than where it went in when it was  
11 discharged.

12 So the best measurement in this case is one inch. So  
13 if that gun with projectile had been fired and you could  
14 see where you could see powder stifling at one inch, that  
15 was probably the distance the barrel was from the  
16 individual when it was fired, assuming nothing else was in  
17 the way.

18 Q Yes, sir. In your expert opinion -- standing --  
19 testing yourself -- expert opinion as to how close it might  
20 have been to leave some sort of powder stifling?

21 A I would say it was definitely within 3 inches, but I  
22 can't tell you any further.

23 Q Yes, sir.

24 A Usually a handgun will not -- I think I said it, but  
25 will not project powder and soot more than a maximum of 10

Dr. John David Wren  
Direct examination by Mr. Bulsa

1 inches. And depending on the weapon itself, it may be  
2 less. For instance, a .22 caliber gunshot will not project  
3 over 3 or 4 inches probably.

4 Q Okay. A person holding a gun, the gun would have been  
5 within 3 inches of the body.

6 A Yes.

7 Q Okay. Now, based on the angle and the path of the  
8 bullet that you described, what does that suggest about the  
9 position of the victim towards the gun?

10 A Well, since we can move about and we're not stationary  
11 objects, all it means is that the projectile, it went into  
12 the body. And it was traveling from superior to inferior  
13 in the body as it went through the body. And it hit the  
14 first rib anteriorly, and it hit the 9th rib as it was  
15 leaving the body. And so I estimated that to be a  
16 70-degree angle from the vertical. In other words, it was  
17 traveling 70 degrees to the horizontal downward.

18 And it entered two and a half inches to the left of  
19 midline and it exited two and a half inches to the left of  
20 midline.

21 So the bullet was traveling in what we call the  
22 sagittal plane, which is an imaginary plane that runs  
23 through the body perpendicular to the, to the, to the body  
24 itself. And it was traveling downward at the 70-degree  
25 angle. And it passed through the lungs as it went through

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Direct examination by Mr. Bulsa

1 and hit the -- both ribs, one anteriorly as it went in and  
2 one posteriorly as it left.

3 Q So based on that extreme angle does that suggest the  
4 victim was most likely bent over in some fashion?

5 A Well, he could have been bent over. He could have  
6 been lying. Any position that you can take the barrel of  
7 the gun and put it in essentially like this, and he would  
8 be in that position, the other person would have had to  
9 have been, you know, behind the gun, the person that fired  
10 the gun.

11 Q Okay. So in order to get that sort of an angle  
12 somebody could have been pointing the gun at a downward  
13 angle.

14 A Yes. He could have been sitting; he could have been  
15 leaned over. He could actually have been lying on the  
16 ground if the, if the person walked up to him and, and got  
17 down close to him. So I can't say any more than that based  
18 on what I see.

19 Q Right. And you of course didn't go to the crime  
20 scene.

21 A No.

22 Q So you don't know about where, where the shooting  
23 occurred.

24 A No.

25 Q Now, you described the bullet striking two bones as it

Dr. John David Wren  
Direct examination by Mr. Bulsa

1 passed through the body.

2 A Yes.

3 Q We've talked all around it, but this was a  
4 through-and-through wound.

5 A Yes.

6 Q In the front and out the back.

7 A Yes. It went in, as I said, in the lower part of the  
8 neck just above the collarbone, and it came out the back in  
9 the same distance to the left of midline as it went in  
10 essentially. And so it was traveling down through the body  
11 and went through both lobes of the left lung and passed  
12 through arteries that were in the -- that travel out  
13 through the -- over the top of each rib. And it hit one of  
14 the branches of the pulmonary artery, to the left, I mean,  
15 to the left lung. So he had arterial bleeding in three  
16 places.

17 Q Were there any traces of the bullet, fragments?

18 A No.

19 Q What likely happened in your expert opinion to the  
20 bullets as it passed through and struck those bones?

21 A Well, it could have -- it would've probably been  
22 distorted as it hit these, his ribs. They often do. Not  
23 always, but they usually do. And some pieces could have,  
24 could have been thrown off or fell off depending on the  
25 type of weapon -- of bullet it was.

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Direct examination by Mr. Bulsa

1           And if we take x-rays we can see sometimes little  
2 pieces of metal, but they're usually so small we can't find  
3 them. It has to be about half as big as a .22 caliber  
4 bullet.

5           It's not including the cartridge but the bullet  
6 itself. It has to be at least that half before we can find  
7 them, because it really depends on where they are, but  
8 usually it has to be about that size.

9   Q       But based on your examination of the wound can you  
10 give an expert opinion as to the likely caliber of weapon?

11   A       I measured the, the defect as .39 inches in diameter,  
12 the one it went into, into his neck.

13           Now, the exit would be different, because as a bullet  
14 passes into the body it bores out a hole usually. And  
15 depending on whether it's going straight in or at an angle,  
16 that bullet hole will be circular or it can be oval,  
17 assuming it's not a contact wound.

18           Now, if it's a contact wound it will sort of tear the  
19 skin out so it will look like a star shape. But we can  
20 usually approximate it back.

21           But as it comes out it tints the skin up and it just  
22 tears its way through. It doesn't bore through the skin.  
23 So depending on how fast it's going as it's leaving and how  
24 much distortion it has will determine the size of the hole.

25           But in this case it was 39 one-hundredths of an inch

Dr. John David Wren  
Direct examination by Mr. Bulsa

1 in diameter. And then one has to take into effect, into  
2 consideration whether the skin was tight where it was --  
3 when it came in or whether it was loose when it entered the  
4 body and the fact of whether it was tight or loose when we  
5 examined it also, because, generally speaking, rule of  
6 thumb is the hole that's measured in the body will be plus  
7 or minus 25 percent of the diameter of the bullet.

8 In other words, this bullet was 39 one-hundredths of  
9 an inch in diameter -- the hole was. So if you subtract a  
10 fourth of 39 which is 9 point -- nine and three quarters --  
11 if you subtract that from 39 it would be about 30. Or if  
12 you add nine to it it will be 48.

13 So the caliber would be somewhere between 30  
14 one-hundredths of an inch in diameter and 48  
15 one-hundredths. So we call that medium to large caliber.

16 It could be a 35. It possibly could be a .32. But it  
17 was more likely a 35, a 9 mm or a .38 or even possibly a  
18 .40 caliber, although we don't have very many of those, and  
19 possibly a .44 or .45, but most likely it was a 9 mm or a  
20 .38.

21 Q Where does a .380 caliber fit into those?

22 A Pardon?

23 Q Where does a .380 caliber fit into those?

24 A That's a .38.

25 Q Would be the same as a .38.

Dr. John David Wren  
Cross-examination by Mr. Allen

1 A Yes.

2 Q Okay. All right. And, finally, Dr. Wren, would you  
3 give us your expert opinion as to the cause of death of  
4 Courtney Rogers?

5 A Well, I assigned the cause of death as exsanguination  
6 because with those three arteries bleeding, he bled  
7 considerably. And I couldn't tell how much blood was lost,  
8 because it's usually, it's just estimated oftentimes in --  
9 during resuscitation. But he definitely had ischemia of  
10 the other organs, meaning that, that he lost a lot of  
11 blood. So I gave the opinion as the cause of death as  
12 exsanguination, which is bled to death secondary to an  
13 intermediate gunshot wound to the neck.

14 Q Thank you, Dr. Wren. Answer any questions Mr. Allen  
15 may have.

16 CROSS-EXAMINATION

17 BY MR. ALLEN

18 Q Doctor, as I understand you're -- when you're talking  
19 about tests that could be conducted by SLED on a weapon,  
20 you're talking about how the ticket -- the suspected  
21 handgun and use the same type of ammunition as suspected  
22 that was used.

23 A Yes, sir.

24 Q And then sort of got an idea of how far the gun was  
25 from the -- in this case.

Dr. John David Wren  
Cross-examination by Mr. Allen

1 A Victim, yes, sir.

2 Q Victim's body, correct?

3 A Yes, sir.

4 Q And that's actually tested and backed it up with a --  
5 got some similar powder stifling that you saw, correct?

6 A That's correct.

7 Q Okay. And then of course you don't typically do that,  
8 is that correct?

9 A No. I'm not a ballistics expert.

10 Q Not a ballistics expert. And the estimates that you  
11 were giving are just your general estimates without having  
12 tested this gun or any particular gun, correct?

13 A Right.

14 Q Okay. When we talked about or the solicitor was  
15 talking about the position of Mr. Rogers at the time the  
16 bullet entered, I gathered from your testimony you really  
17 couldn't tell how he was positioned at the time the bullet  
18 entered, correct?

19 A No. As I indicated, I can only tell the relative  
20 positions of the two, of the assailant and the victim.  
21 That's all I can tell.

22 Q That's right. When you talk about downward you're  
23 talking about assuming the body is standing straight.  
24 You're talking about the relative position to the body, is  
25 that correct?

Dr. John David Wren  
Cross-examination by Mr. Allen

1 A Basically, superior to inferior in the body. Or if  
2 you want to be medically inclined, it's cephalad to caudad.  
3 That means head to tail.

4 Q Probably won't be medically inclined.

5 But, nonetheless, if an individual or if Mr. Rogers  
6 were leaning over at the time of the shot, say reaching for  
7 a lower pocket or something to that effect, that could have  
8 caused the type of wound that you saw, correct?

9 A Yes, it could have, yes.

10 Q Okay. Of course you couldn't tell what Mr. Rogers was  
11 actually doing at the time the bullet entered, correct?

12 A No, no. I can't tell that. I can only tell that the  
13 person was extremely close to him.

14 Q Okay. You mentioned that sometimes you do x-rays to  
15 see if there's any fragments or particles of the bullet  
16 left in the body.

17 A Yes.

18 Q Was that done in this case?

19 A I don't know. But the hospital charges quite a bit to  
20 do an x-ray. And if in my mind that I am sure that the  
21 bullet left the body, then sometimes I don't do it. The  
22 coroner can tell you whether they have x-rays done. I  
23 don't make a note of it usually.

24 Q Okay.

25 A So I can't say whether they did or not. All I know is

Dr. John David Wren  
Cross-examination by Mr. Allen

1 that unless both bullets went in the same hole and came out  
2 the same hole, then he wasn't shot but once, I mean, if you  
3 want to assume he was shot more than once.

4 Q Okay. Now, let's talk about that a little bit.

5 From what you can tell it was just one gunshot wound,  
6 correct?

7 A Yeah, yes, that's correct.

8 Q How likely is it that more than one bullet will go in  
9 the same hole?

10 A It's very unlikely. It has happened. There have been  
11 indications actually in previous cases where a person was  
12 shot twice and one bullet hit the other one as they were  
13 going through the body by two different people.

14 Q But you saw nothing of that in this case.

15 A No.

16 Q Now, you also indicated that because of the way the  
17 bullet traveled and hit the ribs that it was, you say,  
18 defect or defective when it came out.

19 A Pardon?

20 Q That it was --

21 A I can't without seeing the bullet, I can't tell you  
22 whether it was, whether it was distorted or not.

23 Q Okay.

24 A Some copperjacketed bullets that are traveling real  
25 fast will not distort much. If they're hollow points, they

Freddie Thompson  
Direct examination by Mr. Bulsa

1 will distort considerably and the holes will be a lot  
2 bigger as it goes through the body. So I can't tell you  
3 anything except that it possibly could have been distorted.

4 Q Okay. And if it were distorted, I mean, it would  
5 not -- say to enter the wall or something like that -- it  
6 wouldn't leave a wound hole, would it?

7 A No, probably not. It could leave a round hole. But  
8 if it were flattened out on the nose it could leave a round  
9 hole. Or as bullets pass through the body and sometimes  
10 come out, they start tumbling. And it could have hit  
11 sideways, and it could leave a rectangle on the wall if it  
12 hit a wall.

13 Q One second, please.

14 MR. ALLEN: No other questions, Your Honor. Thank  
15 you.

16 MR. BULSA: Nothing further. We ask he be excused.

17 THE COURT: You may step down. You may also be  
18 excused. Thank you.

19 (Whereupon, the witness was excused.)

20 MR. BULSA: State calls Freddie Thompson.

21 FREDDIE THOMPSON, having been  
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. BULSA

24 Q Good afternoon. Would you please introduce yourself  
25 to the jury, please?

Freddie Thompson  
Direct examination by Mr. Bulsa

- 1 A My name is Freddie Thompson.
- 2 Q Who are you employed with?
- 3 A Spartanburg County Communications 9-1-1 Department.
- 4 Q What is your -- what are your duties there?
- 5 A Varied responsibilities, one of which being custodian  
6 of records.
- 7 Q Do you sometimes provide 9-1-1 calls to police  
8 agencies?
- 9 A Yes, I do.
- 10 (CD marked State's Exhibit No. 1 for Identification.)
- 11 Q Mr. Thompson, if you would, look at this. It's been  
12 marked for identification as State's Exhibit No. 1. Does  
13 that appear to be a disc containing the 9-1-1 recording?
- 14 A Yes, it is.
- 15 Q And is it notated when that recording was made?
- 16 A Not the recording, the actual extraction, but the call  
17 was made at 2024 hours, 8:24 p.m., on May 24th of 2008.
- 18 Q So the notation on the disc will be the date the  
19 person would have called in.
- 20 A Correct.
- 21 Q 2024 hours is what?
- 22 A 8:24 p.m.
- 23 Q Okay. On May the 24th of 2008.
- 24 A Correct.
- 25 MR. BULSA: Your Honor, I offer this into evidence.

Freddie Thompson  
Direct examination by Mr. Bulsa

1 MR. ALLEN: Your Honor, if it please the Court, I have  
2 an objection, but I can talk at the bench if the Court  
3 would prefer.

4 THE COURT: Okay.

5 (Bench conference held off the record in the presence  
6 of the jury but out of the hearing of the jury.)

7 (CD marked State's Exhibit No. 1.)

8 THE COURT: All right. Any objection?

9 MR. ALLEN: No, Your Honor.

10 THE COURT: Okay.

11 MR. BULSA: Your Honor, we offer to publish it at this  
12 time.

13 THE COURT: As I understand it, you're just playing a  
14 specific portion.

15 MR. BULSA: Yes, sir.

16 THE COURT: Okay.

17 MR. BULSA: And I've discussed that with Mr. Thompson  
18 to let him know when to stop.

19 (Whereupon, State's Exhibit No. 1 was played for the  
20 jury. No transcription.)

21 Q That's good. Okay.

22 MR. BULSA: Thank you, Your Honor.

23 Q Answer any questions Mr. Allen may have.

24 MR. ALLEN: No questions of Mr. Thompson.

25 THE COURT: You may step down.

Bradford James  
Direct examination by Mr. Bulsa

1 MR. BULSA: We ask Mr. Thompson be excused.

2 THE COURT: He may be.

3 (Whereupon, the witness was excused.)

4 MR. BULSA: The state calls Officer Brad James.

5 BRADFORD JAMES, having been  
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BULSA

8 MR. ALLEN: Your Honor, may we approach real quickly?

9 THE COURT: Yes.

10 (Bench conference held off the record in the presence  
11 of the jury but out of the hearing of the jury.)

12 Q Officer, please introduce yourself to the jury.

13 A Deputy Bradford James, Spartanburg County Sheriff's  
14 Office.

15 Q And, Officer, did you used to be employed with the  
16 Spartanburg Public Safety Department?

17 A Yes, sir.

18 Q How long have you been an officer?

19 A Seven years.

20 Q How long before you were with the city police?

21 A I was with the city approximately six years.

22 Q And what were your duties with the city?

23 A I was a K-9 handler.

24 Q Did you run a normal patrol?

25 A I was on patrol. I wasn't exactly assigned to a

Bradford James  
Direct examination by Mr. Bulsa

1 district. I had a float unit basically over the entire  
2 city wherever I was needed.

3 Q Okay. Well, on May the 24th of 2008 were you on duty?

4 A Yes, sir.

5 Q And did you respond to a call at the intersection of  
6 South Liberty and Amos Street?

7 A Yes, sir, I did.

8 Q Were you one of the first officers to arrive?

9 A Yes, sir.

10 Q Describe for the jury what you saw.

11 A Originally, we were dispatched to the intersection of  
12 South Liberty Street in the general vicinity of Amos Street  
13 near the Coca-Cola plant -- we didn't have an exact  
14 location -- for a possible gunshot victim.

15 As I come down South Liberty Street I observed to the  
16 left. There's a large tree right beside the sidewalk  
17 approximately maybe 20 or 30 feet from Amos Street.

18 As I arrived I observed a black male laying on his  
19 back, several individuals around the black male. It  
20 appeared that they were attempting to render aid.

21 At that time I got out of my vehicle to check to see  
22 if maybe this possibly was the person that had been shot.

23 As I approached the black male lying on the ground I  
24 got everybody to step back so that I could assess what was  
25 going on at the time.

Bradford James  
Direct examination by Mr. Balsa

1           As I got up to the victim that was later identified as  
2 Courtney Rogers, I noticed that he had a gunshot wound to  
3 the base of his neck near where his collarbone come in.

4           At that time I leaned over Mr. Roger as I was putting  
5 on a pair of rubber gloves to attempt to render aid. At  
6 that time Mr. Rogers looked up at me, because I was  
7 actually straddled over the top of him because I was going  
8 to try to put pressure to the wound.

9           When I began to lean over him when I was putting on  
10 rubber gloves Mr. Rogers looked up at me and reached and  
11 grabbed me by both hands, because I was maybe a foot and a  
12 half or two feet away from him. When he grabbed me by the  
13 hands he looked up and he said, "I'm going to die."

14           At that time I tried to distract him to move on so  
15 that he wouldn't -- so that I could possibly get him calmed  
16 down to easlier (sic) render aid to him. I began putting  
17 pressure, gauze.

18           Deputy or -- no. I'm sorry. Not deputy. Officer  
19 Julie James then arrived to assist. And Officer Feleciano  
20 and Brian Shaw arrived.

21 Q       Let me stop you right there now.

22 A       Yes, sir.

23 Q       Okay. So you were there rendering aid and other  
24 officers came to the location.

25 A       Yes, sir.

Bradford James  
Direct examination by Mr. Balsa

1 Q Did they kind of control the scene?

2 A Yes, sir. We advised Officer Shaw and Feleciano to  
3 attempt to get everybody out of the crime scene and to  
4 begin taping off the area to contain the crime scene as  
5 much as possible if any evidence was in the crime scene,  
6 because at that point we had no idea where the incident had  
7 actually happened other than where we were at. But at the  
8 time that was the crime scene. We were controlling that  
9 crime scene.

10 Q And when you first arrived you described there was  
11 some men around.

12 A Yes, sir. There were several. I don't know exactly  
13 how many were around. I just know there were at least  
14 three or four standing there.

15 Q Did one appear to be trying to render aid --

16 A Yes, sir.

17 Q -- for the wound, keep the wound from bleeding?

18 A Yes, sir.

19 Q Okay.

20 A They were actually trying to use his own shirt to  
21 place on it.

22 Q Okay. Now, so your main focus at that time was to try  
23 to save his life.

24 A Yes, sir.

25 Q Okay. And other officers came to try to get people

Bradford James  
Direct examination by Mr. Balsa

1 back and secure that scene?

2 A The other two officers, Shaw and Feleciano, were  
3 advised to contain the scene and if they found any  
4 witnesses to try to contain them to see what had happened.

5 Officer James also was assisting me in trying to  
6 render aid to him while they were containing the scene.

7 Q Was the other officer, James, an investigator at the  
8 time?

9 A Yes, sir.

10 Q To your knowledge were other investigators being  
11 called to the area?

12 A At the time we originally arrived, no, sir, because we  
13 didn't exactly know what we had until after we found out  
14 that there was an actual gunshot victim. Then we began  
15 notifying the proper people.

16 Q Okay. So more people were called.

17 A Yes, sir.

18 Q Okay. Did you stay with Mr. Rogers until the  
19 ambulance arrived?

20 A I did.

21 (Photograph marked State's Exhibit No. 2 for  
22 Identification.)

23 Q Deputy, let me show you what's been marked for  
24 identification as State's No. 2. Do you recognize that  
25 photograph?

Bradford James  
Direct examination by Mr. Bulsa

1 A Yes, sir.

2 Q Does that appear to be an aerial photograph of the  
3 area that you responded to?

4 A Yes, sir.

5 Q Is there a star on that location, on the photograph?

6 A There is.

7 Q Does that appear to be the general area where you  
8 responded?

9 A Yes, sir.

10 Q And that's near the intersection of South Liberty and  
11 Amos Street?

12 A It is.

13 MR. BULSA: Your Honor, I would offer State's 2 into  
14 evidence.

15 MR. ALLEN: No objection.

16 THE COURT: It's admitted.

17 (Photograph marked State's Exhibit No. 2.)

18 Q Officer, I'm going to now project this on the screen  
19 so you can relate to the jury where you were.

20 While this is showing if you need to come down just  
21 let me know and I'll have you come down. I have got a  
22 pointer for you to use.

23 (Whereupon, the witness left the stand.)

24 Q If you would first as it comes up orient the jury to  
25 the location. And is this within the city limits of

Bradford James  
Direct examination by Mr. Balsa

1 Spartanburg?

2 A Yes, sir, it is.

3 Once the screen pulls up if you'll notice there's a  
4 large building to the right-hand side of South Liberty  
5 Street. Also, there's a large building up the road on Amos  
6 Street, which is the Coca-Cola plant directly off South  
7 Church Street if you're familiar with where. Right here is  
8 the Coca-Cola plant. This is South Church Street.

9 Right here is -- it is now Spartanburg Housing  
10 Authority. They've taken over that building. I think it  
11 used to be a school at one time.

12 You know, right here where the star is you can kind of  
13 see there's a real dark shaded area right here. This is  
14 the large tree I was referring to in my testimony. It  
15 should be located about right here, give or take, some  
16 feet. I can't exactly show you on the map as far but it  
17 was within 30 to 40 feet from the intersection.

18 THE COURT: Excuse me. Let me get you to stop just a  
19 minute.

20 THE WITNESS: Yes, sir.

21 THE COURT: Can we move the rope so the jurors can  
22 move down one seat?

23 (Pause.)

24 A When I initially responded they advised me somewhere  
25 in the general area. Like I said before, Amos Street and

Bradford James  
Direct examination by Mr. Bulsa

1 South Liberty Street.

2 I came straight down South Church Street and made the  
3 turn onto Amos Street to check Amos Street on the way to  
4 South Liberty Street.

5 As I got down, that's when I got to the intersection,  
6 is when I observed him, Mr. Rogers, lying on the ground.  
7 And I parked my car blocking off South Liberty Street so as  
8 nobody could come up South Liberty Street from Bomar Avenue  
9 or Collins Avenue, which is down on this end.

10 At that time we -- the other officers that arrived  
11 blocked off Amos Street as well as the opposite end of  
12 South Liberty Street, because, like I said, at the time  
13 that was our crime scene. We didn't know if anything else  
14 had happened anywhere else. So we were containing that  
15 scene as much as possible.

16 Q Okay. Now, just looking at the street names, South  
17 Liberty would run into Caulder Avenue.

18 A Yes, sir. Caulder Avenue and South Liberty intersect  
19 right up here. You can almost see it.

20 Q And you procured Caulder Avenue. It would run into  
21 South Liberty.

22 A It does more along right around in here.

23 Q It's basically parallel to East Columbia and Amos  
24 Street.

25 A Yes, sir.

Bradford James  
Cross-examination by Mr. Allen

1 Q Did you go to any other location during that evening?

2 A No, sir.

3 Q So your focus was primarily with Mr. Rogers.

4 A It was.

5 Q Thank you. You can have a seat, sir.

6 (Whereupon, the witness returned to the stand.)

7 Q Okay. Deputy, if you would, answer any questions that  
8 Mr. Allen may have of you.

9 CROSS-EXAMINATION

10 BY MR. ALLEN

11 Q While we select the picture, you said the housing  
12 authority was over there to the right on the picture as  
13 we're looking at it, correct?

14 A Yes, sir, the almost L-shaped building to the right of  
15 South Liberty Street.

16 Q Okay. And this other large building to the left --

17 MR. BULSA: Mr. Allen, here is the pointer.

18 MR. ALLEN: Thank you, sir.

19 Q This other large building to the left, is that the  
20 Pepsi plant?

21 A It's actually Coke, or it is the Pepsi plant. You're  
22 correct. I'm sorry. The Coke plant is on West Main  
23 Street. You're right.

24 Q Okay. Right. The Pepsi plant is right here.

25 A Yes, sir.

Bradford James  
Cross-examination by Mr. Allen

1 Q Now, when you arrived you saw Mr. Rogers laying on the  
2 sidewalk.

3 A Yes, sir. He was partially on the sidewalk. A little  
4 bit of him was in the grass.

5 Q Okay. And he was on the side of the street. I guess  
6 the sidewalk's on both sides of the street, on the --

7 A No, sir. It's not. It's only on the right-hand side  
8 closest to the housing authority.

9 Q Only on the right-hand side.

10 A Yes, sir.

11 Q Okay. So he was on the side closest to the housing  
12 authority.

13 A Yes, sir.

14 Q Okay. When you arrived there was no one kneeling  
15 right beside him, is that correct?

16 A No, sir. They were kind of standing around him. One  
17 guy was trying to hold a t-shirt over him. He wasn't  
18 actually like kneeling down on his knees beside him, but he  
19 was leaning down to him.

20 Q Okay. When you arrived no one was touching  
21 Mr. Rogers?

22 A Yes, sir. There were.

23 Q Do you recall testifying in December at an earlier  
24 hearing?

25 A I do remember the hearing, yes, sir.

Bradford James  
Cross-examination by Mr. Allen

1 Q Do you remember my asking you if no one, if nobody,  
2 was touching Mr. Rogers when you arrived?

3 A I don't remember the exact questions you asked me, no,  
4 sir.

5 Q Okay. Would referring to a transcript of, of that  
6 earlier hearing refresh your memory?

7 A Yes, sir.

8 Q Okay. Page 17 beginning at line 17.

9 A Yes, sir.

10 Q Do you recall that being your testimony? "There was  
11 nobody touching Mr. Rogers when you arrived."

12 A That's correct.

13 Q And the answer was?

14 A "No, sir."

15 Q Okay. Does that refresh your memory about what  
16 happened?

17 A Excuse me? Say that again.

18 Q Does that refresh your memory better about what  
19 happened when you testified six months ago?

20 A Refresh my memory as far as what happened, no, sir,  
21 not by what's in that book, no, sir.

22 Q Okay. Would it be fair to say that the closest person  
23 to Mr. Rogers when you arrived was 5 to 6 feet away?

24 A Not as far as I can recall, no, sir.

25 Q If I may refer you to the next question I asked in

Bradford James  
Cross-examination by Mr. Allen

1 your earlier testimony. Do you recall my asking you,  
2 "Closest anyone was to Mr. Rogers was about, you said, 5 to  
3 6 feet away." And your answer?

4 A "Yes, sir. They were within 5 feet of him."

5 Q Okay. You said there were about how many people  
6 there?

7 A Approximately three to four. I couldn't tell you an  
8 exact number, no, sir.

9 Q Not including Mr. Rogers. Are you --

10 A No, sir. I didn't take him to count the number of  
11 people standing around him.

12 Q Okay.

13 A I was more interested in his well being.

14 Q Right. There were approximately three to four other  
15 people there. Is that a fair statement?

16 A Yes, sir.

17 Q You did not get their names?

18 A My priority at the time was not asking each one of  
19 them their name. My priority at the time was his well  
20 being. Therefore I rendered aid to him at the time.

21 Q And the answer, I guess, to my question is, no, you  
22 did not get their names.

23 A No, sir. I didn't have time to.

24 Q Okay. When the ambulance arrived -- or did an  
25 ambulance arrive?

Bradford James  
Cross-examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q Okay. And the paramedics then started attending to  
3 Mr. Rogers?
- 4 A Yes, sir, they did.
- 5 Q Okay. And they took him to the hospital.
- 6 A They did.
- 7 Q You did not go with Mr. Rogers to the hospital.
- 8 A No, sir.
- 9 Q Were there people still there when Mr. Rogers was put  
10 into the ambulance?
- 11 A They were on the outside of the crime scene that we  
12 had roped off, yes, sir.
- 13 Q Did you get their names at that time?
- 14 A No, sir. There were other officers out there at that  
15 point.
- 16 Q Did you -- you saw Mr. Rogers' cell phone or a cell  
17 phone with Mr. Rogers when you arrived.
- 18 A I'm not particularly sure. To be honest with you, I  
19 don't remember.
- 20 Q Okay.
- 21 A It's not in my report that I did.
- 22 Q Do you remember my asking you about that back in  
23 December?
- 24 A Not off the top of my head. I don't remember  
25 everything you asked me back then.

Bradford James  
Cross-examination by Mr. Allen

1 Q You don't?

2 A No. I mean, that's been awhile back to be honest with  
3 you.

4 Q I understand. Let's see if we can refresh your memory  
5 going to page 18.

6 Do you remember my asking you if you found that there  
7 was a phone lying on the ground? And you said?

8 A "Yes, sir, when the E. M. S. --

9 Q When he was transported.

10 A "When transported by E. M. S., they located a phone."

11 Q And I asked you was it lying on the ground.

12 A Where you said, "Do you know?"

13 Q "Do you know?"

14 A And I stated, "No, sir."

15 Q You said you think.

16 A "I think but I wasn't sure."

17 Q You said you think what?

18 A "It was in his pocket." But I was unsure.

19 Q Okay. You're unsure. You're not sure today, are you?

20 A No, sir.

21 Q But you think it was in his pocket.

22 A I, I stated in the paper you just showed me that E. M.  
23 S. located the phone. Correct?

24 Q I think so.

25 A Okay. So I --

77  
Bradford James  
Redirect examination by Mr. Bulsa

1 Q Is it fair to say that you did not see a cell phone on  
2 the ground when you arrived?

3 A Not that I recall, no, sir.

4 Q Okay. If you had seen a cell phone you certainly  
5 would have mentioned that in your report, correct?

6 A Yes, sir.

7 Q Okay. And you didn't mention anything about a cell  
8 phone in your report.

9 A No, sir.

10 MR. ALLEN: Thank you, Your Honor. No other  
11 questions.

12 MR. BULSA: Just briefly.

13 REDIRECT EXAMINATION

14 BY MR. BULSA

15 Q Deputy James, was a phone important in your eyes at  
16 that time?

17 A No, sir. Like I stated several times, my main  
18 priority was his safety at the time I arrived. And we  
19 could begin an investigation after we done as much as we  
20 could for him.

21 Q You actually wrote the incident report in this case,  
22 correct?

23 A I did.

24 Q Did you know that -- did anybody come up and volunteer  
25 any information?

Derrick Canada  
Direct examination by Mr. Bulsa

1 A No, sir, they did not, not to me.

2 Q And in your report did you note anybody coming up and  
3 volunteering any information?

4 A No, sir.

5 Q In fact, you weren't even sure where the crime scene  
6 was.

7 A No, sir, not at the time. As far as I knew it was  
8 where I was out with Mr. Rogers.

9 Q Okay. Thank you for your answers. That's all I have..

10 MR. ALLEN: No recross.

11 THE COURT: You may step down.

12 MR. BULSA: Your Honor we ask that Deputy James be  
13 excused.

14 THE COURT: He may be.

15 (Whereupon, the witness was excused.)

16 MR. BULSA: The state calls Derrick Canada.

17 DERRICK CANADA, having been  
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. BULSA

20 Q Officer, please introduce yourself to the jury.

21 A I'm Officer Derrick Canada with the Spartanburg Public  
22 Safety department.

23 Q How long have you been with the Spartanburg Public  
24 Safety?

25 A A little over seven years.

Derrick Canada  
Direct examination by Mr. Bulsa

1 Q How long have you been a police officer?

2 A A little over seven years.

3 Q So your entire career has been with Spartanburg.

4 A Yes, sir.

5 Q Were you on duty the date of this shooting?

6 A Yes, sir, I was.

7 Q What were your duties at that time?

8 A I was on patrol.

9 Q And is this your -- one of your zones?

10 A Yes, sir.

11 Q Okay. Where did you first respond?

12 A I responded to East Columbia Avenue coming from Church  
13 Street.

14 Q And why would you have responded to that location?

15 A Because they stated that the individual was shot  
16 within that area, around there, the area. So I started  
17 down that road to look for the individual.

18 Q Okay. Did you find anybody on that road?

19 A I found several people flagging me down.

20 Q And what occurred when they flagged you down?

21 A They, they stated to me that the incident took place  
22 at --

23 MR. ALLEN: Your Honor, I'm going to object as to what  
24 anyone else says as hearsay.

25 THE COURT: Sustained.

Derrick Canada  
Direct examination by Mr. Bulsa

1 MR. BULSA: Your Honor, it's not being offered for the  
2 truth of the matter.

3 THE COURT: Well, let me see y'all just a minute.

4 (Bench conference held off the record in the presence  
5 of the jury but out of the hearing of the jury.)

6 THE COURT: Overrule the objection.

7 Q Based on the comments people were making to you did  
8 you go to a certain location on East Columbia?

9 A Yes, sir. I went to East Columbia Avenue.

10 Q Okay. Did you ever make it down South Liberty to the  
11 victim?

12 A I did not.

13 Q Okay. So we've got other officers at that location,  
14 and you're coming down East Columbia. And you get directed  
15 to, to the location on East Columbia Avenue.

16 A Yes, sir.

17 Q What do you do when you get to

18 A As, as soon as I got to that residence I secured the  
19 scene and started a crime scene log.

20 Q And do you recall which persons, or if anybody, was at  
21 that home?

22 A Yes, sir. A Ms. Sandra Dandy and a Mr. Dwight Mills.

23 Q Okay. And where were they when you arrived?

24 A Ms. Dandy -- she was inside of the residence when I  
25 arrived.

Derrick Canada  
Direct examination by Mr. Bulsa

- 1 Q Do you remember where Mr. Mills was?
- 2 A I don't recall.
- 3 Q Okay. Do you recall there being any children around?
- 4 A No, sir.
- 5 Q All right. So you went to that location and you began  
6 trying to secure it. Did you call for other officers?
- 7 A Yes, sir, I did.
- 8 Q And did other officers arrive?
- 9 A Yes, sir.
- 10 Q Who did the -- well, let me ask you. Did you actually  
11 walk through the house at any point?
- 12 A Yes, sir, I, I did.
- 13 Q Okay. What was the purpose of that?
- 14 A To clear the house out to make sure -- to make the  
15 house safe and secure.
- 16 Q Were you actually looking for specific items of  
17 evidence?
- 18 A No, sir.
- 19 Q Did anything stand out on your walk through the house?
- 20 A No, sir.
- 21 Q Did you, did you turn over the scene to investigators?
- 22 A I did.
- 23 Q And what were your duties at that point?
- 24 A To keep a crime log.
- 25 Q Okay. And that's to identify who comes and goes from

Derrick Canada  
Direct examination by Mr. Bulsa

1 the scene?

2 A Yes, sir.

3 Q But the basic investigation was done by investigators  
4 and forensic teams.

5 A Yes, sir.

6 Q Okay. What was the demeanor of Ms. Dandy and  
7 Mr. Mills if you recall?

8 A Ms. Dandy -- she was like kind of nervous.  
9 Mr. Mills -- he was, he wasn't really nervous. He was kind  
10 of more calm.

11 Q Okay. Did either of those people confirm that the  
12 shooting had happened there?

13 MR. ALLEN: Objection. That'll be hearsay, Your  
14 Honor.

15 THE COURT: Sustained.

16 Q Did you see any evidence of a shooting when you went  
17 to the scene, to that location? Did you yourself see any  
18 evidence?

19 A I did.

20 Q Okay. What did you see?

21 A I recall seeing blood on the porch.

22 Q Okay. Was that when you did your walk-through?

23 A Yes, sir.

24 Q Did you point that out to any of the investigators?

25 A I can't recall.

Derrick Canada  
Cross-examination by Mr. Allen

1 Q Okay. But you got the information and you went to  
2 that location and you saw blood. And then you began roping  
3 it off and taping it off?

4 A Yes, sir.

5 Q And then a bunch of other officers arrived.

6 A Yes, sir.

7 Q Okay. All right. That's all I have at this time.

8 Answer any questions Mr. Allen may have, sir.

9 CROSS-EXAMINATION

10 BY MR. ALLEN

11 Q Let's talk a little bit about the house. You said you  
12 entered this house.

13 A Yes, sir.

14 Q And where you went in was through the front door?

15 A Yes, sir.

16 Q As you entered the front door you entered into  
17 immediately a living-room area, correct?

18 A Yes, sir.

19 Q And there's no hallway or vestibule or anything like  
20 that, or foyer, right?

21 A No, sir.

22 Q And right in front of this front door within a few  
23 feet is a large furnace, right?

24 A Yes, sir.

25 Q That's like a kerosene type furnace, you think?

Derrick Canada  
Cross-examination by Mr. Allen

- 1 A I just remember there was a furnace.
- 2 Q Okay. And to the immediate right of this front door  
3 was the television, correct?
- 4 A I can't recall.
- 5 Q Okay. Proceeding on through the house right behind  
6 this living room area is a dining room area. Do you  
7 remember that?
- 8 A Yes, sir.
- 9 Q Okay. And do you recall how many bedrooms there were?
- 10 A I do not.
- 11 Q Do you recall where the bedrooms were?
- 12 A I recall one of them.
- 13 Q Okay. That coming off of which room?
- 14 A Which was on the left side.
- 15 Q I'm sorry?
- 16 A On the left side as soon as you walk through the door.
- 17 Q Okay. As soon as you walked in through the front  
18 door.
- 19 A Yes, sir.
- 20 Q Coming off the living room?
- 21 A Yes, sir.
- 22 Q Now, you indicated you didn't see any children inside  
23 the home, correct?
- 24 A I did not.
- 25 Q Do you recall seeing any baby paraphernalia or

Derrick Canada  
Cross-examination by Mr. Allen

1 children's paraphernalia in the home?

2 A I can't recall.

3 Q Cannot recall. When you spoke with Ms. Dandy did she  
4 appear to be intoxicated?

5 A I don't recall anybody being intoxicated. I don't  
6 recall.

7 Q Okay. Had they been notably intoxicated, is that  
8 something that you would have recalled?

9 A I don't recall.

10 Q You don't recall if you would have recalled had they  
11 been?

12 A I do not recall anybody being intoxicated, sir.

13 Q Okay. And the question is that had they been  
14 intoxicated you think you would have recalled that,  
15 correct? Do you know?

16 A I can't, I can't say.

17 Q Okay. When you, when you did the crime-scene walk,  
18 does that include -- I think you mentioned that includes  
19 writing down the names of people who come in, right?

20 A Yes, sir.

21 Q Does it also include writing down the times that they  
22 came into the scene?

23 A Yes, sir.

24 Q And the times they left?

25 A Yes, sir.

Derrick Canada  
Cross-examination by Mr. Allen

1 Q And keeping a crime-scene log, you of course record  
2 the accurate times, is that correct?

3 A Yes, sir.

4 Q Of people entering and left?

5 A Yes, sir.

6 Q Okay.

7 MR. ALLEN: One second, please, Your Honor.

8 (Pause.)

9 Q The -- let's talk a little bit about the blood that  
10 you say you saw. Do you recall exactly where it was?

11 A What's that, sir?

12 Q The blood.

13 A I don't recall. I just remember seeing blood on the  
14 floor.

15 Q A large amount or a small amount or do you recall?

16 A I recall some droplets, but I don't recall exactly  
17 where it's at, where it was.

18 Q Just droplets then.

19 A That's what I recall, sir.

20 Q Now, when you go into the house in order to secure it,  
21 I believe you mentioned that you were just looking for  
22 other people, is that right?

23 A Yes, sir.

24 Q And of course the purpose is that if you find other  
25 people there to get them out of the house so it won't be

Derrick Canada  
Cross-examination by Mr. Allen

1    disturbed, is that correct?

2    A     Yes, sir.

3    Q     And of course for safety, right?

4    A     Yes, sir.

5    Q     You did not see anybody else in there, correct?

6    A     I don't recall seeing anybody else other than the  
7    people I have on my report.

8    Q     Other than Ms. Dandy and Mr. Mills, is that correct?

9    A     That's all I recall, sir.

10   Q     Okay. Had you seen anybody else you certainly would  
11   have noted that in your report, correct?

12   A     Yes, sir.

13   Q     Now, you also didn't touch anything either, is that  
14   right?

15   A     That's right, yes, sir.

16   Q     Other than walking on the floors then, you've been  
17   trained not to touch anything or disturb anything, is that  
18   right?

19   A     Yes, sir.

20   Q     So as best you know you left that scene the way you  
21   entered it, is that correct?

22   A     Yes, sir.

23   Q     Okay.

24           MR. ALLEN: Nothing further, Your Honor. Thank you.

25

Derrick Canada  
Redirect examination by Mr. Bulsa

1 REDIRECT EXAMINATION

2 BY MR. BULSA

3 Q Officer, whose job is it to actually investigate the  
4 crimes?

5 A Sir?

6 Q Whose job is it to actually do the investigation?

7 A The investigators.

8 Q So you're there to identify the possible location and  
9 then secure it for other officers?

10 A Yes, sir.

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

12 A Thank you.

13 THE COURT: You may step down.

14 THE WITNESS: Thank you.

15 MR. BULSA: We ask Officer Canada be excused.

16 THE COURT: He may be.

17 (Whereupon, the witness was excused.)

18 MR. BULSA: The state calls Julie Cojames.

19 JULIAN COJAMES, having been  
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. BULSA

22 Q Good afternoon. Please identify yourself to the jury.

23 A Investigator Julian Cojames.

24 Q And who are you employed with?

25 A Spartanburg Public Safety Department.

Julian Cojames  
Direct examination by Mr. Bulsa

1 Q As an investigator?

2 A Currently, yes, sir.

3 Q How long have you been with public safety?

4 A Thirteen years.

5 Q How long have you been an investigator?

6 A Two years.

7 Q So you had just become an investigator around the  
8 timeframe of this incident?

9 A Yes, sir.

10 Q And did you respond to the location on South Liberty  
11 and Amos?

12 A I did.

13 Q Why did you go to that location?

14 A I was actually working an extra-duty job at Norris  
15 Ridge, working security there.

16 The streets were really busy that night, the patrol  
17 was, and they needed extra people. So I responded to South  
18 Carolina and Amos to assist in the scene not as an  
19 investigator but just as a patrol officer at the time.

20 Q How did you know they needed help?

21 A I heard the call come on the radio, and that's why I  
22 went.

23 Q Okay. So you left your second job and went to your  
24 first job.

25 A I left, I left Norris Ridge, yeah, and pretty much

Julian Cojames  
Direct examination by Mr. Balsa

1 went to my first job.

2 Q Okay. What did you do when you got to the scene?

3 A When I got there I noticed that Officer James was  
4 rendering aid to a black male that was lying there.

5 I quickly went over and asked one of the other  
6 officers. I can't remember if it was Shaw or Feleciano. I  
7 asked one of the other officers to get a first aid kit from  
8 the trunk of their car, took it over there to Officer  
9 James. At that time we started cutting Mr. Rogers' shirt  
10 off trying to assess where his wounds were and what needed  
11 to be done. Once we got his shirt off we started rendering  
12 aid to him, trying to put pressure to --

13 THE COURT: Excuse me just a minute.

14 Ms. James, could you please use that microphone and  
15 slow down a little bit? The court reporter can only go so  
16 fast.

17 THE WITNESS: I'm sorry. I apologize.

18 Where do you need for me to go?

19 THE COURT REPORTER: All the way back.

20 THE WITNESS: All of it.

21 A Okay. Once I responded to the scene, again, I saw  
22 Officer James attempting to render aid to a black male that  
23 was lying there.

24 THE COURT: Ms. James, let me ask you to do this.

25 I know you're talking to the jury, but we've got an

Julian Cojames  
Direct examination by Mr. Bulsa

1 unusual situation because the court reporter is behind you.  
2 She needs to at least be able to see your profile --

3 THE WITNESS: Okay.

4 THE COURT: -- so that she can observe you testify.

5 So if you'll look at Mr. Bulsa as you testify, I think that  
6 would accommodate both the jury's need and the court  
7 reporter's need.

8 THE WITNESS: Yes, sir.

9 THE COURT: Thank you.

10 A Okay. Again, when I got to the scene I saw Officer  
11 James rendering aid to a black male that was lying there.  
12 I can't remember if it was Officer Shaw or Feleciano I  
13 asked to go get the first aid kit from the back of their  
14 car.

15 One of them brought to it me. At that time we started  
16 cutting Mr. Rogers' shirt off to assess his wounds to see  
17 what needed to be done and started applying pressure until  
18 the ambulance came. Once the ambulance came we helped them  
19 load Mr. Rogers into the ambulance.

20 Q Now, Investigator, you stated that you responded  
21 basically in the form of a patrol officer.

22 A Yes, sir.

23 Q Did you ever switch over into the investigative mode?

24 A Yes, I did.

25 Q At what point?

Julian Cojames  
Direct examination by Mr. Bulsa

1 A Once I heard on the radio about the scene at East  
2 Columbia Avenue, at that time I was called in.

3 Q Okay. And had the ambulance arrived and began taking  
4 care of Mr. Rogers?

5 A Yes, sir.

6 Q And what -- did you leave that location to go to

7 A Yes, I did. After Mr. Rogers had already been taken  
8 in the ambulance, I did leave the scene.

9 Q Okay. And what did you see when you got there?

10 A There was -- I had asked Sergeant Smith if she would  
11 get Ms. Dandy, would ask Ms. Dandy, to come down to city  
12 hall to give a statement in reference to the incident. And  
13 Ms. Dandy was a little bit loud.

14 So as I was stepping in with Captain Hardy and  
15 Sergeant Smith I looked down and saw what appeared to be  
16 droplets of some type of red liquid in the door frame, in  
17 between the main hard door and your screen door.

18 Q Okay. Let me stop you right there. You said  
19 Ms. Dandy was getting loud. What do you mean?

20 A Just not real happy with them there.

21 (Photographs marked State's Exhibits Nos. 3, 4 and 5  
22 for Identification.)

23 Q I am going to show you three photographs marked  
24 State's Exhibit 3, 4 and 5 for Identification.

25 Would you look at those and see if you recognize

Julian Cojames  
Direct examination by Mr. Bulsa

1 those?

2 A They're the photos of East Columbia Avenue.

3 Q Do those accurately depict the scene as you saw it  
4 that evening?

5 A Yes, sir.

6 MR. BULSA: Your Honor, the state would offer Exhibits  
7 3, 4 and 5 into evidence.

8 MR. ALLEN: As to Exhibits 3 and 4, no objection. As  
9 to Exhibit 5, may need to be further -- if I may approach,  
10 there has been an objection as to five.

11 (Bench conference held off the record in the presence  
12 of the jury but out of the hearing of the jury.)

13 THE COURT: Any objection?

14 MR. ALLEN: No, Your Honor.

15 THE COURT: They are admitted.

16 (Photographs marked State's Exhibits Nos. 3, 4 and 5.)

17 Q We are going to project these on the screen, but I'm  
18 going to publish primarily State's Exhibit No. 5. Does  
19 that -- what does that show us?

20 A It's the front door of East Columbia Avenue with  
21 the screen door and the main door open. It's showing the  
22 threshold where you would walk in. And there's drops of a  
23 red liquid in that area.

24 Q Okay. And you suspected that might be blood?

25 A Yes, sir.

Julian Cojames  
Direct examination by Mr. Bulsa

1 Q And did you -- what did you do when you identified  
2 that?

3 A I notified the supervisors on the scene that that's  
4 what I saw and it may be relevant to our scene.

5 Q Okay. And did later a forensics officer arrive to  
6 process the scene?

7 A Yes, sir.

8 Q I ask to project these here, State's Exhibit No. 3.  
9 Is that the address, East Columbia?

10 A Yes, it is.

11 Q And, in fact, we see the yellow tape. Is that the  
12 crime scene tape?

13 A Yes, sir.

14 Q And that's meant to keep people out of the scene.

15 A Yes, sir, to preserve our scene.

16 Q And that is a closer view of the porch area?

17 A Yes, sir.

18 Q Show the door that you entered and saw the substance?

19 A Yes, sir.

20 Q Specifically, State's Exhibit No. 5, I'll get the  
21 pointer for you.

22 Step down here if you would.

23 (Whereupon, the witness left the stand.)

24 Q Identify the substance that drew your attention. Just  
25 point to the red.

Julian Cojames  
Direct examination by Mr. Bulsa

1 A Right in that area and right in this area. It was the  
2 red substance.

3 Q Okay. Did you notice any other evidence?

4 A At that time, no.

5 Q Have a seat.

6 (Whereupon, the witness returned to the stand.)

7 Q Okay.

8 MR. BULSA: Turn the lights on.

9 Q Investigator James, how long do you recall being on  
10 the scene?

11 A I can't give you an approximate time. I was there for  
12 a while.

13 Q Okay. Did you do a report of any sort?

14 A No, sir.

15 Q Can you tell us why?

16 A It was an oversight on my part. That night was a very  
17 busy night. We had this incident and we had a shooting in  
18 Crescent Hills, and then we had another shooting on Caulder  
19 Circle all within a matter of hours. So it was just a  
20 crazy night.

21 Q You seem to have a good recollection of the evening.  
22 How is that?

23 A Other people's supplementals and just remembering  
24 certain things that have happened. Certain things in this  
25 job too just stick in your mind, so.

Julian Cojames  
Cross-examination by Mr. Allen

1 Q Okay. Is this one of your first cases as an  
2 investigator that you assisted with?

3 A Probably one of this capacity, yes, but not a first  
4 I've ever assisted in, no.

5 Q One of your first homicides.

6 A Yes, sir.

7 Q Thank you. Answer any questions Mr. Allen has.

8 CROSS-EXAMINATION

9 BY MR. ALLEN

10 Q Were you the first investigator on the scene at  
11 East Columbia?

12 A That I don't recall. My captain was there, and he's  
13 obviously an investigator, so probably not.

14 Q Okay. You -- so you didn't write a report.

15 A No, sir, I didn't.

16 Q Did you take any notes?

17 A No, sir.

18 Q Write a statement?

19 A No, sir.

20 Q Put anything on a computer?

21 A No, sir.

22 Q So you're going strictly on your memory.

23 A And other officers' supplements.

24 Q Oh, what others officers wrote.

25 A Yes, sir, about me, not what they wrote about

Julian Cojames  
Cross-examination by Mr. Allen

1 themselves, what they wrote about me.

2 Q I see. So you're going on -- okay. You were at the  
3 East Columbia Avenue house. Do you know how long?

4 A No, sir, I don't.

5 Q Was it about an hour or so?

6 A I can't tell you an exact time.

7 Q When you reviewed what other officers wrote about you  
8 did you review the crime-scene log?

9 A No. That's something that's kept in evidence, so, no,  
10 I never looked at that.

11 Q So you didn't look at that to prepare for the case  
12 today?

13 A No, I did not.

14 Q In other cases that you investigate you write reports?

15 A Supplementals.

16 Q Okay. And you take notes.

17 A Yes, sir. As I stated before, this was an oversight  
18 on my part.

19 Q When you arrived at South Liberty, did Mr. Rogers  
20 still have the shirt on at that point?

21 A Yes.

22 Q When you arrived at South Liberty, Officer -- I  
23 believe it was -- Brad James was already there, correct?

24 A Yes, sir.

25 Q And Officer Feleciano.

Julian Cojames  
Cross-examination by Mr. Allen

1 A I can't recall if he was there exactly when I got  
2 there or if he showed up a little later. I'm not certain.  
3 He wasn't my focus.

4 Q About what about Officer Shaw?

5 A I can't tell you when he arrived. You'd have to ask  
6 him.

7 Q Okay. Did you obtain names of any of the other people  
8 around?

9 A No. Just as Officer James said, he and I were working  
10 on Mr. Rogers, and he was our primary responsibility and  
11 focus at that point in time. I can't tell you who was  
12 around, their names. Didn't ask. Mr. Rogers was my  
13 primary responsibility at that time.

14 Q Okay. Were people around after Mr. Rogers was taken  
15 in the ambulance?

16 A I don't recall. I was trying to clean up.

17 Q Clean up the street?

18 A Clean up me.

19 Q Clean yourself up. And then after cleaning up, that's  
20 when you went to East Columbia, right?

21 A Yes, sir.

22 Q Okay. And you stayed at East Columbia until  
23 Ms. Westfall arrived?

24 A I can't remember if she was there when I got there or  
25 how that happened.

Julian Cojames  
Redirect examination by Mr. Bulsa

1 Q Okay. Did you draw anybody else's attention to the  
2 red drops that you saw?

3 A Sergeant Smith because she was standing beside me.

4 Q Okay. That was -- as far as you know that was the  
5 only person you mentioned it to.

6 A I may have mentioned it to Captain Hardy, but I can't  
7 be certain on that since he was another supervisor that was  
8 there at the time.

9 Q Other than those two, are those are the only two  
10 people you would have mentioned that to?

11 A Yes, sir.

12 MR. ALLEN: No other questions, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. BULSA

15 Q Officer, let me show you a copy of the crime-scene  
16 log. Does that appear to be the crime-scene log of  
17 East Columbia Avenue?

18 A That's what it states.

19 Q Does it note your presence at the scene?

20 A Yes, it does.

21 Q And when did you arrive?

22 A This states I arrived at 2125.

23 Q What is that? What time is that?

24 A 9:25.

25 Q Okay.

Julian Cojames  
Redirect examination by Mr. Balsa

- 1 A I'm not sure.
- 2 Q When would you have left?
- 3 A It states 2228, but I know that's not going to be  
4 correct.
- 5 Q Why not?
- 6 A Because if you look at Investigator, or excuse me,  
7 Forensic Tech Westfall's supplemental, it states I was  
8 there for the execution of the search warrant which I do  
9 recall being there for. But, again, I can't say exactly  
10 what time that was.
- 11 Q Does this show when Westfall arrived?
- 12 A Originally it shows she arrived at 2155.
- 13 Q So you would have been there when she arrived.
- 14 A Looks that way, yes, sir.
- 15 Q Okay, okay. That's good. And other investigators  
16 such as Investigator Porter arrived as well.
- 17 A Yes, sir.
- 18 Q The case agent in the case -- investigator.
- 19 A Yes, sir.
- 20 Q Just so the jury understands, we're talking about two  
21 different locations, one where the body was found --
- 22 A Yes, sir.
- 23 Q -- and one where the actual shooting was believed to  
24 have occurred, is that right?
- 25 A Yes, sir.

Julian Cojames  
Redirect examination by Mr. Balsa

1 Q So at first -- you're first concerned primarily with  
2 aid to the victim at the first scene.

3 A Yes.

4 MR. ALLEN: Objection. He's leading the witness.

5 THE COURT: Rephrase the question.

6 Q Okay. And then what's your priority at the second  
7 scene?

8 A To preserve that scene so that the investigators and  
9 so that the forensic techs can come in and process the  
10 scene.

11 Q When you preserve a scene are you trying to preserve  
12 the people that are there?

13 A You try and keep them contained so that they don't  
14 contaminate your scene.

15 Q Okay. But if anybody's at the scene at the time it's  
16 identified you make note of it and try to discuss what  
17 happened with them.

18 A Yes.

19 Q Okay.

20 A So that you can get a statement from them in reference  
21 to what has happened.

22 Q And as we've heard, it was just Ms. Dandy and  
23 Mr. Mills, is that right?

24 A I did not see anyone other than Ms. Dandy there.

25 Q Okay. All right. But there was basically nobody else

Courtney Westfall  
Direct examination by Mr. Bulsa

- 1 then that you could see.
- 2 A Not that I saw.
- 3 Q You would have been in a position to see anybody,  
4 right?
- 5 A I was standing in the doorway, and that was it. I  
6 never, at that time I never, went any further into the  
7 home.
- 8 Q Okay. And had there been somebody there you would  
9 have interviewed them.
- 10 A Correct.
- 11 Q Thank you. And you didn't interview anybody, did you?
- 12 A No, sir.
- 13 Q Thank you. Answer anything else Mr. Allen has.
- 14 MR. ALLEN: No other questions.
- 15 THE COURT: You may step down.
- 16 THE WITNESS: Thank you.
- 17 MR. BULSA: We ask Ms. James be excused.
- 18 THE COURT: She may be.
- 19 (Whereupon, the witness was excused.)
- 20 MR. BULSA: The state calls Courtney Westfall.
- 21 COURTNEY WESTFALL, having been  
22 first duly sworn, testified as follows:  
23 DIRECT EXAMINATION BY MR. BULSA
- 24 Q Officer, please -- well, actually you're not an  
25 officer, are you?

Courtney Westfall  
Direct examination by Mr. Bulsa

1 A No, I'm not.

2 Q You're dressed like an officer. Why is that?

3 A This is our uniform. I am actually a crime scene  
4 technician for the public safety department. Courtney  
5 Westfall, by the way.

6 THE COURT: How about pulling that microphone a little  
7 bit closer to you?

8 THE WITNESS: This one?

9 THE COURT: Yes.

10 THE WITNESS: Okay. How is that?

11 Q So you're a crime scene technician with Spartanburg  
12 Public Safety.

13 A Yes, sir. I'm actually a civilian. I work for the  
14 police, but I'm not actually a police officer myself.

15 Q Okay. And what kind of training have you had?

16 A I have a 4-year degree, a bachelor of science, in  
17 forensic identification.

18 Q Where did you get that?

19 A West Virginia University.

20 Q And when did you come down to Spartanburg?

21 A I've been here for approximately a little over four  
22 years now, about four and a half years.

23 Q Did you get this job right out of college?

24 A I did. This is my first law enforcement job.

25 Q Okay. Did you work under the supervision of an

Courtney Westfall  
Direct examination by Mr. Bulsa

1 officer?

2 A My partner that -- the other crime scene technician  
3 that we have is an officer. He's not my supervisor. We're  
4 kind of a team. I do work under the criminal  
5 investigations division though.

6 Q Those are law enforcement officers.

7 A Yes.

8 Q Okay. And what do you do as a crime scene technician?

9 A We respond to crime scenes, whether it be a break-in,  
10 homicide, suicide, anything like that. We are responsible  
11 for documenting the crime scene, collecting and preserving  
12 evidence.

13 Q Okay. And did you respond to a scene at East  
14 Columbia Avenue?

15 A I did.

16 Q I direct your attention to this aerial photograph,  
17 State's Exhibit No. 2. Do you see the star down there  
18 where the body was found? Did you ever go to that  
19 location?

20 A I did not. I responded directly to East Columbia.

21 Q Is that where the crime scene was?

22 A Correct.

23 Q Do you know which house it would have been on East  
24 Columbia?

25 A Can I step down?

Courtney Westfall  
Direct examination by Mr. Bulsa

1 Q Yes, ma'am.

2 (Whereupon, the witness left the stand.)

3 A I believe the house was in this area right through  
4 here. It might not be exact, but it was in that general  
5 area.

6 Q So it was one of the first two houses up from South  
7 Liberty.

8 A Correct. If you turn off of South Liberty Street  
9 going toward South Church Street it would be on the left.

10 Q Okay. And was it this house that's pictured in  
11 State's Exhibit 3?

12 A Yes, that's the house.

13 Q And you didn't take the aerial photograph. But did  
14 you take these photographs?

15 A Correct. I took these, not the aerials.

16 Q All right. Have a seat.

17 (Whereupon, the witness returned to the stand.)

18 Q Was that one of the duties, was to photograph the  
19 scene?

20 A Yes, it was.

21 Q And why was it photographed?

22 A Just to document the crime scene. Photographs also  
23 help later on down the road like in this case. It's two  
24 years later. The photographs help to give you an idea of  
25 what the crime scene looked like and to also help with our

Courtney Westfall  
Direct examination by Mr. Bulsa

1 testimony.

2 Q Help refresh your memory of certain things?

3 A Yes.

4 Q Okay. Now, did you process the scene by yourself?

5 A I did not.

6 Q Who would have helped you?

7 A When I arrived on the scene I was advised that a  
8 search warrant was being obtained for the residence. Once  
9 that search warrant arrived on the scene, I believe it was  
10 myself, Investigator Porter, Investigator James and  
11 Investigator Nelson that processed the scene.

12 Q Okay. We just met Investigator James.

13 A Yes.

14 Q This is Investigator Porter.

15 A Yes.

16 Q And Investigator Nelson.

17 A Yes.

18 Q Okay. All right. Now, the jury may know this from  
19 television, but tell us what you mean by processing the  
20 scene.

21 A Basically, we go in. We take our photographs. We  
22 search for any items of evidence that may be relevant to  
23 the crime scene.

24 We may take measurements. We may take swabs for D. N.

25 A. We may process for fingerprints or dust for

Courtney Westfall  
Direct examination by Mr. Bulsa

1 fingerprints. You've seen that where they have the brush  
2 and use it to look for fingerprints on nonporous items. We  
3 may do any number of those things.

4 Q Now, I show you State's Exhibit No. 5, this photograph  
5 of the substance. Was that one of the first things that  
6 was noted?

7 A Yes.

8 Q And is that because it's in the entryway into that  
9 house?

10 A Yes, right there as you're walking in the door.

11 Q Okay. Did you -- do you recall finding any evidence  
12 out on the porch?

13 A I believe there may have been some of the red  
14 substance that I believed to be blood. It may have been  
15 just barely outside the door on the floor of the porch.

16 Q Basically in the doorway and doorjamb.

17 A Correct.

18 Q All right. So did you focus your investigation on the  
19 interior of the house?

20 A I did.

21 Q What was the next item you recall finding?

22 A A few feet inside the doorway against -- I guess it  
23 was a furnace or maybe a wood stove or something like  
24 that -- as you walk in the door that furnace is the first  
25 thing you see. Actually, let me use the pointer. But that

Courtney Westfall  
Direct examination by Mr. Bulsa

1 box right there.

2           There was a, a raised portion on the floor I guess  
3 where there may have been a fireplace at one point. There  
4 was a shell casing laying on the floor, but it was kind of  
5 butted up against that, the little raised portion. You'll  
6 see a picture of it.

7 Q       All right.

8           (Photographs marked State's Exhibits Nos. 6 through 8  
9 for Identification.)

10 Q       Okay. Let me show you what's been marked for  
11 identification as State's Exhibit 6, 7 and 8. Those are  
12 some additional photographs you took at the scene.

13 A       Yes, sir.

14 Q       Do they accurately depict the scene the night of the  
15 incident?

16 A       They do.

17           MR. BULSA: Your Honor, I would offer these three  
18 exhibits into evidence.

19           MR. ALLEN: No objection.

20           THE COURT: What are the numbers?

21           MR. BULSA: Six, seven and eight.

22           (Photographs marked State's Exhibits Nos. 6 through  
23 8.)

24 Q       Start with No. 6, this is just another view of the  
25 door but a little closer?

Courtney Westfall  
Direct examination by Mr. Bulsa

1 A It is.

2 Q Are you able to see what looks like it's directly in  
3 front of the door, a brown object? Is that the heater  
4 type?

5 A It is.

6 Q Okay. Now, you were describing something being found  
7 at the base of it.

8 A Yeah, a few -- a few feet between it and the door.

9 Q Okay. Here is State's Exhibit No. 7. Does that show  
10 the item you're talking about?

11 A It does. You notice the small shell casing right  
12 there up against -- there's some wood trim right there. I  
13 believe this is maybe concrete. It's just some trim around  
14 it between it and the hardwood floor.

15 Q Okay. Let me show you now State's Exhibit No. 8,  
16 appear to be two placards in the floor. What do those  
17 show?

18 A Those are just my numbers. When we find items of  
19 evidence, especially when we're finding multiple items on a  
20 crime scene, we assign them numbers. We place those  
21 numbers in the crime scene next to those items just so to  
22 kind of help, like I said help, us further down the road so  
23 when we're going through our report that number sort of  
24 stays with that item throughout the, the case.

25 Q Okay. And upon examining the scene and going back to

Courtney Westfall  
Direct examination by Mr. Bulsa

1 the police department do you create a diagram of the scene?

2 A Yes, normally I do.

3 Q And do these numbers help notate on the diagram where  
4 you found certain items?

5 A Yes. It helps us from having to draw out any items of  
6 evidence on our diagram. If we just put a number we can  
7 refer to our list of evidence and just correspond between  
8 the two.

9 (Diagram marked State's Exhibit No. 9 for  
10 Identification.)

11 Q I show you what's been marked for identification as  
12 State's No. 9. Would that have been a diagram that you  
13 prepared?

14 A It is.

15 Q It denotes the layout of the house?

16 A It does.

17 Q Specifically the living room area.

18 A Yes.

19 MR. BULSA: Your Honor, I would offer State's 9 into  
20 evidence.

21 MR. ALLEN: No objection.

22 THE COURT: It's admitted.

23 (Diagram marked State's Exhibit No. 9.)

24 Q Okay. Please describe what you've done for the jury.

25 A Okay. Just be aware that this isn't to scale. We

Courtney Westfall  
Direct examination by Mr. Bulsa

1 also have that noted on the diagram. It just gives you  
2 kind of a bird's-eye view of what we were seeing on the  
3 scene. And it helps us to note where each evidence item  
4 was found.

5 Q You've only noted three numbers.

6 A Yes.

7 Q Why is that?

8 A Really that's the only items of evidence that were --  
9 we believed to be relevant to the crime. There was really  
10 no sign of a struggle, nothing that appeared really out of  
11 place other than those three things right there.

12 Q Okay. Had there been signs of a struggle would you  
13 have noted that in the furnishings?

14 A Yes.

15 Q Now, you talked about No. 1 and No. 2.

16 A Yes.

17 Q What is No. 3?

18 A No. 3 was a hole in the wall, which if you're standing  
19 in the doorway of the front door in the living room you're  
20 looking towards the back of the living room.

21 There's a, like a, T. V. to your right. It's probably  
22 maybe a few feet from the door to the right of the door.  
23 Between the door frame and where that T. V. was there was a  
24 hole in the wall that appeared to be a possible bullet  
25 hole.

Courtney Westfall  
Direct examination by Mr. Bulsa

1 Q Okay. And was it within -- it appears you've got it  
2 drawn within the same area as the other two items.

3 A Yes. It was very close to the other two items.

4 (Photographs marked State's Exhibits Nos. 10 and 11  
5 for Identification.)

6 Q I show you what's been marked State's Identification  
7 Nos. 10 and 11. Are those additional pictures you took at  
8 the scene?

9 A They are.

10 Q Does that further establish the hole that you've  
11 identified as No. 3?

12 A Correct.

13 MR. BULSA: I would offer these into evidence, Your  
14 Honor.

15 MR. ALLEN: No objection to State's Exhibits 10 and  
16 11.

17 THE COURT: They're admitted.

18 (Photographs marked State's Exhibits Nos. 10 and 11.)

19 Q State's 10, you were describing looking back toward  
20 your front door.

21 A Yes, sir.

22 Q Is that what this shows us?

23 A Yeah. This shows you standing from on the opposite  
24 side of the living room looking at the front door.

25 Q Okay. And the bullet hole or the hole that you

Courtney Westfall  
Direct examination by Mr. Bulsa

1 believe that might be a bullet hole is to the left of the  
2 door?

3 A I'm sorry my hand is shaking, but right, right there  
4 is the hole.

5 Q State's 11 shows that?

6 A Yes, it does, just a closer shot of that.

7 Q And that's just to the right of the television.

8 A Correct. It's actually almost possibly even a little  
9 bit behind it kind of at an angle.

10 Q Did you do any further investigation into whether that  
11 might actually be a bullet hole?

12 A Yes. We attempted to -- well, we actually cut a few  
13 holes in the wall looking for a possible projectile inside  
14 the wall.

15 Actually, the hole didn't go all the way through the  
16 outside part of the wall. So we thought, well, maybe if it  
17 is a bullet hole there's a possible bullet trapped between  
18 the living room wall and the outside wall of the house. So  
19 we cut a couple of holes looking for the projectile. We  
20 weren't able to locate it.

21 Q Do you have any idea what that wall was made of?

22 A I believe it was like plaster. It's an older house.  
23 It's not necessarily your drywall. It's a lot thicker.

24 Q Okay.

25 (Photographs marked State's Exhibits Nos. 12 and 13

Courtney Westfall  
Direct examination by Mr. Bulsa

1 for Identification.)

2 Q Let me show you two additional pictures for  
3 identification, 12 and 13. Are those additional pictures  
4 you took?

5 A Yes, these are.

6 Q Are they additional pictures of the location where the  
7 hole was in the wall?

8 A Yes.

9 MR. BULSA: Your Honor, I would offer these into  
10 evidence.

11 MR. ALLEN: No objection.

12 (Photographs marked State's Exhibits Nos. 12 and 13.)

13 Q Before you begin cutting into the wall did you do  
14 anything?

15 A Yes. We used a, what we call a, trajectory rod, which  
16 is basically a fancy word for a dowel rod. We have several  
17 different sizes of dowel rods. We pick one that fits into  
18 that possible bullet hole the best.

19 We put the rod in at the, the angle that the --  
20 basically the angle that the hole will allow us to put the  
21 rod through. We don't force it through. But if we can get  
22 that rod in there, we will. And that helps us to see a  
23 possible angle of entry.

24 Q Okay. And is that denoted in State's Exhibit No. 12?

25 A It is. That shows the trajectory rod going into the

Courtney Westfall  
Direct examination by Mr. Bulsa

1 possible bullet hole.

2 Q So for that picture it suggests that the bullet came  
3 from the right to the left?

4 A Yeah. Possibly from the right to the left slightly  
5 down maybe. It's kind of hard to see in that picture, but  
6 it is slightly at a downward angle barely.

7 Q Was the width of that door, was it a normal width of  
8 the doors?

9 A I believe so, yeah.

10 Q Okay. Didn't seem overly wide?

11 A Uh-uh.

12 Q Okay. State's Exhibit No. 13, does that show the  
13 damage you did to the wall?

14 A Yes.

15 Q Okay. And you -- does that appear to be two holes?

16 A Yes. We -- I believe we cut the top hole first just  
17 to see if maybe the bullet could have been lodged in that  
18 outer wall. It wasn't.

19 There was also some studs in the wall running this way  
20 and this way, up and down and horizontal. So we decided to  
21 cut the second hole in the wall to see if maybe it had  
22 dropped down.

23 Q But you weren't successful in finding it.

24 A Correct.

25 Q Did that surprise you?

Courtney Westfall  
Direct examination by Mr. Bulsa

1 A Not really. We thought maybe, No. 1 maybe, it wasn't  
2 a bullet hole; and, No. 2, maybe the bullet could have  
3 bounced around all in that wall. And we had done enough  
4 damage that we didn't want to cut the entire wall up.

5 Also, we had a shell casing which would have been  
6 enough for us. Also, we thought, well, maybe the bullet  
7 could have fragmented once it went through the wall and  
8 just been in a bunch of little tiny pieces. That wouldn't  
9 be of any value to us anyway.

10 Q Okay. All right. So we go back to the diagram.  
11 Everything pretty much seems centered around that doorway.

12 A Yes.

13 Q All right. We've got one more photograph I want you  
14 to see.

15 (Photograph marked State's Exhibit No. 14 for  
16 Identification.)

17 Q I show you State's Exhibit No. 14 for Identification.  
18 Is that another photograph you took?

19 A Yes. This is a photo of the living room.

20 Q Does that accurately depict the way it looked when you  
21 arrived?

22 A Yes.

23 MR. BULSA: Your Honor, I offer State's 14 into  
24 evidence.

25 MR. ALLEN: No objection.

Courtney Westfall  
Direct examination by Mr. Bulsa

1 THE COURT: It's admitted.

2 (Photograph marked State's Exhibit No. 14.)

3 Q Okay. This is the living room area of the house,  
4 correct?

5 A Correct. That's a shot taken standing in the doorway.

6 Q Okay. Because we see the heating type unit right  
7 there, right?

8 A Yes.

9 Q It appears that everything seems to be in order in  
10 that room. Was it that, that way?

11 A Yes. I mean, there's no -- I mean, nothing's really  
12 knocked over. There's -- it appears to be fairly neat.

13 Q In fact, we even see what appears to be a baby bottle  
14 on the table.

15 A Yes, on the coffee table there.

16 Q Okay. Now, you processed this scene; you identified  
17 those objects. Did you collect the shell casing?

18 A I did. It was noted as item No. 2.

19 Q And did you take samples of the substance in the  
20 doorjamb?

21 A Yes, I did. I collected actually two swabs. The  
22 stain that was on the doorjamb appeared to be blood. Just  
23 from my experience it looked to be blood. So I collected,  
24 I believe, two swabs. One was from the inner side of the  
25 doorjamb like in the living room, and another was from the

Courtney Westfall  
Direct examination by Mr. Bulsa

1 outer side more towards the porch.

2 Q And we've heard your efforts to try to identify the  
3 object that made the hole in the wall.

4 A Yes.

5 Q Do you know what caliber this shell casing was?

6 A It was a .380.

7 Q .380. Okay. And were these -- how did you package  
8 the swabs of the substance?

9 A When we collect a swab we basically put them in a --  
10 well, they have swab cartons. It's just a little cardboard  
11 carton that's got air holes in it so that the substance can  
12 air dry if it needs to. Put it in the cartons, put it in  
13 an evidence envelope and seal it up.

14 Q It would be sealed, tamperproof?

15 A Yes.

16 Q So you could tell whether somebody had messed with it?

17 A Correct.

18 Q Okay. And that's secured in the evidence room at the  
19 city police department?

20 A Yes, it is.

21 Q Was the -- well, who would have taken the items to --  
22 where would the items have been taken to be analyzed?

23 A Okay. Once we place the items into evidence we fill  
24 out a, a SLED request. Basically it's a lab request. We  
25 put any of the items on there that we want tested. And

Courtney Westfall  
Direct examination by Mr. Bulsa

1 then that would go to SLED, which is the state law  
2 enforcement in Columbia, which is where the lab is.

3 Q Would you have taken it down there, or would the  
4 evidence technician?

5 A I would not. An evidence technician would. They're  
6 the people that actually take the items into evidence.  
7 Then they transport it to SLED just to kinda keep down the  
8 chain of custody.

9 Sometimes if it's certain circumstances an  
10 investigator will take it down, but usually it's the  
11 evidence techs.

12 Q So it's your job to collect it and make sure it's  
13 properly sealed. And then you turn over to the evidence  
14 technician to store it.

15 A Correct.

16 Q Now, you did on this day of the incident, I believe.  
17 But didn't you go to another location and locate a weapon?

18 A I did.

19 Q And when was that?

20 A It was on May 30th of 2008 at about 4:50 in the  
21 afternoon.

22 MR. ALLEN: Your Honor, if it please the Court. I'll  
23 object to testimony about the discovery of a weapon at  
24 another location because it hasn't been shown to be  
25 relevant to this case at this time.

Courtney Westfall  
Direct examination by Mr. Bulsa

1 THE COURT: Sustained.

2 Q Did you go to that scene? Did you go to a scene and  
3 recover a weapon?

4 A I did.

5 Q And where was that recovered?

6 MR. ALLEN: Same objection, Your Honor.

7 THE COURT: Refer to the same item that's already been  
8 objected to?

9 MR. BULSA: Yes, sir. I'm going to tie it into the  
10 case.

11 THE COURT: Let me see y'all just a minute.

12 (Bench conference held off the record in the presence  
13 of the jury but out of the hearing of the jury.)

14 THE COURT: Overrule the objection.

15 Excuse me just a minute. Let me ask y'all one more  
16 thing.

17 (Bench conference held off the record in the presence  
18 of the jury but out of the hearing of the jury.)

19 Q Okay. Where was the location of the weapon that you  
20 found?

21 A I was contacted to respond to the intersection of  
22 Williams Street and Harmony Drive.

23 Q Okay. And that was when?

24 A That was May 30th of 2008.

25 Q Okay. So that would have been six days after this

Courtney Westfall  
Direct examination by Mr. Bulsa

1 shooting?

2 A Yeah, yes, sir.

3 Q Okay. Let me show you what's been -- I will get it  
4 marked first.

5 (Photograph marked State's Exhibit No. 15 for  
6 Identification.)

7 Q Did you record the serial number of the weapon that  
8 you recovered?

9 A The serial number was actually scratched out on the  
10 weapon. You couldn't, you couldn't read it.

11 Q Okay. Did you photograph the weapon?

12 A I did. I photographed it.

13 Q What location did you respond to, again?

14 A It was the intersection of Williams Street and Harmony  
15 Drive.

16 Q Okay. Where is that in relation to the incident  
17 location?

18 A Basically across town.

19 Q Okay.

20 A The actual crime scene is on the south side of town.  
21 Williams Street and Harmony Drive is pretty much as far as  
22 opposite you can go almost to the county.

23 (Photographs marked State's Exhibits Nos. 16 through  
24 18 for Identification.)

25 Q Let me show you a series of photos 16 -- excuse -- 15

Courtney Westfall  
Direct examination by Mr. Bulsa

1 through 18.

2 A Okay.

3 Q Those are additional photographs you made in this  
4 case?

5 A Yes. That's what these...

6 Q Those would have been taken on May the 30th?

7 A Yes.

8 Q 2008?

9 A Yes.

10 MR. BULSA: The state would offer these into evidence  
11 -- 16 -- excuse me -- 15, 16, 17 and 18.

12 MR. ALLEN: Subject to my earlier objections to link  
13 it up.

14 THE COURT: They're admitted.

15 (Photographs marked State's Exhibits Nos. 15 through  
16 18.)

17 Q Fifteen shows the street sign?

18 A Yes.

19 Q Showing the area of town.

20 A Yes.

21 Q Now, 16 shows a weapon in the grass.

22 A Yes. It's on the road, on -- not on the roadway but  
23 just off the roadway about a foot or so off of the road.

24 Q Okay. And you took it back to the police department  
25 and took photos 17 and 18?

Courtney Westfall  
Direct examination by Mr. Bulsa

1 A I did. In that picture you can see this area that's  
2 scratched out. That's where the serial number would have  
3 been.

4 Q Okay. And 18 is a picture of the other side?

5 A Yes, it is.

6 Q Did you know whether the weapon was loaded?

7 A It was. When I collected it there were five .380  
8 rounds in the, in the magazine. There was not a round in  
9 the chamber.

10 (Weapon marked State's Exhibit No. 19 for  
11 Identification.)

12 Q Okay. I show you State's Exhibit 19 for  
13 Identification. It's a weapon and a -- appears to be a  
14 magazine.

15 A Yes.

16 Q Is that the gun that is identified as State's 17 and  
17 18?

18 A It is.

19 MR. BULSA: Your Honor, I would offer that into  
20 evidence.

21 MR. ALLEN: Again, objection as to relevance at this  
22 time subject to their being able to link it up.

23 THE COURT: All right. Just mark it for --

24 MR. BULSA: Identification.

25 THE COURT: -- identification to be -- for further

Courtney Westfall  
Direct examination by Mr. Bulsa

1 foundation to be laid for its admittance.

2 MR. BULSA: Yes, sir.

3 Q Okay. Now, this has the magazine out and unloaded,  
4 correct?

5 A Correct.

6 Q Is that done for safety purposes?

7 A Yes.

8 Q Actually got some sort of lock on it.

9 A Yes. That's to keep the gun from firing.

10 Q That way assures nobody gets shot in the courtroom.

11 A Yes.

12 Q What caliber of weapon is that?

13 A It's a .380.

14 Q I'm not going to put the bullets in. But it had five  
15 rounds in it?

16 A It did.

17 Q Do you know -- did you compare the brands?

18 A I did.

19 (Shell casing marked State's Exhibit No. 20 for  
20 Identification.)

21 A The brands of bullets that were loaded in the gun,  
22 three of them were marked with a head stamp, F. C., and two  
23 of them were marked with a head stamp, R. P.

24 Q And what brand was the one found at the house?

25 A I believe the one found at the house was an R. P.

Courtney Westfall  
Direct examination by Mr. Bulsa

1 Q I want to show you State's Exhibit No. 20 for  
2 Identification.

3 A Okay.

4 Q Does that envelope contain that round, the empty  
5 casing you found at the scene?

6 A Yes.

7 Q All right. Once again, the caliber was the same as  
8 the caliber that fits this gun.

9 A Correct. It's an P. R. .380.

10 Q And was this weapon secured in the same fashion as the  
11 other evidence you collected?

12 A You mean sealed?

13 Q Recovered and kept at the sheriff's, I mean, at the  
14 city police department.

15 A Yes. It was collected and placed into evidence.

16 Q A gun is not something you can easily tamper with and  
17 change the way it looks?

18 A No. I will note though that before it was placed into  
19 evidence I believe I processed it for fingerprints. And,  
20 yeah, I processed it for fingerprints.

21 Q And were you successful in finding anything?

22 A No.

23 Q Why is that?

24 A I really never have much luck getting fingerprints off  
25 guns. They're very difficult to get prints from.

Courtney Westfall  
Direct examination by Mr. Bulsa

1 Q How about that location where it was found? Could  
2 that have affected your ability?

3 A It could have. It was found outside in the elements.  
4 That could have something to do with it. It's just I've  
5 never really had luck with getting prints off of guns.

6 Q All right. Let me see. Did you attend the autopsy of  
7 Mr. Rogers?

8 A I did.

9 Q You heard me ask the pathologist about blood being  
10 taken. Would you have collected that or would you have  
11 left that for the coroner's office?

12 A The coroner's office would have taken that.

13 Q Is the coroner's office associated with the city  
14 police department?

15 A No. They're a county office. They respond to any  
16 death investigation. They -- we work with them, but  
17 they're not with the city, no.

18 Q Okay. So at no time would the victim's blood having  
19 been taken from the autopsy ever have been in the same  
20 location where the items which you collected at the crime  
21 scene --

22 A It shouldn't have been, no. I never had possession of  
23 it though.

24 Q You never had it and never was at the city police  
25 department.

Courtney Westfall  
Direct examination by Mr. Bulsa

1 A Not that I know of, no.

2 Q Never was near any swabs that you picked, picked up.

3 A Not that I'm aware of, no.

4 Q Okay. Thank you, Ms. Westfall. That's all I have at  
5 this time.

6 THE COURT: All right. Ladies and gentlemen, because  
7 of the hour we're going to break up the testimony. The  
8 direct examination has been concluded, but we will continue  
9 with the cross-examination by Mr. Allen in the morning at  
10 9:30.

11 So keep in mind -- did I caution you before lunch  
12 about not talking about the case and not reading anything  
13 about the case and not watching anything about the case?  
14 Don't do any research; don't do any investigation.

15 You're nodding your head yes, so keep that caution in  
16 mind. No discussions, no research, not investigation. Do  
17 not permit yourselves to be exposed to any type of media  
18 coverage that relates to the case.

19 There might be something on radio, might be something  
20 on television, might be something in the newspaper. You  
21 have to avoid that.

22 As I told you, you've got to base your decision upon  
23 what you see and hear during the trial. You can't rely  
24 upon somebody else's perception or recollection as to what  
25 the evidence is. So avoid any outside or extraneous

1 information regarding the case. Avoid any type of media  
2 exposure. No discussions, research or investigation.

3 Do have a good evening, and please report to your jury  
4 room at 9:30 in the morning, 9:30 in the morning. Have a  
5 good evening.

6 (The following takes place outside the presence of the  
7 jury.)

8 THE COURT: Ms. Westfall, you may step down, but keep  
9 in mind that you're still technically on the witness stand.  
10 So you are not to discuss this case or your testimony with  
11 any person during the overnight recess.

12 THE WITNESS: Okay.

13 THE COURT: And you need to be back at least by 9:30.

14 (Whereupon, the witness was excused for the day.)

15 THE COURT: Court's in recess until 9:30 in the  
16 morning.

17 END OF PROCEEDINGS MAY 18, 2010

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Courtney Westfall  
Cross-examination by Mr. Allen

1 (Proceedings May 19, 2010)

2 (The following takes place outside the presence of the  
3 jury.)

4 (Photograph marked Defendant's Exhibit No. 1 for  
5 Identification.)

6 THE COURT: All right. Any matters to address before  
7 the jury is brought in?

8 MR. BULSA: No, sir.

9 MR. ALLEN: No, Your Honor.

10 THE COURT: Okay. Bring them in.

11 (The following takes place in the presence of the  
12 jury.)

13 THE COURT: Good morning, ladies and gentlemen.

14 As you know, when we recessed yesterday the witness  
15 was on the witness stand. Courtney Westfall had just  
16 completed her direct examination by the prosecutor. And so  
17 we will now continue with her examination through the  
18 cross-examination by Mr. Allen.

19 Ms. Westfall, if you will, come back please and resume  
20 your seat on the stand. You're still under oath.

21 Mr. Allen.

22 MR. ALLEN: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. ALLEN

25 Q Ms. Westfall, I want to first talk a little more about

Courtney Westfall  
Cross-examination by Mr. Allen

1 the autopsy that you attended of Mr. Rogers.

2       Okay. Along with the, the blood that the solicitor  
3 was talking about, you also took some fingernail scrapings,  
4 is that correct?

5 A     I did, yes.

6 Q     These would be scrapings underneath the fingernails of  
7 Mr. Rogers, correct?

8 A     Yes, correct.

9 Q     And of course you took that into -- you know, you  
10 safeguarded it, right?

11 A     Correct. I took it and put it in into evidence, yes.

12 Q     Right. And you of course tracked the -- where it  
13 would go from that point on up to the point where you  
14 delivered it to property and evidence, correct?

15 A     Correct, yes.

16 Q     Now, property and evidence is a portion of the  
17 department of public safety where they store items of  
18 evidence retrieved in all cases, correct?

19 A     Correct. It's basically a warehouse that is  
20 controlled access. Only the evidence techs have access to  
21 it. If we need to give them something, we give it to them.  
22 If we need to get something out of evidence, we sign it out  
23 from them.

24 Q     And of course it's there for safekeeping, correct?

25 A     Correct, yes.

Courtney Westfall  
Cross-examination by Mr. Allen

1 Q In case the evidence needs to be forwarded to another  
2 agency for testing, correct?

3 A Correct.

4 Q And one of the reasons you take fingernail scrapings  
5 is for possible D. N. A. analysis, correct?

6 A Correct. In this case we weren't sure if there was  
7 actually any hand-to-hand combat. Usually like in a case  
8 where someone is involved in a hand-to-hand combat, a lot  
9 of times the skin cells can get under the victim's  
10 fingernails, or the suspects if they're, you know, fighting  
11 pretty hard with each other. You scratch someone, you can  
12 get their D. N. A. under, under your fingernails. So  
13 that's why we collect that.

14 Q Okay. Just in case.

15 A Yes, just in case.

16 Q Now, let's go a little bit to your processing the  
17 scene at East Columbia Avenue.

18 A Okay.

19 Q All right. The processing includes not only taking  
20 photographs, right?

21 A Correct.

22 Q You took a lot of photographs.

23 A Yes.

24 Q It also includes in some cases collecting items --

25 A Yes.

Courtney Westfall  
Cross-examination by Mr. Allen

- 1 Q -- that may or may not be evidence.
- 2 A Correct.
- 3 Q Correct? And also measuring items or measuring  
4 distances.
- 5 A Sometimes, yes.
- 6 Q Okay. Did you measure any distances in this case?
- 7 A No, not in this case because it was a very small  
8 contained area. And also it appeared to us that the shell  
9 casing that we found may have rolled as it was laying up  
10 against the -- that trim piece I'm trying to come up with.
- 11 Q All right. Looking at State's Exhibit No. 7, is that  
12 the shell casing you were talking about --
- 13 A Yes.
- 14 Q -- with the trim piece?
- 15 A Uh-huh.
- 16 Q This -- let's see if I can turn this on.  
17 (Pause.)
- 18 Q There we go. So looking at State's Exhibit 7 on the  
19 overhead projector, the casing is up against a -- this  
20 piece of wood, right?
- 21 A Yes.
- 22 Q It outlines where the wooden floor ends and where a  
23 concrete hearth begins, is that correct?
- 24 A Correct.
- 25 Q And of course whenever -- you can't tell really

Courtney Westfall  
Cross-examination by Mr. Allen

1 anything, can you, about where a shot occurred based on  
2 where you find a casing? Is that right?

3 A Correct, especially on like a hard floor like that.  
4 You know, if you drop a pencil on the floor like if it's on  
5 a hard surface it's going to roll.

6 So when a shell casing is being ejected from a gun  
7 it's going to be moving in a pretty good amount of speed in  
8 whatever direction it goes. And when it hits the floor  
9 it's not just going to stop. It's -- it may roll. It also  
10 could be kicked in the chaos of the event that's occurring.  
11 It could be kicked; it could be stepped on; it could be  
12 moved. But it was just in the general vicinity of  
13 everything else we found, so.

14 Q And also in the ejection when it's ejected from the  
15 gun, it could bounce off of things, for example, right?

16 A Correct, that's right.

17 Q It could bounce off of furnaces, bounce off the walls.

18 A Yes.

19 Q Right? And depends also on how the gun was held, is  
20 that right?

21 A Yes.

22 Q Okay. Now, next if you will I'm going to talk about  
23 the hole in the wall that you saw.

24 A Yes, sir.

25 Q Okay. And that you photographed.

Courtney Westfall  
Cross-examination by Mr. Allen

- 1 A Yes.
- 2 Q Okay. First of all, when you first photographed it  
3 you photographed it as you saw it, correct?
- 4 A Yes, yes.
- 5 Q And of course this scene had been secured by other  
6 officers before you arrived, correct?
- 7 A It had.
- 8 Q Meaning once the officers arrived and took people out,  
9 no one else was allowed in or out, is that correct?
- 10 A That's right.
- 11 Q Except for investigators.
- 12 A Yes.
- 13 Q And also before you did anything else with the hole  
14 after you photographed it you marked it with a number, is  
15 that correct?
- 16 A I did.
- 17 Q And in this case you marked it with the No. 3, is that  
18 right?
- 19 A Yes.
- 20 Q Okay. Showing you what's been marked as Defense  
21 Exhibit 1. Is this another copy of the photograph you took  
22 of the hole in the wall?
- 23 A It is, yes.
- 24 Q That you labeled as No. 3.
- 25 A Yes. It's got a, like a, sticky label on the wall

Courtney Westfall  
Cross-examination by Mr. Allen

1 next to the hole.

2 Q And this is the same hole that you were talking about  
3 near the television just to the right of the door frame as  
4 you walked in.

5 A Yeah.

6 Q Just to the right of the front door.

7 A Correct.

8 Q Okay.

9 MR. ALLEN: We offer this into evidence as Defense  
10 Exhibit 1, Your Honor.

11 MR. BULSA: No objection.

12 THE COURT: It's admitted.

13 MR. ALLEN: Thank you.

14 (Photograph marked Defendant's Exhibit No. 1.)

15 Q This picture was taken before you did any other tests  
16 on the hole, is that correct?

17 A Yes, should have been, yes.

18 Q Okay. Now, as you're looking at this picture isn't it  
19 true that there appears to be some flakes that are out or  
20 moving away from the wall towards the outside, towards the  
21 camera?

22 A Just where the paint has, you know, I guess come off  
23 the wall a little bit.

24 Q Right.

25 A Yeah.

Courtney Westfall  
Cross-examination by Mr. Allen

1 Q Okay. And this was taken before, of course, you put  
2 the dowel rod in the wall, correct?

3 A Yes, yes.

4 Q This is a through-and-through hole, correct?

5 A Correct.

6 Q In other words, it didn't stop at a slat or another  
7 coat of plaster. It went all the way through that wall to  
8 the interior of the wall.

9 A Right. It didn't go all the way through to the  
10 outside. It just -- in between the two walls, yeah.

11 Q Okay. Thank you.

12 A Yeah.

13 Q Just through that complete plaster.

14 A Right.

15 Q All the way to the other hole -- not the other hole  
16 but the other interior part of the wall, correct?

17 A Yes, yes.

18 Q You -- now, showing you State's 13, when you cut or  
19 when you -- when the officers cut into the wall where the  
20 hole was -- is that correct? That's what that shows.

21 A Yeah.

22 Q Where you cut into --

23 A Correct. We cut around, an area around, where the  
24 hole was.

25 Q Right. And you were specifically looking for a

Courtney Westfall  
Cross-examination by Mr. Allen

1 bullet, is that right?

2 A Yes.

3 Q You did not see anywhere in that part of the wall  
4 where there was another hole, is that correct?

5 A Correct.

6 Q In other words, there's no hole on these -- these are  
7 boards, right, where I'm pointing my pen right now?

8 A I believe to the sides that there were like the two  
9 upboard studs, but on the other side was whatever materials  
10 the outside of the house was made of. I'm not really sure  
11 what it was.

12 Q All right. So there's wooden studs right to the left  
13 and to the right of this hole that y'all cut, is that  
14 correct?

15 A Yes, yes.

16 Q And these wooden studs go pretty much from just behind  
17 the plaster all the way to this outside material, correct?

18 A Pretty much. There may have been some spaces in it,  
19 just some gaps in there.

20 Q But not big.

21 A No, not really.

22 Q Pretty much all the way.

23 A Yeah.

24 Q And you did not see any hole at all in this outside  
25 material.

Courtney Westfall  
Cross-examination by Mr. Allen

- 1 A I did not.
- 2 Q You inspected this area carefully, did you not?
- 3 A Yes. We looked at it for a very long time.
- 4 Q A long time?
- 5 A Yes.
- 6 Q About how long do you think?
- 7 A It was a while. I don't know. I don't know the exact  
8 amount of time.
- 9 Q Okay.
- 10 A But we worked on it for a while.
- 11 Q All right. And of course you inspected the size of  
12 the studs onto the left and the right, is that correct?
- 13 A I did.
- 14 Q You looked a little bit up and a little bit down below  
15 where you cut, is that correct?
- 16 A Yes.
- 17 Q I believe you even got out some of the insulation  
18 behind the wall.
- 19 A Yes, yeah. We pulled insulation out and went through  
20 it in case the bullet may have been, you know, tangled up  
21 in the insulation. Didn't find anything.
- 22 Q You didn't see any nicks in this outside wall, this  
23 outside material, correct?
- 24 A Correct.
- 25 Q You did not see any nicks in the studs.

Courtney Westfall  
Cross-examination by Mr. Allen

- 1 A Not that I recall, no.
- 2 Q Okay. Had you seen nicks in the studs you would have  
3 noted it in your report, right?
- 4 A Yeah, yeah.
- 5 Q You didn't note anything like that in your report.
- 6 A No.
- 7 Q It's fair to say that you did not see any nicks.
- 8 A That's correct.
- 9 Q And of course you looked all the way down this wall  
10 after you got the insulation out, correct?
- 11 A Yes.
- 12 Q Inspected the insulation.
- 13 A Yes.
- 14 Q You also inspected the bottom part of this wall, is  
15 that correct?
- 16 A I did.
- 17 Q The subflooring goes all the way to either the wall or  
18 to where the porch, the concrete porch, joins.
- 19 A Yes. It was pretty flush with, I guess, the concrete.  
20 It, it went up to the outside wall. You couldn't see any  
21 gaps in between it.
- 22 Q But there's no gaps from the subflooring behind this  
23 wall that goes all the way down to the ground below the  
24 house.
- 25 A Right. Not that I could see, no.

Courtney Westfall  
Cross-examination by Mr. Allen

1 Q You looked careful.

2 A I did.

3 Q Okay. You didn't see any evidence of a bullet having  
4 gone in there or bounced around in there, did you?

5 A I couldn't see a bullet, no.

6 Q In fact, you're not even sure if that's a bullet hole,  
7 right?

8 A That's what I said. Of course with the shell casing  
9 being there and the blood being there we suspected it may  
10 be a bullet hole, which is why we cut the wall open.

11 Q But you don't know for certain that that's a bullet  
12 hole.

13 A Just for certain, no. But from experience that's what  
14 it appeared to be.

15 Q That's what it appears to be.

16 A Yes.

17 Q And you don't know how long that hole had been there.

18 A That's correct.

19 Q Let's talk a little bit about the where the wooden  
20 dowel that you put in the hole before you made this larger  
21 cut -- do you know what diameter that wooden dowel was?

22 A Not off the top of my head, no.

23 Q Okay. There was some play with that wooden dowel,  
24 correct?

25 A There was a small amount of space around that dowel

Courtney Westfall  
Cross-examination by Mr. Allen

1 but not enough to be able to manipulate it one way or the  
2 other.

3 Like I said, what we do is we take the dowel rods that  
4 will fit into that hole. We don't try to make, get one,  
5 force one in there. The next size up would not have fit in  
6 that hole.

7 Q All right. The casing that you found in the house,  
8 did you check that for fingerprints as well?

9 A I believe so, yes, yeah. No prints were found on the  
10 shell casing.

11 Q All right.

12 MR. ALLEN: One second, please, Your Honor.

13 (Pause.)

14 Q While you were there investigating the hole in the  
15 wall that you had marked as No. 3 that we've seen pictures  
16 of, did you talk to Ms. Dandy about the hole wall?

17 A I don't remember talking to Ms. Dandy. She was -- she  
18 may have been with an investigator outside the crime scene.  
19 I don't, I don't recall talking to her, no.

20 Q Okay. Now, let's talk a little bit if you would about  
21 when you went out to Williams and Harmon. Is it possible  
22 that's Williams and Harmony streets?

23 A Yes, Harmony. I originally noted that in my report  
24 that it was Harmon, because if you look at the picture you  
25 can see the "Y" is kind of peeling off the sign. So that

Courtney Westfall  
Cross-examination by Mr. Allen

1 was my mistake.

2 Q All right. There was a street sign nearby, right?

3 A Yeah, yeah.

4 Q That's Williams and Har -- and Harmony, although the  
5 "Y" was missing.

6 A Yeah, yeah.

7 Q You see a little shadow of that "Y"?

8 A Uh-huh.

9 Q Okay. This area, I believe indicated it was on the  
10 north end of town.

11 A I believe, yeah, towards the north end.

12 Q Which basically to get to that area you would go out  
13 like from this courthouse, for example. You would go in  
14 the direction roughly in the corner of where the jury box  
15 is over here, is that correct?

16 A I'm trying to think of where we are in the courthouse.  
17 Yeah. I think that sounds, sounds correct, yes.

18 Q Okay. All right. It's off of Howard Street in that  
19 area, correct?

20 A Yes, yeah, towards that way.

21 Q But the area where the house was, where you had been  
22 before at East Columbia, that is on the other side of  
23 Spartanburg.

24 A Correct.

25 Q Is that correct?

Courtney Westfall  
Cross-examination by Mr. Allen

1 A All the way down Church Street, South Church Street.

2 Q So it would be roughly in the direction on the  
3 opposite side of this courtroom diagonally that way, is  
4 that correct?

5 A Yeah, in the way. Yes, yeah.

6 Q I'm not too good on directions either.

7 A I'm not either.

8 Q And you -- I believe you said you went out to this  
9 street area, Williams and Harmony, on the 30th of May, is  
10 that correct?

11 A I think, yeah. I think it was the 30th. Let me make  
12 sure. Yeah, it was the 30th.

13 Q And it was about somewhere between 4:20 and 4:30 in  
14 the afternoon that you recovered this gun. Would that be  
15 correct?

16 A In my report I have 4:50.

17 Q 4:50?

18 A Yes.

19 Q Four five zero.

20 A Yes.

21 Q Okay. Sometimes get 50 and 15 mixed up.

22 A Okay. Fifty.

23 Q All right. Excuse me. Had you been out in that area  
24 earlier looking for evidence in connection with this case?

25 A I had not, no. I was called to respond to that area.

Courtney Westfall  
Cross-examination by Mr. Allen

1 Q You were called to respond to that area.

2 A At about -- I was probably called about 4:30 and then  
3 responded out there about 4:50.

4 Q I see. You were called by the investigators  
5 associated with this case, correct?

6 A Yes, yes.

7 Q All right. When you arrived you didn't notice any  
8 debris on top of this gun, did you?

9 A No. I don't believe so. It was, it was kind of in  
10 tall grass, but it was just kind of laying there.

11 Q But you didn't notice any leaves on top of it?

12 A I don't, I don't remember any leaves on it. I don't  
13 remember it being covered up.

14 Q Or any dirt on top of it.

15 A No.

16 Q Or any pollen?

17 A I don't believe so, no.

18 Q In the area right around where the gun was found did  
19 you see -- you didn't see any indentations in the ground or  
20 anything as if the gun had been tossed out there, did you,  
21 and bounced or came to rest there, did you?

22 A I don't recall. I just remember seeing a gun in the  
23 grass --

24 Q Okay.

25 A -- just there off the side of the road.

Courtney Westfall  
Cross-examination by Mr. Allen

1 Q In fact, you don't even know how long or short that  
2 gun was out there, do you?

3 A That's correct.

4 Q The gun was loaded when you found it.

5 A It was. There were no rounds in the chamber, but  
6 there were five rounds in the magazine.

7 Q And five rounds only in the magazine.

8 A Correct.

9 Q Nothing in the chamber.

10 A No.

11 Q All right. I believe you mentioned there were two  
12 different makes of the rounds in the magazine, correct?

13 A There were.

14 Q Did you note what order they were in?

15 A No, I did not.

16 Q When you -- and I believe you earlier testified that  
17 you had checked for fingerprints on the gun, is that right?

18 A I did.

19 Q And of course when you found the gun the magazine was  
20 inside the handle of the pistol, is that correct?

21 A It was, yes.

22 Q Not exposed to the elements.

23 A Correct.

24 Q The magazine part.

25 A Uh-huh.

Courtney Westfall  
Cross-examination by Mr. Allen

- 1 Q Did you check for fingerprints on the magazine?
- 2 A I did. Any time we recover a gun we're going to  
3 process the gun itself, the magazine and the bullets inside  
4 it.
- 5 Q And so you didn't find any prints on the magazine.
- 6 A I don't believe there were any. Let me double check,  
7 but I don't think there were. No. No prints were found.
- 8 Q Okay. Or on the bullets.
- 9 A Right.
- 10 Q Those five bullets.
- 11 A Correct.
- 12 Q But you checked.
- 13 A I did.
- 14 Q All right. When you went out there to find the gun,  
15 of course I presume that your attention was directed  
16 towards that gun, is that correct?
- 17 A Yes.
- 18 Q By one of the officers or investigators, correct?
- 19 A Yes. I believe it may have been Investigator Porter  
20 who was there. He showed me where the gun was. I  
21 photographed it and collected it.
- 22 Q Okay. Did you notice if there were any, say, civilian  
23 out there as well?
- 24 A I do remember a younger black male being there with  
25 him, but I wouldn't recognize him now.

Courtney Westfall  
Redirect examination by Mr. Bulsa

1 Q Okay. Of course it's not your job to take his name or  
2 anything like that, is that correct?

3 A No. I'm pretty much there for the evidence.

4 Q Just there for the evidence.

5 A Yeah.

6 Q Okay. So he appeared to be with the officers in  
7 connection with this case or more like an interested  
8 bystander, or could you, could you tell?

9 A I think he was with him, but I didn't, I didn't really  
10 engage in any conversation with him or anything, so.

11 Q Right. But just the way he was moving with them and  
12 close to them, you got the impression he was with them.

13 A Yes, I did.

14 MR. ALLEN: Nothing further, Your Honor. Thank you.

15 REDIRECT EXAMINATION

16 BY MR. BULSA

17 Q Ms. Westfall, Mr. Allen was asking you questions about  
18 the positioning of the gun.

19 A Uh-huh.

20 Q We'd seen the picture yesterday that you'd taken of  
21 the gun alongside the road, State's No. 16, is that right?

22 A Yes.

23 (Photograph marked State's Exhibit No. 21 for  
24 Identification.)

25 Q I'm going to now show you an additional photograph

Courtney Westfall  
Redirect examination by Mr. Bulsa

1 marked for identification as State's 21. Does that show a  
2 broader picture of the area where you took the closer  
3 photo?

4 A Yes, it does.

5 Q We didn't show you that one yesterday, but based on  
6 Mr. Allen's questioning I wanted the jury to be able to see  
7 it.

8 A Okay.

9 MR. BULSA: Your Honor, I'll ask to move this into  
10 evidence as State's 21.

11 MR. ALLEN: No objection.

12 (Photograph marked State's Exhibit No. 21.)

13 Q State's 21. This is going to give a better, a broader  
14 perspective of the surrounding where the gun was, right?

15 A Yes.

16 Q So it's kind of hard to find anything else in all of  
17 that.

18 A Yeah. It's pretty hard to see the gun in that picture  
19 anyway. It just kind of gives you just an overview of what  
20 the area was like.

21 Q And then somebody actually had to point the gun out  
22 for you to be able to even see it.

23 A Yes, I believe so, yeah.

24 Q And that's when you took the closer picture.

25 A Yes. You can see it there in the leaves.

Courtney Westfall  
Redirect examination by Mr. Balsa

1 Q Okay. Mr. Allen asked you about the fingerprints or  
2 the processing of the gun, the magazine and the shell  
3 casing.

4 A Yes.

5 Q Actually the actual bullets.

6 A Uh-huh.

7 Q Is it common to be able to obtain fingerprints from  
8 those type of items?

9 A Like I said yesterday, I've not had much luck with  
10 getting prints on guns. I haven't heard of people having  
11 much luck, period, other than on the T. V. shows. Guns are  
12 very difficult to get prints off of. I don't know if it's  
13 the oils that are on the guns, just that material that it's  
14 made out of. It's just, it's very difficult.

15 Q That's something you tried to do.

16 A Yes, I did.

17 Q Now, let's talk about the, the hole in the wall.  
18 Mr. Allen went into great detail about how you looked for  
19 it.

20 At the time you were actually investigating the crime  
21 scene did you have any idea that it was a  
22 through-and-through bullet wound?

23 A I believe, I believe we, we were told that it was a  
24 possible through-and-through. So that also kind of helped  
25 us decide that that was probably a bullet hole, that it may

Courtney Westfall  
Recross-examination by Mr. Allen

1 have come through the body and into the wall.

2 Q Okay. And the fact that you didn't find it, is that a  
3 common thing or uncommon thing?

4 A It can be. I mean, it's common. They cannot really  
5 disintegrate into thin air, but they can break up into  
6 small pieces. They can bounce around, possibly even lodge  
7 somewhere.

8 Of course we just -- it was very difficult to find it,  
9 and we didn't -- I didn't want to tear up the wall any more  
10 than we already had.

11 Q And, lastly, Mr. Allen started off his questioning  
12 about the autopsy, and you made a comment about how you  
13 took fingernail scrapings.

14 A I did.

15 Q Did you have any idea whether there had been any  
16 hand-to-hand combat?

17 A I did not know. We did it just kind of as a  
18 precaution just in case, in case there had been.

19 Q Okay. All right. Thank you.

20 A Uh-huh.

21 RECROSS-EXAMINATION

22 BY MR. ALLEN

23 Q With respect to No. 21, the picture of the gun --  
24 thank you. State's 21 back. Can you tell me approximately  
25 where on this picture -- if you need to come down and take

Courtney Westfall  
Recross-examination by Mr. Allen

1 a look at the actual picture, please do -- this gun is?

2 (Whereupon, the witness left the stand.)

3 A It's hard to see without the picture. I believe it's  
4 in this area right here.

5 Q You're indicating with your fingers near this stem of  
6 leaves on closer to the lower right corner but not in the  
7 corner.

8 A Right. There's sort of a small clearing right there  
9 in the leaves. It's not much. It's hard to see.

10 Q It's hard to see.

11 A Yes.

12 Q Okay. Did you measure the distance? You can have a  
13 seat back. Thank you.

14 A Okay.

15 (Whereupon, the witness returned to the stand.)

16 Q Did you measure the distance from the road?

17 A I did not. I'd say it was approximately a foot to two  
18 foot off the road probably.

19 Q Okay. But you did not actually take a measuring tape  
20 out there --

21 A No, I didn't.

22 Q -- and measure it. It was visible from the road,  
23 correct? I mean if you --

24 A If you knew you -- if you knew what you were looking  
25 for and if you knew it was there, it would be. But if

Courtney Westfall  
Recross-examination by Mr. Allen

1 you're just driving down the road you wouldn't see it.

2 Q Not if you're driving down the road. But if you're  
3 looking for a gun on the side of that road you'd see it  
4 from the road, right?

5 A You have to look.

6 Q Okay.

7 A But you could -- I mean, it's not far. It's just in  
8 those weeds..

9 Q Not far. Okay.

10 A It had to be pointed out to me when I got there, so.

11 Q Sure. It had to be pointed out to you because they  
12 wanted you to collect it as evidence, right?

13 A Right.

14 Q With respect to the fingerprinting of these items,  
15 sometimes isn't it true that a thin layer of oil sometimes  
16 you find on guns, that would actually help in getting  
17 fingerprints, right?

18 A Not necessarily.

19 Q Fingerprints aren't sort of --

20 A Fingerprints --

21 Q -- there because of oils, especially oils on the skin?

22 A Right. It can be oil, sweat, skin cells that are left  
23 behind that come off of your fingers onto an object.

24 Q And sometimes people touch something that has a light  
25 coating of oil, for example, and could leave an impression.

Courtney Westfall  
Recross-examination by Mr. Allen

1 A It could.

2 Q Especially if a gun is fired. Of course there's  
3 gunpowder coming out of that gun too. And it could adhere  
4 to some of these prints that are left behind, correct?

5 A I guess that's correct, but it's just -- I don't  
6 really know how to describe it.

7 The surface of a gun is just -- you'd think that there  
8 would be a lot of prints on a gun because of the oils. But  
9 for whatever reason -- a fingerprint expert could probably  
10 explain that. It just -- plus when a gun's fired you have  
11 a lot of heat and other, other things going on that can  
12 interfere with leaving a print.

13 And, you know, just because I leave -- I touch this  
14 wood right here doesn't mean I'm going to leave a print.  
15 It's not like on "C. S. I." where every time you find that  
16 perfect print. The conditions have to be right. The  
17 environment has to be right. Some people just don't leave  
18 good prints.

19 Q But you have gotten prints before, correct?

20 A I have, yes.

21 Q You've gotten a good many prints before, correct?

22 A Yes.

23 Q Not every time but a good many.

24 A Not every time, that's right.

25 Q But a good many.

Sandra Dandy  
Direct examination by Mr. Bulsa

1 A Yes.

2 Q Okay. And then with respect to your comment that you  
3 didn't want to tear the wall up any more than you already  
4 had, quite frankly, if you wanted to investigate some more  
5 in the wall you were not being stopped.

6 A No but --

7 Q No one said don't cut any more holes, you cut enough  
8 already, correct?

9 A That's correct. But we had the shell casing. In my  
10 mind that would have been enough, so.

11 Q Okay. In your mind it was good enough.

12 A I think it was, yes.

13 Q All right. Thank you.

14 MR. ALLEN: No more questions.

15 MR. BULSA: Nothing further.

16 THE COURT: You may step down.

17 MR. BULSA: The state calls Sandra Dandy.

18 SANDRA DANDY, having been  
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. BULSA

21 Q Ms. Dandy --

22 A Yes.

23 Q -- please introduce yourself to the ladies and  
24 gentlemen of the jury.

25 A My name is Sandra Dandy.

Sandra Dandy  
Direct examination by Mr. Bulsa

- 1 Q How old are you, ma'am?
- 2 A I'm 44.
- 3 Q Where do you live?
- 4 A I live at Caulder Avenue.
- 5 Q Who do you live with?
- 6 A My mother.
- 7 Q Who lives with you there with your mother?
- 8 A My children.
- 9 Q How many children do you have?
- 10 A I have five.
- 11 Q What are their ages?
- 12 A Twenty -- 25, 21, 19, 18 and 3.
- 13 Q Okay. So you have some older children and --
- 14 A Grandchildren, yeah.
- 15 Q A young baby and also grandchildren.
- 16 A Yeah.
- 17 Q Okay. How long have you lived with your mother on
- 18 Caulder Avenue?
- 19 A Since December.
- 20 Q Of 2009?
- 21 A Of 2009.
- 22 Q Okay. And back in May of 2008 where were you living?
- 23 A East Columbia Avenue.
- 24 Q And how far is that from your mother's place?
- 25 A It's another street over.

Sandra Dandy  
Direct examination by Mr. Balsa

1 Q About a block, if that much?

2 A It's just another street over.

3 Q Okay. Did you often walk to your mother's house when  
4 you lived on East Columbia?

5 A Yes.

6 Q Would you walk along the roadway or would you cut  
7 through a path?

8 A I would walk along the road.

9 Q State's No. 2 -- I don't believe your mother's house  
10 is on here. But just to give the jury a general idea  
11 whereabouts your mother -- well, let me ask you this first.  
12 How far up from South Liberty was your house on East  
13 Columbia?

14 A Down the street.

15 Q Was it a couple of houses up?

16 A You say from South --

17 Q Step down here.

18 (Whereupon, the witness left the stand.)

19 Q See right here? That's South Liberty.

20 A It's going on up. Okay. That's East Columbia. Walk  
21 up South Liberty. Then you go on up. It's right across.

22 Q Caulder Avenue --

23 A Yeah.

24 Q -- continue this way.

25 A That's right.

Sandra Dandy  
Direct examination by Mr. Bulsa

- 1 Q So you're right up here.
- 2 A It's on up, that's right.
- 3 Q So you would take the roadway to get to your mother's?
- 4 A Yes.
- 5 Q Is there a path or anything that cuts through to any  
6 of these houses?
- 7 A Yes.
- 8 Q Okay. Did your children sometimes take that path?
- 9 A Yes.
- 10 Q Do you recall which of these houses would have been  
11 East Columbia?
- 12 A The third house from the bottom.
- 13 Q Okay. Somewhere in this area?
- 14 A Uh-huh.
- 15 Q Okay. You can have a seat.  
16 (Whereupon, the witness returned to the stand.)
- 17 Q Were you renting that home?
- 18 A Yes.
- 19 Q Were you on the lease?
- 20 A Yes.
- 21 Q How many people stayed at that house?
- 22 A My two daughters and two grandchildren -- my two  
23 daughters and my grandchild and son.
- 24 Q Okay. Were they your -- were they your two  
25 daughters -- were they your two other youngest children?

Sandra Dandy  
Direct examination by Mr. Bulsa

- 1 A No. They my middle children, my two daughters.
- 2 Q And then you got the baby.
- 3 A Yeah.
- 4 Q All right. How long had you stayed at that residence?
- 5 A Five years.
- 6 Q Five years. And were you seeing anybody at that time?
- 7 A Dating, you mean?
- 8 Q Yes, ma'am.
- 9 A Yes.
- 10 Q Who was that?
- 11 A Dwight Mills.
- 12 Q Did he stay there sometimes?
- 13 A He come and visit every now and then, spunt (sic) the
- 14 night.
- 15 Q Now, were you employed back during this timeframe, May
- 16 of 2008?
- 17 A Yes.
- 18 Q Where did you work?
- 19 A Land and Sea.
- 20 Q What is Land and Sea?
- 21 A It's a clothing place.
- 22 Q How long were you employed there?
- 23 A A year.
- 24 Q Had you been laid off from that job?
- 25 A Yes.

Sandra Dandy  
Direct examination by Mr. Bulsa

1 Q Do you recall the date of this incident, ma'am?

2 A May the 24th.

3 Q Do you remember that in your mind, what took place?

4 A Not -- if it hadn't been wrote down I wouldn't have  
5 remembered the exact date.

6 Q Okay. So the statement you gave to the police helped  
7 you refresh your memory.

8 A Yes.

9 Q Okay. Would a lot of young people gather at your  
10 home, ma'am?

11 A Yes.

12 Q Would you explain why?

13 A Because I have children.

14 Q Okay. Were -- how did that cause people to come over?

15 A How did it cause people to come over?

16 Q Yes, ma'am. Just because you have children --  
17 everybody that has children doesn't mean everybody comes  
18 and gathers at their house.

19 A Well, they came when I didn't want them to, but I  
20 didn't run them away.

21 Q Okay. Was your house sort of a local gathering place  
22 for young boys?

23 A I wouldn't say just a gathering place all of the time  
24 24-7.

25 Q Well, how would you describe it?

Sandra Dandy  
Direct examination by Mr. Bulsa

- 1 A Sometime they would come over.
- 2 Q Okay. On the date of this incident, May 24th, was  
3 that a Saturday?
- 4 A I believe so.
- 5 Q And on that day were there a bunch of young boys over  
6 there?
- 7 A Yes.
- 8 Q Had they been invited?
- 9 A No.
- 10 Q Were any of those boys seeing any of your daughters?
- 11 A They was friends of them.
- 12 Q Friends of your daughters. Okay. All right. Do you  
13 recall about how many boys had been over there that day?
- 14 A Not really. I can't.
- 15 Q About how long had they been there?
- 16 A I can't recall that.
- 17 Q Would they have come there early afternoon or evening  
18 time?
- 19 A It was over in the evening time.
- 20 Q Okay. Do you remember specifically if the defendant  
21 was over there?
- 22 A Yes.
- 23 Q And how do you know him?
- 24 A Through, through my children.
- 25 Q Through your children.

Sandra Dandy  
Direct examination by Mr. Bulsa

- 1 A Uh-huh.
- 2 Q Is he friends with any of your children?
- 3 A Yes.
- 4 Q Which one?
- 5 A Marquee.
- 6 Q Marquee is one of your boys?
- 7 A Uh-huh.
- 8 Q Was Mr. Kilgore, J'Corey Kilgore, a good friend of  
9 your son's?
- 10 A Yes.
- 11 Q Would he come over there often?
- 12 A Not all of the time, but sometimes.
- 13 Q And he was there on the date in question.
- 14 A Yes, earlier.
- 15 Q Okay. How long had he stayed?
- 16 A I can't recall exactly.
- 17 Q Okay. Do you remember, or did you know Courtney  
18 Rogers?
- 19 A Yeah, I knowed of him.
- 20 Q How did you know Courtney?
- 21 A Through his family.
- 22 Q Did he come over to your house often?
- 23 A No.
- 24 Q He didn't?
- 25 A No.

Sandra Dandy  
Direct examination by Mr. Bulsa

1 Q Do you ever remember him coming over there?

2 A I remember him coming through my house, yes.

3 Q Okay. Now, the date May 24th of 2008, what was going  
4 on around 8:00 o'clock that evening?

5 A I guess that's when the commotion came. I don't  
6 remember all of the times or everything, I mean.

7 Q All right. Well, tell us what. What commotion are  
8 you talking about, ma'am?

9 A A loud sound. I mean, I was laying down. I played  
10 cards for a minute and went and laid down. They come  
11 through my house. They did whatever they did. And then I  
12 was just laying there.

13 Q Okay. Let's go through that in a little more detail.

14 All right. Playing cards. Where were people playing  
15 cards?

16 A On the porch.

17 Q On the porch. And you played cards with them for a  
18 while yourself.

19 A Yes.

20 Q And you're saying you went inside.

21 A When I got tired of playing cards, yes, I went in.

22 Q And where did you go inside?

23 A In my bedroom.

24 Q Went into the bedroom.

25 A Yes.

Sandra Dandy  
Direct examination by Mr. Bulsa

- 1 Q Okay. And were the boys still outside playing cards?
- 2 A I don't -- maybe, maybe. I told them I was through.
- 3 Q Had the victim, Courtney Rogers, shown up at your
- 4 house before you went inside?
- 5 A No. I don't think so. I can't remember. No. I
- 6 don't think so.
- 7 Q You didn't remember talking to him outside?
- 8 A No.
- 9 Q Okay. Did you see him at your house?
- 10 A Yes.
- 11 Q When?
- 12 A He come in my house.
- 13 Q Okay. How were you able to see him in your house if
- 14 you were in your room?
- 15 A Because my bedroom is facing my dining room.
- 16 Q Okay. Let's look at some of these pictures. Start
- 17 off with the front porch. This is where the people would
- 18 be playing cards.
- 19 A Yes.
- 20 Q That screen door is open. Did it stay open?
- 21 A No. It was open because they left it open. The
- 22 officers left it open.
- 23 Q The police left it open?
- 24 A Yes.
- 25 Q State's No. 14. This would be the front room of your

Sandra Dandy  
Direct examination by Mr. Bulsa

1 house?

2 A The living room, yes.

3 Q That's where you enter in through the door.

4 A Yes.

5 Q And come in that room. Okay. And where would the  
6 dining room be?

7 A Straight through right here.

8 Q Straight through beyond those hanging curtains?

9 A Yes.

10 Q Okay. You can sort of see a table back there. And  
11 looking straight ahead which direction would you go to get  
12 to your bedroom?

13 A On the side, left side.

14 Q Go to the left. Okay. We have a diagram here,  
15 State's Exhibit No. 9. It's not drawn to scale, but you  
16 see your living room furniture there. And straight  
17 through, as on you pointed out, the dining room.

18 A Dining room.

19 Q And you got the bedroom off -- you got two bedrooms  
20 off -- actually two bedrooms to the left. You would have  
21 been in the middle bedroom?

22 A Yes.

23 Q Now, we don't show the doorway in that diagram but --

24 A But it's straight. See everything.

25 Q Okay. It would be straight into the dining room.

Sandra Dandy  
Direct examination by Mr. Bulsa

1 THE COURT: Ma'am, please when you respond to a  
2 question speak into the microphones because you've got your  
3 back to the court reporter. She can't hear you.

4 THE WITNESS: Yes, sir.

5 Q Okay. All right. Is that the first time you recall  
6 seeing Mr. Rogers?

7 A Yes.

8 Q And was anybody with him in the dining room?

9 A Yes.

10 Q Who?

11 A J'Corey and another young man. I can't recall who the  
12 other young man was.

13 Q Okay. So while you're in your bedroom you're seeing  
14 clearly in the dining room. You see the victim, Courtney  
15 Rogers, and the defendant, J'Corey Kilgore, and a third  
16 person.

17 A Yes.

18 Q Are they talking to each other?

19 A Yes.

20 Q How long do you recall them staying in the dining  
21 room?

22 A Not very long.

23 Q Did you see them leave out of that room?

24 A Yes.

25 Q Okay. And which direction did they leave out?

Sandra Dandy  
Direct examination by Mr. Bulsa

- 1 A Towards the front door.
- 2 Q They're going back towards through, into the living  
3 room.
- 4 A Yes.
- 5 Q And then what occurred?
- 6 A I just heard a loud sound.
- 7 Q Okay. You heard a loud sound. How long after they  
8 had left that dining room did you hear a loud sound?
- 9 A Not very long.
- 10 Q Could you tell where the loud sound was coming from?
- 11 A Not at first I couldn't because it was very loud. I  
12 mean, my bedroom -- my bedroom is right in the middle, so  
13 it could have come from either direction. It was very  
14 loud.
- 15 Q What did you do when you heard that sound?
- 16 A I jumped up and ran to the back. Seeing nothing, then  
17 I ran to the front seeing people scattering, running.
- 18 Q Okay. Did you notice anything about your living room?
- 19 A No, I didn't.
- 20 Q Did you, did you at any point see the blood on the  
21 floor?
- 22 A Not at the time.
- 23 Q Did you even know that the shooting had happened in  
24 the living room at that point?
- 25 A I didn't think it had, no.

Sandra Dandy  
Direct examination by Mr. Bulsa

- 1 Q So you hear a sound. You get up and look and  
2 everybody is running.
- 3 A I see peoples, peoples on my street running down the  
4 street.
- 5 Q Okay. Were any of the boys that had been there  
6 earlier still around?
- 7 A No.
- 8 Q So Courtney was gone; J'Corey was gone.
- 9 A Yes.
- 10 Q And the third person you saw was gone.
- 11 A Yes.
- 12 Q And the other persons on your porch were gone.
- 13 A Yes.
- 14 Q Was Dwight Mills still around?
- 15 A Yes.
- 16 Q And where was he?
- 17 A Sitting in the living room.
- 18 Q Okay. Did he appear to be awake?
- 19 A I don't think so.
- 20 Q Was there any drinking going on while the cards were  
21 being played?
- 22 A Yes.
- 23 Q In fact, you had been drinking yourself.
- 24 A Yes.
- 25 Q Had Mr. Mills?

Sandra Dandy  
Direct examination by Mr. Bulsa

- 1 A Yes.
- 2 Q How about the young people that were there?
- 3 A No.
- 4 Q You don't recall them drinking?
- 5 A No.
- 6 Q Okay. Could you estimate for the jury about how many  
7 boys had been at your house around this timeframe?
- 8 A Maybe six or seven.
- 9 Q Do you recall any of the names?
- 10 A Just the one I was playing cards with, and I don't  
11 even know his real name.
- 12 Q Who is that?
- 13 A We call him Penny Red. I call him Penny Red.
- 14 Q Penny Red.
- 15 A Yes, sir.
- 16 Q Okay. So now we know there is Penny -- was Penny Red  
17 the third man in the dining room?
- 18 A No. I couldn't really see the third person. I just  
19 know there was a third person.
- 20 Q Okay. You couldn't see him well enough to identify  
21 him.
- 22 A No.
- 23 Q Okay. How about James Kilgore, the defendant's  
24 brother? Was he there that day?
- 25 A I don't remember seeing him.

Sandra Dandy  
Direct examination by Mr. Bulsa

- 1 Q You don't remember seeing him. How about somebody  
2 named Keevin Anderson? Do you remember him?
- 3 A I don't know them by name.
- 4 Q You don't know them by name. Okay. You told us about  
5 Penny Red.
- 6 A We was playing cards together.
- 7 Q Okay. All right. So all of these guys are gone. And  
8 then what's the next thing that happens?
- 9 A A (sic) officer come up and asked me my address.
- 10 Q All right. And did you tell him?
- 11 A Yes.
- 12 Q And then what happened?
- 13 A He started taping my house off, taping -- well,  
14 around, around my house.
- 15 Q And what did you do?
- 16 A I asked him what the problem was. He told me had been  
17 a shooting at my house.
- 18 Q Okay. How did you respond?
- 19 A I couldn't believe it.
- 20 Q Even though you heard that loud sound?
- 21 A That's right.
- 22 Q Okay. And then what happened?
- 23 A I didn't see anything messed up in my home.
- 24 Q Right. So the police are there roping it off.
- 25 A Yes.

Sandra Dandy  
Direct examination by Mr. Bulsa

- 1 Q Did you want them there?
- 2 A No. But I let them come on through, walk through my  
3 house, to show them I didn't think anything had happened at  
4 my home.
- 5 Q Okay. And then did they leave at that point?
- 6 A No.
- 7 Q Did you want them to leave?
- 8 A Yeah, because I thought that was enough by him walking  
9 through my house. I didn't see anything.
- 10 Q Were you kind of upset?
- 11 A Yeah, yeah, I was.
- 12 Q What made you upset?
- 13 A Because he was saying what had done happened at my  
14 house, and I didn't see, see anything happened at my house.  
15 I just heard a loud sound like I told 'em.
- 16 Q Did you ask to see a captain or somebody?
- 17 A Later on, later on after I had done gave my  
18 statements. I thought that was enough. And I thought it  
19 was time for them to leave.
- 20 Q Well, did you eventually see the, a substance in the  
21 doorway that looked like blood?
- 22 A Yes, yes.
- 23 Q And did you see a shell casing in the floor?
- 24 A After it -- yeah. It was pointed to me.
- 25 Q Okay. And did you see the hole in the wall?

Sandra Dandy  
Direct examination by Mr. Bulsa

- 1 A That was pointed to me as well.
- 2 Q Okay. Were either one of those three things at your  
3 house prior to this loud sound you heard?
- 4 A No.
- 5 Q In fact, is this the way you normally keep your living  
6 room, ma'am?
- 7 A Yes.
- 8 Q It looks somewhat neat. You try to keep a neat house?
- 9 A Yes.
- 10 Q Okay. So, as you said, doesn't appear that anything  
11 happened to you, right?
- 12 A That's correct.
- 13 Q Then there was a hole in the wall that wasn't there  
14 before.
- 15 A That's right.
- 16 Q One of the shell casing. Did you own any guns, ma'am?
- 17 A No, sir.
- 18 Q To your knowledge were there any guns in your house?
- 19 A No, sir.
- 20 Q So there would have been no reason for that shell  
21 casing to be there.
- 22 A That's right.
- 23 Q And this substance along the doorstep, was that there?
- 24 A No.
- 25 Q Okay. Did you then understand that something happened

Sandra Dandy  
Direct examination by Mr. Bulsa

1 in your house?

2 A Yes, yes, then I understood.

3 Q Okay. And talk about giving a statement to the  
4 police. In fact, didn't you give more than one?

5 A Yes.

6 Q Why is that?

7 A Because the first time I didn't tell who was around my  
8 home.

9 Q Why not?

10 A I just didn't.

11 Q Were you --

12 A Because, like I said, the first statement, I didn't  
13 feel like anything had happened at my home. And then  
14 things started being pointed out to me. Okay. I gave  
15 another statement.

16 Q Did you not want to be involved?

17 A No, I did not want to be involved.

18 Q Do you want to be involved right now?

19 A It happened at my home. I feel like -- yeah.

20 Q Did the police ever tell you what to say in your  
21 subsequent statements?

22 A No, sir.

23 Q Do you have anything against J'Corey?

24 A No.

25 Q Did you have any conflict with any of those young men?

Sandra Dandy  
Cross-examination by Mr. Allen

1 A No.

2 Q Prior to the loud noise you heard did you hear any  
3 sort of commotion or conflict going on?

4 A I heard voices, you know, people walking down the  
5 street, because they was running to see what had happened.

6 Q I'm talking about before you heard the shot.

7 A No. I didn't hear anything.

8 Q Did you hear any arguing or anything?

9 A No.

10 Q Thank you, ma'am. Answer anything Mr. Allen has.

11 CROSS-EXAMINATION

12 BY MR. ALLEN

13 Q Ms. Dandy, you gave about three written statements, is  
14 that right, to the police?

15 A Maybe, yes.

16 Q Okay. I think you said in your first one -- you  
17 didn't say anything at all about seeing anything in your  
18 house, is that right?

19 A Yes, sir.

20 Q In fact, you told the police you were laying your  
21 back -- your were laying down in your bedroom.

22 A Yes, sir.

23 Q And then you heard a noise and looked out the back,  
24 right?

25 A Yeah, yes.

Sandra Dandy  
Cross-examination by Mr. Allen

1 Q Now, you didn't -- now, this statement was given after  
2 the police had been at your house for a while, correct?

3 A I gave two statements, I believe, in that same --

4 Q At your house.

5 A Yeah.

6 Q But this one I was just referring to -- the first one  
7 was given at -- I take it that you're looking at it right  
8 now. Is that the one that for the time, has 2106 as the  
9 time? Do you have another one in your lap? Yes.

10 A This is the first one.

11 Q Okay. The one that's marked 2106, would that be your  
12 first one?

13 A Yes.

14 Q Do you know whether that stands for 9:06 in the  
15 evening? Do you know what that time means?

16 A About 9:00 o'clock, right?

17 Q About 9:00 o'clock, uh-huh. That's when you gave your  
18 first statement.

19 A Yes.

20 Q The police had been at your house for a while,  
21 correct?

22 A Yes.

23 Q They had already showed you the shell casing, where  
24 that was.

25 A They -- I seen shell case.

Sandra Dandy  
Cross-examination by Mr. Allen

- 1 Q Right. They'd already showed you the little drops of  
2 what they suspect to be blood.
- 3 A Yes, when the lady investigator came.
- 4 Q Right.
- 5 A Yeah.
- 6 Q They showed you that before you gave that first  
7 statement, right?
- 8 A No, no. I didn't see anything. The first statement I  
9 gave to Officer James.
- 10 Q Okay.
- 11 A I didn't see anything.
- 12 Q You didn't see anything in your house.
- 13 A No.
- 14 Q So you decided not to tell officers everything you  
15 knew. Is that what you're saying?
- 16 A I didn't, I didn't call no names or anything if that's  
17 what you're asking me.
- 18 Q Well, yes, ma'am. You didn't call any name.
- 19 A No, I didn't.
- 20 Q In fact, you didn't even tell in that first statement  
21 about seeing anybody in your house other than yourself.
- 22 A That's right, that's right. He asked me who was at my  
23 house, and I told him.
- 24 Q In that first statement?
- 25 A He asked me when he got there who was in my house. I

Sandra Dandy  
Cross-examination by Mr. Allen

1 let him walk through my house.

2 Q Uh-huh.

3 A I didn't write it down. He asked me.

4 Q Okay. On your first statement you didn't say anything  
5 about anything happening in your house, correct?

6 A That's right.

7 Q All right. Your next statement given at your house  
8 was at 10:51 p.m., correct?

9 A Yes.

10 Q Okay. By that time the police had shown you the  
11 droplets of blood, right?

12 A Yes.

13 Q They had shown you the shell casing, correct --

14 A Yes.

15 Q -- where you say you realized that something --

16 A Had done happened.

17 Q -- had happened.

18 A Yes.

19 Q And in that statement you didn't say anything at all  
20 about seeing anybody inside of your house, correct?

21 A That's right. I just told what, what I had did and  
22 when I got up and what I had done heard.

23 Q But you didn't tell the police anything about seeing  
24 Courtney Rogers in your house.

25 A No, I didn't. I didn't tell them about that I saw

Sandra Dandy  
Cross-examination by Mr. Allen

- 1 anyone really.
- 2 Q I'm sorry?
- 3 A I didn't tell them that I saw anyone. I didn't call  
4 no names.
- 5 Q That's right.
- 6 A That's right.
- 7 Q You didn't say anything about Corey Hull-Kilgore,  
8 right?
- 9 A That's right.
- 10 Q In fact, you're still trying to lead the police to  
11 believe that everything occurred outside, right?
- 12 A I was hoping hadn't nothing happened in my house.  
13 That's, that's what I believed in, that's what I believed.
- 14 Q Even after they showed you those things, right?
- 15 A That's right.
- 16 Q Just a few moments ago I believe you said that you  
17 didn't hear any loud voices or loud noise other than the  
18 boom.
- 19 A Not in my house, I didn't.
- 20 Q Okay. Did you hear loud voices outside of your house?
- 21 A Yeah, when I went to the door after that loud noise.  
22 When I went to the door, yeah.
- 23 Q Before the boom did you hear any loud voices?
- 24 A No.
- 25 Q Not at all.

Sandra Dandy  
Cross-examination by Mr. Allen

- 1 A No.
- 2 Q You didn't hear a commotion before the boom, right?
- 3 A That's right.
- 4 Q Well, looking back at your first statement, the one  
5 that's got that 2106 at the bottom --
- 6 A Well, okay.
- 7 Q -- didn't you say or did you tell the police that you  
8 heard what sounded like people voicing out loud in a  
9 conflict?
- 10 A Yeah, when they was going down the street. I didn't  
11 know what was going on.
- 12 Q And then the very next sentence you say, "I heard a  
13 loud noise like a boom."
- 14 A Yeah. I didn't say it in, in order, but, yeah, that's  
15 what happened.
- 16 Q And then in your next statement that you gave at 1051  
17 you say -- didn't you say you woke up to a commotion?
- 18 A Yeah, that's what I said.
- 19 Q But that's not true. You didn't hear it.
- 20 A I woke up because I heard a loud sound.
- 21 Q A boom?
- 22 A A loud sound, yes, sir.
- 23 Q That sounded like a boom?
- 24 A I could have said pow. I could have said I heard a  
25 loud sound like a pow -- boom, pow, whichever.

Sandra Dandy  
Cross-examination by Mr. Allen

1 Q Right. You didn't wake up to a loud boom -- voices.

2 A No. That's right.

3 Q Okay. So you were asleep up to the time that you  
4 heard the loud pow or boom, is that right?

5 A I had done laid down to go to sleep.

6 Q Right.

7 A Drifting off to sleep. Someone hollered, "Aunt San,  
8 coming on through." They was already in. So I said come  
9 on in.

10 Q And that was not in your first statement.

11 A No, it wasn't in there.

12 Q It's not in your second statement.

13 A No.

14 Q And you didn't mention that just before now in your  
15 testimony when Mr. Bulsa was asking you questions, right?

16 A Mention what?

17 Q Somebody asking, saying come on in.

18 A He didn't ask me.

19 Q Okay. You -- I believe you mentioned that you had  
20 been drinking that day, right?

21 A Yes, sir.

22 Q A lot?

23 A Yes, sir.

24 Q Do you know how much?

25 A A lot, a lot. I don't know how much.

Sandra Dandy  
Cross-examination by Mr. Allen

- 1 Q Okay. Lost count?
- 2 A Uh-huh.
- 3 Q Don't know how much? But you were pretty well  
4 intoxicated?
- 5 A Yes.
- 6 Q Were you drinking beer or were you drinking something  
7 else?
- 8 A A mixture in the --
- 9 Q Mixture?
- 10 A Beer and liquor.
- 11 Q Beer and liquor.
- 12 A Uh-huh.
- 13 Q You started drinking that day about what time?
- 14 A About 10:00 o'clock.
- 15 Q In the morning or in the evening?
- 16 A In the morning.
- 17 Q In the morning. And essentially drank throughout that  
18 time up until the time that you went to the bed, right?
- 19 A Yes, sir.
- 20 Q Now, you were playing cards on your front porch, is  
21 that right?
- 22 A Yes, sir.
- 23 Q This is a photograph of the front porch, State's  
24 Exhibit 4. Which side?
- 25 A The left side.

Sandra Dandy  
Cross-examination by Mr. Allen

- 1 Q The left side?
- 2 A Yes, sir.
- 3 Q As you're looking at the house?
- 4 A Yeah, the left side.
- 5 Q The left side, which would be the side to the left?
- 6 A Yes.
- 7 Q Not the side where the mailbox is but the other side.
- 8 A That's right.
- 9 Q That's where you played cards.
- 10 A That's right. That left.
- 11 Q And you were seated where on this porch?
- 12 A I was seated -- we were playing cards. It was a
- 13 table.
- 14 Q Right.
- 15 A On over some where that chair at. Right there. I had
- 16 that chair, the chair that's behind the screen door.
- 17 Pulled it over with the table that, that was over in the
- 18 corner.
- 19 Q Okay. And the table was here in the corner behind
- 20 this?
- 21 A No. The table was in, in between us. We playing
- 22 cards. The table's right here.
- 23 Q Where was Penny Red sitting?
- 24 A Across from me.
- 25 Q Across from you?

Sandra Dandy  
Cross-examination by Mr. Allen

- 1 A Yes.
- 2 Q Was he sitting in front of this window here on the  
3 left side or --
- 4 A No. I was sitting with my back towards the house.
- 5 Q Okay. And he was sitting where to you?
- 6 A In front of me across from me.
- 7 Q Across from you?
- 8 A Yes.
- 9 Q This window here on the left side, that goes to the  
10 front bedroom of the house, correct?
- 11 A Yes.
- 12 Q Before you gave your third statement to the police --  
13 of course that third statement you gave to the police was  
14 down at the police station, correct?
- 15 A Yes, sir.
- 16 Q And before you gave your third statement they talked  
17 to you about that you were about ready to catch a charge.
- 18 A No.
- 19 Q They didn't tell you at all about it?
- 20 A I don't recall them telling me I had a charge.
- 21 Q No. But if you didn't tell them something else.
- 22 A They let me know that it was a serious matter and  
23 whatever I knew I needed to tell it.
- 24 Q Okay. And that if you didn't you might catch a  
25 charge.

Sandra Dandy  
Cross-examination by Mr. Allen

- 1 A No. I don't remember that.
- 2 Q They didn't tell you that?
- 3 A Uh-uh.
- 4 Q When you went from playing cards you went into the  
5 house, correct?
- 6 A Yes.
- 7 Q You went through the living room and then the dining  
8 room, correct --
- 9 A Yes.
- 10 Q -- to go into your bedroom --
- 11 A Yes.
- 12 Q -- which is in the back part of the house. Mr. Mills,  
13 Dwight Mills, was sitting on a sofa watching T. V.,  
14 correct?
- 15 A I can't recall whether he was watching T. -- the T. V.  
16 might have been watching him.
- 17 Q What does that mean?
- 18 A He could have been woke; he could have been sleep.
- 19 Q You just don't remember right now? I'm sorry?
- 20 A I was thinking he was woke, but he said he was sleep.
- 21 Q No one else was in that living room when you walked  
22 through, correct?
- 23 A Yes, no one else.
- 24 Q No one else was there. When you laid down, you laid  
25 down with your, your young child, correct?

Sandra Dandy  
Cross-examination by Mr. Allen

- 1 A Yes.
- 2 Q And your grandchild.
- 3 A Yes.
- 4 Q Who is also young, right?
- 5 A Yes.
- 6 Q And, again, your young -- was it a son or a daughter?
- 7 A Son.
- 8 Q Son.
- 9 A Yes.
- 10 Q Your young son was how old at that time?
- 11 A One.
- 12 Q One. And your granddaughter was?
- 13 A Almost three.
- 14 Q Almost three. From the time you went into the house  
15 and went into the bedroom, they were in your bedroom.
- 16 A Yes.
- 17 Q With you, right?
- 18 A Yes.
- 19 Q And D'Angelo Miller, he wasn't in the house when you  
20 went in.
- 21 A No.
- 22 Q And Lakeisha Brewster was not in the house when you  
23 went in?
- 24 A No, sir.
- 25 Q Had they already left the house?

Sandra Dandy  
Cross-examination by Mr. Allen

- 1 A Yes.
- 2 Q You go to sleep?
- 3 A Yeah. I had nodded off some.
- 4 Q Nodded off. Do you know how long you were asleep?
- 5 A No.
- 6 Q Was it --
- 7 A I can't remember.
- 8 Q Okay. Now, you said earlier I believe in your  
9 testimony that Corey was there earlier at your house,  
10 correct?
- 11 A Yeah. I seen him before I laid down.
- 12 Q Okay. He was there about how long?
- 13 A I can't recall.
- 14 Q Wasn't playing cards?
- 15 A No.
- 16 Q Do you remember who else? Was it just you and Penny  
17 Red playing cards, or other people?
- 18 A It was another young man. I, I can't remember who he  
19 were. There was another young man.
- 20 Q Just the three of you were playing cards.
- 21 A Yes.
- 22 Q When you left do you know if they continued to play  
23 cards?
- 24 A I don't know; I don't know.
- 25 Q When you were out there playing cards was it still

Sandra Dandy  
Cross-examination by Mr. Allen

- 1 daylight outside?
- 2 A Yeah.
- 3 Q Was it in the cool of the evening?
- 4 A I believe it was when it starting getting, getting  
5 dawn like. It wasn't dark, but it was still daylight.
- 6 Q Was getting dark but it was still daylight?
- 7 A It was fixing to get dawn. It was still daylight.
- 8 Q Now, you nod off to sleep, is that right?
- 9 A Yes.
- 10 Q At some point you say you awoke, right?
- 11 A I had to been woke for -- I woke up when they called,  
12 hollered Aunt San, so I must not have been in a deep sleep.
- 13 Q All right. And after hollering Aunt San, Courtney  
14 walked in your house?
- 15 A Him, J'Corey and another young man.
- 16 Q Okay. Went to the dining room --
- 17 A Yes.
- 18 Q -- you said. You didn't hear any loud talking.
- 19 A No.
- 20 Q You didn't see anybody holding a gun.
- 21 A No.
- 22 Q Didn't see any guns.
- 23 A No.
- 24 Q And when they left the dining room you didn't hear any  
25 loud talking.

Sandra Dandy  
Cross-examination by Mr. Allen

1 A No.

2 Q Or see any guns.

3 A No.

4 Q Ms. Dandy, isn't it true that on April the 27th of  
5 2000 you were convicted of forgery? Is that right?

6 A Yes. That's been 11 years ago.

7 Q And possession of cocaine, right?

8 A Yes. What's that gotta do with this, this right here?

9 Q I'm asking the questions, ma'am. And July the 8th of  
10 1999 isn't it true you were convicted of giving false  
11 information to the police?

12 A Yes, my name.

13 Q But you were convicted, found guilty or pled guilty,  
14 right?

15 A Yeah.

16 Q December 1st of 1993 --

17 MR. BULSA: Objection, Your Honor. Mr. Allen knows  
18 he's beyond the rule.

19 A Uh-huh. Been through that one time.

20 MR. ALLEN: Your Honor, I gave him notice under the  
21 rule, under 609.

22 MR. BULSA: That's --

23 THE COURT: Let me see y'all just a minute. And bring  
24 your information up.

25 (Bench conference held off the record in the presence

Sandra Dandy  
Redirect examination by Mr. Bulsa

1 of the jury but out of the hearing of the jury.)

2 Q Ms. Dandy, it's also true December 1st of 1993 you  
3 were convicted of three counts of forgery, correct?

4 A Yes.

5 MR. ALLEN: No other questions, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. BULSA

8 Q Ms. Dandy, do you have anything to gain by being here  
9 today?

10 A No, I don't.

11 Q In fact, you didn't want to be here, did you?

12 A No.

13 Q Ma'am, we need to make sure the jury understands this.  
14 You went into your house to lay down. You were dozing  
15 off to sleep. What woke you up?

16 A A loud sound.

17 Q Okay. That's where the confusion comes. You're  
18 saying a loud sound, but you're saying this guy called in  
19 saying mama -- what did they call you?

20 A Auntie, Aunt San.

21 Q "Aunt San, we're coming through"?

22 A Yeah.

23 Q Describe the discrepancy there, ma'am.

24 A They come on through, through the dining room. I'm  
25 laying in my bedroom, stood at the table. Courtney -- he

Sandra Dandy  
Redirect examination by Mr. Bulsa

1 pulled out a brown package. J'Corey picked it up and said  
2 it was his. And they left out.

3 Q Okay. Did you fall back to sleep?

4 A I laid on back down.

5 Q Okay. And how much later did you hear the loud sound?

6 A Very soon.

7 Q Okay. So had you actually gotten to sleep before you  
8 heard somebody come through your house?

9 A Just a little. I just nodded off a little and laid  
10 down to sleep.

11 Q Are you certain you saw this man in your house moments  
12 before you heard that sound?

13 A Yes.

14 Q Are you telling the truth about that?

15 A Yes.

16 Q Has anybody told you what to say?

17 A No, sir.

18 Q Why on March or May the 24th did you not tell the  
19 police that?

20 A Yes.

21 Q Why did you not tell them that? You didn't tell them  
22 that on May the 24th, did you?

23 A I didn't call any names.

24 Q Right. Why did it take three days for you to tell the  
25 police?

Sandra Dandy  
Redirect examination by Mr. Bulsa

1 A I didn't want -- I didn't -- I was hoping hadn't  
2 nothing happened at my house. I didn't want to be  
3 involved. But when they said something happened at my  
4 house I knew I would be involved in it.

5 Q Is that when you finally told them what you knew?

6 A Yes.

7 Q Who is D'Angelo Miller?

8 A A friend of my daughter's.

9 Q Was he at the house that day?

10 A Earlier.

11 Q Okay. Had he left before you went inside?

12 A Yes.

13 Q Do you know if he'd come back?

14 A I have no knowledge of that.

15 Q Okay. But he could have come back.

16 A I have no knowledge of it. I don't know.

17 Q I'm saying, right. And he was gone when you went  
18 inside and he wasn't there when you came back out.

19 A He wasn't.

20 Q Okay. Now, you told Mr. Allen that you didn't see  
21 anybody else in the living room when you went through. Is  
22 that right?

23 A Nobody besides Dwight.

24 Q Nobody besides Dwight. So you don't know if somebody  
25 else had come in the living room or not after you laid

Lakeisha Brewton  
Direct examination by Mr. Bulsa

1 down.

2 A No.

3 Q Thank you, ma'am.

4 MR. ALLEN: No other questions.

5 THE COURT: You may step down.

6 We'll take a short break. I'll ask the jury to please  
7 go to your jury room. Remember the caution given you. Do  
8 not discuss the case. I'll bring you back after that  
9 break.

10 (The following takes place outside the presence of the  
11 jury.)

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

13 (Whereupon, a recess was taken.)

14 THE COURT: All right. Are we ready for the jury?

15 MR. BULSA: Yes, sir.

16 MR. ALLEN: Yes, sir.

17 THE COURT: Bring them in.

18 (The following takes place in the presence of the  
19 jury.)

20 THE COURT: Mr. Bulsa.

21 MR. BULSA: The state calls Lakeisha Brewton.

22 LAKEISHA BREWTON, having been  
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BULSA

25 Q Ms. Brewton, make sure you speak up when you talk.

Lakeisha Brewton  
Direct examination by Mr. Bulsa

- 1 Okay?
- 2 A Okay.
- 3 Q How old are you, ma'am?
- 4 A Nineteen.
- 5 Q Where do you live?
- 6 A Caulder Avenue.
- 7 Q Do you live there with your mother and grandmother?
- 8 A Yes.
- 9 Q Do you have any children?
- 10 A I've got one.
- 11 Q How old?
- 12 A She'll be five in July.
- 13 Q A little girl?
- 14 A Yes.
- 15 Q Did you live with your mother at East Columbia  
16 Avenue?
- 17 A Yes.
- 18 Q Have you ever moved away from home?
- 19 A Not really. I mean, I always lived with my grandma,  
20 and then I moved with my mother.
- 21 Q Okay. Pretty much with your family.
- 22 A Yeah, all time.
- 23 Q So you had been living with your mother at East  
24 Columbia for a while before this happened.
- 25 A Five years.

Lakeisha Brewton  
Direct examination by Mr. Bulsa

- 1 Q Okay. Do people often come over and visit?
- 2 A Yes.
- 3 Q Is that a regular occurrence?
- 4 A I mean, I would say, yeah.
- 5 Q Okay.
- 6 A Not every day but mostly every day.
- 7 Q Okay. On the weekends?
- 8 A Weekdays too, but not every day.
- 9 Q All right. Did you know Courtney Rogers?
- 10 A Yes.
- 11 Q Was he about your age?
- 12 A Almost. He was my sister's age, I think.
- 13 Q And did he come over often?
- 14 A No.
- 15 Q He didn't hang out there?
- 16 A Him and my sister used to date, and he would come over
- 17 there then, but it was not even on a regular basis like
- 18 that.
- 19 Q So he wasn't one of the boys that normally came over
- 20 to hang out.
- 21 A No.
- 22 Q Okay. Did a lot of other boys come over and hang out?
- 23 A Yes.
- 24 Q We've heard the name D'Angelo Miller.
- 25 A Yes.

Lakeisha Brewton  
Direct examination by Mr. Bulsa

- 1 Q Was that your boyfriend at that time?
- 2 A At that time.
- 3 Q Did he come over and hang out?
- 4 A Yes.
- 5 Q Was he there that day?
- 6 A He was with me.
- 7 Q He was with you at your house the day Courtney died?
- 8 A Yes. Not the whole time.
- 9 Q Were you close to Courtney yourself?
- 10 A No.
- 11 Q How about the defendant, J'Corey Kilgore? How well
- 12 did you know him?
- 13 A He was my friend. I knowed him well.
- 14 Q A friend of yours.
- 15 A Yes.
- 16 Q How about his brother? Was you friends with him too?
- 17 A Yes.
- 18 Q How many brothers does he have?
- 19 A Who -- J'Corey?
- 20 Q Yes, ma'am.
- 21 A Two.
- 22 Q What were their names?
- 23 A James Hull-Kilgore and Javaris Hull -- no. I think
- 24 he -- what is -- I don't know Javaris' last name.
- 25 Q Okay. His name is different than Kilgore.

Lakeisha Brewton  
Direct examination by Mr. Bulsa

1 A I think. I'm not sure.

2 Q Was either one of them over there at your house that  
3 day?

4 A Yes.

5 Q Who was there?

6 A James was there for a minute.

7 Q How about J'Corey?

8 A Yes.

9 Q All right. How long was J'Corey there?

10 A About a minute. I left.

11 Q Okay.

12 A So I can't say.

13 Q You're using a little bit of slang. What do you mean  
14 by a minute?

15 A Excuse me then. A little while.

16 Q All right. That's a little bit better. But about  
17 when did the guys come over and start hanging out?

18 A Like when?

19 Q Approximate time of the day, approximate time of day.

20 A I mean, I don't know. It was -- I can't even recall  
21 now because this was like two years ago. But I would say  
22 that it had to be in the evening. But sometimes they came  
23 in the morning, I mean, if I was up. But I would say it  
24 had to be in the evening.

25 Q All right. Let's do it this way. Okay. Do you

Lakeisha Brewton  
Direct examination by Mr. Bulsa

- 1 remember when Courtney got killed?
- 2 A No, because I was not there.
- 3 Q Okay. You weren't there. Let's use that as a time  
4 reference, ma'am.
- 5 A Okay.
- 6 Q When did you learn Courtney had died or actually  
7 Courtney had got shot? Let's put it that way.
- 8 A My -- when I got the phone call.
- 9 Q Okay. And where were you at when you got that phone  
10 call?
- 11 A My grandmother's house.
- 12 Q That was -- what's her name?
- 13 A Ms. Mini Bailey.
- 14 Q Did you call Ms. Bunch?
- 15 A Yes.
- 16 Q And that's where your mother had kinda showed the jury  
17 where she lived, right?
- 18 A Yes.
- 19 Q Okay. And then how did you get to that house?
- 20 A On the pathway.
- 21 Q Okay. You didn't take the road like your mother does.
- 22 A Uh-uh.
- 23 Q You took the pathway.
- 24 A Yeah.
- 25 Q Who went there with you?

Lakeisha Brewton  
Direct examination by Mr. Bulsa

- 1 A At the time me and D'Angelo was walking up the street,  
2 but I turned around to go get my baby because my mother  
3 was -- well, she was drinking. And she had went and laid  
4 down. See, he used to go out with me. But I leave him.  
5 So I told him to go back. But as I walked through the  
6 pathway assumed he might be making it there because I heard  
7 a shot.
- 8 Q All right. Okay. So you're actually in the pathway  
9 that short distance between your grandmother's house and  
10 your mother's house and you hear a shot.
- 11 A Yes.
- 12 Q And where did that shot sound like it came from?
- 13 A I don't know.
- 14 Q Did it sound like from the direction of where you had  
15 just been walking?
- 16 A I would say. It was just a loud shot.
- 17 Q Okay. Is that a common occurrence in that area?
- 18 A It's common.
- 19 Q All right. What about that shot? Did you think  
20 anything of it?
- 21 A Uh-uh.
- 22 Q You just kept walking to your grandmother's.
- 23 A Uh-huh.
- 24 Q All right. Now, how -- we know it's a short distance,  
25 so it couldn't have been a few seconds or minutes.

Lakeisha Brewton  
Direct examination by Mr. Bulsa

1 A Uh-huh. I would say about a few minutes. I wouldn't  
2 say seconds. It had to be like a few minutes, because as I  
3 was going up the street walking through the path -- like  
4 the path -- it's a house like behind my grandma house.  
5 That's the pathway I took. So as I walking behind the  
6 house, then I heard the shot, ya know what I'm saying,  
7 boom. I didn't think nothing about it. I just kept going.  
8 But-and then my brother got a phone call.

9 Q When you had left your house, tell us the names of the  
10 boys that you remember being there.

11 A I would say J'Corey and Red and Jurock, Kenneth.  
12 What's his name?

13 Q I don't know. You tell us the ones you recall.

14 A Ken, Ken -- I never even got the boy's name -- Keevin,  
15 Kevin, whatever his name is. Him. I don't know all of  
16 them. I can't think of it right now.

17 Q Do you remember if James Kilgore was there when you  
18 left?

19 A Yeah, but he was fixing to leave. He was on the side.  
20 When I was fixing t' leave going up the street he was on  
21 the side of the house fixin' to go home.

22 Q Okay. James wasn't up on the porch.

23 A Uh-uh.

24 Q Where was J'Corey when you left?

25 A On the porch with everybody else.

Lakeisha Brewton  
Direct examination by Mr. Bulsa

- 1 Q Okay. And Red?
- 2 A On the porch.
- 3 Q And this person named Jurock.
- 4 A On the porch.
- 5 Q Do you know his real name?
- 6 A No.
- 7 Q Okay. And Keevin person, where was he?
- 8 A On the porch. Everybody was on the porch when I left.
- 9 Q Everybody was on the porch, but you said James was off  
10 the porch.
- 11 A Uh-huh. He's, they's fixing to go home.
- 12 Q Okay. He was fixing to leave.
- 13 A Uh-huh.
- 14 Q All right. Where was Ms. Dandy, your mother?
- 15 A In the bed.
- 16 Q She was already in bed when you left?
- 17 A Well, she went in and me and D'Angelo was leaving. So  
18 I went in and told her I was gone, and I was gone.
- 19 Q Okay. So you were leaving and it looked like James  
20 was leaving, but it looked like everybody else was staying  
21 around.
- 22 A Uh-huh.
- 23 Q And J'Corey was one of those guys on the porch when  
24 you left.
- 25 A Uh-huh.

Lakeisha Brewton  
Cross-examination by Mr. Allen

1 Q And you were walking on the pathway, and then you  
2 heard a shot.

3 A Uh-huh.

4 Q Do you where D'An -- how far D'Angelo had gotten back?

5 A No.

6 Q So you don't know if he'd made it back to the house or  
7 not.

8 A Uh-uh.

9 Q Okay. Answer anything Mr. Allen has.

10 CROSS-EXAMINATION

11 BY MR. ALLEN

12 Q You stayed -- where your bedroom was, at the front  
13 bedroom, correct?

14 A Uh-huh.

15 Q I'm sorry?

16 A Correct.

17 Q Okay. The one that's just off the porch and the  
18 living room to the left.

19 A Yeah. You said the first -- you said the first  
20 bedroom window.

21 Q The first bedroom as you walk in the front door.

22 A Yes.

23 Q Now, I believe you indicated you had a child, correct?

24 A Corus, correct.

25 Q Okay. I'm sorry. I'm a little bit hard of hearing.

Lakeisha Brewton  
Cross-examination by Mr. Allen

1 So if you could please --

2 A Okay.

3 Q -- try to speak up loud enough for me to hear like  
4 you're doing right now.

5 A All right.

6 Q And how old was your child back in May of 2008  
7 approximately?

8 A She was about to be three.

9 Q About to be three.

10 A Yes.

11 Q And she stayed there as well at East Columbia.

12 A Yes.

13 Q That's correct?

14 A Yes.

15 Q Now, I understand you were going over to your  
16 grandmother's house.

17 A Yes.

18 Q Is that right? And you and D'Angelo left together.

19 A Yes.

20 Q And do you recall the time that you left?

21 A No.

22 Q And about what time?

23 A I can't even give you approximate time because I do  
24 not know.

25 Q There were a bunch of people at your house.

Lakeisha Brewton  
Cross-examination by Mr. Allen

- 1 A Yes.
- 2 Q A bunch of boys.
- 3 A Yes.
- 4 Q When you left your mother was in her bedroom.
- 5 A Yes.
- 6 Q Was anyone else in the bedroom with her?
- 7 A The two kids, mine and hers.
- 8 Q Your daughter.
- 9 A And my little brother.
- 10 Q And your little brother. And you told your mother you  
11 were leaving.
- 12 A Uh-huh.
- 13 Q She responded. Did she say something to you?
- 14 A She was, she was drinking. I ain't going to say  
15 drunk, but she was drinking. So my guess, I didn't look  
16 for no -- making sure she was in the bed. So I was just  
17 letting her know I was gone though.
- 18 Q Okay. And you and D'Angelo left together.
- 19 A Yes.
- 20 Q Now, after -- let's see. You -- I think you said you  
21 saw Courtney as you were leaving, right?
- 22 A Right.
- 23 Q Did you see him drive up, or was he already there?
- 24 A He drove up.
- 25 Q And he drove up in what?

Lakeisha Brewton  
Cross-examination by Mr. Allen

- 1 A Parked. He parked and got out.
- 2 Q Okay. Did he -- what, what was he driving?
- 3 A A Jeep.
- 4 Q A Jeep. What color?
- 5 A I'm not sure at the time. I think it was black. I  
6 don't know.
- 7 Q Okay. He parked and got out.
- 8 A Yes.
- 9 Q Do you know where he went?
- 10 A To my house. We walked right past each other.
- 11 Q Okay. You passed him where?
- 12 A On the sidewalk. It's like a walkway.
- 13 Q The walkway.
- 14 A Coming off the porch.
- 15 Q Coming off the porch.
- 16 A Yes.
- 17 Q Did you turn around to see where he went?
- 18 A No. I knowed he was going in the house. He went on  
19 my porch. I ain't, I ain't turned around to look to see  
20 did he go in or I ain't turned around to look to see what  
21 he did. I just -- he -- we walked past each other. He  
22 spoke, I spoke, and we kept going.
- 23 Q Now, I think you said that Courtney used to date your  
24 sister.
- 25 A Yes.

Lakeisha Brewton  
Cross-examination by Mr. Allen

1 Q She wasn't there that day, right?

2 A No.

3 Q She wasn't living there then, right?

4 A No. She was living there. She just wasn't there.

5 Q She wasn't living there. I'm sorry?

6 A Yeah. She was living there, I think. She just wasn't  
7 there that day.

8 Q Did you tell Courtney your sister's not there?

9 A No. We ain't had no conversation. I told you he said  
10 hey. I said hey. And that was it.

11 Q All right. And you and D'Angelo walked across the  
12 street.

13 A No. It was not across the street. We walked up the  
14 street.

15 Q Walked up the street towards --

16 A The passway.

17 Q Towards the passway.

18 A Uh-huh.

19 Q When you went out of your house to walk up the street  
20 were you going up towards South Church or were you going  
21 the other direction?

22 A Not even that far. It was up the street. I say it's  
23 on the opposite side of my house. So my house is on the  
24 left, and it was on the right. It was like from up my  
25 house maybe three houses.

Lakeisha Brewton  
Cross-examination by Mr. Allen

1 Q I'm trying to figure out. When you come out of your  
2 house were you going -- initially before you got to the  
3 pathway were you going towards South Church or were you  
4 going the way toward South Liberty?

5 A Towards South Church. I wasn't going down the street.  
6 South Liberty is down the street. I'm going toward South  
7 Church.

8 Q Of course you didn't go all the way up there, you went  
9 to a pathway --

10 A Of course.

11 Q -- to go over to Caulder Avenue --

12 A Yes.

13 Q -- where your grandmother lived.

14 A Yes.

15 Q And you and D'Angelo went that way.

16 A Yes. He turned around.

17 Q And he turned around.

18 A Yeah, to go get my little girl. But I don't even  
19 think he even made it to my house because we heard a boom.

20 Q All right. But he didn't turn around until after --

21 A We got in the, in the yard of the passway.

22 Q Okay. He didn't turn around until after you  
23 heard what --

24 A No. It wasn't after.

25 Q I'm sorry?

Lakeisha Brewton  
Cross-examination by Mr. Allen

- 1 A No. It wasn't after I heard anything.
- 2 Q Okay. So he, he turned around before you heard --
- 3 A Before the boom.
- 4 Q -- what you thought was a shot.
- 5 A Yes.
- 6 Q Okay. And he went back in the direction towards
- 7 y'all's house.
- 8 A My house.
- 9 Q I believe you said that a sound you heard that you
- 10 thought was a shot, you didn't think anything of it.
- 11 A Uh-uh. I hear shots all of the time.
- 12 Q I'm sorry?
- 13 A I used to hear shots all the time.
- 14 Q You used to hear shots in your neighborhood all the
- 15 time.
- 16 A Yes.
- 17 Q So that -- do, again, you didn't think anything of it.
- 18 A Just in -- no.
- 19 Q All right. You heard later -- apparently you, you
- 20 heard or you learned later that night that Courtney might
- 21 have been shot, correct?
- 22 A Uh-huh.
- 23 Q That would be --
- 24 A Correct, correct.
- 25 Q Correct. You didn't go back to your house on East

Lakeisha Brewton  
Cross-examination by Mr. Allen

1 Columbia Avenue that night and talk to the police, correct?

2 A No. You wrong.

3 Q You did?

4 A I went back to the house of course when I heard that  
5 somebody been shot there and my baby there.

6 Q And you talked to the police that night?

7 A No, I didn't talk to no police that night. They took  
8 my name because I went into the house and got my child and  
9 my little brother.

10 Q All right. But you didn't -- when you walked off when  
11 you're going towards the pathway, you say James was  
12 present, James Hull-Kilgore, right?

13 A He was leaving. He was present at the time, yes.

14 Q So he was outside the house?

15 A Yes.

16 Q Whereabouts outside the house?

17 A On the side.

18 Q On the side.

19 A Uh-huh.

20 Q Okay. But after you walked away you didn't look back  
21 to the house to see what was going on, right?

22 A Right.

23 Q You didn't see any gun.

24 A Uh-uh.

25 MR. ALLEN: One second, please, Your Honor.

Lakeisha Brewton  
Redirect examination by Mr. Bulsa

1 (Pause.)

2 MR. ALLEN: No other questions, Your Honor.

3 MR. BULSA: Briefly.

4 REDIRECT EXAMINATION

5 BY MR. BULSA

6 Q Ms. Bruton, you were talking about Courtney driving up  
7 and you speaking to him.

8 A Uh-huh.

9 Q That's when you were on your way leaving?

10 A Yes.

11 Q Did Courtney go up on the porch?

12 A Yes.

13 Q So he would have been on the porch also when you left.

14 A Yes.

15 Q Ma'am, Mr. Allen was asking you about the bedroom you  
16 stayed in and all. It was the first bedroom off the living  
17 room?

18 A Uh-huh.

19 Q When you left, ma'am, was there any blood in the  
20 doorway?

21 A Uh-uh.

22 Q Was there a hole in the wall near the door?

23 A Not that I -- uh-uh. I don't think so.

24 Q You stayed there how long?

25 A Five years.

Taquil Nabors  
Direct examination by Mr. Bulsa

1 Q Okay. To your knowledge were there any guns in your  
2 house?

3 A Uh-uh.

4 Q Any ammunition?

5 A Uh-huh.

6 Q Thank you, ma'am. That's all I have.

7 MR. ALLEN: No questions.

8 THE COURT: You may step down.

9 MR. BULSA: Taquil Nabors.

10 TAQUIL NABORS, having been  
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. BULSA

13 Q Taquil, how old are you?

14 A Seventeen.

15 Q Are you the a/k/a Penny Red? You're Penny Red?

16 A Yes, sir.

17 Q You need to answer the questions out loud.

18 Okay. That's a nickname, right?

19 A Yes, sir.

20 Q What most people know you by? That's what most of  
21 your friends know you by?

22 A Yes, sir.

23 Q Are you in school?

24 A No, sir.

25 Q Working on your G. E. D.

Taquil Nabors  
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q Okay. Are you employed? Are you working?
- 3 A No, sir.
- 4 Q Where do you stay?
- 5 A Caulder Avenue.
- 6 Q Who lives there?
- 7 A My grandma.
- 8 Q How long have you stayed with your grandmother?
- 9 A Forever.
- 10 Q Forever. Did she raise you?
- 11 A And my mama.
- 12 Q Slow down and answer clearly.
- 13 Okay. Who raised you?
- 14 A My grandma and my mama.
- 15 Q Your grandmother and your mother. Caulder Avenue --
- 16 is that the Caulder Avenue we saw on the map?
- 17 A Yes, sir.
- 18 Q Do you know Lakeisha's grandmother?
- 19 A Yes, sir.
- 20 Q Does she live near you?
- 21 A Yes, sir.
- 22 Q Okay. Do you know where Lakeisha used to live on East
- 23 Columbia?
- 24 A Yes, sir.
- 25 Q Did you go there often?

Taquil Nabors  
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q Why, why?
- 3 A Because my friend used to stay there.
- 4 Q Okay. Which friend?
- 5 A Lakeisha.
- 6 Q Okay. Are you friends with the rest of the family
- 7 too?
- 8 A Yes, sir.
- 9 Q Is that a common place for young people to go hang
- 10 out?
- 11 A Uh.
- 12 Q What?
- 13 A I don't know.
- 14 Q Did a lot of young people go hang out there?
- 15 A Sometime.
- 16 Q Sometimes. All right. Do you know the defendant,
- 17 J'Corey Kilgore?
- 18 A Yes, sir.
- 19 Q How do know him?
- 20 A Grew up with 'im.
- 21 Q Grew up with him. Would you consider him a friend?
- 22 A Yes, sir.
- 23 Q Is he one of the guys that hang out, that used to hang
- 24 out, at East Columbia?
- 25 A Yes, sir.

Taquil Nabors  
Direct examination by Mr. Bulsa

- 1 Q Did you know Courtney Rogers?
- 2 A Yes, sir.
- 3 Q How did you know him?
- 4 A Grew up with him.
- 5 Q Was he a friend?
- 6 A Yes, sir.
- 7 Q Did Courtney hang out at East Columbia?
- 8 A No, sir.
- 9 Q Do you remember when Courtney died?
- 10 A Yes, sir.
- 11 Q Where were you?
- 12 A On Caulder walking down, walking, uh, South Liberty.
- 13 Q Okay.
- 14 A After he left.
- 15 Q Were you at the house when he got shot?
- 16 A Yes, sir.
- 17 Q Tell the jury what happened, please.
- 18 A Well, we, we was playing cards. We was outside
- 19 playing cards -- we was outside playing cards. Then about
- 20 30 minutes later he pulled up. I went to the car. We was
- 21 talking over there. Then he got out of the car and came on
- 22 the porch.
- 23 Q Keep going. What happened?
- 24 A And everybody was out there just talking, and he went
- 25 in the house.

Taguil Nabors  
Direct examination by Mr. Bulsa

1 Q He being Courtney -- he being Courtney? You said he  
2 went in the house. Do you mean Courtney went into the  
3 house?

4 A Yes, sir.

5 Q And then what happened?

6 A I heard, I heard a gun cock back.

7 Q Okay. Did somebody go in the house after Courtney?

8 A No, sir.

9 Q Had somebody gone in there before Courtney?

10 A I wasn't paying no attention.

11 Q Okay. So you don't know who else went in the house,  
12 but you remember Courtney going in the house.

13 A Yes, sir.

14 Q You heard a gun cock. Where was -- where did you hear  
15 that sound -- where did you hear that sound?

16 A In the house.

17 Q All right. And what did you do?

18 A I looked.

19 Q You looked into the house. Through the screen door?

20 A Yes, sir.

21 Q Did you open the screen door?

22 A Opened.

23 Q You opened the screen door. And what did you see?

24 A A dude that had on a white shirt over his face.

25 Q Who was that?

Taquil Nabors  
Direct examination by Mr. Bulsa

- 1 A Corey.
- 2 Q Okay. Was he the one with the gun?
- 3 A Yes, sir.
- 4 Q And what happened? What did you see?
- 5 A I seen. They standing beside each other.
- 6 Q And? And then what happened?
- 7 A And then Courtney started walking out the door, and
- 8 he, he was digging in his bottom pocket.
- 9 Q Was he sort of leaning over while he was doing that?
- 10 A Yes, sir.
- 11 Q And then what happened?
- 12 A I heard a gun go off.
- 13 Q And then what happened after the gun went off?
- 14 A He ran out the door and I ran out -- I ran behind him.
- 15 Q Courtney ran out the door?
- 16 A Yes, sir.
- 17 Q You ran out behind him. Did you see any other guns in
- 18 that house?
- 19 A Who?
- 20 Q Did you see any other guns in the house?
- 21 A No, sir.
- 22 Q Were there any other persons in the house?
- 23 A Yes, sir.
- 24 Q Who?
- 25 A De -- Dwight.

Taquil Nabors  
Direct examination by Mr. Bulsa

1 Q Where was Dwight?

2 A In the living room. And Keith -- he was sitting,  
3 sitting on the sofa.

4 Q Keith was sitting on the sofa. Where was Dwight? Was  
5 he on the sofa too?

6 A On this side.

7 Q Okay. So you've got Dwight on one sofa and Keevin on  
8 the other?

9 A Yes, sir.

10 Q Okay. Was it your voice we heard on that 9-1-1 tape  
11 yesterday?

12 A Yes, sir.

13 Q Did you try to help Courtney?

14 A Yes, sir.

15 Q This is getting loud so you make sure you speak up.  
16 What did you do trying to help Courtney?

17 A I called. Well, when he was on the phone with  
18 ambulance he had dropped -- he laid his phone down, and  
19 then I picked it up. I started talking to 'em. They told  
20 me to take my shirt off. I took my shirt off and put it  
21 where the bullet hole was.

22 Q Did you stay there until the police got there?

23 A Yes, sir.

24 Q Did they tell you to get back?

25 A Yes, sir.

Taquil Nabors  
Direct examination by Mr. Bulsa

- 1 Q Did they take over trying to help him? Did the police  
2 try to help him?
- 3 A I don't even remember. He, he was telling us to get  
4 back.
- 5 Q Okay. What did you do when the police arrived and  
6 told you to get back?
- 7 A I got back. Like he said, I started walking up the  
8 street.
- 9 Q Where did you walk to?
- 10 A Up South Liberty.
- 11 Q Did you go back and talk with any of the policemen?
- 12 A Yes, sir.
- 13 Q When?
- 14 A About ten minutes later.
- 15 Q Okay. And what did you tell them?
- 16 A I seen, I seen -- I was coming through a path and he  
17 walked down the street.
- 18 Q Okay. You didn't tell them you were at the house, did  
19 you?
- 20 A No, sir.
- 21 Q Why not?
- 22 A Because I, I didn't want nothing to do with it.
- 23 Q You didn't want to have to tell on your friend?
- 24 A I didn't want nothing to do with it.
- 25 Q Did the police talk to you again?

Taguil Nabors  
Direct examination by Mr. Bulsa .

- 1 A Yes, sir.
- 2 Q Did you give another statement?
- 3 A Yes, sir.
- 4 Q Did you tell them what you told us now?
- 5 A Yes, sir.
- 6 Q Why did you tell them that? Why did you tell them  
7 something different?
- 8 A U-u -- I don't know.
- 9 Q Well, which one is the truth?
- 10 A The sec (sic).
- 11 Q Both of these men were your friends, right?
- 12 A Yes, sir.
- 13 Q Who are you closer in age to? They're about the same  
14 age, aren't they?
- 15 A Yes, sir.
- 16 Q Was that, was that Ms. Dandy's house?
- 17 A Yes, sir.
- 18 Q Was that about the view you had looking in? Is that  
19 about the view you had looking in the door?
- 20 A Yes, sir. I was on that side though.
- 21 Q What?
- 22 A I was all the way on that side.
- 23 Q We can see the doorjamb here. Would it have been on  
24 this side?
- 25 A Yes, sir.

Taquil Nabors  
Direct examination by Mr. Bulsa

- 1 Q Looking in through the screen?
- 2 A Yes, sir.
- 3 Q And you could see what -- the people you described  
4 inside.
- 5 A Yes, sir.
- 6 Q And you saw Courtney with a gun.
- 7 A I ain't seen him with a gun.
- 8 Q I mean, you saw J'Corey with a gun.
- 9 A Yes, sir.
- 10 Q And --
- 11 A But I knowed, I knowed Courtney had one though.
- 12 Q Courtney had one in his pocket.
- 13 A Yes, sir.
- 14 Q Okay. But he didn't pull his out, did he?
- 15 A No, sir.
- 16 Q Now, and you heard a shot. And it was J'Corey's gun  
17 that shot, right?
- 18 A (Grunt.) I ain't know, I ain't know, I ain't which  
19 gun it was at first till I seen him running down holding  
20 his neck.
- 21 Q Okay. But you --
- 22 THE COURT: Excuse me just a minute.
- 23 You're going to repeat that last answer. I don't  
24 think anybody heard that.
- 25 A I said I don't know what, what it was first, which one

Taquil Nabors  
Direct examination by Mr. Bulsa

1 it was first. But he's the only one that had a gun that I  
2 seen.

3 Q Okay. He being J'Corey.

4 A Yes, sir.

5 Q And Dwight was on one couch and Keevin was on one  
6 couch.

7 A Yes, sir.

8 Q Did you see anybody else in the house?

9 A I know Ma San was in the back.

10 Q Who? Mama Sand. Is that Ms. Dandy?

11 A Yes, sir.

12 Q Now, Taquil, you've already testified you didn't want  
13 to be involved, you didn't want to have to tell the police  
14 and you didn't want to be involved.

15 A Yes, sir.

16 Q Did you want to even be involved in the trial? Did  
17 you want to have to come today?

18 A I had to come.

19 Q Have you got any argument or conflict with J'Corey?

20 A No, no, sir.

21 Q Got any reason to lie against him?

22 A No, sir.

23 Q Got any reason to say he did this?

24 A No, sir.

25 Q Are you being promised anything to testify?

Taquil Nabors  
Cross-examination by Mr. Allen

- 1 A Say what?
- 2 Q Are you being promised anything to testify?
- 3 A No, sir.
- 4 Q Anybody rewarding you to testify?
- 5 A No, sir.
- 6 Q Did you tell the truth?
- 7 A Yes, sir.
- 8 Q Was J'Corey in that house with a gun when this shot  
9 went off?
- 10 A I already told you.
- 11 Q Thank you.
- 12 CROSS-EXAMINATION
- 13 BY MR. ALLEN
- 14 Q Mr. Nabors, when you talked to the police, not the  
15 first time -- when you talked to the police down at the  
16 police station didn't they will tell you -- didn't they  
17 threaten to put a charge on you?
- 18 A No, sir.
- 19 Q They didn't? Did they talk to you about --
- 20 A They, they said if I keep lying, somethin' about I  
21 have accessory or somethin'.
- 22 Q I'm sorry? I didn't catch all of that. If you keep  
23 lying what?
- 24 A I have accessory.
- 25 Q Accessory. You don't want that, is that right?

Taquil Nabors  
Cross-examination by Mr. Allen

- 1 A No, sir.
- 2 Q You knew they were interested in hearing about Corey  
3 at that point, right?
- 4 A Yes, sir.
- 5 Q Let's talk a little bit about you're involvement.
- 6 A About who?
- 7 Q About your involvement in this case. When the police  
8 first arrived you went down -- when the police first  
9 arrived of course they told you to step back, and you did,  
10 right?
- 11 A Yes, sir.
- 12 Q You walked away, is that right?
- 13 A Nay. I stepped back.
- 14 Q Stepped back. You went up the street. Did you go up  
15 the street?
- 16 A When the ambulance came I left. I walked up the  
17 street.
- 18 Q Okay. Walked up which street -- East Columbia?
- 19 A South Liberty.
- 20 Q South Liberty. How far did you go?
- 21 A To the stop sign at about, at the end of the road.
- 22 Q Where Caulder Avenue is?
- 23 A Yes, sir.
- 24 Q Housing Authority is on your right, is that right?
- 25 A Yes, sir.

Taquil Nabors  
Cross-examination by Mr. Allen

- 1 Q And then you came back, is that right?
- 2 A Ten minutes later and talked to the police.
- 3 Q Okay. So you stayed at the corner about ten minutes  
4 and then you came back?
- 5 A Yes, sir.
- 6 Q And that's when you told the police. They didn't call  
7 you back, right? They didn't call you back.
- 8 A No, sir.
- 9 Q They didn't have your name. You didn't give your name  
10 to anybody.
- 11 A Didn't nobody ask for my name.
- 12 Q And then you told the police at that point that you  
13 had been up at -- I believe it was Palisade, is that right?
- 14 A I said Pete's.
- 15 Q Or Pete's. Excuse me. That you were coming back from  
16 Pete's and you saw Courtney, is that right?
- 17 A Yes, sir.
- 18 Q And he was walking around in circles, is that right?
- 19 A Yes, sir.
- 20 Q Is that what you told them?
- 21 A Yes, sir.
- 22 Q And he fell down.
- 23 A Well, that what he did though.
- 24 Q And he fell down, right? That's what you told the  
25 police then. And that's when you realized he was shot. Is

Taquil Nabors  
Cross-examination by Mr. Allen

1 that what you told the police then?

2 A Yes, sir, man.

3 Q And you didn't say anything about being up at  
4 Ms. Dandy's house, is that right, at that point?

5 A No, sir.

6 Q And you didn't say anything about seeing anybody  
7 shooting Mr. Rogers, is that right?

8 A Yes, sir.

9 Q And you told the police at that time that what you  
10 were telling them was the truth.

11 A And I came back and told them I, I was lying.

12 Q What I'm saying is on the 24th of May when you gave  
13 your first statement, didn't you say after telling them all  
14 of this stuff -- is this a copy of your statement you gave  
15 on the 24th of May? Yes?

16 A Yes, sir.

17 Q Your signature on it? Is that right?

18 A Yes, sir.

19 Q And you've read all of this before, before you signed  
20 it.

21 A No, sir.

22 Q You didn't read any of it before you signed it?

23 A No, sir.

24 Q Where it says this is the truth about what happened,  
25 was given freely, where it's got your initial right after

Taguil Nabors  
Cross-examination by Mr. Allen

1 that?

2 A I don't remember reading that, man.

3 Q Where it says you swear or affirm that the facts  
4 contained in that statement are true?

5 A I said them are lies I read.

6 Q Okay. But you're telling the police then that they  
7 were true, right? Is that correct?

8 A Yes, sir.

9 Q And it wasn't until the 27th of May when you talked to  
10 the police they talked about that accessory charge, you  
11 started talking about Corey, is that right?

12 A I don't remember.

13 Q You don't remember what day? You didn't mention Corey  
14 the first time until they talked -- until the police were  
15 telling you they were going to put an accessory charge on  
16 you, isn't that right?

17 A Yes, sir. They didn't say they was going to put  
18 nothing on me.

19 Q They said that you are looking at an accessory charge,  
20 right?

21 A Yes, sir.

22 Q Okay. Let's talk a little bit about what you're now  
23 saying. You're playing cards on the porch, is that right?

24 A Yes, sir.

25 Q At East Columbia. You went down. When Courtney

Taguil Nabors  
Cross-examination by Mr. Allen

1 arrived you went down to talk to him, right?

2 A Yes, sir.

3 Q When you were talking to him he was standing where?

4 Down by the vehicle?

5 A He was in, he was still in the driver's seat.

6 Q Still in the driver's seat. And you said something to  
7 him about folks being grindy these days.

8 A Yeah, but we was talking about something, what he did.

9 Q Okay. But Courtney said when you said folks -- or  
10 something to the effect of folks being grindy these days,  
11 Courtney said that's what I carry this for, right?

12 A Yes, sir.

13 Q And then he pulls out a pistol, Courtney does, right?

14 A He ain't pulled it out. He showed.

15 Q He showed you.

16 A He didn't pull it out.

17 Q All right. Courtney put that pistol in his pocket.

18 A It, it was already in his pocket.

19 Q Already in his pocket. But he pulled it out to show  
20 it to you, right?

21 A He ain't pulled it out.

22 Q He showed you the pistol.

23 A He did -- he opened it. He had on some Jibos. He  
24 opened it and did like this and I seen it.

25 Q Okay. So he had on some?

Taguil Nabors  
Cross-examination by Mr. Allen

- 1 A Jibos.
- 2 Q Jibos. These are pants, right?
- 3 A Yes, sir.
- 4 Q And they have pockets that are kind of low on the leg,  
5 is that right?
- 6 A Yes, sir.
- 7 Q And if Courtney was standing up, for example, he'd  
8 have to reach down, bend down, to get down to that pocket.
- 9 A He wasn't standing up. I just told you. I said he  
10 was in the driver's seat.
- 11 Q He was in the driver's seat, right. He didn't have to  
12 bend down then.
- 13 What I'm getting at is this pocket's down low on the  
14 legs of the pants that he was wearing, right?
- 15 A It ain't that low.
- 16 Q Okay. How low is it?
- 17 A About -- I ain't got none on.
- 18 Q Okay. But stay with me. If it's down low enough,  
19 that if Courtney was standing up he'd have to bend down to  
20 get into that pocket, correct?
- 21 A If he was standing up?
- 22 Q Uh-huh.
- 23 A He wasn't standing up.
- 24 Q He kept that pistol in his pocket, correct?
- 25 A Yes, sir.

Taquil Nabors  
Cross-examination by Mr. Allen

- 1 Q And he didn't put it in the car, that's right?
- 2 A Uh-huh.
- 3 Q Had it on when he went up to the house, is that right?
- 4 A Yes, sir.
- 5 Q You say you saw him go in the house, is that right?
- 6 A Yes, sir.
- 7 Q You do have to answer out loud --
- 8 A Yes, sir.
- 9 Q -- because the lady here is taking down everything you  
10 say.
- 11 Now, you went back to playing cards, is that right?
- 12 A Yes, sir.
- 13 Q And you were playing cards with who, do you recall?
- 14 Who were you playing cards with?
- 15 A Me, James.
- 16 Q James? James who?
- 17 A Whatever his name -- Hull, Hull.
- 18 Q Corey's brother?
- 19 A Yes, sir.
- 20 Q And who else were you playing cards with? Just you  
21 and James?
- 22 A I don't remember the rest.
- 23 Q You don't remember the rest. Courtney was in the  
24 house for a while before you heard, before you say you  
25 heard, that click, right?

Taquil Nabors  
Cross-examination by Mr. Allen

1 A Yes, sir.

2 Q You never saw Corey go into the house. Is that what  
3 you're saying?

4 A Yes, sir.

5 Q When you say you looked in the house after hearing the  
6 gun click or hearing a click, you saw how many people in  
7 that house?

8 A I don't remember. It was about, about three.

9 Q About three?

10 A Three or four. I don't remember. Three or four.

11 Q Three or four. And one of them was Courtney, right?

12 A Yes, sir.

13 Q How many people had a shirt over their faces?

14 A Two.

15 Q You say they had their shirts over their faces. Do  
16 you mean they were just pulled up hiding their face or  
17 what?

18 A Hiding their face, half way.

19 Q I'm sorry?

20 A Half way.

21 Q Half way up above their mouth and nose? Is that what  
22 you're saying?

23 A Yes, sir.

24 Q When you looked in the house after you heard that  
25 click you saw Courtney bending over, right?

Taquil Nabors  
Cross-examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q Reaching towards his lower pocket.
- 3 A Yes, sir.
- 4 Q A pocket where you earlier saw a gun in?
- 5 A Yes, sir.
- 6 Q You say that Courtney ran away, right?
- 7 A Yes, sir.
- 8 Q And all of the other boys ran away too, is that right?
- 9 A I wasn't paying no attention. I ran straight behind
- 10 him.
- 11 Q James was, you say, still on the porch.
- 12 A I ain't see'ed him.
- 13 Q At the time of -- at time where you're saying you
- 14 heard the shot James was still on the porch, right?
- 15 A I don't remember.
- 16 Q When you, when you -- you were playing cards with
- 17 James, I think you said, right?
- 18 A Uh-huh. We had stopped playing too.
- 19 Q You had stopped playing too. You were playing cards
- 20 with him when you heard this clicking sound, right?
- 21 A Uh-uh.
- 22 Q No?
- 23 A I was on the side of the screen door in the chair.
- 24 Q You were what?
- 25 A I was sitting on the porch right by the screen door.

Taquil Nabors  
Cross-examination by Mr. Allen

- 1 Q You weren't playing cards when you heard the click.
- 2 A No, sir.
- 3 Q Okay. So after Courtney walked in you played cards  
4 again, right?
- 5 A We had stopped. I ain't --
- 6 Q All right. Fair to say that everybody that you say  
7 you saw in the house ran after the shot?
- 8 A I ain't said that.
- 9 Q Okay. You ran, right? Is that correct?
- 10 A He ran. Courtney ran first, and then I ran.
- 11 Q Courtney ran and then you ran. Over on South Liberty  
12 where Courtney fell down, before the police arrived were  
13 there other fellows there too?
- 14 A They was, they were coming through the pathway.
- 15 Q Coming through the pathway.
- 16 A James was.
- 17 Q James was. The gun that Courtney had, did you do  
18 anything with that gun?
- 19 A No.
- 20 Q Did you see anybody do anything with that gun?
- 21 A No.
- 22 Q Did you see anybody give that gun to somebody else?
- 23 A No.
- 24 Q I'm going to back up a minute, back at the house,  
25 East Columbia.

Taguil Nabors  
Redirect examination by Mr. Bulsa

1           When you saw Courtney bent over inside the house --  
2 Courtney bend over inside the house, it looked like he was  
3 going for the pocket that had the gun in it, right?

4 A       Yes, sir, but that probably ain't the only thing that  
5 man had in his pocket.

6           MR. ALLEN: Nothing further, Your Honor.

7           MR. BULSA: Just a few.

8       REDIRECT EXAMINATION

9       BY MR. BULSA

10 Q       Mr. Nabors, did you know Courtney was actually shot  
11 when he ran away from the house?

12 A       Yes, sir.

13 Q       You knew he actually had been hit with a bullet and  
14 took off running?

15 A       Yes, sir.

16 Q       How?

17 A       Because he was, he was yelling.

18 Q       He was yelling and holding his neck when he ran. And  
19 he ran past you. And you followed after him?

20 A       Yes, sir.

21 Q       What kind of gun did he have in his pocket?

22 A       Two-shot .38.

23 Q       Two-shot?

24 A       .38.

25 Q       Okay. You say two shots. How do you know it was two

Taquil Nabors  
Redirect examination by Mr. Bulsa

- 1 shots?
- 2 A Idenolgy (sic).
- 3 Q Huh?
- 4 A Identity; whatever you call it, cause when he was in  
5 the Jeep I seen him.
- 6 Q Okay. You saw the gun. But how do you know what kind  
7 of gun it was?
- 8 A (Grunt.)
- 9 Q You got to say. You speak.
- 10 A I don't know.
- 11 Q Okay. Well, why are you saying it's a two-shot?
- 12 A Because.
- 13 Q That's what we're trying to understand. Was it a big  
14 gun?
- 15 A Nah. It was small, like small.
- 16 Q Are you familiar with guns?
- 17 A No.
- 18 Q But you know that was just that two shots?
- 19 A Somebody said. James had said when we was down where  
20 he was laying.
- 21 Q James saw the gun.
- 22 MR. ALLEN: I'm going to object to anything that he  
23 says James said. It's hearsay.
- 24 THE COURT: He's just saying why he thought it was  
25 what it is. It's not to prove the truth of the matter.

Taguil Nabors  
Redirect examination by Mr. Bulsa

- 1 Q So you, you think it was a two-shot because somebody  
2 else said it was a two-shot.
- 3 A It was a two-shot. It had two, two little barrels or  
4 whatever you call it.
- 5 Q Two little barrels. Okay. But he never took it out  
6 of his pocket. You told the police or you told us about  
7 them pulling up their shirts over their faces.
- 8 A I already told 'em about that.
- 9 Q I know, but I'm going back into it.  
10 Did that keep you from identifying who those persons  
11 were?
- 12 A A little bit.
- 13 Q Who was, who were the two people that pulled their  
14 shirts up?
- 15 A I don't know the other one.
- 16 Q You didn't know the other one. Was it Keevin?
- 17 A I don't know.
- 18 Q Who was in the house?
- 19 A It was, it was three people.
- 20 Q Let's name them.
- 21 A Three or four.
- 22 Q Name them for us.
- 23 A Man, I told you the name.
- 24 Q Answer the questions, please.
- 25 A Told them. I said Dwight, Keevin and Courtney and

Taquil Nabors  
Redirect examination by Mr. Bulsa

- 1 him.
- 2 Q Okay.
- 3 THE COURT: Excuse me just a minute.
- 4 When you're saying him, you are referring to who?
- 5 THE WITNESS: Corey.
- 6 Q The defendant, the defendant J'Corey.
- 7 A I just said Corey.
- 8 Q Okay. Did J'Corey have his shirt over his face?
- 9 A Half way.
- 10 Q Half way. Did that keep you from identifying Corey?
- 11 A Uh-uh.
- 12 Q No?
- 13 THE COURT: Would you please answer yes or no instead
- 14 of grunting?
- 15 A No.
- 16 Q Is that because you've known him most of your life?
- 17 A Nah.
- 18 Q What?
- 19 A No.
- 20 Q How long have you known him?
- 21 A I know him for a long, but that ain't, that ain't why.
- 22 Q Why? How could you tell it was him?
- 23 A Because they was the only ones in the house.
- 24 Q Okay. Well, did Dwight have his shirt over his face?
- 25 A No, because he was on the couch.

Taguil Nabors  
Redirect examination by Mr. Bulsa

1 Q Did Keevin have his shirt on his face?

2 A No. Keevin was standing. Man, I just told you where  
3 he was standing right by the sofa, sitting on the sofa.

4 Q Okay. So now you're telling us there was another  
5 person inside.

6 A I don't know.

7 Q This is important.

8 A I just told you. I don't know.

9 Q You said there was a second man.

10 A I said three to four people.

11 Q You said there was a second man with their face  
12 covered up, right?

13 A Uh-huh, yeah.

14 Q Did that person have a gun?

15 A No. One of them did.

16 Q Which one had the gun?

17 A Corey.

18 Q Did the police tell you what to say when they brought  
19 you down to the station?

20 A No, no.

21 MR. BULSA: Nothing else.

22 MR. ALLEN: No other questions.

23 THE COURT: You may step down.

24 Ladies and gentlemen, we're going to break for lunch,  
25 so keep in mind my caution. No discussions, no research,

1 no investigation, no media exposure.

2 Have a good lunch. And please report to your jury  
3 room this afternoon at 2:30, 2:30 this afternoon.

4 (The following takes place outside the presence of the  
5 jury.)

6 THE COURT: Court is still in session.

7 Would you please let me know when the jury has  
8 cleared?

9 (Pause.)

10 THE BAILIFF: The jurors are clear.

11 THE COURT: Court is in recess until 2:30.

12 (Whereupon, a recess was taken.)

13 THE COURT: All right. Well, the crowd keeps growing,  
14 so let me tell those who haven't been here before.

15 There is no talking while this trial is in progress;  
16 there is no leaving; there is no coming in; there is no  
17 discussions, no conversations, no making faces about  
18 testimony that you might hear that you like or don't like.

19 Anybody violates those rules it's contempt of court.  
20 I hope y'all understand it and what the consequences are,  
21 because there will be consequences to it.

22 All right. Anything further before the jury comes in?

23 MR. BULSA: No, sir.

24 MR. ALLEN: No, Your Honor.

25 THE COURT: All right. Bring them in.



Mylnor Beach  
Direct examination by Mr. Bulsa

1 safeguarding?

2 A Yes, sir.

3 Q And as part of your duties did you take some of that  
4 evidence, if not all, to another location for testing?

5 A Yes, sir. Some of the evidence in this case was taken  
6 to SLED in Columbia for them to do their analysis.

7 Q And when you receive property into evidence is it  
8 sealed in any fashion?

9 A Depending on the type of evidence it is, it's put into  
10 a secured locked area where the officers have to log it in  
11 in a book.

12 At least once a day myself or officer Reeves who is my  
13 partner will take that evidence out. It's in a locked  
14 metal box that only he and I have the keys for, our locked  
15 lockers.

16 We have to verify that piece of evidence to the log-in  
17 sheet. Then we in turn sign it. And we bring it inside  
18 our office. This is all right outside in the hallway of  
19 our area. And then we process it, sign it and bar code it  
20 and enter it into the computer and put it in the correct  
21 location.

22 Q And did you bring the evidence sheets with you today?

23 A Yes, I did.

24 Q Okay. Let me ask you to look at what evidence was  
25 collected from the residence of East Columbia Avenue.

Mylnor Beach  
Direct examination by Mr. Bulsa

1 (Swabs marked State's Exhibit No. 22 for  
2 Identification.)

3 A I've been through all of them. I'm sure I have got  
4 them. All right.

5 Q Okay. Let me show you what's been marked previously  
6 as State's Exhibit No. 20. It's a package containing a  
7 shell casing. Do you have records showing that that was  
8 turned in?

9 A Yes, sir.

10 Q Was it turned in in a sealed fashion?

11 A It was turned into the drop box by Investigator  
12 Westfall. She put it in on May the 27th of 2008 at 2030  
13 hours. I retrieved it and received it on May the 28th of  
14 2008 at 0700 hours.

15 Q Okay. Now, let me show you what's been marked for  
16 identification as State's Exhibit No. 22. Can you identify  
17 that package?

18 A Yes, sir.

19 Q Is that a package received in this case?

20 A Yes, sir. Also turned in by Investigator Westfall May  
21 27th of 2008 at 2030 hours. I received it the following  
22 morning, May 28th of 2008, at 0700 hours.

23 Q Does that denote how it was received and what was  
24 received in it?

25 A Yes, sir. It states it was two blood swabs. And this

Mylnor Beach  
Direct examination by Mr. Bulsa

1 particular envelope was sealed and initialed by  
2 Investigator Westfall.

3 Q Okay.

4 MR. BULSA: Your Honor, I would offer State's 22 into  
5 evidence at this time.

6 THE COURT: Any objection?

7 MR. ALLEN: No objection.

8 THE COURT: It's admitted.

9 (Swabs marked State's Exhibit No. 22.)

10 Q Okay. We are going to speak specifically about these  
11 two objects right now.

12 A Okay.

13 Q You received those in a sealed form and safeguarded  
14 them?

15 A Yes, sir.

16 Q Did you transport those to the state law enforcement  
17 office?

18 A Yes, sir, I did. On July the 2nd of 2008 I took them  
19 to SLED property and evidence receiving in Columbia, South  
20 Carolina. They were received by Forensic Technician Amy  
21 Stephens.

22 Q Okay. Would you have taken them down in the same  
23 condition you had collected them?

24 A Yes.

25 Q Would you have had any reason to open either one of

Mylnor Beach  
Direct examination by Mr. Bulsa

1 those?

2 A No, sir.

3 Q When you took them to the state law enforcement  
4 division what was done with them?

5 A They take the necessary paperwork. As you can see,  
6 they have one of their bar codes that goes on it.

7 They place it in a -- this, these items, were placed  
8 in a plastic envelope and heat sealed. Once it's heat  
9 sealed they give it back to me and I have to initial and  
10 date that I saw them, you know, seal it in their evidence  
11 envelope.

12 Once I sign that I give it back to them, and then they  
13 distribute it to the different parties.

14 Q Okay. I don't have that actual bag, but is this an  
15 example of the kind of bag that was used?

16 A Yes, sir.

17 Q Okay.

18 A Yes, sir.

19 Q Okay. But it's sealed again in your presence. So  
20 it's doubly sealed basically.

21 A Yes, sir.

22 Q Okay. Would you have had any or do you have any  
23 record of ever having received any blood samples from the  
24 victim's body from either the pathologist or the coroner's  
25 office?

Mylnor Beach  
Direct examination by Mr. Bulsa

- 1 A Now, I received at the same time, you know, these two  
2 blood swabs.
- 3 Q Did you receive any vials of blood?
- 4 A Well, I'm not showing it on her sheets that she turned  
5 in to me.
- 6 Q Okay. Well, on all of those sheets did anybody ever  
7 turn in any vials of blood in this case?
- 8 A Can you give me time to look through them right quick?
- 9 Q Yes, sir.
- 10 (Pause.)
- 11 A I'm not showing two vials of blood with my evidence.
- 12 Q Okay. That's the answer I expected. All right. Did  
13 you also receive a pistol into your custody?
- 14 A If that's what it would have come in. I didn't  
15 receive this myself. My partner, David Reeves, received it  
16 and, and --
- 17 Q Would it have been turned in in that fashion?
- 18 A Yes, sir.
- 19 Q And secured in your --
- 20 A This would have been secured in one of the locked  
21 secured lockers.
- 22 Q Okay. Did you transport a pistol down to the state  
23 law enforcement division?
- 24 A Yes, sir.
- 25 Q Okay. So you --

Mylnor Beach  
Cross-examination by Mr. Allen

1 A That was at the same time on July the 2nd of 2008.

2 Q So you took the pistol that was recovered in the  
3 case --

4 A Yes, sir.

5 Q -- along with the shell casing and some swabs, as well  
6 as a few other items. Those are specifically the ones  
7 we're interested in today.

8 A Yes, sir.

9 Q Is that correct?

10 A Yes, sir.

11 Q Thank you. That's all I have. Answer any questions  
12 Mr. Allen may have.

13 CROSS-EXAMINATION

14 BY MR. ALLEN

15 Q You also received some scrapings -- indicating  
16 fingernail scrapings.

17 A Yes, sir, yes, sir.

18 Q And you transported that down to SLED?

19 A Well, that was transported down to SLED by myself.  
20 I'd have to go through the evidence sheet to see who  
21 actually received it, you know, into evidence. But I did  
22 take them to SLED.

23 Q You did take it.

24 A Yes, sir.

25 Q And the purpose of taking all of these items to SLED

Mylnor Beach  
Cross-examination by Mr. Allen

- 1 is for further analysis or tests or something of that sort.
- 2 A Yes, sir.
- 3 Q All right.
- 4 MR. ALLEN: One second, please, Your Honor.
- 5 (Pause.)
- 6 Q And, again, these items -- the swabs that you
- 7 previously mentioned that's on --
- 8 A Swabs are here, sir.
- 9 Q Thank you. Yes. On State's Exhibit 2, you took this
- 10 to SLED, I think you said, in July of '08.
- 11 A Yes, sir. July the 2nd of 2008 is the received date
- 12 on it.
- 13 Q Received date at SLED.
- 14 A At SLED, yes, sir.
- 15 Q All right.
- 16 A I received it on May the 28th of 2008. That's when I
- 17 signed for it out of the drop box.
- 18 Q You were taking it on July of '08.
- 19 A Yes, sir.
- 20 Q Correct?
- 21 A Yes, sir.
- 22 Q As well as the fingernail scrapings. You took that
- 23 down at the same time.
- 24 A Yes, sir, sure did.
- 25 MR. ALLEN: No other questions, Your Honor.

Randall Eugene Bogan  
Direct examination by Mr. Bulsa

1 MR. BULSA: I have nothing further.

2 THE COURT: You may step down.

3 THE WITNESS: Thank you.

4 MR. BULSA: Your Honor, we ask Mr. Beach be excused.

5 THE COURT: He may be.

6 (Whereupon, the witness was excused.)

7 MR. BULSA: The state calls Randy Bogan.

8 RANDALL EUGENE BOGAN, having  
9 been first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. BULSA

11 Q Please introduce yourself to the jury.

12 A My name is Randall Eugene Bogan.

13 Q Who are you employed with?

14 A I work with the Spartanburg County Coroner's Office.

15 Q As an investigator?

16 A Yes, sir, and I have been so for approximately two and  
17 a half years.

18 Q Is part of your duties to collect blood and take it to  
19 SLED?

20 A Actually I collect it from the morgue after it's  
21 collected by either the pathologist or his assistant, and  
22 take it from there to SLED.

23 Q Do you have any records of taking any blood belonging  
24 to a Courtney Rogers?

25 A Yes, I do.

Randall Eugene Bogan  
Direct examination by Mr. Bulsa

1 Q And do you recall when that was taken?

2 A It was taken on June the 24th of 2008.

3 Q Is that when you received it from the morgue?

4 A Yes, sir.

5 Basically, what takes place is the autopsy takes  
6 place. After the autopsy the blood's collected by either  
7 the pathologist or the assistant with the pathologist.

8 Once it's collected it's placed in the refrigerator at  
9 the morgue that's locked. In turn, I go and collect it  
10 from the locked refrigerator.

11 I'll take it back to the office and place it in an  
12 envelope which is plastic that belongs to SLED that they've  
13 give me some of.

14 I actually seal it at our office and place it in the  
15 refrigerator until the next day when I have a chance to go  
16 to SLED. I retrieve it from the refrigerator, which is in  
17 a locked evidence room. And, as I said, the bag is sealed.  
18 I retrieve that and take it to SLED and turn it over to  
19 log-in at SLED.

20 Q Was the vial itself sealed?

21 A There's two vials. Actually, normally at an autopsy  
22 three tubes of blood are collected, along with a sample  
23 portion of the liver.

24 The liver is put in a freezer. The blood is placed in  
25 the refrigerator part of the refrigerator. The -- they're

Randall Eugene Bogan  
Direct examination by Mr. Bulsa

1 placed in a bag, just a small zip-lock bag. And I retrieve  
2 them from that bag and take them back to the office and  
3 place them in a plastic bag. And once I place them in the  
4 plastic bag that belongs to SLED I have a heat sealer which  
5 seals the plastic together. Then I initial, put my  
6 initials, and the date that I receive it on that bag.

7 Q Let me ask you this. When you pick it up are you  
8 looking for any signs of tampering?

9 A Of course but there's no -- the vials of blood  
10 actually have stoppers at the top. And once you pull those  
11 stoppers out it's, I mean it's, almost impossible to get  
12 one back in. So, I mean, of course there's no tampering  
13 with those stoppers and the blood.

14 And the tubes also have a -- the name of the decedent  
15 on them where the morgue staff actually places a sticker on  
16 the tubes.

17 Q So in this case were you confident that the samples  
18 had not been tampered with?

19 A Yes, sir.

20 Q And did you take these samples to the state law  
21 enforcement division?

22 A Yes, I did.

23 Q When?

24 A I took them on June the 24th of 2008.

25 Q Okay. And were they further sealed at SLED?

Randall Eugene Bogan  
Cross-examination by Mr. Allen

1 A No, sir. The proper seal that I did at the office is  
2 what SLED requires. Once I seal it at the office and put  
3 my initials on it and the date it stays sealed throughout  
4 the chain until the chemists, of course, get it.

5 I just turn it over to one of the log-in ladies who in  
6 this case was Nikki Perry. I turned it over to her. And  
7 she actually logs it in. And the seal is kept intact until  
8 the chemist receives it.

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

10 A Yes, sir.

11 Q Answer any questions Mr. Allen has.

12 CROSS-EXAMINATION

13 BY MR. ALLEN

14 Q Were you present when the vials -- or when the blood  
15 was put in the vials?

16 A No, sir.

17 Q So you came along later in the morgue and picked them  
18 up.

19 A Yes, sir.

20 Q Nothing further. Thank you.

21 MR. BULSA: Nothing further.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you, sir.

24 MR. BULSA: The state calls Toni Broome.

25 I will ask Mr. Bogan be excused.

Toni Broome  
Direct examination by Mr. Bulsa

1 THE COURT: He may be.

2 THE WITNESS: Thank you, Your Honor.

3 (Whereupon, the witness was excused.)

4 TONI BROOME, having been first  
5 duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BULSA

7 Q Please introduce yourself to the ladies and gentlemen  
8 of the jury.

9 A I'm Toni Broome. I work --

10 Q Go ahead.

11 A I work for the South Carolina Law Enforcement  
12 Division, also known as SLED.

13 Q What is your position there?

14 A I'm a forensic toxicologist.

15 Q What kind of education do you have?

16 A I obtained my bachelor degree from Francis Marion  
17 University in chemistry and the in-house training at SLED.

18 Q And do you on occasion receive vials of blood from  
19 homicide victims?

20 A That's correct.

21 Q In this case did you receive some vials of blood that  
22 came from Courtney Rogers?

23 A That's correct.

24 Q And how would you have received those vials?

25 A The -- I received two gray-top tubes of blood in a

Toni Broome  
Direct examination by Mr. Bulsa

1 tamper-evident plastic bag, and it was heat sealed,  
2 initialed and dated.

3 Q And did you pass some of that blood on to the D. N. A.  
4 department?

5 A That's correct.

6 Q Let me back up. Do you have a notation as to who  
7 brought it to SLED from Spartanburg?

8 A Randall E. Bogan of Spartanburg County Coroner's  
9 Office.

10 Q You received it sealed, and you're the one that broke  
11 it open.

12 A That's correct.

13 Q And after doing that did you later send some to the D.  
14 N. A. department?

15 A Yes, per request by e-mail to send a sample of blood  
16 to D. N. A.

17 Q What process did you take to do that?

18 A Because there were two gray-top tubes of blood,  
19 basically I just took one tube and I placed it into a  
20 plastic tamper-evident bag, placed one tube of blood  
21 labeled Courtney Rogers, heat sealed, initialed and dated  
22 it.

23 Basically, I locate -- place it into a secure locked  
24 refrigerator until the proper personnel was able to receive  
25 the evidence for a D. N. A. analysis.

Lindsay Thompson  
Direct examination by Mr. Bulsa

1 Q What's the purpose for all of this sealing and  
2 resealing? Why is that so important?

3 A To ensure the chain, ensure that no one is tampering  
4 with the evidence that is going where the analysis request  
5 is being asked for.

6 Q Are you confident that you received it sealed and sent  
7 this sample to D. N. A. sealed?

8 A Yes.

9 Q Thank you, ma'am. Answer any questions Mr. Allen has.

10 MR. ALLEN: No questions.

11 THE COURT: You may step down.

12 MR. BULSA: The state calls Lindsay Thompson.

13 LINDSAY THOMPSON, having been  
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. BULSA

16 Q Please introduce yourself to the jury.

17 A My name is Lindsay Thompson.

18 Q Who are you employed with?

19 A I work for the South Carolina Law Enforcement  
20 Division, known as SLED.

21 Q And what is your occupation there, ma'am?

22 A I am a forensic D. N. A. analyst.

23 Q How long have you been in that position?

24 A Approximately three and a half years.

25 Q What is your education?

Lindsay Thompson  
Direct examination by Mr. Bulsa

1 A I have a Bachelors of Science from Virginia  
2 Commonwealth University with majors in forensic science and  
3 biology and a minor in chemistry.

4 I also have my Master's in biology from Virginia  
5 Commonwealth University with a specialization in forensic  
6 D. N. A. analysis.

7 I've also been trained at SLED under a court-qualified  
8 analyst for over a year, as well as statistical analysis as  
9 they apply to forensic D. N. A. analysis and continue  
10 education yearly.

11 Q Are you often called to testify in court as an expert?

12 A Yes.

13 Q Expert in serology and D. N. A. analysis?

14 A Yes.

15 MR. BULSA: Your Honor, I would offer Agent Thompson  
16 as an expert in serology and D. N. A. analysis.

17 MR. ALLEN: No questions as to her qualifications.

18 THE COURT: She so qualified.

19 (D. N. A. marked State's Exhibit No. 23 for  
20 Identification.)

21 Q Agent Thompson, did you receive some items from the  
22 Spartanburg Public Safety Department concerning the victim,  
23 Courtney Rogers?

24 A Yes, I did.

25 Q And were you asked to analyze some swabs of a

Lindsay Thompson  
Direct examination by Mr. Bulsa

1 substance taken from the doorway at the crime scene?

2 A Yes, I was.

3 Q Let me show you State's Exhibit No. 22. Does that  
4 contain the swabs that you received?

5 A It contains two swab boxes. One is listed as doorway  
6 outside and the other is listed as doorway inside.

7 Q Okay. And how did you receive those items initially?

8 A These items would have been placed in a heat-sealed  
9 pouch, one of these clear pouches, with the blue writing on  
10 the front.

11 It would have been placed in that envelope by a log-in  
12 technician, sealed in the presence of the officer who is  
13 turning in that evidence, and they would have initialed and  
14 dated that.

15 That pouch would have ended up in my box in the D. N.  
16 A. lab, and I would check the pouch for -- if it had been  
17 tampered with. If the pouch is still intact, I then open  
18 the pouch, and this would have been inside that.

19 Here I initialed and dated when I broke this seal, so  
20 this envelope was also sealed when I received it. And then  
21 when I open each box I also initial and date and label each  
22 box with the lab, the SLED lab number, and item number on  
23 it.

24 Q Did you see any evidence of any tampering on those  
25 items?

Lindsay Thompson  
Direct examination by Mr. Bulsa

1 A No, no, not in this case.

2 Q I show you what's been marked for identification as  
3 State's 23. Can you identify what this is?

4 A This appears to be the heat-sealed pouch that I  
5 received which contained -- when I received it it contained  
6 a gray-top tube of blood.

7 We don't work with liquid blood. We work with dried  
8 blood. So what I would do is open that tube of blood, pour  
9 it on a piece of filter paper, label that piece of paper  
10 with this case information and the victim's name, the  
11 person who the blood came from, as well as labeling the  
12 envelope that I put that filter paper in once it was dried  
13 with also the SLED lab number and item number on that as  
14 well.

15 Q Is that the actual packaging that you received from  
16 Agent Broome?

17 A This heat-sealed pouch would be the same pouch that I  
18 received from her, so she would have sealed at the top here  
19 with a date. I would received it sealed.

20 I did open it here in the corner to retrieve that vial  
21 of blood. Once I dried the blood in our lab, which is  
22 sealed, only available to D. N. A. analysts, once that was  
23 dried I put the public (sic) back in here and resealed it  
24 and initialed and dated that.

25 Q Okay.

Lindsay Thompson  
Direct examination by Mr. Bulsa

1 MR. BULSA: Your Honor, I would offer this into  
2 evidence, State's 23.

3 MR. ALLEN: Your Honor, I'm going to object to the  
4 offering of that item into evidence at this time because I  
5 don't think there has been a sufficient chain of custody  
6 showing where that item originated from. Mr. Bogan --

7 (Bench conference held off the record in the presence  
8 of the jury but out of the hearing of the jury.)

9 THE COURT: Overrule the objection.

10 (D. N. A. marked State's Exhibit No. 23.)

11 Q State's 23. Okay. Agent, would you testify and tell  
12 us how you would have examined those samples?

13 A Well, would you like an explanation of D. N. A.  
14 analysis to begin with?

15 Q Yeah, we can do that.

16 A D. N. A. is a chemical that's found in everybody's  
17 body. It's in almost every cell of your body, the  
18 exception being red blood cells which carry oxygen instead  
19 of D. N. A. From blood samples we can get D. N. A. from  
20 the white blood cells, better present in blood.

21 What happens is when you're born you have half of your  
22 D. N. A. from mother and half from your father. And  
23 99.1 percent of your D. N. A. is going to be the same as  
24 everybody else. It's going to give you two arms, one head,  
25 hair, things like that.

Lindsay Thompson  
Direct examination by Mr. Balsa

1           But there is a small portion that varies, and there's  
2 a portion that varies very greatly because it doesn't  
3 actually code for anything. Therefore it can vary in a  
4 wide range among all individuals.

5           We look at that portion of D. N. A. because that is  
6 going to be what individualizes somebody. So what we look  
7 at are 15 locations in this D. N. A. that varies. So it's  
8 kind of like saying we're looking for a man. That would  
9 separate half their amount.

10           Then you would say I'm looking for a man with brown  
11 hair. So that man narrows it down a little bit more. I'm  
12 looking for a man with brown hair and blue eyes and so  
13 forth and so on, except the information we're looking at  
14 doesn't actually code for any of that information.

15           So what happens is we get a sample, an evidence  
16 sample, and then we get a sample that comes from an  
17 individual that we know is that person's profile. That's  
18 known as a standard.

19 Q       That's what we've done in this case.

20 A       Correct. That's what I have in this case from the  
21 victim. That would be a known standard. I know for sure  
22 that when I run the sample I'm going to get this person's  
23 D. N. A.

24           Then I would also run the evidence sample separate.  
25 And I would compare the two profiles. What happens, at

Lindsay Thompson  
Direct examination by Mr. Bulsa

1 each of the locations we look at you can either get  
2 something from your mom and then something from your dad,  
3 and they can be the same or they can be different.

4 Okay. So if they're the same we find, we get the  
5 result of a single number. If they're different, then we  
6 get the result as two different numbers.

7 At each of those locations we look at -- every person  
8 can have up to two numbers at any given location. That's  
9 all.

10 Okay. And then at each location we compare it to see  
11 if what we have for the evidence sample is what matches  
12 what we have for the standard.

13 In this case I did run that analysis. I did get  
14 results from the evidence samples and from the standards.

15 Q What were your results?

16 A My results were for the swabs from the doorway outside  
17 and from the swabs from the doorway inside that they  
18 matched the D. N. A. profile of Courtney Rogers. And I do  
19 have a statistic for that.

20 Q Okay. Tell us what that statistic is.

21 A The statistic is the probability of randomly selecting  
22 an unrelated individual having a D. N. A. profile matching  
23 these items is approximately one in 39 quadrillion.

24 Q Describe what quadrillion is.

25 A Quadrillion is a 39 with 15 zeroes behind it. The

Lindsay Thompson  
Cross-examination by Mr. Allen

1 world population is 6.6 billion, which means that 39  
2 quadrillion is 5.9 million times the world population.

3 Q Is that why you're comfortable saying that's a match?

4 A Yes. In my opinion that would be a match.

5 Q Thank you. Answer any questions Mr. Allen may have  
6 for you.

7 CROSS-EXAMINATION

8 BY MR. ALLEN

9 Q You just briefly talked about as far as the statistic,  
10 is based on selecting an unrelated individual, right?

11 A Correct.

12 Q Unrelated to Mr. Rogers or a person who -- whose D. N.  
13 A. you're comparing, correct? In other words, unrelated to  
14 the person whose D. N. A. you used.

15 A Correct.

16 Q And that statistic would change dramatically if we're  
17 talking about a related person to Mr. Rogers.

18 A It may or may not. There's a potential for someone  
19 who is related to Mr. Rogers to have some of the same  
20 information.

21 If it's a brother or sister they could have gotten it  
22 from a parent as well, but they could have gotten the  
23 opposite information from the parent also. So there's a  
24 chance that the statistic would be lower for a sibling or  
25 mother or father, yes.

Lindsay Thompson  
Cross-examination by Mr. Allen

- 1 Q Significantly lower.
- 2 A It would depend on the individual, on their profile.
- 3 Q Okay. And when you're comparing the substances you  
4 don't really know where you're -- drawing the D. N. A.  
5 specifically from, do you?
- 6 A I'm sorry?
- 7 Q In other words, these machines or these -- your  
8 instruments are very precise, or, you know, they pick up  
9 from anything in there, right? They could be skin cells.
- 10 A We can get D. N. A. from skin cells, yes.
- 11 Q Saliva.
- 12 A Yes, yes, sir.
- 13 Q Sweat, anything --
- 14 A Yes, sir.
- 15 Q -- that's in that substance or in that swab, correct?
- 16 A Correct.
- 17 Q Okay. And you don't know what your machine or what  
18 your instrument's actually picking up from, correct?
- 19 A Well, what happens is we test for the indication of  
20 blood. We use a test called phenolphthalein. And in this  
21 case I did get blood indicated. And typically when we see  
22 blood there are so many white blood cells present in that  
23 that the D. N. A. from that is going to overwhelm any touch  
24 D. N. A. that may be present on that swab.
- 25 Q Now, you also received other swabs for D. N. A.

Lindsay Thompson  
Cross-examination by Mr. Allen

1 analysis such as fingernail scrapings. That won't be a  
2 swapped. That would be a scraping, correct, in connection  
3 with this case?

4 A Yes. I also received additional swabs, several  
5 different additional swabs, and fingernail scrapings in  
6 this case.

7 Q Did you perform any analysis on the fingernail  
8 scrapings?

9 A No, I did not.

10 Q You have some swabs marked swabs from a Bersa .380  
11 automatic pistol, for example, correct?

12 A Yes, I did.

13 Q Did you perform any D. N. A. analysis on those swabs?

14 A No, I did not.

15 Q When you receive items in connection with a case, this  
16 all comes connected to this particular case or a particular  
17 case, right?

18 A We hope that it all comes --

19 Q You hope so.

20 A -- in the same as a single case, yes.

21 Q And when you receive it it's presented to you as a  
22 single case. You keep it as a single case too, right?

23 A We keep them in the heat-sealed pouches that they're  
24 submitted in.

25 Q Okay. When you do your testing for D. N. A., say on

Frank Dan DeFreese  
Direct examination by Mr. Bulsa

1 these swabs that were marked as State's Exhibit 22, the  
2 ones labeled from the doorway --

3 A Yes.

4 Q Okay -- you can't tell, can you, how old the substance  
5 is?

6 A No. I cannot tell time.

7 Q You can't tell how long it had been in that location  
8 before it was collected.

9 A No, sir. I can only tell, identify the D. N. A.

10 Q Thank you.

11 MR. ALLEN: No other questions.

12 MR. BULSA: Nothing further.

13 THE COURT: You may step down.

14 FRANK DAN DEFREESE, having  
15 been first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. BULSA

17 Q Please introduce yourself to the jury.

18 A My name is Frank Dan DeFreese, spelled D-E, capital,  
19 F-R-E-E-S-E.

20 Q Who are you employed with?

21 A I also work for the South Carolina Law Enforcement  
22 Division in the forensic laboratory in Columbia.

23 Q What is your position there?

24 A I'm assigned to the firearm and toolmark department  
25 where we do the analysis of firearm and toolmark evidence.

Frank Dan DeFreese  
Direct examination by Mr. Bulsa

1 Q How long have you been doing this?

2 A For 43 years.

3 Q Have you been in court often?

4 A Yes, sir.

5 Q Qualified as an expert in those fields?

6 A Yes, sir.

7 MR. BULSA: Your Honor, I would offer Agent DeFreese  
8 an expert in the field of firearm and toolmark  
9 identification.

10 MR. ALLEN: Stipulate to his qualification.

11 THE COURT: He is so qualified.

12 Q Agent DeFreese, did you receive a firearm and shell  
13 casing in the case in question today?

14 A I did.

15 Q Did you also receive additional bullets?

16 A Yes, sir. There were five unfired cartridges received  
17 with the pistol.

18 Q State's Exhibit 19. It has a box. We took it out for  
19 court. Does that appear to be what you received?

20 A It is.

21 Q State's Exhibit 20. Would that have been the shell  
22 casings you received?

23 A It is.

24 (Bullets marked State's Exhibit No. 24 for  
25 Identification.)

Frank Dan DeFreese  
Direct examination by Mr. Bulsa

1 Q I show you State's Exhibit 24. Do these appear to be  
2 the rounds that came with the weapon?

3 A They are.

4 Q What were you looking for?

5 A I was looking for the case number, the item number and  
6 my initials which I engrave on every item of evidence  
7 that's large enough to be engraved.

8 MR. BULSA: Your Honor, I would offer State's 24 into  
9 evidence.

10 MR. ALLEN: No objection.

11 THE COURT: It is admitted.

12 (Bullets marked State's Exhibit No. 24.)

13 Q Did the weapon come to you loaded?

14 A No, sir.

15 Q Here is the rest of the weapon. Were there rounds in  
16 the magazine?

17 A No, sir. I believe the rounds were loose when I  
18 received them.

19 Q Somebody had unloaded it and brought it to you. And  
20 what, what tests did you conduct on those?

21 A Well, I collected certain information about the pistol  
22 and about the cartridge case and unfired cartridges. And I  
23 marked them.

24 And after that I test fired the pistol, State's  
25 Exhibit 19, to obtain cartridge cases that I knew it had

Frank Dan DeFreese  
Direct examination by Mr. Bulsa

1 fired. Our test is a side-by-side microscopic comparison  
2 of the marks that are on test cartridge cases and on  
3 evidence cartridge cases. Or when there's more than one  
4 evidence cartridge case from case to case we don't directly  
5 compare a cartridge case with the gun.

6 In this case I was looking for unique markings that  
7 might be present on either the breach face impressions, the  
8 firing pin impressions or other surfaces.

9 In this case I found matching breach face impressions  
10 on this cartridge case, which is State's Exhibit 20, and on  
11 test cartridge cases that I had fired in State's  
12 Exhibit 19. From that I concluded that State's Exhibit 20  
13 was fired by State's Exhibit 19.

14 State's Exhibit 24 contains five unfired cartridges of  
15 the same caliber as State's Exhibit 20. Three of these are  
16 Federal brand cartridges and two of them are Remington  
17 brand cartridges.

18 State's Exhibit 20 is a Remington brand cartridge  
19 case.

20 Q Okay. And what type of weapon is this?

21 A This is a Bersa. It's a .380 auto caliber pistol.  
22 It's made in Argentina. It's called a Model Thunder .380.  
23 That's a semiautomatic pistol that when loaded will fire  
24 one shot for every pull of the trigger.

25 The only thing that's unique about this pistol is the

Frank Dan DeFreese  
Direct examination by Mr. Balsa

1 fact that its trigger return spring is either broken or  
2 improperly installed, which means that once you pull the  
3 trigger, the trigger would ordinarily go back forward on  
4 its own, which it does not do.

5 You can fire it again by pushing the trigger forward  
6 if the slid were forward and pulling it again. Each time  
7 you pull the trigger it will fire.

8 But unlike a Bersa in correct mechanical condition, it  
9 requires the, the trigger to be pushed forward to reset it  
10 for the next shot.

11 Other than that and the fact that the serial number  
12 had been attacked, the pistol was otherwise normal.

13 Q You said the serial number had been attacked. What do  
14 you mean by that?

15 A The serial number had been obliterated by scratching  
16 or gouging so that the serial number was not legible when I  
17 received it.

18 Q Does that weapon have any safety mechanism?

19 A It has several. It has a de-cocking safety that's  
20 located on the slid. Of course it also has a disconnecter  
21 that keeps it from firing more than one shot at a time.

22 And it also has what's known as a magazine safety such  
23 that unless the magazine is placed in the gun it won't  
24 fire. Many semiautomatic pistols will fire a round in the  
25 chamber without the magazine being in the gun. This one

Frank Dan DeFreese  
Direct examination by Mr. Bulsa

1 will not.

2 Q How does the round actually get into the chamber in  
3 order to be fired?

4 A It can be placed in the chamber manually, but more  
5 commonly cartridges are placed in this box-like structure  
6 called a magazine.

7 The magazine in this case can hold as many as, I  
8 believe, seven rounds, and of course another round could be  
9 put in the chamber.

10 After the magazine is loaded if this gun lock were not  
11 in place the magazine could be inserted into the butt of  
12 the pistol, and the slide would be permitted to go forward.  
13 That would strip the top cartridge in the magazine from the  
14 magazine and place it in the chamber, the chamber being an  
15 enlarged area at the rear of the barrel that's machined to  
16 accept the cartridge. At that point the gun would be  
17 prepared for firing.

18 This gun is capable of being fired in either what they  
19 call the single action or the double action mode. That is  
20 it's capable of firing from the hammer being all the way  
21 forward so that a single long pull of the trigger will both  
22 cock the hammer and fire the gun, or it's also capable of  
23 firing from the single action mode, such as if you freshly  
24 charged it the hammer would already be cocked. And then a  
25 somewhat lighter pull of the trigger would cause it to

Frank Dan DeFreese  
Direct examination by Mr. Bulsa

1 fire.

2 Q What do you mean a freshly charged?

3 A That is if I were to like put a loaded magazine in the  
4 gun and let the slide go forward. At that point the hammer  
5 would already be cocked, because each time the slide moves  
6 to the rear it cocks the hammer. And the hammer will stay  
7 cocked unless it's de-cocked.

8 Q What if it were not charged? Would you have to  
9 manually charge it to cock the gun?

10 A To get the first cartridge in the barrel the slide has  
11 to be pulled to the rear and either a cartridge dropped in  
12 the barrel or a cartridge stripped out of the magazine to  
13 place it in the barrel.

14 So to prepare the gun for firing the first time you've  
15 got to load it which requires the slide to be pulled to the  
16 rear and move forward.

17 Q Does that have a clicking sound when you do that?

18 A It does. Now if you didn't want to fire the gun then  
19 you could depress the safety, rotate the de-cocking safety  
20 down. Doing so would block the firing pin, and it would  
21 drop the hammer without the gun firing.

22 You could also simply pull the trigger and ease the  
23 hammer forward with your thumb. So long as this manual  
24 safety is in this down position pulling the trigger will  
25 not result in the hammer going back far enough to fire the

Frank Dan DeFreese  
Direct examination by Mr. Bulsa

1 gun. The gun won't fire. If you take the magazine out the  
2 gun won't fire.

3 But once it's prepared for firing and the safety is  
4 turned to the fire position, like I say, a single long pull  
5 of the trigger will cock it and fire it. Or if the hammer  
6 is manually cocked or if the gun's been freshly charged,  
7 simply pulling the trigger will fire it.

8 Q But in order to load it, a round into the chamber, you  
9 have to put one through the -- what's that called?

10 A The ejection port.

11 Q Ejection port. Is that how you would load one?

12 A You could. That's really not the best way to do it.  
13 The best way to do it is to load the magazine and let the  
14 gun itself strip the top round out of the magazine.

15 Q That's typically how it's done. Let's say you don't  
16 do that. You put the magazine in. In order to put a round  
17 into the barrel manual cocking has to be done.

18 A You have to pull the slide substantially all the way  
19 to the rear and let go of it. And the recoil spring will  
20 cause the slide to move forward and strip the top round out  
21 of the magazine and place it in the chamber.

22 Q And that would create some sort of noise when you do  
23 that.

24 A Yes.

25 Q Okay.

Frank Dan DeFreese  
Direct examination by Mr. Bulsa

1 A You, you could work at doing it quietly, but it makes  
2 a little bit of noise.

3 Q Something certainly someone could hear close by.

4 A If you did it forcefully it would make a racket.

5 Q Okay. All right. So in your expert opinion the  
6 round -- the -- excuse me -- the shell casing came from  
7 this gun.

8 A Yes, sir. State's Exhibit 20 was fired by that  
9 pistol, by State's Exhibit 19.

10 Q Okay. And when that -- is that round -- would that  
11 shell casing automatically have been ejected once it was  
12 fired?

13 A Yes. It would have left the gun.

14 Q Is there any way we can tell the location of the  
15 shooter in relation to finding of the shell casing?

16 A Not normally. You've got to have a great deal of  
17 information to determine the shooter's position from the  
18 position a fired cartridge case was recovered.

19 There's a lot of variables in it. It's possible to do  
20 sometimes. Other times, most of the time, not.

21 Q Okay. If you're in a closed, confined area is it more  
22 likely to be -- is it easier to make that sort of claim?

23 A It depends, it depends on the situation.

24 Q Okay. All right. Now, let's talk about the type of  
25 bullet.

Frank Dan DeFreese  
Direct examination by Mr. Bulsa

1           What type of round would have been loaded into that  
2 casing that was recovered?

3   A     I don't know.

4   Q     You don't know?

5   A     I don't know because it's not there.

6   Q     Okay.

7   A     Now, the two other cartridges that have Remington head  
8 stamps that were received with the gun both have roundnosed  
9 full metal jacketed bullets in them. In fact, all of the  
10 cartridges, both the Remingtons and the Federals, were all  
11 full metal jacketed bullets.

12   Q     Okay. And if a bullet of that nature was fired  
13 through a body striking two bones, through a wall, what  
14 condition would you expect the bullet to be in?

15   A     I don't know.

16   Q     Why not?

17   A     Here again, there's too many variables to know.  
18 Sometimes bullets split and go all to pieces, and sometimes  
19 they'll pass through a body and keep on going.

20   Q     Does that mean it should have been found?

21   A     I don't know that either. Perhaps, perhaps not.

22   Q     And why not? What if a bullet is fired into a wall?

23   A     Sometimes recovering a bullet from a wall is an easy  
24 matter. Sometimes it is not. You know, walls are hollow  
25 and they've got a lot of structures in them. And bullets

Frank Dan DeFreese  
Cross-examination by Mr. Allen

1 could be traveling at different altitudes when they strike  
2 the wall. You know, sometimes you find them, or sometimes  
3 you find fragments of them, and sometimes you don't.

4 Q Thank you. Answer any questions Mr. Allen may have.

5 MR. BULSA: Your Honor, I don't believe I introduced  
6 the pistol into evidence. I would ask to do that at this  
7 time. I think we withheld introducing it -- State's 19.

8 MR. ALLEN: No objection.

9 THE COURT: It's admitted.

10 (Weapon marked State's Exhibit No. 19.)

11 CROSS-EXAMINATION

12 BY MR. ALLEN

13 Q Let's pick up on this bullet and wall. I mean, in the  
14 event a bullet goes all the way through, say, a plaster wall  
15 even if you -- the bullet's not found -- wouldn't you  
16 expect the bullet to keep on going until it hits or strikes  
17 some other object within the wall?

18 A Normally so or it can, of course, depending on the  
19 altitude with which it hits the wall -- most walls are  
20 two-by-four stud walls if you are talking about sheetrock  
21 walls. So there's a cavity in between it.

22 If you're talking about an exterior wall with  
23 insulation and other things, there's a lot of structures  
24 that can end up being in that.

25 Q Okay. Talking about, say, a plaster wall in some

Frank Dan DeFreese  
Cross-examination by Mr. Allen

1 older houses.

2 A So you're talking about plaster and wood lath --

3 Q Right.

4 A -- and brown under the plaster.

5 Q And if we make -- if we have a round hole that goes  
6 all the way through the plaster wouldn't there be some  
7 markings if the bullet struck something else?

8 A I would expect to see if it were going in  
9 perpendicular to the wall, I'd expect to see some damage on  
10 something on the other side of the plaster wall if it  
11 penetrated it.

12 Q Okay.

13 A Now, once it did that it could fall, it could deflect.  
14 I mean, a lot of things could happen.

15 Q Okay. But you'd expect to see some damage on the wood  
16 or whatever is on the opposite side of that plaster wall.

17 A I would expect to see it. I may not see it, but I  
18 would, I would be looking for it.

19 Q You would be looking for it. You mentioned or the  
20 solicitor had asked about the five other --

21 A Gunfire?

22 Q -- bullets. Thank you. And you mentioned that they  
23 were different types or different manufacturers of bullets.

24 A Yes, sir. There are three Federal brand cartridges  
25 and two Remington brand cartridges.

Frank Dan DeFreese  
Cross-examination by Mr. Allen

1 Q Now, normally cartridges are not sold by normal  
2 retailer or wholesaler in mixed brands, are they?

3 A No. Normally if you bought a box of Federal  
4 cartridges you would expect to see Federal cartridges in  
5 it. And the same for Remington.

6 Q Right. The trigger spring, the trigger return spring  
7 deflect that you talked about --

8 A Yes, sir.

9 Q -- that didn't affect the action of the slide of this  
10 weapon, right?

11 A That's correct.

12 Q Didn't affect the slide's being able to go back and to  
13 chamber another round, is that correct?

14 A That's correct. It only affects the fire control part  
15 of the firearm.

16 Q The fire control part meaning the trigger?

17 A Meaning the trigger and all of the parts related to  
18 the trigger that ultimately tell the hammer to fall.

19 Q Okay. Got you.

20 In your examination of this gun you cannot tell when  
21 that trigger-return spring became defective or was damaged  
22 or installed improperly, correct?

23 A That's correct. I don't know when it broke.

24 Q Okay. And the same with the -- that you said the  
25 scratch -- the scratching out of the serial numbers.

Frank Dan DeFreese  
Redirect examination by Mr. Bulsa

1 A Right.

2 Q You can't tell anything about when that occurred.

3 A I can't tell when the serial number was attacked or  
4 obliterated.

5 Q Okay. No other questions. Thank you.

6 MR. BULSA: Just briefly on redirect.

7 REDIRECT EXAMINATION

8 BY MR. BULSA

9 Q Agent DeFreese, Mr. Allen asked you about the damage  
10 to the wall. You used a term that the bullet enters the  
11 wall in a certain fashion. Do you remember what you said?

12 A I said perpendicular to the wall. If it went straight  
13 into the wall as opposed to a glancing wall.

14 Q Okay. So what if it goes in at an angle?

15 A Well, if it goes in at an angle of course it will end  
16 up having more material in the wall to penetrate. And once  
17 it -- assuming it makes it through the wall with sufficient  
18 velocity to go through the hollow cavity in the wall and  
19 strike the other side, it would be going at an angle. And  
20 if it had energy left it could be diverted at an angle.

21 Q Just because you have a hole in a wall doesn't mean  
22 you had a bullet strike it, does it?

23 A No, no. There are a lot of reasons to have holes in a  
24 wall.

25 Q Right, right. And the same fashion. If there is a

Frank Dan DeFreese  
Recross-examination by Mr. Allen

1 hole in the wall there could be a bullet hole due to other  
2 circumstances.

3 A Yes, sir. If it's about the size of a bullet and --  
4 it could be a bullet hole.

5 Q Could the absence of an actual round being found  
6 affect that analysis?

7 A Well, for sure if you looked in the hole and you found  
8 the bullet, you know, on the, the sill below it or in the  
9 wall. You would know that was a bullet hole.

10 There are certain characteristics to bullet holes, but  
11 I'm not sure you could tell every single hole and tell that  
12 it was a bullet versus some other -- some other device that  
13 put the hole there.

14 Q But if you didn't find a bullet that doesn't mean a  
15 bullet didn't go through it.

16 A Correct. You could have simply not found it. It  
17 might be there in some location that you simply just didn't  
18 see it.

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

20 RECROSS-EXAMINATION

21 BY MR. ALLEN

22 Q Officer, I gather from your testimony just because you  
23 found a hole doesn't necessarily mean a bullet made that  
24 hole, correct?

25 A True. You may not be able to tell that a hole was

Frank Dan DeFreese  
Recross-examination by Mr. Allen

1 made by a bullet to the exclusion of every other possible  
2 source --

3 Q Right.

4 A -- unless you found a bullet in it.

5 Q Unless you found a bullet in it.

6 A Right.

7 Q And if a bullet had gone in at an angle as you were  
8 talking about a moment ago and then diverted you'd expect  
9 to find some sort of marking on the opposite side of the  
10 wall cavity.

11 A I'd certainly be looking for it, yeah. I may not find  
12 it. You know, it may not be distinct enough to tell, but  
13 I'd certainly be looking for that sort of damage.

14 Q And if the bullet ran out of energy so that it  
15 couldn't strike the opposite side, of course it would --  
16 you'd expect it to fall to the floor.

17 A I would expect it to fall, you know, lower in the  
18 structure to be perhaps intercepted by some other part of  
19 the structure or something else. But I'd expect it to be  
20 in there.

21 Q Thank you.

22 MR. BULSA: Nothing further.

23 THE COURT: You may step down.

24 MR. BULSA: Your Honor, I would ask Agent DeFreese as  
25 well as the other SLED agents be excused.

1 THE COURT: They may be.

2 MR. BULSA: They all traveled together.

3 (Whereupon, the witnesses were excused.)

4 THE COURT: Let me see y'all minute, please.

5 (Bench conference held off the record in the presence  
6 of the jury but out of the hearing of the jury.)

7 THE COURT: Ladies and gentlemen, we are going to take  
8 a short break before we go further.

9 So please go to your jury room. Again, do not discuss  
10 the case. I'll bring you back after that break.

11 (The following takes place outside the presence of the  
12 jury.)

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

14 (Whereupon, a recess was taken.)

15 THE COURT: Are we ready for the jury?

16 MR. BULSA: I would prefer not to have the chair  
17 there, Your Honor, but yes, sir.

18 May we approach?

19 THE COURT: Yes, sir.

20 (Bench conference held off the record.)

21 THE COURT: All right. Bring the jury in, please,  
22 sir.

23 (The following takes place in the presence of the  
24 jury.)

25 THE COURT: All right. Next witness.



D'Angelo Miller  
Direct examination by Mr. Bulsa

- 1 A From the streets.
- 2 Q Did you grow up with him?
- 3 A Probably went to the same elementary school and what  
4 not.
- 5 Q I'm sorry?
- 6 A We probably went to the same elementary school and  
7 what not.
- 8 Q You don't know him from school. You know him from the  
9 neighborhood.
- 10 A Na. We ain't from the same neighborhood.
- 11 Q How do you know who he is then?
- 12 A From around.
- 13 Q Okay. Did you know Courtney Rogers?
- 14 A Yes, sir.
- 15 Q How did you know him?
- 16 A He stayed at the top of my street when me and my  
17 mother was staying with her boyfriend in Summit Hills. And  
18 I went to elementary school and junior high school and high  
19 school wit' 'm.
- 20 Q Okay. Did you used to date Lakeisha Brewton?
- 21 A Yes, sir.
- 22 Q Do you remember the day Courtney died?
- 23 A Yes, sir.
- 24 Q Were you at the house where he was shot?
- 25 A Yes, sir.

D'Angelo Miller  
Direct examination by Mr. Bulsa

- 1 Q If you would, tell us what you remember about that  
2 day. Start with -- were you there? Let me ask it this  
3 way, Mr. Miller. Were you there when Courtney drove up?  
4 A Yes, sir.  
5 Q And what happened when Courtney drove up?  
6 A Somebody asked him did he have some weed.  
7 Q Okay. Keep going. What else happened?  
8 A He was just like yeah. So he got out of da car and  
9 came on the porch. And he was talking to me, because I had  
10 just came home. And he was like what's up. And I was like  
11 nuthin. He was like where you been at. And I was like I  
12 just got out.  
13 And he told me to get his number, but I ain't get it  
14 or what not. I didn't have a phone then or nut'in.  
15 Q Okay. So you talked with him up there on the porch?  
16 A Sir?  
17 Q You talked with him up on the porch?  
18 A Just the little conversation I just told you about.  
19 Q Okay. Did you see J'Corey Kilgore at that time?  
20 A He was out in the yard.  
21 Q Okay. Did you see anything happen with him?  
22 A No, sir.  
23 Q Was his brother there with him?  
24 A Yeah. He was standing beside 'm up on the porch.  
25 Q Okay. Did J'Corey or James say anything when Courtney

D'Angelo Miller  
Direct examination by Mr. Balsa

1 was driving up?

2 A No, sir.

3 Q All right. Tell us what you saw that happened that  
4 day after you and Courtney had that conversation. You gave  
5 a statement to the police, didn't you?

6 A Yes, sir.

7 Q Did you tell them what happened?

8 A I don't even know where to start.

9 Q Start with what happened when Courtney was driving up.

10 A He rode past the bottom of the street first.

11 Q Okay.

12 A And I 'on't -- I can't remember who flagged him down,  
13 but he came back. And that's when they asked him did he  
14 have some weed. And he was like yeah. He was sitting in a  
15 Jeep. He was shaking his head and listening to his music.  
16 Then that's when he got out and came on the porch and we  
17 had the little conversation.

18 Q And then what happened?

19 A J'Corus (sic) Kilgore asked for a gun.

20 Q That's the defendant asked for a gun?

21 A Yes, sir.

22 Q From whom?

23 A From his brother.

24 Q His brother named James?

25 A Yes, sir.

D'Angelo Miller  
Direct examination by Mr. Bulsa

1 Q And what happened when he asked for the gun?

2 A He ain't passed it to him while he was on the porch or  
3 what not.

4 I remember seeing him on the side of the house. And I  
5 had grabbed the two kids and I had went in the house  
6 because I had just came home May the 20th. And this was  
7 May the 24th. I wasn't drinking, smoking. I didn't want  
8 no part of nothing.

9 Q Did you see -- who did you see on the side of the  
10 house?

11 A J'Corus and James.

12 Q And that was after J'Corey asked for a gun.

13 A Yes, sir.

14 Q Had Lakeisha left the house?

15 A I can't say because I had went in the house with the  
16 kids after I heard him ask for the gun.

17 Q Okay. Were you wanting to get the kids away from  
18 there?

19 A Yes, sir, and myself.

20 Q All right. And then what happened after you went  
21 inside?

22 A I believe that's when Courtney came walking in the  
23 house, and J'Corus came walking behind him.

24 Q Did anybody else come inside?

25 A No, sir.

D'Angelo Miller  
Direct examination by Mr. Bulsa

- 1 Q What did you do when you saw them come inside?
- 2 A I had got the kids and went in the bedroom and closed  
3 the door.
- 4 Q So what part of the house were you inside when they  
5 came in?
- 6 A I was in the living room sitting on the couch.
- 7 Q Was anybody else in that living room at that time?
- 8 A I don't know his name. It's the older man -- Dwight.  
9 I think he was drunk or something.
- 10 Q Is he the guy that was seeing Ms. Dandy?
- 11 A Sir?
- 12 Q Is he the guy that was seeing Ms. Dandy?
- 13 A Yes, sir.
- 14 Q Okay. But he was in the living room also?
- 15 A Yes, sir.
- 16 Q He was on -- was he on a couch or something?
- 17 A Yes, sir.
- 18 Q Where did J'Corey and Courtney go to when they came in  
19 the house?
- 20 A I don't think they went past the dining room.
- 21 Q They went through the living room into the next room?
- 22 A Yes, sir.
- 23 Q Is that when you left?
- 24 A That's when I got up and I walked in the room with the  
25 kids.

D'Angelo Miller  
Direct examination by Mr. Bulsa

- 1 Q Which room did you go into?
- 2 A The first room on the left.
- 3 Q That front bedroom?
- 4 A Yes, sir.
- 5 Q You closed the door?
- 6 A Yes, sir.
- 7 Q Why did you take the kids in there?
- 8 A Because I ain't wanting to be around none of that.
- 9 Q All right. Did you hear anything while you were in  
10 there?
- 11 A I just heard one gunshot.
- 12 Q How long after you went into the room did you hear  
13 that gunshot?
- 14 A It wasn't even two minutes.
- 15 Q Could you tell where the sound was coming from?
- 16 A I know it came from in the house.
- 17 Q Did you ever see Mr. Kilgore, J'Corey, with a gun?
- 18 A No, sir.
- 19 Q Do you know if James passed him a gun?
- 20 A Yes, sir.
- 21 Q How? How do you know that?
- 22 A I mean, I ain't intentionally see him with it, but I  
23 know how somebody hold their swag up when they got a gun on  
24 their hip.
- 25 Q Is that the way Mr. J'Corey seemed to you?

D'Angelo Miller  
Direct examination by Mr. Balsa

1 A When he came from around the house.

2 Q After you heard this shot what, what did you do?

3 A I heard somebody saying, "Courtney, Courtney". So I  
4 was just sitting there thinking. I was like no. I was  
5 like he done shot the man.

6 So I ran out of the room and ran straight outside.

7 And then my friend, Penny Red, he was going after him.

8 Then by the time I looked down the corner, that's when he  
9 was on the ground. And Penny Red was calling the

10 ambulance.

11 Q At any time did you hear J'Corey say anything other  
12 than give me the gun?

13 A No, sir.

14 Q He didn't say what he wanted the gun for?

15 A When he asked for the gun?

16 MR. ALLEN: Your Honor, I think I have an objection to  
17 the line of questioning he's trying to get into if I can  
18 approach the bench.

19 THE COURT: Okay.

20 (Bench conference held off the record in the presence  
21 of the jury but out of the hearing of the jury.)

22 Q Let me ask you again.

23 Did you hear J'Corey say what he wanted the gun for?

24 A Said about robbing.

25 Q Was that when he was outside when you heard him say

D'Angelo Miller  
Direct examination by Mr. Bulsa

1 that?

2 A Yes, sir.

3 Q Is that one of the reasons you went inside? Answer  
4 yes or no.

5 A Yes, sir.

6 Q When you heard that shot did you look out that bedroom  
7 window?

8 A When I looked out the window I seen everybody was  
9 running.

10 Q But you heard the shot and then you looked out the  
11 window.

12 A I had heard the screen door like somebody burst out  
13 the screen door.

14 Q Did you see Penny Red outside?

15 A I seen him like going after Courtney.

16 Q Running after Courtney. Did you ever go down to where  
17 Courtney was?

18 A I didn't go all the way, sir. I went half way and  
19 turned around.

20 Q What did you do with the kids?

21 A I took them to Mr. Bunch's house, and then I called my  
22 mama.

23 THE COURT: You don't have to lean into that  
24 microphone. Just speak up and it'll pick it up.

25 Q Ms. Bunch's house. Is that Lakeisha's grandmother?

D'Angelo Miller  
Direct examination by Mr. Balsa

- 1 A Yes, sir.
- 2 Q Was Lakeisha over there?
- 3 A Sir?
- 4 Q Was Lakeisha over at her grandmother's house?
- 5 A When I got there she was already there.
- 6 Q Okay. Did you see J'Corey after the shooting?
- 7 A Later on that night.
- 8 Q Whereabouts was he?
- 9 A In the back yard as Ms. Bunch's house.
- 10 Q How was he acting?
- 11 A Like didn't nothin' happen.
- 12 Q Was he saying anything?
- 13 A Not too much.
- 14 Q Was he talking about what had happened?
- 15 A No, sir.
- 16 Q Was anybody with him?
- 17 A No, sir.
- 18 Q Did you go and ask what happened?
- 19 A I ain't asked.
- 20 Q Did anybody talk to him about it?
- 21 A Not in the yard, not.
- 22 Q At any point after this incident did he say anything
- 23 that you overheard about the incident?
- 24 A Sir?
- 25 Q After the shooting did you see J'Corey at any time

D'Angelo Miller  
Direct examination by Mr. Bulsa

1 where he said anything about what had happened?

2 A No, sir.

3 Q Now, you're back in prison because you violated your  
4 Y. O. A. sentence?

5 A Yes, sir.

6 Q And that was for using a vehicle without permission.

7 A No, sir.

8 Q Okay. But also -- you were convicted of that, right?

9 A Yes, sir.

10 THE COURT: You need to scoot your chair up. You  
11 backed up on me.

12 Q And you've got some other convictions as well, right?

13 A Yes, sir.

14 Q In fact, you gave false information in 2009.

15 A Yes, sir.

16 Q Is that you gave the wrong name?

17 A Yes, sir.

18 Q Receiving stolen goods and obtaining property by false  
19 pretenses.

20 A Yes, sir.

21 Q 2004 for petit larceny when you were a juvenile.

22 A Yes, sir.

23 Q And you had a more serious charge of robbery, didn't  
24 you, in 2007?

25 A Yes, sir.

D'Angelo Miller  
Cross-examination by Mr. Allen

1 Q Do those convictions affect your ability to tell the  
2 truth?

3 A No, sir.

4 Q Did you tell the truth about what you saw and heard  
5 that day?

6 A Yes, sir.

7 Q Okay. Answer any questions Mr. Allen has of you.

8 CROSS-EXAMINATION

9 BY MR. ALLEN

10 Q You're also pending a couple of more. You've got a  
11 couple of more charges currently pending against you, is  
12 that right?

13 A Yes, sir.

14 Q Here in Spartanburg County.

15 A Yes, sir.

16 Q Being prosecuted by the 7th Circuit Solicitor's  
17 Office, right?

18 A Yes, sir.

19 Q You don't have a lawyer yet on those charges.

20 A No, sir.

21 MR. BULSA: Objection, Your Honor. That's not  
22 relevant.

23 THE COURT: Sustained.

24 Q Let me see if I can. You -- as I understand you were  
25 saying that when you went into the house you -- after

D'Angelo Miller  
Cross-examination by Mr. Allen

- 1 Courtney arrived you took two children inside, correct?
- 2 A Yes, sir.
- 3 Q And those two children are, let's see, Lakeisha
- 4 Brewton's child, is that right?
- 5 A Yes, sir.
- 6 Q And a Ms. Dandy's child.
- 7 A Yes, sir.
- 8 Q So they were not asleep at this time.
- 9 A Who wasn't asleep?
- 10 Q The children.
- 11 A I think like the son, Ms. Dandy's son, I think he was
- 12 asleep with Ms. Dandy and he woke up. And then he came --
- 13 he was brought outside with us.
- 14 Q Okay. He was outside -- he was outside. When you
- 15 took the children in you kept them with you.
- 16 A Yes, sir.
- 17 Q As I understand it, first in the living room, is that
- 18 right?
- 19 A Yes, sir.
- 20 Q And then into that front bedroom.
- 21 A Yes, sir.
- 22 Q And up to -- you saw James with a gun?
- 23 A Yes, sir.
- 24 Q Okay. That was a yes, sir?
- 25 A Yes, sir.

D'Angelo Miller  
Cross-examination by Mr. Allen

1 Q Okay. Thank you.

2 You also saw a fellow named Keevee (sic) there as  
3 well.

4 A Yes, sir.

5 Q You saw -- he had a gun?

6 A No, sir.

7 Q Did you ever tell the officers that he had a gun, that  
8 Keevee -- you saw Keevee had a gun?

9 A I don't know who no Keevee is.

10 Q Did you ever tell the officers, specifically  
11 Officer -- do you remember being questioned about this case  
12 with the city police investigators?

13 A Somewhat.

14 Q On this case.

15 A Somewhat.

16 Q Somewhat. Okay. Excuse me. I thought you said  
17 ongoing. I'm sorry. You were talking to them on the  
18 27th of May of 2008, correct?

19 A Yes, sir.

20 Q You were in a little room with two officers, Officer  
21 Nelson and Officer Porter, is that right?

22 A Yes, sir.

23 Q Do you remember telling those officers that the other  
24 dude, the one that they call Keevee, had a gun out there  
25 that night?

D'Angelo Miller  
Cross-examination by Mr. Allen

1 A No, sir.

2 Q We'll come back to that in a few minutes.

3 Now, when you talked to these officers you tried to  
4 tell them what you say you knew about the case, right?

5 A Yes, sir.

6 Q You -- let me ask you this. You're saying today that  
7 you saw Courtney and Corey come into the house --

8 A Yes, sir.

9 Q -- after you came in the house --

10 A Yes, sir.

11 Q -- with the two children.

12 A Yes, sir.

13 Q When you were talking to the officers on May 27th of  
14 2008 this event was fresher in your mind. You remembered  
15 it better, in other words?

16 A Sir?

17 Q Do you think you remembered this thing better in 2008,  
18 May 27th of 2008, than you do now?

19 A (Grunt.)

20 Q You don't know?

21 A I don't know.

22 Q Let me ask you this. Isn't it true you told these  
23 officers when you talked to them that the shot was outside  
24 the house?

25 A No, sir.

D'Angelo Miller  
Cross-examination by Mr. Allen

1 Q Are you sure of that?

2 A No, sir.

3 Q You're not sure of what -- you're not sure if you told  
4 them that?

5 A I don't remember telling them that.

6 Q Do you remember the officer asking you, "So they did  
7 not come into the house"? Do you remember that question?

8 A I don't understand what you just said.

9 Q Do you remember an officer, Officer Nelson, asking  
10 you, "So they did not come into the house"?

11 A I don't remember that question.

12 Q Do you remember telling them that you did not see  
13 those other persons in the house, come in the house?

14 A What other persons?

15 Q Specifically, I'm talking about Courtney and Corey.  
16 Do you remember saying that?

17 A No, sir.

18 Q Okay.

19 MR. ALLEN: Your Honor, at this time I would like to  
20 play -- first, let me show you something on --

21 MR. BULSA: May we approach, Your Honor?

22 (Bench conference held off the record in the presence  
23 of the jury but out of the hearing of the jury.)

24 Q All right. I'm going to show you a picture on this  
25 computer. Is this, is this you?

D'Angelo Miller  
Cross-examination by Mr. Allen

1 A Yes, sir.

2 Q Is this Officer Nelson?

3 A If that's his name.

4 Q Okay. And this, you're seated in a room like this and  
5 over a table like this when you talked to him.

6 A Yes, sir.

7 Q Okay.

8 MR. ALLEN: Your Honor, if we could hook the speakers  
9 up to this so I can play just these portions for him.

10 THE COURT: Is there a place to hook those up?

11 MR. ALLEN: Yes, sir. I would like to ask Ms. Alley  
12 to assist me in that.

13 (Pause.)

14 THE COURT: Put it on the other side. That way it  
15 won't be in the way.

16 MR. ALLEN: Okay.

17 Q I'm going to show you just a portion of a question and  
18 answer that you gave.

19 (Whereupon, the inaudible tape was played for the  
20 jury.)

21 Q Did you hear yourself saying, "That other dude, the  
22 one they call Wayne or Kilo, he had a gun out there that  
23 night"?

24 A Yes, sir.

25 Q Okay.

D'Angelo Miller  
Cross-examination by Mr. Allen

1 MR. ALLEN: Now if we can go to the other.

2 (Whereupon, the inaudible tape was played for the  
3 jury.)

4 Q Did you hear them say -- did you hear the investigator  
5 ask you if the shot was outside?

6 A Yes, sir.

7 Q And your response was outside?

8 A Yes, sir.

9 (Whereupon, the inaudible tape was played for the  
10 jury.)

11 Q Did you hear that?

12 A Yes, sir.

13 Q What did you say to that question?

14 A I ain't see'ed nothing.

15 Q You didn't see anybody come in the house, right?

16 A Yes, sir.

17 (Whereupon, the inaudible tape was played for the  
18 jury.)

19 Q Okay. Did you see that?

20 A Yes, sir.

21 Q He asked you, "So this didn't occur in the house."  
22 And what did you do or say?

23 A No, sir.

24 Q Okay. You shook your head no.

25 MR. ALLEN: Okay. That's it.

D'Angelo Miller  
Cross-examination by Mr. Allen

1 Q Does this refresh your memory a little bit better  
2 about what you told the officer on the 27th of May?

3 A A little bit.

4 Q So you did tell the officer that this occurred outside  
5 the house.

6 A Yes, sir.

7 Q And that they did not come in the house, right?

8 A Yes, sir.

9 Q You don't know my client, Corey, very well, do you?

10 A No, sir.

11 Q Do you know his brother James?

12 A Yes, sir.

13 Q Do you know him better than you do Corey?

14 A Yes, sir.

15 Q He's older than Corey?

16 A Yes, sir.

17 Q Bigger than Corey -- taller, bigger.

18 A If you want to say that.

19 Q You don't really hang out with Corey.

20 A No, sir.

21 Q Thank you. One second.

22 (Pause.)

23 MR. ALLEN: No other questions, Your Honor. Thank  
24 you.

25

D'Angelo Miller  
Redirect examination by Mr. Bulsa

1 REDIRECT EXAMINATION

2 BY MR. BULSA

3 Q Who else did you say you saw with a gun?

4 A Sir?

5 Q Who else did you tell the police you saw with a gun?

6 A I said Kilo, but he didn't have no gun, sir.

7 Q Did you know that person?

8 A I ain't even know that man from a bed of rocks.

9 Q Why did you tell the police he had a gun?

10 A I was trying to hurry up and leave.

11 Q Did that person come inside the house? Did you see  
12 him inside the house?

13 A No, sir.

14 Q So while you were in your living room you didn't see  
15 him come inside the house.

16 A No, sir.

17 Q But once you went in the bedroom and closed the door,  
18 do you know if anybody came in after that?

19 A I mean, I didn't hear no door open or nothing. It was  
20 too quick.

21 Q Why did you tell the police that the shot was outside?

22 A I don't even know -- I don't even know, sir.

23 Q It's clear you didn't see what happened, right?

24 A Yeah. I didn't see, I mean, I ain't see'ed the man  
25 shoot the man but...

D'Angelo Miller  
Recross-examination by Mr. Allen

1 Q You did tell the police that you saw him with a gun,  
2 right?

3 A Not like with the gun, like seeing him with it in his  
4 hand, not like that. But, I mean, I know he had one tucked  
5 in his, like on his hip or something.

6 Q Okay. Were you made any promises to testify?

7 A No, sir.

8 Q Why are you testifying?

9 A Tired of thinking about it.

10 Q What do you mean, you're tired of thinking about it?

11 A Been on my mind since it happened because I could have  
12 stopped it.

13 Q Why do you think that?

14 A Because I could have said no from the beginning, or I  
15 could have said don't do it.

16 Q You mean because you heard him ask for the gun?

17 A Yes, sir.

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

19 MR. ALLEN: Briefly.

20 RE CROSS-EXAMINATION

21 BY MR. ALLEN

22 Q When you told the officers about the other guy with  
23 the gun, you said you said it because you were trying to  
24 hurry up and leave.

25 A Yes, sir.

D'Angelo Miller  
Recross-examination by Mr. Allen

1 Q You, you knew at the time that that was not an  
2 accurate statement.

3 A Yes, sir.

4 Q You were saying whatever you had to in order to get  
5 out of there and leave, right?

6 A Yes, sir.

7 Q Thank you.

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

9 All right. Ladies and gentlemen, we're going to break  
10 for the afternoon.

11 Keep in mind the caution previously given you. No  
12 discussions, no media exposure, no research, no  
13 investigation.

14 Have a good evening, and please report to your jury  
15 room at 9:30 in the morning, 9:30 in the morning. Have a  
16 good evening.

17 (The following takes place outside the presence of the  
18 jury.)

19 THE COURT: Court's in recess until 9:30 in the  
20 morning.

21 END OF PROCEEDINGS MAY 19, 2010

22

23

24

25

Dwight Mills  
Direct examination by Mr. Bulsa

1 (Proceedings May 20, 2010)

2 (The following takes place outside the presence of the  
3 jury.)

4 THE COURT: Any matters to address before the jury is  
5 brought in?

6 MR. BULSA: Not from the state, Your Honor.

7 MR. ALLEN: No, Your Honor.

8 THE COURT: Okay. Let's bring them in.

9 (The following takes place in the presence of the  
10 jury.)

11 THE COURT: Good morning, ladies and gentlemen.

12 We are going to continue with state's presentation of  
13 evidence.

14 MR. BULSA: The state calls Dwight Mills.

15 DWIGHT MILLS, having been  
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. BULSA

18 Q Good morning, Mr. Mills.

19 A Good morning.

20 Q Would you tell us where you live, sir?

21 A I live at Frye Circle, Fairforest.

22 Q Slow down a little bit when you speak.

23 A Frye Circle, Fairforest.

24 Q How old are you, sir?

25 A I'm 52.

Dwight Mills  
Direct examination by Mr. Bulsa

- 1 Q Who do you live with?
- 2 A My mom.
- 3 Q Did you used to stay with Sandra Dandy?
- 4 A I just visited. I didn't stay.
- 5 Q Okay. Did you used to date her?
- 6 A Yes, sir.
- 7 Q About how long did you date her?
- 8 A For about like eight months.
- 9 Q When you went to visit her was it at East Columbia  
10 Avenue?
- 11 A Yes, sir.
- 12 Q When would you usually go visit her?
- 13 A On the weekends.
- 14 Q Did you work back during this timeframe?
- 15 A Yes, sir.
- 16 Q Where did you work?
- 17 A Land and Sea.
- 18 Q Is that the same place she worked?
- 19 A Yes, sir.
- 20 Q Is that where y'all met?
- 21 A Yes, sir.
- 22 Q And y'all began dating. And you would go visit her on  
23 the weekends.
- 24 A Yes, sir.
- 25 Q Do you remember this weekend in particular, the

Dwight Mills  
Direct examination by Mr. Bulsa

- 1 weekend of May the 24th of 2008?
- 2 A Sort of.
- 3 Q Do you remember learning that someone had been shot  
4 and got killed?
- 5 A Later on that evening, but that night rather.
- 6 Q Do you recall what you were doing that day?
- 7 A Drunk on the couch, asleep, passed out.
- 8 Q And how did you get in that condition?
- 9 A Went to the liquor store and beer store.
- 10 Q Okay. And when did you start drinking?
- 11 A That Monday through that Sunday.
- 12 Q Monday through Sunday?
- 13 A Yes, sir.
- 14 Q Weren't you working?
- 15 A Yes, sir.
- 16 Q Did you drink, get drunk on the job?
- 17 A Yeah, not drunk, but I had been drinking.
- 18 Q Okay. So you drank every day?
- 19 A Yes, sir.
- 20 Q Do you still drink?
- 21 A Yes, sir.
- 22 Q So Monday through Sunday, what caused you to stop on  
23 the next Monday?
- 24 A I started back up again.
- 25 Q Okay. All right. So this was a Saturday, right?

Dwight Mills  
Direct examination by Mr. Bulsa

- 1 A Supposedly.
- 2 Q When you would drink, where would you drink?
- 3 A In the house, on the porch.
- 4 Q Do you remember young people being over there?
- 5 A I think so. I can't recall.
- 6 Q Did young people usually come over there?
- 7 A Yes, sir.
- 8 Q Would you interact with them at all?
- 9 A No, sir. I don't deal with young people.
- 10 Q You kind of kept to yourself?
- 11 A I keep to myself. I'm a loner.
- 12 Q All right. So do you recall about what time you would
- 13 have went inside?
- 14 A I can't recall.
- 15 Q All right. And you said you fell asleep when you were
- 16 on the couch.
- 17 A Yes, sir.
- 18 Q Did you hear anything happen inside that house?
- 19 A No, sir.
- 20 Q Did you hear anything happen outside the house?
- 21 A No, sir.
- 22 Q What's the first thing you remember?
- 23 A Waking up off the couch.
- 24 Q And what woke you up?
- 25 A Just wake up like every normal people do wake up,

Dwight Mills  
Direct examination by Mr. Bulsa

- 1 besides the grace of the good Lord.
- 2 Q Okay. What was going on when you woke up?
- 3 A All the lights was on, the front door, screen door,  
4 was open. All things were wide open.
- 5 Q Okay. Had the police gotten there?
- 6 A I think so, because when I walked outside I saw them  
7 taping off the house.
- 8 Q Okay. So you went to sleep sometime that afternoon or  
9 early evening.
- 10 A Yes, sir.
- 11 Q And didn't wake up until the police got there.
- 12 A Well, they probably already there.
- 13 Q Okay. That's what I'm saying. The police had already  
14 gotten there.
- 15 A I think so. I'm not sure.
- 16 Q You woke up and came outside.
- 17 A Yes, sir.
- 18 Q Did you talk to the police?
- 19 A No, sir.
- 20 Q Did they talk to you?
- 21 A Later on that evening.
- 22 Q Okay. And what did you tell them?
- 23 A They asked me did I know anything. I said no, if I  
24 did know anything I would, I would tell you.
- 25 Q Okay.

Dwight Mills  
Direct examination by Mr. Bulsa

- 1 A But I didn't know anything.
- 2 Q Okay. That's not the way you started out with them,  
3 is it?
- 4 A Yes, sir.
- 5 Q Didn't you start out telling them a false name?
- 6 A Yes, sir.
- 7 Q Whose name did you give?
- 8 A Raymond Mills.
- 9 Q Whose name is that?
- 10 A My father's name is Raymond. My last name is Mills.
- 11 Q Why did you give the police the wrong name?
- 12 A I can't really say, but that was a mistake that I  
13 made. I regret it. And I paid for that mistake.
- 14 Q After you were arrested on that, weren't you?
- 15 A Yes, sir. And I paid for it.
- 16 Q But you were so drunk you didn't know if anybody came  
17 in the house --
- 18 A No, sir.
- 19 Q -- that day.
- 20 A No, sir.
- 21 Q You were so drunk you didn't even hear a shot.
- 22 A No, sir.
- 23 Q Okay. Thank you. Answer any questions Mr. Allen has.
- 24 MR. ALLEN: No questions of Mr. Mills.
- 25 THE COURT: Step down.

Louis Maceo Nelson  
Direct examination by Mr. Bulsa

1 MR. BULSA: The state calls Louis Nelson.

2 LOUIS MACEO NELSON, having  
3 been first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. BULSA.

5 Q Please introduce yourself to the jury.

6 A My name is Louis Maceo Nelson.

7 Q Who are you employed with?

8 A I'm employed with the Spartanburg Public Safety  
9 Department. I've been a law enforcement officer since  
10 1993 -- seven years in the city of Chester, seven years  
11 with the county and four years, going on four years, with  
12 Spartanburg city.

13 Q What are your duties with Spartanburg city?

14 A Right now I'm currently assigned to the criminal  
15 investigations division.

16 Q Were you in that division back in May of 2008?

17 A Yes, sir, I was.

18 Q Did you assist in the investigation of the shooting at  
19 East Columbia Avenue?

20 A Yes, I did.

21 Q Did you actually respond to the scene?

22 A Yes, I did.

23 Q Did you assist in the execution of the search warrant  
24 at that scene?

25 A Yes, I did.

Louis Maceo Nelson  
Direct examination by Mr. Bulsa

1 Q Did you personally look for the bullet in the walls?

2 A Yes, sir, I did.

3 Q Explain the process you took.

4 A Once, once I arrived at the scene I went in to assist  
5 in the investigation.

6 The forensics technician is Courtney Westfall. She  
7 was already processing the scene. I had already -- I  
8 arrived at the scene later after everyone else because I  
9 was conducting interviews at city hall.

10 Once I arrived and went inside and saw that there  
11 appeared to be a hole in the wall -- the wall was, as  
12 you've seen presented before -- on the right-hand side as  
13 you come into the residence just to the left of the door  
14 frame.

15 We, we all felt like it was possibly a bullet hole in  
16 the wall that may be involved in the shooting incident.  
17 And we felt like since the hole went through the wall -- I  
18 walked outside, and I didn't see where there was an exit  
19 going through the exterior of the wall.

20 We wanted to explore the possibility that maybe a  
21 round went into the wall and was either lodged on a stud or  
22 somewhere inside the wall or had fallen down towards the  
23 floor sill into the subflooring.

24 We began by -- I cut -- I took a Sawzall, which if you  
25 don't know what Sawzall, it's one of those reciprocating

Louis Maceo Nelson  
Direct examination by Mr. Bulsa

1   saws. The blade vibrates back and forth.

2           I began to cut a small hole around -- a square hole  
3 around the bullet hole. And at that point we tried just  
4 without making a lot of damage to the wall, tearing up the  
5 house, we cut small portions out. And we looked. We  
6 looked up, back up, against the wall around the studs. And  
7 we cut the hole a little larger to get a better view.

8           And he wound up cutting a hole as you saw in the  
9 final, final picture. It was a rather large hole,  
10 something that I could put my hand in the wall and feel and  
11 look, observe with a flashlight. And we didn't see  
12 anything around the studs or on the far side of the wall  
13 that was actually the exterior.

14           At that point I wanted to explore down near the  
15 subflooring. So, again, I cut a hole down at the base  
16 where the wall meets the floor. I cut a hole there and I  
17 began to pull out insulation. There was also some old  
18 acorns or pecans apparently where maybe there was some type  
19 of rodent, maybe a mouse that had gotten inside the wall  
20 and had made, possibly made, a nest inside the wall. A lot  
21 of that debris as you saw in the picture it was right there  
22 on the outside of the, the floorboard.

23           I ran my hand along inside as far as I could. I  
24 reached up inside the wall. I explored the inside of the  
25 wall to the best of my ability. I took a flashlight and

Louis Maceo Nelson  
Direct examination by Mr. Bulsa

1 shined. And we searched the top portion where the large  
2 hole was and down below near the subflooring.

3 We made very prudent, a very prudent, search to try to  
4 locate the projectile or any fragments that may have been  
5 inside that wall. Once we didn't find anything we just  
6 felt like with the shell casing maybe the bullet was  
7 fragmented.

8 MR. ALLEN: Objection as to what they felt like, Your  
9 Honor, as being speculation.

10 THE COURT: Sustained.

11 A We felt like we had the --

12 MR. ALLEN: Objection.

13 THE COURT: You can't speculate. You can tell us what  
14 you did.

15 Q Did you --

16 A We had --

17 Q Did you make a good search of the area?

18 A Yes, sir. We made a very thorough search.

19 Q Okay. But you weren't able to find any bullet.

20 A No, we weren't able to find anything.

21 Q Does that mean it wasn't there?

22 MR. ALLEN: Objection. He's not qualified as an  
23 expert to give that opinion.

24 THE COURT: Overruled.

25 Q Does that mean the bullet wasn't there?

Louis Maceo Nelson  
Direct examination by Mr. Bulsa

1 A No, sir, it doesn't mean that.

2 Q It just means you didn't find it.

3 A No, sir. That's exactly what it means. We didn't  
4 locate it.

5 Q Okay. You said before you went to the scene you had  
6 been taping some interviews or some statements of people.

7 A Yes. I did.

8 Q Done on the same day, May the 24th.

9 A Yes. I did.

10 Q Okay. Now, you took those interviews and investigated  
11 the scene. You then began taking a series of additional  
12 interviews on May 27th.

13 A Yes, sir. I did.

14 Q Why did you begin making additional interviews?

15 A We made, we make additional interviews for several  
16 reasons. Sometimes during the course of the investigation  
17 some things may come to our attention after we may have  
18 spoken to an individual.

19 We may need to bring them back in to, you know, speak  
20 with them again in reference to some new evidence that may  
21 have been brought -- brought to our attention.

22 Q Okay. Let's go through that process on May 27th.

23 Do you recall who the first person you would have  
24 spoke to --

25 A On May the 27th I would have spoke with a Ms. Lakeisha

Louis Maceo Nelson  
Direct examination by Mr. Bulsa

1 Brewton.

2 Q Okay. Do you have a note as to when you would have  
3 spoken to her?

4 A Yes, sir, at approximately 11:45 a.m. Investigator  
5 Porter and I sat in on an interview with Ms. Lakeisha  
6 Brewton.

7 Q Okay. And following that interview who did you  
8 interview?

9 A Following that interview we then interviewed  
10 Mr. D'Angelo Miller.

11 Q Okay. And when was that?

12 A That interview would have taken place at approximately  
13 12:55 p.m.

14 Q Okay. And then who did you interview?

15 A Later that day at 1914, which is 7:14 p.m. that  
16 evening, we interviewed Ms. Sandra Dendy.

17 Q Okay.

18 A Excuse me. Sandra Dandy.

19 Q Okay. Did you speak with Taquil Nabors that day?

20 A Yes, sir. I do believe we did speak with Taquil.

21 Q Okay. And why did you go speak to all of these  
22 people? Is it because -- did you have information that  
23 they were at the scene when this happened?

24 A Yes, sir. We found out through the course of the  
25 investigation that they were at the residence either prior

Louis Maceo Nelson  
Direct examination by Mr. Bulsa

1 to or during the incident.

2 Q Did you reinterview them again?

3 A Yes, sir.

4 Q How cooperative were these people?

5 A Some were more cooperative than others. Some people  
6 were just reluctant to get involved. They don't want to be  
7 involved in the process.

8 Q Okay. Did you ever seek to interview Dwight Mills  
9 again?

10 A Yes, sir, I did.

11 Q Did he give any more information than what he just  
12 gave us today?

13 A No, sir. That was his story throughout.

14 Q Okay. Based on those interviews did you then speak  
15 with James Kilgore?

16 A Yes, sir, we did.

17 Q And that's the defendant's brother.

18 A Yes, sir.

19 Q During these interviews was it you and Mr. Porter?

20 A Yes. Investigator Porter and I worked. We assisted  
21 one another. He was the lead investigator.

22 Q Were you able to locate all of the persons who had  
23 been identified as having been at that scene?

24 A No, sir, we didn't locate everyone. They -- we just  
25 couldn't locate them. Some of the names we were able to --

Louis Maceo Nelson  
Cross-examination by Mr. Allen

1 you get street names and you try to find out what the birth  
2 name is. And sometimes you can find the people and  
3 sometimes you can't.

4 Q Okay. You make -- do you make a valiant attempt to  
5 try to find them?

6 A Yes, sir. We make a very diligent attempt, every  
7 resource we have available -- school resource officers if  
8 the person is in school. We try to find out maybe if  
9 they're employed, maybe contact, you know, go by the work  
10 place. We do whatever we can in a case of this magnitude.

11 Q In fact, do you know whether Keevin Anderson was ever  
12 located?

13 A I believe he was located by Investigator Porter.

14 Q But you didn't participate in that?

15 A No, I didn't.

16 Q Thank you. Answer any questions Mr. Allen has.

17 CROSS-EXAMINATION

18 BY MR. ALLEN

19 Q Let's first talk about the hole in the wall that  
20 you're talking about.

21 You made this search inside the wall on the night of  
22 the 24th, is that right, or maybe the early morning hours  
23 of the 25th of May?

24 A If my memory serves me correctly, it was very close to  
25 midnight. And it may have continued over into the, the

Louis Maceo Nelson  
Cross-examination by Mr. Allen

1 following day, that morning.

2 Q Of the 24th or 25th of May.

3 A Yes, sir.

4 Q Okay. Now, of course nothing was preventing you from  
5 sawing more holes or larger holes to continue your search,  
6 correct?

7 A There was one concern. There was a wall outlet. I  
8 didn't, I didn't, I couldn't tell exactly how the wiring  
9 was running, it ran in that wall. I didn't want to risk.  
10 I also didn't want to risk potentially cutting into that --

11 Q The wiring?

12 A -- while, while getting too close. I didn't want to  
13 go that far. But I felt like the search that we had done  
14 was very reasonable and diligent.

15 Q Okay. Well, there have been occasions on other cases  
16 where officers go in the house that they sometimes call  
17 electricians to cut the power off to the house, sometimes  
18 for safety concerns, correct?

19 A Yes, sir.

20 Q You didn't call an electrician this time to cut the  
21 power off to the house so it would be --

22 A No, sir, we didn't.

23 Q Okay. And since the night, early morning hours, of  
24 the 24th and 25th have you been back to the house to  
25 continue searching this, for this bullet, or did you go

Louis Maceo Nelson  
Cross-examination by Mr. Allen

1 back to the house after the -- after that time?

2 A No, sir, I didn't.

3 Q Okay. To the best of your knowledge -- to the best of  
4 your knowledge -- let me ask it this way. You didn't go  
5 back to continue any more search inside that wall.

6 A Once, once we cleared the scene that night the search  
7 warrants -- the search warrant was -- the execution of the  
8 search warrant, it was closed out. And we would have had  
9 to obtain a new search warrant to go back inside that  
10 residence, so.

11 Q And you didn't try to obtain a new search warrant  
12 after that time to continue your search.

13 A No, sir, I didn't do that.

14 Q Did you go out to the area of Williams and Wofford or  
15 Williams and Harmony streets on or about the 30th of May of  
16 2008?

17 A No, sir, I didn't go out that day. I was off on that  
18 particular day. I didn't go out.

19 Q Okay. So on the 30th you, you were not involved in  
20 the search or the location of the gun that's been marked as  
21 State's Exhibit 19.

22 A No, sir. I was not involved and I was off that day.

23 Q But on the -- was it the 20 -- you did go out to the  
24 area around the Pepsi plant on Amos Street to search for a  
25 gun, did you not?

Louis Maceo Nelson  
Cross-examination by Mr. Allen

1 A Yes, I did. I did go to an area, an old field, behind  
2 the Pepsi plant, on Amos Street located behind the  
3 Pepsi-Cola plant.

4 Q Okay. That was out just to reacquaint ourselves with  
5 that -- of course the Pepsi plant is right there on South  
6 Church Street, correct?

7 A That would be affirmative.

8 Q Okay. And you were going along a pathway around, or  
9 going towards the Pepsi plant, is that correct?

10 A No, sir. The pathway -- it was perpendicular with  
11 the, the fence that ran along the back side.

12 Q Okay.

13 A I couldn't tell you where, exactly where, that path  
14 led to because I followed it up to -- it was a very thick  
15 overgrowth area, overgrown area. And at that, at that  
16 point I didn't go any further.

17 Q Okay. But you were looking for the location of the  
18 gun that was alleged to have shot, that you were led to  
19 believe shot, the casing that was found in the house,  
20 correct? You were searching for that gun?

21 A I was searching, yes, sir. We had information.

22 Q You had information. And you were looking underneath,  
23 what, a rock or something?

24 A I believe it was described as a stepping stone.

25 Q A stepping stone.

Louis Maceo Nelson  
Cross-examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q Isn't it along the pathway or near the pathway, right?
- 3 A I do believe that it was stated that the stepping  
4 stone was along the pathway or on the side of the pathway.  
5 I'm not a hundred percent sure, but I know it was a  
6 stepping stone along the pathway or just off the pathway.
- 7 Q You found a stepping stone, correct?
- 8 A I found some, some flat shaped rocks that I would  
9 consider to be stepping stones, yes.
- 10 Q And of course you looked underneath them or around  
11 them, correct?
- 12 A Yes, sir, I did.
- 13 Q And you did not find any weapon, did you?
- 14 A No. The area that I -- that was described to me was  
15 very close in description to the way it was described. So  
16 I feel like that was the area, yes, sir.
- 17 Q After the 30th of May of 2008 did you engage in any  
18 other searches for any weapon that was mentioned in the  
19 course of this case that we've listened to today?
- 20 A After -- what was the date?
- 21 Q After the 30th of May of 2008. All the way up to and  
22 including today have you engaged in any other search  
23 looking for specifically a small gun that we heard  
24 described that Courtney had?
- 25 A No, sir.

Keevin Anderson  
Direct examination by Mr. Bulsa

1 MR. ALLEN: No other questions, Your Honor. Thank  
2 you.

3 MR. BULSA: Nothing further.

4 THE COURT: Step down.

5 KEEVIN ANDERSON, having been  
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BULSA

8 Q Mr. Anderson, where do you live, sir?

9 A Dutch (sic) State Prison in Georgia.

10 Q Is that near Atlanta? How long have you been down  
11 there?

12 A Say about 18 months, about 16 -- 16 or 18 months.

13 THE COURT: Mr. Anderson, let me caution you about  
14 this.

15 We've got a court reporter taking down everything that  
16 you say. So when you answer a question, you have to answer  
17 it out loud. If you shake your head she can't take it  
18 down. Okay.

19 Q Are you from the Atlanta area?

20 A No, sir.

21 Q Where are you from?

22 A Spartanburg.

23 Q Do you still have relatives that live here?

24 A Yes, sir.

25 Q Who?

Keevin Anderson  
Direct examination by Mr. Bulsa

- 1 A My grandmama. I got a lot of people stay down here.
- 2 Q Okay. And when you were down in Atlanta did you come  
3 back and visit some?
- 4 A Yes, sir.
- 5 Q Do you remember if you were back here May 24th of  
6 2008?
- 7 A Yes, sir.
- 8 Q How long had you been back in Spartanburg at that  
9 time?
- 10 A Probably about two weeks at the max.
- 11 Q Did you have an occasion or did you go to Sandra  
12 Dandy's house on that day?
- 13 A Yes, sir.
- 14 Q Why did you go to that house?
- 15 A Don't know. Just hanging out, I guess.
- 16 Q Did you do that some when you came up to Spartanburg?
- 17 A Yes, sir.
- 18 Q Some of your friends hang out there?
- 19 A Yes, sir.
- 20 Q Do you know J'Corey?
- 21 A Yes, sir.
- 22 Q How do you know him?
- 23 A Just friends from the area.
- 24 Q Okay. Just from the area? How about Courtney Rogers?  
25 Did you know him?

Keevin Anderson  
Direct examination by Mr. Bulsa

- 1 A I knew of him.
- 2 Q You just heard about him. Had you ever met him?
- 3 A Na, not really.
- 4 Q How about, did you know J'Corey's brother, James?
- 5 A Yes, sir.
- 6 Q Did you know him the same way you knew James, I mean,  
7 knew J'Corey?
- 8 A Yes, sir.
- 9 Q How about Penny Red? Did you know him?
- 10 A Yes, sir.
- 11 Q How about Dwight Miller, excuse me, D'Angelo Miller?
- 12 A I know of him. I ain't with him on a regular basis.
- 13 THE COURT: Get closer to that microphone, please.
- 14 Q You said you don't hang with him on a regular basis?
- 15 A No, sir.
- 16 Q Who were you more friendly with at that time?
- 17 A What'cha mean, more friendly with?
- 18 Q Who were you better friends with at the time of this  
19 incident?
- 20 A Cool with everybody.
- 21 Q You were cool with everybody?
- 22 A Yeah.
- 23 Q All right. Were you at the house when the shooting  
24 happened?
- 25 A Yes, sir.

Keevin Anderson  
Direct examination by Mr. Bulsa

1 Q Where were you?

2 A I was on the porch at first, and then I went into the  
3 house.

4 Q Okay. Where did you go in the house?

5 A On the couch, sat on the couch.

6 Q And did something happen while you were in the living  
7 room?

8 A Courtney got shot.

9 Q All right. Tell us how that happened.

10 A I was on the porch at first. I told Sandra I had a  
11 headache, so she said go on in the house and sit down. So  
12 I sat down on the couch. I went in and sat down on the  
13 couch about five to ten minutes.

14 That's when Sand came in. I don't know if she was  
15 going to bathroom. I don't know what she was coming about.

16 And then Courtney came in behind her, but Courtney  
17 went to the back table behind me. About two minutes later,  
18 that's when J'Corey had came in. And I don't know if they  
19 were arguing or what was going on, but I know he took, took  
20 his money, took his money from him.

21 MR. ALLEN: Objection, Your Honor, if I may approach  
22 the bench.

23 THE COURT: Okay.

24 (Bench conference held off the record in the presence  
25 of the jury but out of the hearing of the jury.)

Keevin Anderson  
Direct examination by Mr. Bulsa

1 MR. BULSA: Thank you, Your Honor.

2 Q Did something happen in the dining room area of this  
3 house?

4 MR. ALLEN: Your Honor, if it please the Court. For  
5 the record I object to the line of questioning he's about  
6 ready to go into about what he says occurred that night in  
7 the house or once -- I could state the grounds at a later  
8 time.

9 THE COURT: All right. Overrule the objection.

10 Q You were in the living room. Put it this way. While  
11 you were in the living room did Courtney and J'Corey go  
12 into the dining room?

13 A You meaning dining room every time where I'm at?

14 Q You were in the living room, right, with couches?

15 A Uh-huh.

16 Q Is there a room back behind that?

17 A The table is right there.

18 Q That's what I'm calling the dining room, where the  
19 table was.

20 A Uh-huh.

21 Q Did those two boys go back into there?

22 A No, not really, not, not J'Corey.

23 Q Okay. But Courtney did.

24 A Yes, sir.

25 Q All right. Well, when did this conflict happen that

Keevin Anderson  
Direct examination by Mr. Bulsa

- 1 you're describing?
- 2 A When Courtney -- he was coming back out. He was like  
3 really coming back out there.
- 4 Q All right.
- 5 A In my discretion, I don't know if he was coming out  
6 the house or what. I know he was walking back to the  
7 dining, I mean, the living room, so then the conflict --
- 8 Q Okay. So did this happen in the living room?
- 9 A Yes, sir.
- 10 Q Whereabouts in the living room?
- 11 A Like not close to the door, but it was near the door.
- 12 Q Near the door. All right. Was Courtney nearer to the  
13 door?
- 14 A Yeah, Courtney was nearer to it.
- 15 Q And J'Corey would have been nearer to the inside of  
16 the house.
- 17 A Yes, sir.
- 18 Q And what happened at that point?
- 19 A He took his money.
- 20 Q All right. And then what happened?
- 21 A I know he shot him.
- 22 Q Who shot who?
- 23 A Courtney, I mean, J'Corey shot Courtney.
- 24 Q In the house?
- 25 A Yes, sir.

Keevin Anderson  
Direct examination by Mr. Bulsa

1 Q While Courtney was near the door?

2 A Yes, sir.

3 Q What did you do?

4 A Courtney take off running. He scream and take off  
5 running. I run after Courtney. I ain't running after him,  
6 but I took off behind him. He went one way; I went the  
7 other way.

8 Q What did J'Corey do?

9 A He take off running too.

10 Q What did you do after that?

11 A I ran to the back yard and stayed there not, probably  
12 not, even a minute. Then I walked to Tobe Hartwell to my  
13 aunt's house.

14 Q Then what did you do?

15 A Then I walked back to Sand-mama house. Walked back to  
16 Sand-mama house. And then I had went. My aunt, she had  
17 came and picked me up and took to the west side.

18 Q When you Sand's mama's house --

19 A That was across the street from, from Caulder.

20 Q On East Caulder, on Caulder Avenue?

21 A Yeah, I guess.

22 Q Okay. When did you go back to Georgia?

23 A Like probably the next week.

24 Q Did you talk with the police while you were in  
25 Spartanburg?

Keevin Anderson  
Direct examination by Mr. Bulsa

- 1 A No.
- 2 Q Did they find you in Georgia?
- 3 A No. I had turned myself in for armed robbery down  
4 there.
- 5 Q Okay. Then did the Spartanburg police come down and  
6 speak to you in Georgia?
- 7 A Yes, sir.
- 8 Q Did you tell them what you saw?
- 9 A Yes, sir.
- 10 Q You turned yourself in on that robbery down in  
11 Georgia. Is that what you're doing in jail right now?
- 12 A Yes, sir.
- 13 Q Thank you. Answer any questions of Mr. Allen.  
14 Wait a minute. Let me ask you this. Were you  
15 promised anything to testify?
- 16 A No, sir.
- 17 Q Why are you testifying?
- 18 A I guess I was asked to.
- 19 Q Do you have anything against Corey?
- 20 A No.
- 21 Q Do you have anything to gain by this?
- 22 A No.
- 23 Q Thank you.
- 24
- 25

Keevin Anderson  
Cross-examination by Mr. Allen

1 CROSS-EXAMINATION

2 BY MR. ALLEN

3 Q Let's talk a little bit. First of all, I believe you  
4 said you, you're current -- you were convicted and are  
5 currently serving time now for armed robbery, is that  
6 right?

7 A Yes, sir.

8 Q And assault, and aggravated assault and battery.

9 A Yes, sir. What that gotta do with this case here?

10 Q Well, I understand. Unfortunately, I can only ask  
11 questions and you answer them.

12 Now, the solicitor was asking you. You didn't go talk  
13 to the police about what you say you know, right --

14 A No, sir.

15 Q -- while you are in Spartanburg, is that right?  
16 Again, you can't just nod or --

17 A Yes, sir.

18 Q -- shake your head. You've got to answer out loud.  
19 Okay. Thank you.

20 THE COURT: Get closer to the microphone.

21 Q And you went over to -- I think you said after you  
22 went to your aunt's house you went over to Ms. Dandy's  
23 mother's house, is that right?

24 A Yes, sir.

25 Q And you saw other people over there.

Keevin Anderson  
Cross-examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q You saw Keisha Brewton over there?
- 3 A I don't remember seeing her.
- 4 Q You saw D'Angelo Miller over there.
- 5 A I don't remember seeing him over there.
- 6 Q You saw James Paul Kilgore over there?
- 7 A Yes, sir.
- 8 Q You saw Taquil Nabors over there -- Penny Red.
- 9 A I don't remember seeing him over there.
- 10 Q You had been in Spartanburg for about two weeks, you  
11 say, before that night, correct?
- 12 A No, sir.
- 13 Q Okay. Maybe I misunderstood you.
- 14 A You said how long did I stay in Spartanburg that week?  
15 I said two weeks.
- 16 Q Two weeks.
- 17 A So it had to be the first week. I said I left the  
18 second week.
- 19 Q Left the second week. I'm not sure if I understand.  
20 The second week?
- 21 A I left the next week.
- 22 Q The next week.
- 23 A I stayed a week, and then I left the next week at the  
24 end of the week.
- 25 Q The week after this occurred? Is that what you're

Keevin Anderson  
Cross-examination by Mr. Allen

- 1 saying?
- 2 A Yeah.
- 3 Q And during that week you didn't go talk to the police  
4 at all.
- 5 A No, sir.
- 6 Q Now, when the officer first came to talk to you you  
7 were in Georgia, right?
- 8 A Yes, sir.
- 9 Q In a state institution, right?
- 10 A I was in juvenile.
- 11 Q Juvenile. Thank you.
- 12 You first told them you didn't know anything about  
13 this case, right?
- 14 A No, sir.
- 15 Q Let's go back to who you knew in this case. You say  
16 you didn't know my client very well, right?
- 17 A I didn't say I didn't know him well. I said I knew  
18 him but I didn't hang with him.
- 19 Q Didn't hang with him.
- 20 A No, sir.
- 21 Q Okay. You didn't know his name? Did you know his  
22 name when you were first talking with the officers?
- 23 A Not really.
- 24 Q Not really. Well, who told his -- who told you the  
25 name?

Keevin Anderson  
Cross-examination by Mr. Allen

- 1 A Detective.
- 2 Q In fact, when you were --
- 3 A I already knew his name. He just --
- 4 Q I'm sorry?
- 5 A I knew his name, but it just, I just couldn't, I,  
6 remember it.
- 7 Q Well, did they show you a picture of somebody?
- 8 A No, sir.
- 9 Q When you were talking with them and giving your  
10 statement, you first described as the boy that shot  
11 Courtney, right? That's how you first described him.
- 12 A Yes, sir.
- 13 Q And the detective gave you the fellow's name?
- 14 A Yes, sir.
- 15 Q They didn't show you a picture.
- 16 A No, sir. Like I said before, I already knew his name.  
17 It's just it wasn't clicking at the time.
- 18 Q It wasn't clicking at the time. And of course you  
19 have been in courts before, right?
- 20 A Yes, sir.
- 21 Q You know where the defendant sits in a trial.
- 22 A Yes, sir.
- 23 Q I'm sorry?
- 24 A Yes, sir.
- 25 Q And so once they provided you the name it clicked and

Keevin Anderson  
Cross-examination by Mr. Allen

- 1 you knew who he was, right?
- 2 A Yes, sir.
- 3 Q And the guy that you knew, you called him by what  
4 name?
- 5 A The boy that shot Courtney.
- 6 Q Excuse me? What name do you know my client by?
- 7 A J'Corey.
- 8 Q J'Corey. Is that what he goes by -- J'Corey?
- 9 A I guess, yes, sir.
- 10 Q I guess. Do you know James Paul Kilgore?
- 11 A Yes, sir.
- 12 Q Do you know him pretty well? I'm sorry?
- 13 A Yes, sir.
- 14 Q Better than my client?
- 15 A About the same.
- 16 Q About the same. Okay. Let's see if I can get this  
17 straight.
- 18 You're saying that you went over to Ms. Dandy's to  
19 chill with some folks, right?
- 20 A Yes, sir.
- 21 Q Who did you go over there to chill with?
- 22 A I went over there by myself.
- 23 Q Well, but who were you going there to chill with? Who  
24 were you going there to see?
- 25 A Everybody at the house. Like I told the detective,

Keevin Anderson  
Cross-examination by Mr. Allen

1 I'm cool with everybody. Go over there and chill with  
2 everybody at the house.

3 Q Okay. Now, you say you were on the porch, is that  
4 right?

5 A Yes, sir.

6 Q And Ms. Dandy was on the porch, right?

7 A Yes, sir.

8 Q And you went inside the house.

9 A Yes, sir.

10 Q And you sat down on a sofa, right?

11 A Yes, sir.

12 Q Which, now, do you recall how that living room is set  
13 up?

14 A Yes, sir.

15 Q Okay. Do you know if there was more than one sofa in  
16 that living room?

17 A Yes, sir.

18 Q Okay. How were the sofas arranged?

19 A There's one on this side and there's one on the other  
20 side.

21 Q Okay. When you say this side, what are you referring  
22 to?

23 A As soon as you come in the door there's a sofa right  
24 there. And then on the side is a sofa.

25 Q And there's a television to the right of the front

Keevin Anderson  
Cross-examination by Mr. Allen

- 1 door as you come in, is that right?
- 2 A Yes, sir.
- 3 Q And then there's a sofa opposite that television,  
4 facing the television, correct?
- 5 A Yes, sir.
- 6 Q And then there's another sofa on the wall that's over  
7 to the right as you walk in that front door, is that  
8 correct?
- 9 A Got two sofas, yes, sir.
- 10 Q Two sofas. Set up kind of like an "L".
- 11 A Yes, sir.
- 12 Q Not joined, but kinda in an "L" shape to each other,  
13 right?
- 14 A Yes, sir.
- 15 Q And you were on which sofa, the one facing the  
16 television or the one --
- 17 A The one facing the television.
- 18 Q And no one else was in the living room when you went  
19 in there.
- 20 A No, sir, no, sir.
- 21 Q And no one else was sitting in the living room while  
22 you were in there, correct?
- 23 A No, sir.
- 24 Q No one else was laying down in that living room while  
25 you were there, correct?

Keevin Anderson  
Cross-examination by Mr. Allen

1 A No, sir, no, sir.

2 Q During this whole process where you say you saw the  
3 shooting, no one else is in that living room except for  
4 you, is that right?

5 A Yes, sir.

6 Q D'Angelo Miller did not come in or through that living  
7 room during this whole time you were there.

8 A He wasn't in the living room when I was in there.

9 Q I'm sorry?

10 A He wasn't in there when I was in there.

11 Q And he didn't come into the house while you were  
12 there.

13 A No, sir.

14 Q Correct?

15 A No, sir.

16 Q He didn't come into the house with any children while  
17 you were there, correct?

18 A I didn't see him.

19 Q You were there with your eyes open, right?

20 A (Hissing sound).

21 Q I'm sorry?

22 A I ain't blind, so I had to, yeah.

23 Q Okay. Well, you weren't -- you didn't go to sleep, in  
24 other words.

25 A No, sir.

Keevin Anderson  
Cross-examination by Mr. Allen

- 1 Q You didn't take a nap.
- 2 A No, sir.
- 3 Q You didn't rest your eyes.
- 4 A No, sir.
- 5 Q And you say this Ms. Dandy came into the house and  
6 went straight back towards the dining room, is that right?
- 7 A I didn't say that. I don't know where she went in the  
8 house.
- 9 Q Did she pass by you?
- 10 A She passed by me, but there's other rooms in the house  
11 instead of the dining room.
- 12 Q So she went back towards the dining room behind the  
13 living room?
- 14 A Something like that, I guess.
- 15 Q Okay. And you say right behind her, Courtney was  
16 coming behind her, right?
- 17 A Yes, sir.
- 18 Q And then for about two minutes the only persons in the  
19 house as far as you know were Ms. Dandy and Courtney Rogers  
20 and you, is that right?
- 21 A Yes, sir.
- 22 Q And you're saying that J'Corey came into the house  
23 after about two minutes, is that right?
- 24 A Yes, sir.
- 25 Q And he went towards the dining room too?

Keevin Anderson  
Cross-examination by Mr. Allen

1 A Yes, sir.

2 Q And that's where you say Courtney was, is that right?

3 A Yes, sir.

4 Q And those are the only two people in the dining room  
5 as far as you know at that time, correct?

6 A Yes, sir.

7 Q There was never another person in that dining room, is  
8 that right?

9 A Yes, sir.

10 Q By the way, what do folks call you? Do they call you  
11 Keevin or do they call you by some nickname or street name?

12 A My name -- Keevin.

13 Q They call you Keevin?

14 A Yes, sir.

15 Q They don't call you Keevee?

16 A No.

17 Q And then you say -- let me ask you. On that day while  
18 you were at Ms. Dandy's house did you have a gun on you  
19 somewhere?

20 A No, sir.

21 Q Now, when you say these fellows next came into the  
22 living room after they went into the dining room, those are  
23 the only -- there was only three people then in the living  
24 room, is that what you're saying, after they came from the  
25 dining room?

Keevin Anderson  
Cross-examination by Mr. Allen

- 1 A Courtney was in the dining room. He was standing like  
2 beside, like right beside, the couch. He didn't go  
3 directly in the dining room in the -- well, in the kitchen  
4 where Corey was at. They wasn't in the kitchen exactly  
5 together.
- 6 Q Okay. Are you saying that J'Corey didn't go further  
7 than the couch?
- 8 A Yes, sir.
- 9 Q Okay. Is that the couch you were sitting on?
- 10 A Yeah.
- 11 Q Okay. So then you're saying that Courtney then walked  
12 past J'Corey, right?
- 13 A He was trying to get by.
- 14 Q Okay. Before you say you heard the shot did you see  
15 Courtney bending down or reaching down?
- 16 A No, sir.
- 17 Q So he was standing straight up when you say you heard  
18 the shot?
- 19 A Yes, sir.
- 20 Q And after you say you heard the shot you say Courtney  
21 went out first, is that right?
- 22 A Yes, sir.
- 23 Q And then you went out?
- 24 A Yes, sir.
- 25 Q And then you say J'Corey went out.

Keevin Anderson  
Cross-examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q And you ran behind Courtney for a while.
- 3 A No. He ran -- exactly when he ran out of the house,  
4 he ran that way. And I ran that way to the back of the  
5 house.
- 6 Q Do you know what street it was or what area it was  
7 where he went one way and you went the other?
- 8 A I didn't run to no street. I ran to the back yard.
- 9 Q Ran to the back yard. Okay. And Courtney ran to the  
10 back yard too?
- 11 A Who?
- 12 Q Courtney.
- 13 A No, sir.
- 14 Q Okay.
- 15 A Like I said before, he took off out the house. He  
16 took, he took a right outside the house. I'm not looking  
17 for where he going. I'm trying to get out -- I'm trying to  
18 get out of the house. I'm going to the back yard.
- 19 Q Okay. When you saw Courtney running you didn't see  
20 anybody else running behind Courtney, did you?
- 21 A No, sir.
- 22 Q Was Penny Red there at the time you say you saw the  
23 shooting or heard the shooting?
- 24 A He was on the porch at first before I went in the  
25 house.

James Kilgore  
Direct examination by Mr. Bulsa

1 Q Was he there at the time of the shooting?

2 A I don't know.

3 Q You don't know. Did you see him after the shooting?

4 A Like I said, I, I don't remember seeing him after the  
5 shooting.

6 MR. ALLEN: No other questions, Your Honor. Thank  
7 you.

8 MR. BULSA: Nothing further, Your Honor.

9 THE COURT: You may step down.

10 MR. BULSA: James Kilgore.

11 JAMES KILGORE, having been  
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. BULSA

14 Q All right. James, how old are you?

15 A Twe -- twenty.

16 Q Twenty? Are you the brother of J'Corey Kilgore?

17 A Yes, sir.

18 Q Y'all have the same mother?

19 A Yes, sir.

20 Q Same father?

21 A Yes, sir.

22 Q Did you grow up together?

23 A Yes, sir.

24 Q Lived in the same house?

25 A Yes, sir.

James Kilgore  
Direct examination by Mr. Bulsa

- 1 Q Who raised you?
- 2 A My mother.
- 3 Q How about your father?
- 4 A Deceased.
- 5 Q How many other brothers you got?
- 6 A One.
- 7 Q What's his name?
- 8 A Javaris.
- 9 Q Is he a full brother?
- 10 A Yes, sir.
- 11 Q Same mother?
- 12 A Yes, sir.
- 13 Q Same father?
- 14 A Yes, sir.
- 15 Q Why is his name called Smith?
- 16 A Cause he have a different father but we -- he ain't no  
17 half brother though. Still my full brother.
- 18 Q Okay. All right. Now, under the law he's a half  
19 brother, but you consider him a full brother.
- 20 A Yeah.
- 21 Q You're close to him.
- 22 A Yes, sir.
- 23 Q Okay. Did he grow up with you also?
- 24 A Yes, sir.
- 25 Q How old is he?

James Kilgore  
Direct examination by Mr. Bulsa

- 1 A Seventeen.
- 2 Q All right. So how old is J'Corey?
- 3 A Nineteen.
- 4 Q So you're the oldest.
- 5 A Yes, sir.
- 6 Q Do you go to school?
- 7 A Yes, sir.
- 8 Q Where did you go to school?
- 9 A Spartan High.
- 10 Q How far did you go?
- 11 A Graduated.
- 12 Q When would you have graduated?
- 13 A I'd have walked Friday. I came to jail on a Tuesday.
- 14 Q You would have walked Friday, end of May of 2008?
- 15 A Yes, sir.
- 16 Q But you went to jail --
- 17 A Yes, sir.
- 18 Q -- because of this case.
- 19 A Yes, sir.
- 20 Q Have you been there ever since?
- 21 A Yes, sir.
- 22 Q You're charged as an accessory.
- 23 A Yes, sir.
- 24 Q Were you at the house, at Sandra Dandy's house, when
- 25 this happened?

James Kilgore  
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q How did you come to be there?
- 3 A I was already up there. I had done been up there  
4 since earlier that day.
- 5 Q Did you go up there with your brother?
- 6 A No, sir.
- 7 Q Who did you go up there with?
- 8 A I went up there with Keevin and Penny Red.
- 9 Q About how many guys showed up that day?
- 10 A It was, it was a good bit of us up there that day.
- 11 Q People come and go?
- 12 A Yes, sir.
- 13 Q How about around the time of this incident sometime  
14 after 8:00 o'clock that night? Who all was still there?
- 15 A Me, Patrick Davis, Tiquan, Tiquan Nabors, my brother,  
16 Keevin Anderson, Sandra Dandy, D'Angelo Miller. I can't  
17 remember all of the names.
- 18 Q Okay. You named a good bit of them. Do you remember  
19 if Kinkey was there?
- 20 A I can't recall.
- 21 Q That's Lakeisha Brewton.
- 22 A Yes, sir.
- 23 Q Did she actually live there with her mother?
- 24 A Yes, sir.
- 25 Q Do you remember when Courtney drove up?

James Kilgore  
Direct examination by Mr. Bulsa

- 1 A Yes, sir, I remember him pulling up.
- 2 Q What was going on at that time?
- 3 A Nothing. Everybody was on the porch, people playing  
4 cards and stuff.
- 5 Q Did somebody call him, yell at him to stop?
- 6 A I couldn't recall. I don't know if anyone called him  
7 or not.
- 8 Q Where did he pull his car up?
- 9 A In front of the house.
- 10 Q Did you go talk to him out at the car?
- 11 A Yes, sir.
- 12 Q Are you friends with him?
- 13 A Yes, sir.
- 14 Q Tell us what happened after he pulled up.
- 15 A He pulled up. We all sat on the porch. He took out.  
16 And we was all sitting on the porch. And then after that  
17 he, he wasn't -- he stepped in the house after he was on  
18 the porch. Then he stepped in the house, and a couple of  
19 other people went in the house.
- 20 Q Before Courtney went in the house did your brother ask  
21 for anything?
- 22 A No, sir, not before Courtney went in the house, no,  
23 sir.
- 24 Q Did he ever ask for anything outside?
- 25 A Yes, sir, but it was -- Courtney wasn't there at this

James Kilgore  
Direct examination by Mr. Bulsa

- 1 time.
- 2 Q All right. Well, what happened? What did he ask for?
- 3 A Asked for my gun.
- 4 Q You were carrying a gun?
- 5 A Yes, sir.
- 6 Q About ready to graduate from high school.
- 7 A Yes, sir.
- 8 Q You got any other record?
- 9 A No, sir.
- 10 Q Why were you carrying a gun?
- 11 A I don't know.
- 12 Q What do you mean, you don't know? What kind of gun
- 13 was it?
- 14 A .380.
- 15 Q Where did you get it?
- 16 A Bought it off the street.
- 17 Q Why? You got to answer out loud.
- 18 A I don't know.
- 19 Q Being stupid?
- 20 A Pretty much.
- 21 Q Let me show you State's 19. Do you recognize that?
- 22 A Yes, sir.
- 23 Q Is that the gun you gave your brother?
- 24 A Yes, sir.
- 25 Q That's the gun you bought off the street?

James Kilgore  
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q Was it loaded?
- 3 A Yes, sir.
- 4 Q Had you loaded it?
- 5 A Yes, sir.
- 6 Q So you gave a loaded gun to your brother.
- 7 A Yes, sir.
- 8 Q Where were you and he when you gave it to him?
- 9 A Where was he at?
- 10 Q Yes, sir.
- 11 A Outside.
- 12 Q Outside Sandra Dandy's house?
- 13 A Yes, sir.
- 14 Q East Columbia Avenue.
- 15 A Yes, sir.
- 16 Q And he just asked for a gun and you gave it to him.
- 17 A Yes, sir.
- 18 Q Do you know why he wanted it?
- 19 A No, sir. I asked. He never did tell me.
- 20 Q All right. So he has the gun. Well, what does he do
- 21 with the gun when you give it to him?
- 22 A Tuck it.
- 23 Q What?
- 24 A He tuck it on him -- he tuck it on him.
- 25 Q Tucked it on him in his waistband?

James Kilgore  
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q All right. Could you see it in his waistband when he  
3 tucked it, or was it covered with it?
- 4 A No, sir. Covered.
- 5 Q Covered with the shirt?
- 6 A Yes, sir.
- 7 Q All right. So he had the gun when Courtney went  
8 inside, right?
- 9 A Yes, sir.
- 10 Q What happened when Courtney went inside?
- 11 A After Courtney went inside, and then a couple of  
12 people went in later after that.
- 13 Q Was your brother one of those people?
- 14 A Yes, sir.
- 15 Q Who else went inside?
- 16 A Keevin Anderson.
- 17 Q Where were you when you saw all of this?
- 18 A On the -- out in the yard, like in the front, like on  
19 the side of the yard.
- 20 Q Why were you not up on the porch?
- 21 A Because we all was just talking. The porch was  
22 already crowded.
- 23 Q Was Penny Red on the porch?
- 24 A Yes, sir.
- 25 Q So at least three people were in the house.

James Kilgore  
Direct examination by Mr. Balsa

- 1 A Yes, sir.
- 2 Q Do you remember Dwight -- excuse me -- if D'Angelo  
3 Miller was around?
- 4 A No, sir. I think he was on the porch, but I think he  
5 went in the house at that point in time.
- 6 Q Okay. So that puts him in the house also.
- 7 A Yes, sir.
- 8 Q Had Ms. Dandy already been in the house?
- 9 A Yes, sir.
- 10 Q Did you ever go look in the window or look in the  
11 door?
- 12 A No, sir.
- 13 Q Do you know what took place in the house?
- 14 A No, sir.
- 15 Q Did you hear any noises?
- 16 A I heard, I heard noises, but it wasn't noises like  
17 nothing to be cautious over.
- 18 Q Okay. Well, did you hear a shot?
- 19 A Yes, sir.
- 20 Q Where did that shot come from?
- 21 A The house.
- 22 Q Were you still standing out by --
- 23 A No, sir.
- 24 Q Where were you?
- 25 A I had done started running, took off running.

James Kilgore  
Direct examination by Mr. Bulsa

- 1 Q I'm sorry?
- 2 A I had done took off running where I started to.
- 3 Q All right. When you heard the shot you took off
- 4 running.
- 5 A Yes, sir.
- 6 Q Where were you standing when the shot went off?
- 7 A Like right, like on the same spot like on the side of
- 8 the house, like in the front.
- 9 Q Okay. So you didn't go up on the porch right before
- 10 that.
- 11 A No, sir.
- 12 Q You were still outside.
- 13 A No, sir.
- 14 Q You heard the shot while you were outside.
- 15 A Yes, sir.
- 16 Q Which direction did you run?
- 17 A Around the side of the house and to the right.
- 18 Q So if you're facing the house from the street you
- 19 would have went to the right side?
- 20 A Facing the house, yes, sir, the right side.
- 21 Q Okay. Is that because you were standing more over in
- 22 that area?
- 23 A Yes, sir.
- 24 Q Did you see anybody come out of the house after the
- 25 shot?

James Kilgore  
Direct examination by Mr. Bulsa

- 1 A I saw Courtney run out first, and then my brother and  
2 Keevin.
- 3 Q How was Courtney acting?
- 4 A He took off running.
- 5 Q Did he say anything?
- 6 A No, sir. He just ran down Liberty Street, took off  
7 running down Liberty Street.
- 8 Q Was he screaming?
- 9 A No, sir.
- 10 Q Did you think he was shot?
- 11 A No, sir.
- 12 Q When did you realize he was shot?
- 13 A Once we got to the next street and we see him laying  
14 down on the street down there on Liberty.
- 15 Q Had penny Red chased after him?
- 16 A Yes, sir.
- 17 Q So you ran to the back of the house, right?
- 18 A Yes, sir.
- 19 Q Where did you wind up?
- 20 A Down at the end of the street with Tiquan and Patrick  
21 Davis where Courtney was.
- 22 Q Okay. So you ran from beside the house to the next  
23 street over?
- 24 A Yes, sir.
- 25 Q That would have been Amos Street?

James Kilgore  
Direct examination by Mr. Bulsa

1 A Yes, sir.

2 Q And you saw Courtney down on the ground near the  
3 intersection of Amos and South Liberty?

4 A Yes, sir.

5 Q You actually went down to where he was?

6 A Yes, sir.

7 Q What was going on?

8 A We was calling the police and stuff for him. Tiquan  
9 Nabors had done already called, and we all just waited  
10 there.

11 Q Was somebody trying to help him?

12 A Yes, sir.

13 Q Who was helping?

14 A Me, Patrick and Penny Red -- me, Patrick and Tiquan.

15 Q Tiquan is Penny Red, right?

16 A Yes, sir.

17 Q Where did your brother go?

18 A Him and Keevin ran through a pathway. They kept  
19 running straight across to a pathway.

20 Q Which side, what direction from the house?

21 A The right.

22 Q Is the pathway near the Pepsi-Cola plant?

23 A Yes, sir.

24 Q Do you know where they ran to?

25 A No, sir.

James Kilgore  
Direct examination by Mr. Bulsa

- 1 Q Did you see anything happen while they were running?
- 2 A No, sir, just the gun being tossed.
- 3 Q Who was tossing the gun?
- 4 A My brother.
- 5 Q Did you do anything when you saw that?
- 6 A Yes, sir.
- 7 Q What?
- 8 A I didn't do nothing at that time. I went on down the  
9 street and crossed over -- Courtney -- and then once I got  
10 down the street Patrick was searching him. And he got a  
11 gun off of him and told me to go hide it. So I went and  
12 hid it.
- 13 Q Patrick got a gun off Courtney.
- 14 A Yes, sir.
- 15 Q What kind of gun?
- 16 A A .38 Dillinger two-shot.
- 17 Q Okay. Did you see about where, where it was on  
18 Courtney's body?
- 19 A No, sir.
- 20 Q All right. Did Patrick then pass that gun to you?
- 21 A Yes, sir.
- 22 Q And why did you take it?
- 23 A He told me to hide it, go hide it.
- 24 Q All right.
- 25 A So I hid it up under a brick, and that's when I

James Kilgore  
Direct examination by Mr. Bulsa

1 spotted the gun that was tossed. And I also hid that.

2 Q So you hid both guns in the same spot.

3 A Yes, sir.

4 Q Why did you hide that gun?

5 A Because I saw it had been tossed, and I heard a shot.

6 And I saw Courtney had been shot. And I saw my brother had

7 tossed it. So I was trying to cover for my brother.

8 Q All right. Did you stick around and talk to the  
9 police?

10 A No, sir.

11 Q Did you talk to the police like the day, the day of or  
12 the next day?

13 A The next day.

14 Q Did you tell them what you knew?

15 A No, sir.

16 Q Why not?

17 A Because still trying to protect my brother.

18 Q Trying to protect yourself too?

19 A Yes, sir.

20 Q Did the police come back to you and try to talk to you  
21 again?

22 A Yes, sir.

23 Q Did you see your brother any time after the shooting?

24 A Yes, sir, at the house.

25 Q Did y'all talk about this?

James Kilgore  
Direct examination by Mr. Bulsa

- 1 A No, sir.
- 2 Q Did you ever ask him why he did it?
- 3 A No, sir. I asked him on the phone.
- 4 Q But you didn't ask him in person, asked him on the  
5 phone.
- 6 A Over the phone did he do it. He said he don't know --  
7 he don't know. He didn't mean to if he did. He don't  
8 know.
- 9 Q Did you quest him with any more questions?
- 10 A No, sir.
- 11 Q Did you ever see Keevin again?
- 12 A No, sir.
- 13 Q How well did you know him?
- 14 A We had also grew up together. You know, pretty good.
- 15 Q Did you know he had moved back -- moved to Atlanta?
- 16 A Yes, sir.
- 17 Q At this time, at the time of this incident, were you  
18 and your brother still living with your mother?
- 19 A Yes, sir.
- 20 Q And where was that?
- 21 A Caulder Circle.
- 22 Q Did you sometimes stay with your grandmother?
- 23 A Yes, sir. I was living with her at the time. I was  
24 fixing to move in at the time.
- 25 Q You were fixing to move in with your grandmother?

James Kilgore  
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q Where was she living?
- 3 A Pineview. Wilkerson Court.
- 4 Q Was Courtney -- or was J'Corey going to move up there
- 5 too?
- 6 A No, sir.
- 7 Q Would that have been the first time y'all were
- 8 separated?
- 9 A Yes, sir.
- 10 Q You moved in because you were graduating?
- 11 A Yes, sir. My grandma was there by herself.
- 12 Q What were you going to do after your graduation?
- 13 A I was going to go to college and play basketball.
- 14 Q Where?
- 15 A Spartanburg Methodist.
- 16 Q Do you have anything against your brother?
- 17 A No, sir.
- 18 Q Now, we know you lied the first time to the police.
- 19 The second time you told them -- did you tell them
- 20 everything you testified to today?
- 21 A No, sir.
- 22 Q What did you leave out to them?
- 23 A The gun.
- 24 Q Why?
- 25 A Because I was still trying to cover for myself also.

James Kilgore  
Direct examination by Mr. Bulsa

- 1 Q Did you, in fact, try to help the police find the gun  
2 that you hid?
- 3 A Yes, sir.
- 4 Q What had you done with it? Did you leave it under  
5 that stone?
- 6 A Gave it to Demetrius.
- 7 Q How did that come about?
- 8 A I took him to it, get it.
- 9 Q You took Demetrius to the gun?
- 10 A Yes, sir.
- 11 Q Did anybody else go with you there?
- 12 A My brother.
- 13 Q Your brother who?
- 14 A J'Corey.
- 15 Q J'Corey went.
- 16 A Yes, sir.
- 17 Q So the three of y'all went to that location.
- 18 A Yes, sir.
- 19 Q Were both guns still there?
- 20 A No, sir.
- 21 Q Which gun was there?
- 22 A Just the .380.
- 23 Q Do you know what happened to the other one?
- 24 A No, sir.
- 25 Q Any idea?

James Kilgore  
Direct examination by Mr. Balsa

- 1 A No, sir.
- 2 Q But you hid them in the same spot.
- 3 A Yes, sir.
- 4 Q What happened to the gun after you took Demetrius to  
5 it?
- 6 A I gave it to him. I never, never knew what he did  
7 with it after that.
- 8 Q When you talked to the police did you tell the police  
9 about giving the gun to Demetrius?
- 10 A No, sir.
- 11 Q Do you know how the police found the gun?
- 12 A Yes, sir.
- 13 Q How?
- 14 A I led them to it.
- 15 Q You led them to it?
- 16 A Yes, sir.
- 17 Q How did you lead them to it if you had given it to  
18 Demetrius?
- 19 A I told Demetrius I had it.
- 20 Q Okay. So at one point you told them that Demetrius  
21 had it.
- 22 A At one point but not when they first arrested me. I  
23 didn't.
- 24 Q Okay. So it took a few days for you to tell them.
- 25 A Yes, sir.

James Kilgore  
Direct examination by Mr. Bulsa

- 1 Q Did you at that time tell them that you had given that  
2 to your brother?
- 3 A No, sir.
- 4 Q Why not?
- 5 A I have no idea.
- 6 Q Have you been promised anything to testify?
- 7 A No, sir.
- 8 Q Have you got anything to gain by this?
- 9 A I didn't understand your question.
- 10 Q Have you got anything to gain? Do you hope to gain  
11 anything?
- 12 A No, sir.
- 13 Q Are you trying to help yourself now?
- 14 A No, sir.
- 15 Q Are you trying to hurt your brother?
- 16 A Sir?
- 17 Q Are you trying to hurt your brother?
- 18 A No, sir.
- 19 Q Then why are you testifying?
- 20 A I gotta also help myself out.
- 21 Q Do you want to be testifying?
- 22 A No, sir.
- 23 Q Why not?
- 24 A Because of my brother.
- 25 Q Thank you. Answer anything Mr. Allen has.

James Kilgore  
Cross-examination by Mr. Allen

1 CROSS-EXAMINATION

2 BY MR. ALLEN

3 Q When you say you're trying to also help yourself out,  
4 you mean help yourself out on this charge that you're  
5 facing --

6 A No, sir.

7 Q -- for accessory?

8 A No, sir.

9 Q When you -- you're not hoping that the solicitor or  
10 the officers are going to come to court on your charge and  
11 put in a good word for you?

12 A No, sir, cause I'm man enough to face my own. I did  
13 it.

14 Q I'm sorry?

15 A No, sir. I'm man enough to face my own. I did it.

16 Q When you talked to the officer -- I'm talking about  
17 the time that you talked to them in their office when you  
18 first told them the story about your brother -- didn't the  
19 officers talk to you about charges you're facing, accessory  
20 charge you were facing?

21 A About what?

22 Q Didn't the officers talk to you a little bit about  
23 that charge?

24 A About what charge? About my charge I'm facing?

25 Q Yes, sir.

James Kilgore  
Cross-examination by Mr. Allen

1 A They didn't talk to me about my charge. They told me  
2 about -- they told me my charge.

3 Q Yes, sir. They told you your charge. And didn't they  
4 say before we tell the judge and the solicitor that you  
5 cooperated and to ask the judge to help you out you got to  
6 tell them?

7 A Never told me anything like that.

8 Q They never said that to you. They never said that  
9 before we tell anybody that you're a good guy and not to  
10 put James in jail for the same amount of time --

11 MR. BULSA: Objection, Your Honor.

12 THE COURT: What's the basis for the objection?

13 MR. BULSA: May we approach?

14 (Bench conference held off the record in the presence  
15 of the jury but out of the hearing of the jury.)

16 Q Let me ask you again.

17 I believe it was -- do you remember being down at the  
18 police station talking to Investigator Porter?

19 A Yes, sir.

20 Q And that would have been the 28th of May.

21 A Yes, sir.

22 Q Of 2008, right?

23 A Yes, sir.

24 Q And before y'all started talking about this or while  
25 y'all were talking about this didn't Investigator Porter

James Kilgore  
Cross-examination by Mr. Allen

- 1 say to you before he tells the judge or a solicitor that  
2 you cooperated and asks them to help you out, that you're a  
3 good guy, not to put you in for as much time as Corey, that  
4 you got to talk?
- 5 A No, sir.
- 6 Q Did he say anything like that to you?
- 7 A No, sir. I don't recall.
- 8 Q You don't recall.
- 9 A No, sir.
- 10 Q When you talked to the officer that day you were  
11 trying to tell him everything about this case --
- 12 A No, sir.
- 13 Q -- because you knew you were in trouble, is that  
14 right?
- 15 A Yes, sir.
- 16 Q You were trying to protect yourself.
- 17 A Yes, sir.
- 18 Q Because you don't want to be charged with this.
- 19 A Yes, sir.
- 20 Q You knew that you gave the gun to Demetrius, right?
- 21 A Yes, sir.
- 22 Q That would be Demetrius Reid?
- 23 A Yes, sir.
- 24 Q And you told him to get off of that side of town,  
25 right?

James Kilgore  
Cross-examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q And when you were -- were you picked up on the 28th of  
3 May?
- 4 A Yes, sir.
- 5 Q At your grandmama's house?
- 6 A Yes, sir.
- 7 Q The gun at that point was in a storage area in your  
8 grandmama's house, right?
- 9 A Yes, sir.
- 10 Q Because you put it there, or did Demetrius put it  
11 there?
- 12 A Demetrius put it there.
- 13 Q Demetrius put it there.
- 14 A Yes, sir.
- 15 Q You saw him put it there.
- 16 A Yes, sir.
- 17 Q So on the 28th of May you believed the gun was at your  
18 grandmama's house.
- 19 A No, sir.
- 20 Q You didn't believe that?
- 21 A Demetrius took it with him.
- 22 Q After you got picked up?
- 23 A Yes, sir.
- 24 Q Because you told Demetrius when the police come for  
25 you to get rid of the gun, right?

James Kilgore  
Cross-examination by Mr. Allen

- 1 A I didn't tell 'm to get rid of it.
- 2 Q What did you say?
- 3 A I didn't tell him nothing. He did it on his own.
- 4 Q Okay. Did it on his own. You're saying that this gun  
5 that's been marked as State's Exhibit 19 is your gun?
- 6 A Yes, sir.
- 7 Q Did you scratch the serial numbers off of this?
- 8 A No, sir. It was already gone.
- 9 Q They were already gone when you bought it?
- 10 A Yes, sir.
- 11 Q How long have you had this gun?
- 12 A About three or four months.
- 13 Q Three or four months.
- 14 A Might have been longer.
- 15 Q And maybe longer. You shot that gun before?
- 16 A Yes, sir, in the air.
- 17 Q Carry it around with you a good bit?
- 18 A I carried it. Not a good bit though. I carried it  
19 though.
- 20 Q You don't know why you carried it.
- 21 A No, sir. Protection, I guess.
- 22 Q Protection, you guess. You say it was also a gun that  
23 you handled that you got from Patrick Davis.
- 24 A Yes, sir..
- 25 Q Or Patrick, right?

James Kilgore  
Cross-examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q That day, the 24th.
- 3 A Yes, sir.
- 4 Q And he got it from Courtney Rogers --
- 5 A Yes, sir.
- 6 Q -- after Courtney was laying there on the sidewalk,  
7 right?
- 8 A Yes, sir.
- 9 Q Those weren't the only two guns you saw out there that  
10 day, right?
- 11 A No, sir.
- 12 Q You saw another gun, or you say you saw another gun  
13 being tossed, right?
- 14 A Yes, sir.
- 15 Q And that gun was tossed by Keevin, right?
- 16 A Yes, sir.
- 17 Q Keevin Anderson.
- 18 A I never saw Keevin toss a gun but Keevin -- I saw  
19 Keevin with a gun.
- 20 Q You saw Keevin with a gun.
- 21 A Yes, sir.
- 22 Q That day?
- 23 A Yes, sir.
- 24 Q At Ms. Dandy's home?
- 25 A Yes, sir.

James Kilgore  
Cross-examination by Mr. Allen

- 1 Q Before the shooting?
- 2 A Yes, sir.
- 3 Q Where would he keep that gun, or do you know where he  
4 kept that gun?
- 5 A I don't know.
- 6 Q Do you know where he had it on his person?
- 7 A No, sir.
- 8 Q How did you see that gun?
- 9 A Because Tiquan passed it to Keevin, but I don't know  
10 if Keevin had passed it back to Tiquan or what. It was  
11 Tiquan's gun.
- 12 Q Tiquan. Would that be Penny Red?
- 13 A Yes, sir.
- 14 Q It was his gun and Keevin asked to see it?
- 15 A Yes, sir.
- 16 Q That was before Courtney got there?
- 17 A Yes, sir, early in the day.
- 18 Q Earlier that day.
- 19 A Yes, sir.
- 20 Q Now, you went over to Ms. Dandy's house earlier that  
21 day.
- 22 A Yes, sir.
- 23 Q Is that what you said? With Keevin Anderson, right?
- 24 A No, sir. Keevin. That's a different Keevin.
- 25 Q Oh, a different Keevin.

James Kilgore  
Cross-examination by Mr. Allen

- 1 A Keebo. It's a different person.
- 2 Q Different. What's his last name?
- 3 A I don't know his last name.
- 4 Q You say when Courtney drove up you went out on the  
5 porch, right?
- 6 A Yes, sir.
- 7 Q And you went down to talk to Courtney, is that  
8 right --
- 9 A Yes, sir.
- 10 Q -- while he was still in his car?
- 11 A No, sir. He was out the car.
- 12 Q He was out of the car.
- 13 A I (inaudible).
- 14 Q I'm sorry?
- 15 A I shook his hand. He went on up on the porch.
- 16 Q And you were the only one.
- 17 A Me and a couple of other people.
- 18 Q A couple of the other people went down there too?
- 19 A Yes, sir.
- 20 Q Who else?
- 21 A Tiquan, Patrick. I think we might have been the only  
22 three to greet him that day.
- 23 Q Okay.
- 24 A I spoke to him once he hit the porch.
- 25 Q Okay. And y'all went there sort of together?

James Kilgore  
Cross-examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q And everyone spoke to him after he got out of the  
3 truck, right?
- 4 A Yes, sir.
- 5 Q Nobody spoke to him while he was in the truck.
- 6 A No, sir.
- 7 Q Nobody spoke to him while he was sitting down.
- 8 A Yes, sir.
- 9 Q I mean at the car.
- 10 A No, sir, not at the car.
- 11 Q Not at the car or the truck.
- 12 A Yes, sir.
- 13 Q And you say Courtney went into the house.
- 14 A Yes, sir.
- 15 Q And after Courtney went in the house Keevin Anderson  
16 was still on the porch, right?
- 17 A No, sir, he wasn't. Yeah. They was on the porch when  
18 he first went in.
- 19 Q When who first went in?
- 20 A When Courtney first went in.
- 21 Q Uh-huh. So he was on the porch. And Courtney went in  
22 first, is what I'm getting at.
- 23 A Yes, sir.
- 24 Q And your brother was still on the porch, right?
- 25 A Yes, sir.

James Kilgore  
Cross-examination by Mr. Allen

1 Q So he hadn't gone in, you say.

2 A He hadn't gone in, yes, sir.

3 Q And then you say your brother, Corey, went in next.

4 Is that what you're saying?

5 A Him and Keevin.

6 Q So they went in together?

7 A Yes, sir.

8 Q And then you were on the porch when they went in?

9 A No, sir. I was off the porch standing down on the  
10 ground.

11 Q And then you stayed there until you heard this shot?

12 A Yes, sir.

13 Q You're on, in the front the whole time until you heard  
14 the shot?

15 A Yes, sir.

16 Q After you heard that you ran, right?

17 A Not straight off.

18 Q I'm sorry?

19 A Not straight off.

20 Q Not straight off?

21 A I didn't run until I saw Keevin and Courtney and all  
22 of them running out of the house.

23 Q Okay. I believe you said that Courtney came out of  
24 the house running first.

25 A Yes, sir.

James Kilgore  
Cross-examination by Mr. Allen

- 1 Q And then you say your brother came out next.
- 2 A My brother and Keevin.
- 3 Q Oh, they came out together?
- 4 A Yes, sir.
- 5 Q Do you know who was first?
- 6 A No, sir.
- 7 Q And you went following Courtney, is that right?
- 8 A No, sir.
- 9 Q Who did you --
- 10 A Tiquan followed Courtney.
- 11 Q Tiquan followed Courtney. Who did you follow?
- 12 A Followed no one.
- 13 Q I'm sorry?
- 14 A No one. I just took off running the closest way I
- 15 was, the closest -- I was closer to this side of the house,
- 16 so I ran that way beside of the house.
- 17 Q Which area did you run to? Did you run towards Church
- 18 Street?
- 19 A No, sir. Amos.
- 20 Q Toward Amos. Would that be the street right behind --
- 21 A Yes, sir.
- 22 Q -- Columbia, right?
- 23 A Yes, sir.
- 24 Q Same direction as Columbia, right?
- 25 A Yes, sir.

James Kilgore  
Cross-examination by Mr. Allen

1 Q When you say you saw your brother running, he was  
2 running with who, or who was running with him?

3 A Keevin.

4 Q Keevin or Keevee?

5 A Keevin.

6 Q Before you heard the shot did you see D'Angelo Miller  
7 at the house?

8 A No, sir. I don't know what he had -- I think he was  
9 already in the house.

10 Q Did he have the little children there too?

11 A He had, he had one of the kids with him.

12 Q One of the kids?

13 A Yeah.

14 Q Which one?

15 A Lakeisha's child.

16 Q Lakeisha's child.

17 Go back to your conversation with the police a little  
18 bit. When you talked to them on the 28th and you first  
19 said your brother did it -- do you remember that  
20 conversation?

21 A Yes, sir.

22 Q Do you remember the police asked you specifically if  
23 you had a gun that day?

24 A Yes, sir.

25 Q And you told them no, you didn't.

James Kilgore  
Cross-examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q And the police specifically asked you if you gave your  
3 brother a gun that day.
- 4 A Yes, sir.
- 5 Q And you told them you didn't.
- 6 A Yes, sir.
- 7 Q They asked you if you hid a gun that day. Do you  
8 remember that?
- 9 A Yes, sir.
- 10 Q And you told them no, you didn't.
- 11 A Yes, sir.
- 12 Q And you didn't tell them about that because you were  
13 trying to cover for yourself.
- 14 A Yes, sir, also.
- 15 Q Also?
- 16 A Myself and my brother.
- 17 Q Well, talking about the conversation you had with the  
18 officers where you said your brother shot J'Corey, I mean,  
19 shot Courtney.
- 20 A Yes, sir.
- 21 Q It was that conversation that you told them you didn't  
22 have a gun, right --
- 23 A Yes, sir.
- 24 Q -- or you hid a gun?
- 25 A Yes, sir.

James Kilgore  
Redirect examination by Mr. Bulsa

1 Q So you weren't trying to help your brother then, were  
2 you?

3 A Yes, sir.

4 Q No other questions.

5 REDIRECT EXAMINATION

6 BY MR. BULSA

7 Q James, were you trying to keep the police from finding  
8 the gun?

9 A Yes, sir, at first.

10 Q That way you thought you would help your brother?

11 A Yes, sir.

12 Q This Keebo you mentioned, that was a different person  
13 than Keevin Anderson.

14 A Yes, sir.

15 Q Was Keebo there at the time of the shooting?

16 A No, sir.

17 Q He had already left.

18 A Yes, sir.

19 Q Okay. D'Angelo had already gone in the house and had  
20 the child with him.

21 A I think so, yes, sir.

22 Q Okay. Thank you. That's all I have.

23 THE COURT: You can step down.

24 We're going to take a short break, so I will ask the  
25 jury to please go to your jury room. Do not discuss the

1 case. I'll bring you back shortly.

2 (The following takes place outside the presence of the  
3 jury.)

4 THE COURT: Mr. Allen, during the testimony of Keevin  
5 Anderson you objected to the solicitor questioning  
6 Mr. Anderson about what was going on in the residence  
7 immediately prior to the shot having been fired.

8 MR. ALLEN: Yes, sir.

9 THE COURT: And you and Mr. Bulsa approached the  
10 bench, and you discussed with me the nature of your  
11 objection and the grounds for it.

12 So in order to preserve that objection do you want to  
13 state the grounds on the record?

14 MR. ALLEN: Thank you, Your Honor. Yes, I do.

15 Your Honor, I was objecting when they got into the  
16 testimony where Mr. Anderson was describing a robbery or an  
17 armed robbery.

18 As I informed the Court, my client was found not  
19 guilty of that offense at an earlier trial where both of  
20 these charges were tried. I believe that the state would  
21 be collaterally estopped from going into the armed robbery  
22 at this time; also, under the principles of res judicata  
23 because the jury in December found my client not guilty.

24 Now, I realize the events occurred close in time or  
25 along with each other, but the state charged him and

1 brought both charges to trial. And in my reading of cases  
2 such as the United States Supreme Court case of Ashe vs.  
3 Swenson, that collateral estoppel occurs when all of the  
4 issues are -- I won't say similar but that there's a  
5 complete hearing on the same issues.

6 And one jury found him not guilty. Then I don't think  
7 the state has a right to go into those very same incidents.  
8 I realize he's on trial for murder, but I don't think they  
9 can try to support their case on the murder charge against  
10 my client with an event for which he was found not guilty.  
11 And that's why I objected.

12 THE COURT: All right. Mr. Bulsa, do you want to be  
13 heard?

14 MR. BULSA: Your Honor, we feel it's just part of the  
15 res judicata of the case.

16 THE COURT: Res gestae.

17 MR. BULSA: Excuse me. Res gestae of the case.

18 Your Honor, just because the jury found there was  
19 insufficient evidence to convict doesn't mean it didn't  
20 happen.

21 And I actually did not go further into that line of  
22 questioning. I didn't feel I needed to. I felt the answer  
23 was sufficient. So we weren't trying to exploit that.

24 THE COURT: All right. Well, Mr. Allen, I understand  
25 your objection. And it is clear to me that the solicitor

1 did not, was not trying to assert there was an armed  
2 robbery being committed. He wasn't trying to prejudice the  
3 defendant in rehashing those facts that would support the  
4 commission of the crime of armed robbery.

5       However, the circumstances of the event that relate to  
6 the circumstances of the charge for which he now stands  
7 trial, which is murder, are certainly relevant on a number  
8 of elements, and specifically on any intent or the  
9 existence of malice.

10       So clearly the circumstances that immediately precede  
11 and lead up to the event in question, which in this case is  
12 the murder, is certainly relevant on the issues that the  
13 jury has to decide, because if I accepted your argument --  
14 basically, we don't know why the jury found him not guilty  
15 of armed robbery. It might be because they weren't  
16 convinced beyond a reasonable doubt that he had a gun.  
17 Well, in that case they wouldn't even be able to talk about  
18 a gun in this murder case, and so logic would tell me  
19 that's not, not applicable.

20       So I think the circumstances surrounding the event are  
21 certainly admissible and relevant. And the state's not  
22 going to -- did not contend and is not going to argue that  
23 it was during the course of the commission of armed  
24 robbery.

25       And as far as the testimony goes, Mr. Anderson based

1 upon the questioning simply said he took his money. And,  
2 quite frankly, I've been sitting here during the whole  
3 trial and listening to the testimony. And when he said he  
4 took his money, I don't know who he was referring to. I  
5 don't know who he is or who his is, or his was. And I  
6 don't know. It could have been that -- I don't know which  
7 one took money from who, is the point.

8 So in this case I don't think -- I don't think it even  
9 prejudices the defendant by having that testimony elicited,  
10 even though I think it's appropriately elicited.

11 I don't think it prejudices the defendant because I  
12 don't think the jury can know who he was even referring to  
13 since he didn't name either person.

14 So, in any event, your motion, I mean, your objection  
15 as far as it was is overruled, but your ground has now been  
16 stated for preservation.

17 All right. We're going to be in recess for 15  
18 minutes.

19 (Whereupon, a recess was taken.)

20 THE COURT: Are we ready for the jury?

21 MR. BULSA: Yes, sir.

22 THE COURT: Bring them in.

23 (The following takes place in the presence of the  
24 jury.)

25 THE COURT: All right. Mr. Bulsa.

Russell Porter  
Direct examination by Mr. Bulsa

1 MR. BULSA: The state calls Rick Porter, excuse me,  
2 investigator.

3 RUSSELL PORTER, having been  
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BULSA

6 Q Please introduce yourself to the jury.

7 A My name is Russell Porter.

8 Q Who are you employed with?

9 A Spartanburg Public Safety Department.

10 Q What capacity?

11 A I'm an investigator.

12 Q How long have you been an investigator?

13 A About ten years.

14 Q How long have you been a police officer?

15 A Seventeen years.

16 Q All of it with Spartanburg city?

17 A Yes, sir.

18 Q Do you investigate homicides?

19 A I do.

20 Q Is this your case?

21 A It was.

22 Q Did you respond to the scene?

23 A I did.

24 Q What was going on when you got there?

25 A Once I arrived -- I actually responded to South

Russell Porter  
Direct examination by Mr. Bulsa

1 Liberty Street, to the scene of the actual victim. At that  
2 scene he was transported by E. M. S.

3 I received additional information that we had  
4 discovered a crime scene at East Columbia. I then  
5 respond over to that, that location.

6 Q What was taking place over there?

7 A Once I got there the scene had already been secured or  
8 taped off. A couple of officers were there talking to  
9 people. Then I began to try to ascertain witnesses or talk  
10 to people that were either in the house or around the  
11 house.

12 Q Did you have any contact with Ms. Dandy?

13 A I did.

14 Q What was her demeanor like?

15 A She was kind of argumentative, uncooperative. I spoke  
16 with her. Several other investigators spoke with her.

17 Q Did you ascertain any other witnesses that day?

18 A Mr. Dwight Mills. Dwight Mills was there.

19 Q What was his condition?

20 A He was -- you could tell he had been drinking, a  
21 little intoxicated.

22 Q Was he cooperative?

23 A He was not.

24 Q Anybody else at the house?

25 A Those are the only two I talked to at that time.

Russell Porter  
Direct examination by Mr. Bulsa

- 1 Q How long did it take you before you figured out who  
2 all was at the house?
- 3 A Took several days to figure out who, actually who, all  
4 there.
- 5 Q Did you bring those people into the police station and  
6 speak to them?
- 7 A Yes, the ones we located, yes.
- 8 Q Did those people come and testify in court?
- 9 A Some did, yes.
- 10 Q The ones that testified are the ones that you're  
11 certain were at the house?
- 12 A Yes.
- 13 Q Where did you find Mr. Anderson?
- 14 A I found Mr. Keevin Anderson in a juvenile facility in  
15 Atlanta, Georgia.
- 16 Q How did you track him down?
- 17 A I actually received a call from a solicitor from  
18 Atlanta in reference to Mr. Anderson.
- 19 We had put the information out through his mom that we  
20 needed to talk with him. The solicitor there called me and  
21 informed me that he was in custody in Atlanta.
- 22 Q And so you drove down there and spoke to him?
- 23 A I did.
- 24 Q How cooperative was he?
- 25 A At the beginning of the interview he was not very

Russell Porter  
Direct examination by Mr. Bulsa

1 cooperative. He tried to tell me a story that was  
2 inconsistent with the evidence and the scene that I knew to  
3 be true. Once again, I continued to question him. And  
4 then he began to tell me a more plausible story.

5 Q Was his attitude sort of similar to everybody else's  
6 attitude?

7 A Yes.

8 Q Who, who appeared to be the most forthcoming?

9 MR. ALLEN: Objection. That's his opinion as to who  
10 was most forthcoming.

11 THE COURT: Sustained.

12 Q Did you speak with D'Angelo Miller?

13 A I did.

14 Q How cooperative was he?

15 A He seemed to give more information, more detail,  
16 names, more details about what's going on inside the house,  
17 more -- I guess it would be the most cooperative actually.

18 Q Now, was it you that located the pistol in this case?

19 A I did.

20 Q Tell the jury how that came about.

21 A After several hours of the area -- the area was  
22 searched.

23 Q Before you get there let's make sure they understand  
24 how you got there.

25 Did you have conversations with Mr. James Kilgore?

Russell Porter  
Direct examination by Mr. Bulsa

- 1 A I had a conversation with Mr. James Kilgore --  
2 informed me that a Demetrius Reid had the weapon and he had  
3 it over near his grandmother's house and had dumped it,  
4 supposedly walked away from the grandmother's house and  
5 dumped it into the woods near the grandmother's house. So  
6 we went over to that area to search it.
- 7 Q And were you successful?
- 8 A We were not.
- 9 Q Not the first time?
- 10 A Not the first time.
- 11 Q Did someone actually lead you to the gun?
- 12 A They did.
- 13 Q Was that Mr. Reid?
- 14 A Yes.
- 15 Q And we've seen pictures where it was found.
- 16 A Yes.
- 17 Q How far is that location from where James and  
18 J'Corey's grandmother lives?
- 19 A Walking distance straight from the house to that area,  
20 it's probably less than 300 meters. If you drive -- if you  
21 travel the road up to the area it's probably about a block,  
22 would expect it to be about a block away.
- 23 Q Did you -- you actually went into the crime scene and  
24 you saw the location of the evidence.
- 25 A I did.

Russell Porter  
Cross-examination by Mr. Allen

1 Q In your experience did you ascertain where the  
2 altercation occurred?

3 A Yes.

4 Q Where?

5 MR. ALLEN: Objection as to his opinion as to where  
6 the altercation occurred.

7 THE COURT: Sustained.

8 MR. BULSA: Based on his experience, Your Honor, I  
9 think he is qualified to answer.

10 THE COURT: Let me see y'all just a minute.

11 (Bench conference held off the record in the presence  
12 of the jury but out of the hearing of the jury.)

13 Q Was, were the location of the items in evidence  
14 consistent with the stories you'd been given by the  
15 witnesses?

16 MR. ALLEN: Objection as to his opinion as to  
17 consistency of --

18 THE COURT: Overruled.

19 A Yes.

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

21 CROSS-EXAMINATION

22 BY MR. ALLEN

23 Q Your talking with people you talked with in connection  
24 with this case, the ones you identified as potential  
25 witnesses who testified, you had to at times talk to them

Russell Porter  
Cross-examination by Mr. Allen

1 about their looking at some charges.

2 A That's correct.

3 Q Especially -- you say this after they initially say  
4 something that you didn't think was consistent, is that  
5 right?

6 A Yes.

7 Q Now, with respect to James Hull-Kilgore -- and you  
8 were talking to him on the -- I think it was the 28th of  
9 May at the police station. Do you remember?

10 A Yes, sir.

11 Q You had earlier talked to Mr. James Hull-Kilgore.

12 A Yes, sir.

13 Q He didn't know anything about this, right?

14 A That's correct.

15 Q Didn't know who did the shooting or didn't know  
16 anything about that.

17 A That's correct.

18 Q And then on the 28th he had been arrested on an  
19 accessory charge in connection with this case.

20 A That's correct.

21 Q And isn't it true you told him when you were talking  
22 to him that before you tell a judge or a solicitor that he  
23 cooperated and to help out James, that he's a good guy and  
24 not to put him in for the amount of time as much, for the  
25 same amount of time as Corey, he's got to talk.

Russell Porter  
Cross-examination by Mr. Allen

- 1 A That's correct.
- 2 Q Tell you something else, right?
- 3 A That's correct.
- 4 Q But you did say that to him.
- 5 A That's correct.
- 6 Q Now, the search for the gun, you first went to the  
7 area around the Pepsi plant looking for the gun, correct?
- 8 A That's correct.
- 9 Q Looking for something that might be considered a  
10 stepping stone or something to that effect.
- 11 A That's correct.
- 12 Q Of course you looked there and didn't find anything.
- 13 A That's correct.
- 14 Q Was that on the 30th of May or was that on an earlier  
15 day? Would that be on the 30th of May that you -- or do  
16 you -- or do you remember?
- 17 A Not exactly. I don't recall what day we went to the  
18 woods.
- 19 Q But you went to the area around the Pepsi plant before  
20 you went to the area where the gun was eventually found,  
21 right?
- 22 A That's correct.
- 23 Q Right? Now, on the 30th -- and you found the gun on  
24 the 30th of May of 2008, right?
- 25 A Yes.

Russell Porter  
Cross-examination by Mr. Allen

1 Q And by the gun, I'm talking about what's been  
2 identified as State's Exhibit 19, is that correct?

3 A That's correct.

4 Q Okay. Now, you started looking in the area around  
5 Williams Street, you know, where Williams and Harmony, and  
6 I believe it's Wofford, you know, that area.

7 A That's correct. We had the city come out, and we  
8 actually cleared all of that bush away, yes.

9 Q Sanitation department?

10 A Sanitation, all city employees. And we actually cut  
11 back all of that bush, yes.

12 Q Okay. And that -- you started sometime that morning.  
13 I won't get into the exact time. Right?

14 A That's correct.

15 Q You were out there at that point for about six  
16 hours --

17 A That's correct.

18 Q -- looking for this gun, right?

19 A That's correct.

20 Q You weren't the only officer out there, I take it.

21 A No.

22 Q Okay. Of course one of the reasons you want to look  
23 for a gun if you're given information that's on the street,  
24 is to keep it out of the hands of someone else, right?

25 A That's correct.

Russell Porter  
Cross-examination by Mr. Allen

1 Q So that nobody else could get hurt by it, right?

2 A That's correct.

3 Q Now, I guess that's in this case because you're  
4 looking for a few -- thinking the gun used in this case, is  
5 that right?

6 A That's correct.

7 Q Now, when you went out there, when you started looking  
8 in the beginning of that 6-hour period or thereabouts, you  
9 were met out there by Demetrius Reid.

10 A That's correct.

11 Q He was there with y'all for a while?

12 A Yes.

13 Q And then he left?

14 A Basically he tried to, tried to help us search, and we  
15 asked him to leave. We didn't need him to get into the  
16 area.

17 Q And you searched all along this area.

18 A That's correct.

19 Q All the way up to Harmony Street?

20 A Yes.

21 Q All the way to Wofford Street along Williams, is that  
22 right?

23 A That's correct, yes.

24 Q Looking very carefully.

25 A Yes.

Russell Porter  
Cross-examination by Mr. Allen

1 Q You wanted to get this gun off the street, right?

2 A And obviously, you know, collect it as the murder  
3 weapon, yes.

4 Q And collect it as evidence in this case.

5 A Right.

6 Q You didn't find it then, right?

7 A That's correct.

8 Q You didn't find it after this 6-hour period of time.

9 A That's correct.

10 Q You got back to your office about 4:00 or a quarter  
11 after 4:00 or thereabouts on that day.

12 A Yes.

13 Q As soon as you got back to your office you got a  
14 call --

15 A Yes.

16 Q -- from Demetrius Reid.

17 A Yes.

18 Q As a result of that call you went back out to this  
19 area around Williams and Harmony, correct?

20 A Correct.

21 Q You saw Demetrius Reid out there again, right?

22 A Yes.

23 Q He was pointing to some area on the ground, right?

24 A He pointed directly to the gun actually, yes.

25 Q To the gun.

Russell Porter  
Cross-examination by Mr. Allen

1 A Yes.

2 Q This gun, State's 19.

3 A Yes.

4 Q In the area that you had been searching for six hours  
5 is where you found that gun, right?

6 A That's correct.

7 Q Had it been there during that time, the six hours you  
8 were searching it, y'all would have found that gun at that  
9 time, right?

10 A Yes, more than likely, yes.

11 Q The gun looked relatively clean for a gun out in the  
12 open outside, right?

13 A Yes.

14 Q Didn't have any dirt on it, right?

15 A Right.

16 Q Or any other debris.

17 A Right.

18 Q And you didn't see any indentations in the ground or  
19 anything indicating this might have been tossed there,  
20 right?

21 A No. I don't guess.

22 Q I mean, you didn't notice any.

23 A No. It didn't bounce off the road or anything. It  
24 did not.

25 MR. ALLEN: No other questions for Mr. Porter.

1 Q Thank you.

2 MR. BULSA: Nothing further.

3 THE COURT: You may step down.

4 MR. BULSA: Can we approach, Your Honor?

5 THE COURT: Yes.

6 (Bench conference held off the record in the presence  
7 of the jury but out of the hearing of the jury.)

8 MR. BULSA: At this time the state would rest.

9 THE COURT: All right. Ladies and gentlemen, that is  
10 all of the testimony or other evidence to be offered by the  
11 state, at least in their case in chief.

12 I've got a couple of matters I'll need to address with  
13 the lawyers before we can continue. So right now you'll  
14 need to go to your jury room. It should take only a few  
15 minutes.

16 I'll bring you back to continue with the trial. Do  
17 not discuss the case.

18 (The following takes place outside the presence of the  
19 jury.)

20 THE COURT: All right. Any motions or other matters  
21 to address before we continue?

22 MR. ALLEN: Yes, Your Honor.

23 At this time I would ask for a motion for a directed  
24 verdict in connection with this case based primarily on my  
25 objection that was overruled concerning that part of

1 Mr. Anderson's testimony concerning the actions that  
2 constituted the robbery for which -- to which I objected  
3 and that was placed on the record at the beginning of the  
4 last break, as well as on the general ground that the  
5 evidence taken all together is not sufficient to take the  
6 issue or to make out a case for the jury to decide.

7 THE COURT: Mr. Bulsa.

8 MR. BULSA: Your Honor, the evidence is sufficient and  
9 clear.

10 Multiple witnesses have testified of the defendant's  
11 presence, presence with a gun and actually firing the  
12 weapon at the victim. I feel it's surely a fact issue for  
13 the jury.

14 THE COURT: All right. Motion for a directed verdict  
15 is denied.

16 Any other matters to address before we continue?

17 MR. ALLEN: Yes, Your Honor.

18 Before going over to my client's decision to testify  
19 or not testify I would make a motion in limine to settle  
20 his record to determine if there are any convictions on  
21 which the state intends to impeach him in the event he  
22 decides to testify.

23 MR. BULSA: Your Honor, the state intends to impeach  
24 him with juvenile convictions for assault of a high and  
25 aggravated nature and pointing a firearm in December of

1 2007, just six months prior to this incident. He was on  
2 probation at the time of these charges.

3 MR. ALLEN: Your Honor, if it please the Court, I  
4 would object to the state's proposed use of the -- of those  
5 convictions based on 609(a)(1), because I believe -- and  
6 also based on the cases, you know, such as the Green case  
7 and the Colt case where in determining whether or not  
8 convictions like that should be used against the defendant  
9 it would be more prejudicial than probative under  
10 609(a)(1).

11 The reason, that it's very similar kind of conduct to  
12 that conduct for which he is currently on trial, as well as  
13 a claim that he used the weapon and the charge for which he  
14 was convicted of pointing and presenting a firearm as a  
15 juvenile is also very similar.

16 I'm afraid that the jury will not be able to use that  
17 evidence for the limited purpose of impeachment but would  
18 rather view that evidence as a type of conduct or course of  
19 conduct that my client engaged in or would have engaged in  
20 and would use it for an improper purpose, assuming that he  
21 was convicted of a similar offense and be guilty of this  
22 offense.

23 The credibility of the witnesses is key in this  
24 particular case in the event my client decides to testify  
25 to indicate that he is not guilty of this particular

1 charge, having this brought out before the jury would tend  
2 to confuse the issue, especially, and that they may not use  
3 it for that limited purpose even though the Court will  
4 direct them to do so. And I object to the state's proposed  
5 use of those two convictions. Thank you.

6 THE COURT: Mr. Balsa.

7 MR. BULSA: Your Honor, we can restrict our  
8 cross-examination by questioning him on whether he had been  
9 convicted of charges in December of 2007.

10 Also, Your Honor, the fact that he was on probation  
11 and had a 6:00 o'clock curfew pursuant to the order will go  
12 to his bias towards lying about whether he was at his own  
13 home or another location at the time of the incident.

14 THE COURT: These were adjudications in family court?

15 MR. BULSA: Yes, sir.

16 THE COURT: And he was placed on probation?

17 MR. BULSA: Yes, sir.

18 THE COURT: And who was supervising him?

19 MR. BULSA: I don't have the agent's name. I seek to  
20 get that, Your Honor. I have a copy of the order.

21 THE COURT: Mr. Allen, do I understand your objection  
22 is simply the admission of the type of offense for which he  
23 has been adjudicated guilty but not the fact that he has  
24 been adjudicated guilty of crimes themselves that if he  
25 were an adult would -- he could have received more than a

1 year?

2 MR. ALLEN: I especially object to the type of the  
3 offense. However, although I'm aware that our state  
4 Supreme Court has decided in some cases that the state may  
5 bring out the fact that they were convicted of crimes for  
6 which the penalty is more than one year, I don't believe  
7 contrary to what our state Supreme Court has said about  
8 this that's allowed under the rule.

9 I think the rule is there to prevent convictions from  
10 coming out if they do not -- I mean, if they are more  
11 probative, excuse me, more prejudicial than probative. The  
12 purpose of the rule is to keep the conviction out.

13 Secondly, by not stating what type of offense it is,  
14 it's going to lead the jury to speculate as to what it  
15 might have been. Consequently, they may assume it was  
16 similar to this course of conduct, especially since the  
17 prior convictions of others have been specifically  
18 mentioned, others, state's witness. But that's under a  
19 different test.

20 But I just would object to their using it altogether  
21 simply because of the potential speculation. I don't think  
22 we're going to be hiding anything from the jury. They may  
23 very well speculate that was the same course of conduct.

24 These convictions do not in and of themselves involve  
25 deceit or dishonesty or fraud, and therefore they should be

1 kept out for that purpose. They do not really deal with  
2 his credibility other than the fact that had he been an  
3 adult at the time of the charges he would -- may have been  
4 looking at a penalty that carried more than one year. But  
5 other than that they do not in and of itself indicate  
6 anything about his honesty or giving true or false  
7 statements. And consequently I think they are irrelevant,  
8 especially in looking at the factors as previously  
9 delineated in the Cauthen and Green cases.

10 So I would object to either form of the question  
11 coming out. I especially object to the nature of the  
12 offense, but I also object to either just mentioning him  
13 being convicted of crimes for which the penalty, the  
14 potential sentence, was more than one year.

15 THE COURT: All right. Well, clearly in my view  
16 having the jury know the nature of the crimes themselves  
17 for which he has been adjudicated guilty would be more  
18 prejudicial, substantially more prejudicial, than probative  
19 simply because they're similar in nature to those for which  
20 he now stands charged.

21 They clearly are not crimes involving dishonesty,  
22 fraud or deceit, which would be admissible and which is  
23 clearly extremely probative on the issue of credibility of  
24 a witness' testimony.

25 Rule 609(a) (1) provides that evidence of a conviction

1 may be admitted -- and I'm skipping over the part about the  
2 403 balancing test to determine probative value as against  
3 prejudice when it relates -- and when it clearly relates to  
4 a defendant's testimony. But it says it's admissible if  
5 the crime was punishable by death or imprisonment in excess  
6 of one year under the law under which the witness was  
7 convicted.

8 Well, under the law under which Mr. Kilgore was  
9 convicted he could not receive more than a year. I know  
10 the courts have -- I think the courts have previously held  
11 that juvenile adjudications may be used for impeachment  
12 purposes. But under (a) (1), clearly under the law in which  
13 he was convicted he could not have gotten more than a year.

14 What do you say about that, Mr. Bulsa?

15 MR. BULSA: Your Honor, I believe the courts have held  
16 that if he had been an adult the crimes that he was  
17 convicted of, he could have received more than a year.

18 THE COURT: Well, that's what my impression was, but  
19 that's not what the rule says.

20 Well, in this case I'm going to exclude the admission  
21 of the convictions or the adjudications for the purpose of  
22 impeachment primarily because identifying the nature of the  
23 crimes is substantially more prejudicial than probative in  
24 my view, and allowing the fact of an adjudication where it  
25 does not involve dishonesty, fraud or deceit and the nature

1 of the crime is not identified, it really doesn't benefit  
2 the jury in assessing credibility based upon those  
3 adjudications.

4 Now, there comes the issue that Mr. Bulsa has also  
5 raised about a potential motive in the sense that he was  
6 being supervised and he was not in a place that he was  
7 authorized to be at the time that this offense occurred.

8 MR. BULSA: My reading of the order -- if the Court  
9 wants me to have the probation agent come to court to  
10 clarify that, I'll have them up here.

11 THE COURT: Well, tell me how that would arise during  
12 the course of the testimony. For what purpose would that  
13 type of evidence be offered?

14 MR. BULSA: I would be asking him and cross-examining  
15 him as to the reasons he would have to lie to say he was  
16 not at this location beyond his curfew and reasons why he  
17 continues to say that. He has to lie so he wouldn't have  
18 violated that, and now he has to lie to remain consistent.

19 MR. ALLEN: Your Honor, my client has testified in an  
20 earlier trial. And Mr. Bulsa may recall that in his  
21 testimony he stated that at some point -- and I believe it  
22 was after dark -- Mr. Bulsa can explore the times they're  
23 talking about -- he heard sirens and left the house.

24 So if my client were to testify, and I have no reason  
25 to believe he's not going to testify consistently with what

1 he previously testified to, he's going to basically admit  
2 to violating the order that Mr. Bulsa says. And that's  
3 certainly not going to necessarily be an incentive for him  
4 to lie about not being up at the -- Ms. Dandy's house at  
5 the time they claim the crime occurred. For that matter,  
6 I'm not sure that the testimony was all that clear as to  
7 when they say the shooting occurred.

8 But be that as it may, I'm not sure -- once the Court  
9 hears my client's testimony about what he did afterwards, I  
10 mean, he's going to essentially admit to being out.

11 Now, I am not proposing that to say that he should  
12 admit that he's violated probation. I guess what I'm  
13 saying is if he's going to say that he went out when it was  
14 dark, obviously he's talking about doing something that  
15 under the terms of the court order as Mr. Bulsa reads it  
16 it's a violation. So I don't know if that's really  
17 incentive enough, and certainly it's going to further  
18 confuse the issues by, again, putting it out there that my  
19 client's been in some kind of trouble before for which he  
20 was being supervised and on probation.

21 I just think that's going to unnecessarily attract the  
22 jury into trying to speculate as at what my client had  
23 previously done or even speculate that he might be a bad  
24 person on probation.

25 And I just think that would be a very dangerous type

1 of evidence to put in front of them and possibly detracting  
2 them from getting to the real issue, and the real issue  
3 being as to whether or not my client is guilty or not  
4 guilty of this charge, whether or not he was or was not  
5 there.

6 THE COURT: Well, let me just see.

7 You're saying he's admitted to having -- he admitted  
8 to being at the residence, but the time that he admits  
9 having been there was not a violation of the curfew?

10 MR. ALLEN: In his prior testimony he was there  
11 earlier in the day and he'd left and went home. Then he  
12 heard sirens later that night. I believe it was dark. And  
13 he left the house again. And then he went up to see -- was  
14 heading up the street towards Lucky's house -- Marquis. I  
15 believe his last name is Dandy, the son of Sandra Dandy.  
16 So but it was dark. And so of course being in May of 2008  
17 the jury can surmise. I mean, everybody's going to realize  
18 it was after 6:00 o'clock, the time for which Mr. Bulsa was  
19 talking about, so.

20 THE COURT: It was after 6:00 o'clock that he was at  
21 the residence, or not?

22 MR. ALLEN: No, sir. After 6:00 o'clock that he was  
23 at the -- that he left his house to go back up there, but  
24 it was also after --

25 THE COURT: Back up there being East Columbia Avenue?

1 MR. BULSA: Yes, sir.

2 MR. ALLEN: I think it was up to Caulder Avenue closer  
3 to South Church Street. I don't think his testimony is  
4 going to be that he went back up to East Columbia, but he  
5 went up, back up, in that area.

6 MR. BULSA: Your Honor --

7 MR. ALLEN: But I was not there at the time of the  
8 shooting.

9 THE COURT: I understand that's his position.

10 MR. BULSA: He basically testified that he left  
11 Ms. Dandy's house around 7:30 or 8:00.

12 THE COURT: Say that again.

13 MR. BULSA: He testified that he left Ms. Dandy's  
14 house about 7:30 or 8:00.

15 THE COURT: At night?

16 MR. BULSA: Yes, sir. Mr. Allen had asked him what  
17 time did he leave. He said 7:30 to 8:00.

18 THE COURT: And the curfew is 6:00?

19 MR. BULSA: By the order it was 6:00 o'clock.

20 THE COURT: So, so then he has admitted in his  
21 testimony that he has violated the curfew.

22 MR. BULSA: Yeah. But I wasn't allowed to go into it  
23 the last trial.

24 THE COURT: Why won't you? I mean, that's not a  
25 reason for him --

1 MR. BULSA: That's it.

2 THE COURT: -- denying. That's not the reason for  
3 creating an alibi. He's already admitted he violated the  
4 curfew.

5 MR. BULSA: I think that goes towards his credibility.

6 THE COURT: You mean violation of the credibility goes  
7 towards his credibility?

8 MR. BULSA: Yes, sir, yes, sir.

9 THE COURT: Okay. Well, I'm not going to buy that  
10 one.

11 You can ask him -- I think it's appropriate to ask him  
12 if he was not even supposed to be at the residence when he  
13 was there anyway. You can ask him that in a sense.

14 We're not going to go into the fact it's a court order  
15 unless -- if he denied it.

16 MR. BULSA: Yes, sir.

17 THE COURT: But you can, you can inquire if he  
18 understood he wasn't even supposed to be at that residence  
19 at the time he stated he was there. I think that's fair  
20 enough.

21 MR. BULSA: Yes, sir.

22 THE COURT: All right. But the adjudications  
23 themselves unless you can -- unless you can show me a case  
24 that would permit it I think that's -- should be excluded.  
25 And I'm satisfied the, the description of the convictions

1 themselves, the type of convictions, is clearly more  
2 prejudicial than probative.

3       And I think the fact that it's an adjudication is -- I  
4 don't know how that -- I mean, I could understand the  
5 argument that, you know, the fact that somebody has a  
6 criminal record might go towards their credibility.

7       In this case it clearly -- they're not crimes of  
8 dishonesty, fraud or deceit, which would be admissible.  
9 And they're of the nature of such that I really -- I'm not  
10 satisfied they would bear on credibility anyway, although  
11 you can certainly argue to the contrary.

12       So they're excluded unless you show me something  
13 otherwise prior to the testimony.

14       MR. BULSA: Yes, sir.

15       THE COURT: All right. Anything else?

16       MR. ALLEN: Yes, Your Honor.

17       In the event -- I'm just looking at the order again  
18 placing him on probation. And I'm not quite sure. The  
19 state may have a misunderstanding. The curfew was in  
20 effect until he completed the community service that he was  
21 ordered to do. And my understanding is he completed that.  
22 Consequently, the curfew may not have been in effect, so.

23       THE COURT: Okay. I don't know. So y'all have to  
24 tell me.

25       If he was not under a curfew, then it's nothing to

1 inquire about. If he was under a curfew, then I've already  
2 stated what my view is on that.

3 But y'all have to make that determination before the  
4 questions are asked.

5 MR. ALLEN: Yes, sir.

6 THE COURT: All right. Anything else?

7 MR. ALLEN: No, Your Honor, unless the Court wants to  
8 address my client.

9 THE COURT: All right. Have you talked to him about  
10 his right to testify and not testify?

11 MR. ALLEN: I have, Your Honor.

12 THE COURT: And does he appear to you to understand  
13 it?

14 MR. ALLEN: Yes, Your Honor, he does.

15 THE COURT: Does he indicate to you a preference?

16 MR. ALLEN: He does.

17 THE COURT: What is his preference?

18 MR. ALLEN: His preference is to testify, my  
19 understanding is.

20 THE COURT: All right. Mr. Kilgore, your lawyer has  
21 told me that you and he have discussed your right to  
22 testify, as well as not testify.

23 Do you understand that when you're charged with a  
24 crime as you are you have an absolute right to remain  
25 silent?

1           You never have to testify; you never have to make a  
2 statement; you never have to answer any questions that  
3 relate to the case.

4           You always have an absolute right to remain silent and  
5 to require the state to come into court with sufficient  
6 evidence to establish your guilt beyond a reasonable doubt.  
7 And you don't have to assist them in their efforts by  
8 making statements or answering questions that might tend to  
9 prove your own guilt.

10           Now, at the same time, if you wish to testify or  
11 provide this jury any additional evidence or testimony, now  
12 is the only opportunity that you will have to do so.

13           Have you and Mr. Allen discussed your right to testify  
14 as well as not testify?

15           THE DEFENDANT: Yes, sir.

16           THE COURT: And have you and he discussed the  
17 advantages and disadvantages of your testifying as well as  
18 not testifying?

19           THE DEFENDANT: Yes, sir.

20           THE COURT: And do you understand what those  
21 advantages and disadvantages are?

22           THE DEFENDANT: Yes, sir.

23           THE COURT: Do you understand that if you take the  
24 stand and testify you'll have to answer not just your  
25 lawyer's questions but you'll also have to answer the

1 prosecutor's questions? And you'll have to answer those  
2 questions so far as they are relevant even if the responses  
3 may tend to prove you guilty of this crime.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: If you choose not to testify I will  
6 instruct the jury that they may not hold that against you  
7 or consider it in any way in your deliberations or in their  
8 determination as to whether or not your guilt has been  
9 proven beyond a reasonable doubt.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And have you had time to reflect upon your  
12 decision as to whether or not you will testify?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And have you made a decision?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And what is that decision?

17 THE DEFENDANT: I'm going to testify, sir.

18 THE COURT: And is that a decision that you reached of  
19 your own free will and accord?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Has anybody pressured you into it?

22 THE DEFENDANT: No, sir.

23 THE COURT: Anybody suggested that's the decision you  
24 ought to make?

25 THE DEFENDANT: No, sir.

1 THE COURT: You made that decision on your own?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And you're satisfied with it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Mr. Allen, do you have other  
6 witnesses you're going to call in addition to Mr. Kilgore?

7 MR. ALLEN: I have. I do, Your Honor.

8 THE COURT: Do you have, whether it be Mr. Kilgore or  
9 some other witnesses -- can you organize it such as it'll  
10 take us to about 1:00 o'clock?

11 MR. ALLEN: I believe so, Your Honor. I think I  
12 can -- the first witness I was going to call is probably  
13 going to be quite short. I don't think...

14 THE COURT: Let me put it this way.

15 MR. ALLEN: I think what I've got, Your Honor --  
16 excuse me.

17 THE COURT: Let me just put it this way.

18 Just get us as close to 1:00 o'clock as you can. I  
19 don't want to go past 1:00 o'clock. But if you have to  
20 stop beforehand, we will. I'm just telling you that so you  
21 won't put somebody up that's going to take longer than the  
22 next 40 minutes.

23 MR. ALLEN: Yes, sir.

24 THE COURT: But you have one or more witnesses that  
25 will not take longer than 40 minutes.

Javaris Hull-Smith  
Direct examination by Mr. Allen

1 MR. ALLEN: That's correct.

2 THE COURT: Okay. All right. Any other matters to  
3 address before the jury is brought back?

4 MR. ALLEN: No, Your Honor.

5 MR. BULSA: No, sir.

6 THE COURT: Okay. Bring them in.

7 (The following takes place in the presence of the  
8 jury.)

9 THE COURT: Ladies and gentlemen, as you know, the  
10 state has rested in their presentation. So we'll now  
11 proceed with any to be offered by the defense.

12 Mr. Allen.

13 MR. ALLEN: If it please the Court. Call Javaris  
14 Hull-Smith.

15 JAVARIS HULL-SMITH, having  
16 been first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. ALLEN

18 Q You are Javaris Hull-Smith.

19 A Yes, sir.

20 Q Okay. If you would, please, speak up loud enough so I  
21 can hear way over here. All right. Can you do that for  
22 me?

23 A Yes, sir.

24 Q You don't necessarily need to lean forward into the  
25 microphone. Speak up loud enough for me to hear, and I

Javaris Hull-Smith  
Direct examination by Mr. Allen

- 1 believe that will help everybody in this courtroom hear you  
2 as well. Okay?
- 3 A Yes, sir.
- 4 Q Thank you.
- 5 Now, how old are you now?
- 6 A Seventeen.
- 7 Q You are of course related to Corey Hull-Kilgore.
- 8 A Yes, sir.
- 9 Q You are his -- what is your relationship to him?
- 10 A I'm his little brother.
- 11 Q Okay. Half brother, full brother? Do you know?
- 12 A A full.
- 13 Q A full brother?
- 14 A Yeah, yes, sir.
- 15 Q Y'all have got the same mother.
- 16 A Not like the same daddy, but I still look at him as a  
17 full brother.
- 18 Q Okay. So you've got the same mother then.
- 19 A Yes, sir.
- 20 Q Okay. At the time back in May of 2008 where did you  
21 live?
- 22 A Caulder Circle.
- 23 Q Do you remember what the address was?
- 24 A I think .
- 25 Q Where is Caulder Circle in relation to other areas

Javaris Hull-Smith  
Direct examination by Mr. Allen

1 that have been talked about in this case?

2 A Down the street on -- it's down the street from South  
3 Church Street --

4 Q Okay.

5 A -- and going down Caulder Avenue.

6 Q Going down Caulder Avenue from South Church Street?

7 A Yes, sir.

8 Q Is it past where the housing authority is?

9 A Yes, sir. It's the first right after you pass the  
10 housing authority.

11 Q Okay. Are there two entrances to Caulder Circle that  
12 come off of Caulder Avenue?

13 A Yes, sir. It's the second entrance.

14 Q Your house is closer to which one?

15 A The second entrance.

16 Q The second entrance. Who else lived there at that  
17 time?

18 A My oldest brother, James, and my mother and J'Corey.

19 Q Your mother's name is?

20 A Juanita Hull.

21 Q Do you recall the events of the evening of May the  
22 24th of 2008?

23 A No, sir. I just remember my brother coming in the  
24 house. I remember they was chilling, playing a game.

25 Q I'm sorry?

Javaris Hull-Smith  
Direct examination by Mr. Allen

- 1 A I say no, sir.
- 2 Q But you remember your brother came in the house?
- 3 A Yes, sir, was chilling, playing a game.
- 4 Q What game?
- 5 A Play Station Two.
- 6 Q Do you remember approximately what time that was?
- 7 A Between the time of 6:30 and 7:30. Not for sure
- 8 though.
- 9 Q Did you have a watch?
- 10 A No, sir.
- 11 Q Did you look at a clock?
- 12 A There was one on the game, but I was looking to the
- 13 game.
- 14 Q Playing attention to the game and not the clock?
- 15 A Yes, sir.
- 16 Q Who else was in the house at that time?
- 17 A Nobody except me and J'Corey.
- 18 Q Your mother wasn't home at that time?
- 19 A No, sir.
- 20 Q Did Corey leave later?
- 21 A Yes, sir, later on that night.
- 22 Q What time, do you know?
- 23 A No, not for sure, sir.
- 24 Q What was the lighting conditions like?
- 25 A It was dark.

Javaris Hull-Smith  
Cross-examination by Mr. Bulsa

1 Q Dark. Did you hear anything just before he left?

2 A Sirens, like police sirens and ambulance sirens.

3 Q Backing up just a little bit. When your brother got  
4 to the house, what was the lighting conditions like?

5 A It was still -- it was like just getting dark.

6 Q When your brother left did you see what direction he  
7 went?

8 A No, sir. I shut the door behind 'im.

9 Q What did you do after that?

10 A Went and sat back down and started, kept playing the  
11 game.

12 Q Did you stay there that night?

13 A Yes, sir.

14 MR. ALLEN: Nothing further, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. BULSA

17 Q How do you know which night that was?

18 A Because he had some little -- some females over that  
19 night.

20 Q How do you know it was May 24th of 2008?

21 A Because we had some females over on May 24th of 2008.

22 Q Have you got a diary you kept?

23 A Na, no, sir.

24 Q How do you know what date it was?

25 A Because that was the day that the chicks came over.

Javaris Hull-Smith  
Cross-examination by Mr. Bulsa

- 1 What I speaking of chicks, the females.
- 2 Q You didn't tell the attorney about anybody else
- 3 though. You said it was you and J'Corey.
- 4 A Because I didn't want my mama to know about it.
- 5 Q You're just playing games.
- 6 A No, I ain't playing games.
- 7 Q Is this the first time mama's known about the chicks?
- 8 A Oh, na. She know about it when I started talking to
- 9 my brother Cloy (sic).
- 10 Q Then why didn't you tell the lawyer that when he was
- 11 asking you the questions?
- 12 A Because he already knows it.
- 13 Q No. Because you're lying to the jury, isn't that
- 14 true?
- 15 A No, sir.
- 16 Q Now, you were how old?
- 17 A Seventeen.
- 18 Q You're in school?
- 19 A Yeah.
- 20 Q Where?
- 21 A Z. L. Madden Alternative School. I go back to Spartan
- 22 High this year.
- 23 Q What grade are you in?
- 24 A Eleventh.
- 25 Q Was your brother in school?

Javaris Hull-Smith  
Cross-examination by Mr. Bulsa

1 A Yes, sir. He was trying to get his G. E. D.

2 Q So he left public school.

3 A Who -- J'Corey?

4 Q J'Corey, yeah.

5 A No. Like once he got out of jail they wouldn't let  
6 him come back to school. So he started going to try to get  
7 his G. E. D.

8 Q And James was about to graduate.

9 A Yes, sir.

10 Q Right? Okay. Now, you said you heard sirens. That's  
11 a common occurrence, isn't it, out there?

12 A Yes, sir.

13 Q Unfortunately, you hear sirens most nights.

14 A Not most nights. Like I say, out of a week I probably  
15 hear like two or three times a week.

16 Q Two or three. Well, that's more than enough, isn't  
17 it? Okay. So you can't time this by any sirens you heard,  
18 right?

19 A No, sir.

20 Q Thank you.

21 MR. ALLEN: One second, please, Your Honor.

22 (Pause.)

23 MR. ALLEN: No other questions of this witness, Your  
24 Honor.

25 THE COURT: Step down.

1 MR. ALLEN: May we approach real quickly?

2 THE COURT: Yes, sir.

3 (Bench conference held off the record in the presence  
4 of the jury but out of the hearing of the jury.)

5 THE COURT: All right. Ladies and gentlemen, there's  
6 a possibility that the next witness might take longer than  
7 30 minutes, which takes us to 1:00 o'clock or to lunch.

8 So this is a convenient time nevertheless to recess  
9 for lunch, so we'll do that. And I'll simply ask that you  
10 report back to the jury room at 2:00 o'clock this  
11 afternoon, at 2:00 o'clock this afternoon.

12 In the meantime no discussions, no media exposure, no  
13 investigation, no research. Have a good lunch and please  
14 be back by 2:00 o'clock to your jury room.

15 (The following takes place outside the presence of the  
16 jury.)

17 THE COURT: Court is in recess until 2:00 o'clock.

18 Mr. Bulsa, you and Mr. Allen step up here for just a  
19 minute.

20 (Whereupon, a recess was taken.)

21 THE COURT: All right. Now, before we recessed for  
22 lunch and after we were discussing the issue of the  
23 admissibility of any prior juvenile adjudications I had  
24 indicated that I thought the rule provided differently. I  
25 have now read the rule in its entirety.

1           So, Mr. Bulsa, do you have anything you want to  
2 address with the Court?

3           MR. BULSA: Yes, sir, Your Honor.

4           We feel under Rule 609(b) juvenile adjudications are  
5 admissible as crimes convicted -- or adjudicated would have  
6 been admissible under the rule.

7           THE COURT: All right. That appears to be the case.

8           Mr. Allen, the 609(d) does provide that evidence of a  
9 juvenile adjudication is admissible under this rule if the  
10 conviction would be admissible to attack the credibility of  
11 an adult. And in this case of course it would be  
12 admissible to attack the credibility of an adult.

13           Now, so far as -- so far as the, the nature of the  
14 crime itself, I've not changed my mind about that. I  
15 clearly believe that the nature of the offense, or at least  
16 that disclosure to the jury, would be substantially more  
17 prejudicial than probative. And so I'm not, I would not  
18 permit the state to admit -- inquire of the defendant as to  
19 the nature of the conviction.

20           But it appears that the admission of the fact of an  
21 adjudication of guilt for a crime that could possibly carry  
22 more than one year if it had been committed by an adult is  
23 admissible or should be admitted for the purpose of  
24 attacking the credibility or impeachment of the defendant's  
25 testimony.

1           So, Mr. Allen, do you want to be heard on that?

2           MR. ALLEN: Yes, Your Honor.

3           I still think that under the Rule 609(a)(1) that we,  
4 we still use a different test in looking at convictions of  
5 accused, and that being as whether or not the admission of  
6 the -- of that conviction is likely as opposed to, I think,  
7 substantially likely. But it's a different test with the,  
8 with the accused on basically a lower threshold.

9           Now, if it's likely to -- the evidence -- if the  
10 accused had been convicted of such a crime, shall be  
11 admitted if the Court determines that the probative value  
12 of admitting the evidence outweighs the prejudicial effect  
13 of the accused. This is different from the 403 analysis  
14 which I believe is used that outweighs, substantially  
15 outweighs.

16           My position is -- and I realize that there are South  
17 Carolina Supreme Court decisions contrary to this -- but  
18 the, the practice of just allowing the state to ask the  
19 defendant if he'd been convicted of a, or adjudicates the  
20 likelihood of an offense carries possible penalty of more  
21 than one year, it still leaves it open to the jury not only  
22 to speculate as to what that is. But as the Court  
23 indicated earlier, it still doesn't give the jury any kind  
24 of framework from which to make a decision as to whether or  
25 not that conviction may in their mind bear upon his

1 credibility.

2       Now, I think in a situation like this where  
3 credibility is key in this case, I still think the Court  
4 should rule otherwise and not allow the state to impeach  
5 him on the fact that he was adjudicated delinquent for an  
6 offense which could have carried more than a year sentence.

7       I still think the danger of admitting that evidence  
8 outweighs the prejudice, outweighs the probative value, for  
9 that limited purpose. And I don't think the jury would be  
10 able to keep to that very limited purpose, that being to  
11 determine his -- as it may or may not bear upon his  
12 credibility. And I would object.

13       THE COURT: All right. Well, I understand the  
14 argument. And if that were persuasive, then likely you'd  
15 just have to keep out a defendant's convictions in every  
16 case where a defendant testifies. And that's not what the  
17 rule provides for.

18       I do not find that the prejudicial effect to the  
19 defendant outweighs the probative value in this case as --  
20 because it's going to be limited for one thing, to the fact  
21 that he has a conviction but not to the nature of it.

22       And the other consideration that I have taken into  
23 account is the fact that there are a number of witnesses,  
24 fact witnesses, that have been called to testify on behalf  
25 of the state who have criminal records. Some of those

1 convictions do not involve dishonesty, but they were  
2 criminal convictions that carried more than one year. And  
3 those were admitted. And the purpose of course is for the  
4 jury to assess the credibility of the witness' testimony.  
5 And they have to do that in light of not just that  
6 particular witness' testimony but in light of each witness'  
7 testimony in the whole case.

8         And in this particular case I don't think it's fair,  
9 understanding that the defendant does have criminal  
10 convictions, for him to testify and the jury be under the  
11 impression that while many of the state's fact witnesses in  
12 this case do have criminal convictions that the defendant  
13 who is testifying does not have any criminal convictions,  
14 otherwise they would have been brought out.

15         So in that sense it would be a misunderstanding and  
16 they would be -- they would not have the information  
17 necessary in order to fairly evaluate and assess each  
18 witness' credibility, which would include the defendant.  
19 He has convictions just like some of the others have  
20 convictions.

21         Now, I recognize his convictions are -- I believe his  
22 convictions are basically just as serious as other  
23 witnesses' convictions. And I do recognize that the nature  
24 of those convictions would be highly prejudicial and be  
25 more prejudicial than probative in that regard.

1           But that, that prejudice can be eliminated and the  
2 probative value be allowed by limiting the reference to the  
3 convictions to just being an adjudication of a crime that  
4 could potentially carry more than a year if he had been an  
5 adult, and not allowing the fact of the nature of the  
6 conviction itself to be admitted.

7           So, so I'll allow the defendant to be examined as to  
8 the fact of a prior conviction for a crime that could carry  
9 more than one year had he been an adult at the time the  
10 offense was committed.

11           And that'll be the extent of the inquiry. Okay. And  
12 note your exception.

13           MR. ALLEN: Yes, sir.

14           MR. BULSA: Your Honor, just as to the process of how  
15 to ask the question, I was just going to ask if he was  
16 convicted of crimes in December of 2007, not going to the  
17 verbiage of the statute or of the rule.

18           THE COURT: Well, I'm just saying that they are crimes  
19 that would have carried more than one year.

20           MR. BULSA: Okay.

21           THE COURT: You can ask him if he has not been  
22 convicted of a crime or two crimes.

23           Were they determined at the same time?

24           MR. BULSA: Yes, sir. There was the hearing. I  
25 believe the case was related -- the charges were related.

1 THE COURT: And that was when?

2 MR. BULSA: December 4th of 2007.

3 THE COURT: Okay. All right. Anything further?

4 MR. ALLEN: One second.

5 (Pause.)

6 MR. ALLEN: Nothing further, Your Honor. We're ready  
7 to proceed.

8 THE COURT: All right. Mr. Allen, you have discussed  
9 the ruling with your client.

10 MR. ALLEN: I have, Your Honor.

11 THE COURT: And understands that he will be asked  
12 about the prior convictions?

13 MR. ALLEN: He understands that.

14 THE COURT: And have you discussed with him the  
15 advantages and disadvantage of that admission of that type  
16 of evidence?

17 MR. ALLEN: Hold on one second.

18 (Pause.)

19 MR. ALLEN: Your Honor, we have discussed it in the  
20 past and I've just reminded him again. So he understands  
21 the advantages and disadvantages of that testimony -- of  
22 that evidence coming out.

23 THE COURT: And has he indicated a change in his  
24 decision as to whether or not he'll testify?

25 MR. ALLEN: He's indicated he has not changed his mind

J'Corey Hull-Kilgore  
Direct examination by Mr. Allen

1 and still desires to testify.

2 THE COURT: All right. Is that true, Mr. Kilgore?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You still wish to testify, notwithstanding  
5 that I have indicated a ruling which would permit the state  
6 to examine you for impeachment purposes of your having  
7 prior convictions?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. All right. Bring the jury in,  
10 please.

11 (The following takes place in the presence of the  
12 jury.)

13 THE COURT: Good afternoon, ladies and gentlemen.  
14 We're going to continue with the defendant's  
15 presentation.

16 Mr. Allen.

17 MR. ALLEN: The defense, Your Honor, would call  
18 J'Corey Hull-Kilgore.

19 J'COREY HULL-KILGORE, having  
20 been first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. ALLEN

22 Q You are J'Corey Hull-Kilgore, is that correct?

23 A Yes, sir.

24 Q And what do folks that know you call you?

25 A Corey.

J'Corey Hull-Kilgore  
Direct examination by Mr. Allen

- 1 Q Okay. How old are you?
- 2 A Nineteen.
- 3 Q Where did you live in May of 2008?
- 4 A Caulder Circle.
- 5 Q Who lived with you at that time?
- 6 A My mother, my little brother, Javaris Hull-Smith, and  
7 older brother, James Hull-Kilgore.
- 8 Q And you've heard the testimony previously of your  
9 brothers describing how they're related to you, is that --
- 10 A Yes, sir.
- 11 Q -- correct?
- 12 A Yes, sir.
- 13 Q Okay. Now, do you remember the events of the 24th of  
14 May of 2008?
- 15 A Yes, sir.
- 16 Q Okay. Did you go to the home of Ms. Dandy?
- 17 A Yes, sir.
- 18 Q When did you go there, about?
- 19 A Like about 2:30 or 3:00 o'clock.
- 20 Q In the --
- 21 A Afternoon.
- 22 Q What did you do there?
- 23 A Just chilled. And like after a little while I went  
24 home, about 7:30 or 8:00 o'clock.
- 25 Q What was the lighting conditions like when you went

J'Corey Hull-Kilgore  
Direct examination by Mr. Allen

1 home?

2 A The sun was like just going down.

3 Q Pardon?

4 A The sun was like just going down, sir.

5 Q Okay. And how did you get about from your home to  
6 Ms. Dandy's house, and from her house back to yours?

7 A I walked down Caulder Avenue.

8 Q Now, you heard your younger brother's explanation of  
9 where your house was in connection with Ms. Dandy's house.

10 A Yes, sir.

11 Q Is that -- how accurate is that?

12 A It's pretty -- it's accurate.

13 Q Now, and how did you get back home?

14 A I walked.

15 Q When you got back home who was there?

16 A My little brother.

17 Q What was he doing if you know when you got -- when you  
18 arrived?

19 A He was in my mama's room playing a game.

20 Q What kind of game?

21 A Play Station Two.

22 Q Okay. Do you remember what game specifically?

23 A M. B. A. Live and Madden. I don't remember what year  
24 though.

25 Q M. B. A. Live?

J'Corey Hull-Kilgore  
Direct examination by Mr. Allen

- 1 A Yes, sir.
- 2 Q Basketball game?
- 3 A Yes, sir.
- 4 Q And Madden?
- 5 A Yes, sir.
- 6 Q Which is a --
- 7 A Football game.
- 8 Q What did you do when you got home?
- 9 A First I fixed me something to eat, and then I went and  
10 started playing the game with him.
- 11 Q And how, how long do you think you played games with  
12 him?
- 13 A Probably about an hour, give or take.
- 14 Q Was anybody else there?
- 15 A No, sir. But at one point in time we had went to the  
16 door and we seen some girls walking down the street or  
17 whatever.
- 18 Q You had gone into the what?
- 19 A We went to the door, and we seen some girls walking  
20 down the street or whatever and they, you know, what I'm  
21 saying, they came in. But they didn't stay that long for  
22 us to really get to know them like that.
- 23 Q How, how long do you think they stayed?
- 24 A About 30 minutes to 45 minutes.
- 25 Q Do you remember their names?

J'Corey Hull-Kilgore  
Direct examination by Mr. Allen

1 A No, sir.

2 Q Do you remember where they lived?

3 A No, sir.

4 Q Had you seen them before?

5 A No, sir.

6 Q Did they look like -- well, how did they appear about  
7 as far as age goes?

8 A They was about around about our age at that time, like  
9 16 or 17, somewhere in there.

10 Q Now, did you later leave your house?

11 A Yes, sir.

12 Q That day, I mean.

13 A Yes, sir, after that, yes, sir.

14 Q And do you know about what time it was?

15 A About nine -- 9:00 or 10:00, somewhere in there. It  
16 was dark outside. I know that.

17 Q Where, or why did you leave?

18 A Because I heard sirens.

19 Q Did they sound on -- how did that sound as far as  
20 distant -- far or near?

21 A It, it sounded like where we used to be hanging, and I  
22 know that's where we used to hang at or whatever.

23 Q What do you mean, about like where you used to be  
24 hanging out?

25 A Like we used to always be like right across the street

J'Corey Hull-Kilgore  
Direct examination by Mr. Allen

1 from Carver or whatever. And that's where it sounded like  
2 it was at.

3 Q Okay. And where is -- is Carver near the area --

4 A Yes, sir.

5 Q -- where Ms. Dandy lived?

6 A Yes, sir.

7 Q Whereabouts is Carver? I don't think we've talked  
8 about Carver yet in this case. Where is Carver in  
9 connection with where Ms. Dandy lived and the housing  
10 authority?

11 A It's like -- East Columbia is the street right behind  
12 Caulder Avenue. Carver is on the -- like if you coming  
13 down South Church Street it's on the left side of Caulder  
14 Avenue.

15 Q So Carver's on the corner of Caulder Avenue and Church  
16 Street, South Church Street?

17 A Yes, sir.

18 Q Same side of the street that Columbia Avenue's on, or  
19 the other side of the street?

20 A Other side of the street.

21 Q So you heard sirens. Why did you leave?

22 A Because, I mean, it just, it just -- how many sirens  
23 it was. It was a whole bunch of them. So I figured  
24 something had happened, and I knew my older brother and all  
25 of them was still out there because I had just left off

J'Corey Hull-Kilgore  
Direct examination by Mr. Allen

- 1 from up there with them.
- 2 Q About how -- you -- so what did you do? Where did you  
3 go?
- 4 A I left. I went up my home, home boy, Mocal's (sic),  
5 Markee Dandy.
- 6 Q Did you go directly there?
- 7 A Yes, sir.
- 8 Q Did you stop anywhere else in between?
- 9 A No, sir.
- 10 Q And where did -- I think you said home boy Moque  
11 (sic).
- 12 A Marquee Dandy.
- 13 Q Mooke'e Dandy -- Marquee Dandy is his real name?
- 14 A Yes, sir.
- 15 Q But they call him?
- 16 A Mookee.
- 17 Q Okay. And where did he live?
- 18 A Caulder Avenue.
- 19 Q That would be?
- 20 A His grandmother's house.
- 21 Q His grandmother's house. And her name is?
- 22 A We call her Ms. Bunch.
- 23 Q Ms. Bunch. Did you see Marquee there?
- 24 A Yes, sir.
- 25 Q Did you see anybody else there you knew?

J'Corey Hull-Kilgore  
Direct examination by Mr. Allen

1 A Yes, sir. I seen like -- it was some people in the  
2 back yard. The only people I knew that was back there was  
3 my brother and Lakeisha Brewton. I didn't even go back  
4 there. I just started talking to Marquee.

5 Q How long did you stay there?

6 A Probably about 30 minutes.

7 Q And then where?

8 A I went back home because there was too many polices  
9 out there.

10 Q While you were at Ms. Dandy's house was your brother  
11 there -- or your brother, James?

12 A Yes, sir.

13 Q Did you get there before he did or after he did or  
14 with him?

15 A I got there like, I think, before him. Yeah, I think  
16 I got there before him. Yeah, before him.

17 Q What about other people there that you remember being  
18 there. Do you remember anybody else being there?

19 A No, sir. I mean, I remember them being there, but I  
20 think I was like the first person to get there because I  
21 had like walked to Marquee's house before he left to go to,  
22 with his cousin Julius -- or somewhere. He was going  
23 somewhere with his cousin. But he told me he'll be back.  
24 And I be like okay. So I told him I'll be over at your  
25 sister's house with your sister. He -- but I, I come over

J'Corey Hull-Kilgore  
Direct examination by Mr. Allen

1 there when I get, when I get back or whatever so I -- so  
2 when I walked over there she was the only one over there --  
3 her and D'Angelo Miller.

4 Q Okay. And you found his sister, Marquee's sister.  
5 And you're referring to who?

6 A Lakeisha Brewton.

7 Q Did you see Courtney Rogers that day?

8 A No, sir.

9 Q Did you see anyone arrive in a black Jeep-like  
10 vehicle?

11 A No, sir.

12 Q Did you ask your brother James for a gun?

13 A No, sir.

14 Q Did you get a gun from James?

15 A No, sir.

16 Q Did you have a gun on you?

17 A No, sir.

18 Q Did you shoot Courtney Rogers?

19 A No, sir.

20 Q Did you shoot anybody?

21 A No, sir.

22 MR. ALLEN: No other questions, Your Honor.

23

24

25

J'Corey Hull-Kilgore  
Cross-examination by Mr. Bulsa

1 CROSS-EXAMINATION

2 BY MR. BULSA

3 Q You never said anything about any girls being at the  
4 house, did you, until today?

5 A I mean, because I didn't remember them out there, sir.

6 Q You didn't say anything about them until today until  
7 your brother said something.

8 A I mean, because I didn't remember them out there, sir.

9 I mean, there wasn't no use me saying them if I didn't  
10 remember their name, sir.

11 Q And now you're saying it because you've got to back up  
12 your brother's story because he surprised everybody with  
13 those.

14 A No, sir.

15 Q Right?

16 A No, sir.

17 Q Because he didn't tell Mr. Allen on direct examination  
18 that no girls were over there.

19 A No, sir.

20 Q And these girls aren't here to testify on your behalf,  
21 are they?

22 A I'm not lying, sir.

23 Q Somebody unrelated to you --

24 A I'm not lying.

25 Q -- who has no bias to protect you.

J'Corey Hull-Kilgore  
Cross-examination by Mr. Bulsa

- 1 A I'm not lying, sir.
- 2 Q You didn't tell the police about those girls, did  
3 they -- did you?
- 4 A I'm not lying, sir.
- 5 Q Didn't you talk to the police the day this incident  
6 happened?
- 7 A Yes, sir.
- 8 Q Did you tell them about some girls being over -- you  
9 being at your house and some girls being over there?
- 10 A No, sir.
- 11 Q Did you tell the police to go find those girls, they  
12 can prove my innocence?
- 13 A I told to go find my brother. Did they do that?
- 14 Q I wasn't there.
- 15 A They didn't go find my brother either, did they, sir?
- 16 Q They found James, didn't they?
- 17 A I'm not lying, sir.
- 18 Q They found James Kilgore, and he put the gun in your  
19 hand, didn't he?
- 20 A I'm not lying, sir.
- 21 Q He gave you this gun --
- 22 A No, sir.
- 23 Q -- that you used to kill that boy.
- 24 A No, sir.
- 25 Q Did you know -- did you even know Courtney Rogers?

J'Corey Hull-Kilgore  
Cross-examination by Mr. Bulsa

- 1 A No, sir. I knew of him.
- 2 Q And how did you know of him?
- 3 A I mean, because he was from around.
- 4 Q From the neighborhood.
- 5 A Yes, sir.
- 6 Q Did you know -- when you said you were friends with
- 7 Mookie, a/k/a, Marquee Dandy?
- 8 A Yes, sir.
- 9 Q And, in fact, Sandra Dandy is his mother.
- 10 A Yes, sir.
- 11 Q So you know Sandra Dandy.
- 12 A Yes, sir.
- 13 Q Do you consider her a friend?
- 14 A I mean, she older than me. How I'm going to consider
- 15 her a friend? She like a mother.
- 16 Q So she's like a mother to you?
- 17 A I mean, nay, she ain't like a mother to me. But I'm
- 18 just saying she's a mother. How am I going to consider --
- 19 how am I going to be a friend with a mother?
- 20 Q You can't be a friend with an older lady?
- 21 A No.
- 22 Q Well, isn't it true that she allowed you to come over
- 23 to her house?
- 24 A I mean, man, what's that supposed to mean, sir?
- 25 Q Isn't it true that she allowed you to come over to her

J'Corey Hull-Kilgore  
Cross-examination by Mr. Bulsa

1 house?

2 A I mean, yes, sir.

3 Q On any time you wanted to.

4 A I mean, the only time I went over her house is when  
5 her children was there. It ain't like I went over when she  
6 was there by herself.

7 Q She let you come over there while her children were  
8 there --

9 A Yes, sir.

10 Q -- on many occasions.

11 A Yes, sir.

12 Q Let you come into her house any time.

13 A No, sir, not any time.

14 Q Whenever her -- your friend was over there.

15 A I mean, it ain't like I just sat in her house. We  
16 used to sat on the front porch some.

17 Q In fact, you went over there when Marquee wasn't even  
18 over there.

19 A Yes, sir.

20 Q So you were used to going over there, common thing for  
21 you to do, right?

22 A Yes, sir.

23 Q Okay. So would you say you had a friendly  
24 relationship with Ms. Dandy?

25 A Somewhat.

J'Corey Hull-Kilgore  
Cross-examination by Mr. Bulsa

- 1 Q Okay. And Ms. -- and Lakeisha Brewton. Her  
2 nickname's Keekee, right?
- 3 A Yes, sir.
- 4 Q You're friends with her.
- 5 A Yes, sir.
- 6 Q Because she's the sister of your -- was Mookey one of  
7 your best friends?
- 8 A Yes, sir.
- 9 Q Okay. So you're the -- one of the best friends of her  
10 brother.
- 11 A Yes, sir.
- 12 Q Okay. And you're friends with D'Angelo Miller.
- 13 A No, sir.
- 14 Q Not now? You were back then, weren't you?
- 15 A I ain't never knew Dezemon. He's not even from our  
16 side of town. He's from a different side of town.
- 17 Q Well, he was hanging other there with Keekee.
- 18 A I mean, he went with Keekee. That don't mean I knew  
19 him like that though.
- 20 Q Did you have any problems with him?
- 21 A No, sir.
- 22 Q Did it surprise you that he put you at that house?
- 23 A Yes, sir.
- 24 Q Are you friends with Penny Red?
- 25 A I mean, we used, like somewhat, but not all that.

J'Corey Hull-Kilgore  
Cross-examination by Mr. Bulsa

- 1 Q What do you mean, not all that?
- 2 A I mean, I didn't really have friends. I met all them  
3 through Marquee Dandy.
- 4 Q But Marquee wasn't even there, and you were over there  
5 visiting.
- 6 A But that don't still mean I can't hang with them.  
7 Why, why you worried about who I hang with anyway?
- 8 Q Weren't you friends with them?
- 9 A No, sir. I mean, they associate.
- 10 Q Were you friends with Keevin Anderson?
- 11 A No, sir. I didn't even know him.
- 12 Q You didn't even know Keevin?
- 13 A No, sir.
- 14 Q Were you surprised that he knew you?
- 15 A Yes, sir.
- 16 Q And, in fact, he said he saw you shoot J'Corey.
- 17 A Yes, sir.
- 18 Q And it surprise you that Penny Red said he saw you  
19 shoot Courtney?
- 20 A Yes, sir.
- 21 Q Surprise you that James Kilgore, your brother, said he  
22 gave you that gun?
- 23 A Yes, sir.
- 24 Q You, you got any problems with your brother?
- 25 A No, sir.

J'Corey Hull-Kilgore  
Cross-examination by Mr. Bulsa

1 Q Y'all grew up together?

2 A Yes, sir.

3 Q Y'all were friends?

4 A Yes, sir.

5 Q It surprise you that Ms. Dandy said you were there?

6 A Yes, sir.

7 Q In fact, everybody that testified said that you were  
8 there.

9 A Yes, sir.

10 Q Right?

11 A Yes, sir.

12 Q Isn't it true that there is a lot of sirens out in  
13 that neighborhood?

14 A Yes. It is. But that night it was just too many.

15 Q You heard the police testify there was more than one  
16 shooting.

17 A Yeah. I know. But I'm saying there was a lot that  
18 night.

19 Q It's not unusual to hear sirens, is it?

20 A No, it's not.

21 Q And isn't it true, Mr. J'Corey Hull-Kilgore, that you  
22 have been convicted of two crimes in December of 2007?

23 A Yes, sir.

24 MR. ALLEN: Renew my objection, Your Honor.

25 THE COURT: Note your exception.

J'Corey Hull-Kilgore  
Redirect examination by Mr. Allen  
Recross-examination by Mr. Bulsa

1 Q What was your answer?

2 A Yes, sir.

3 Q That's all I have.

4 REDIRECT EXAMINATION

5 BY MR. ALLEN

6 Q You say you talked to the officers about this case?

7 A Yes, sir.

8 Q What did you tell them?

9 A The same thing that I'm saying now, sir, about the  
10 girls.

11 Q Except the girls. You told them that you were where?

12 A At home.

13 Q With who?

14 A My little brother.

15 Q Okay.

16 MR. ALLEN: Nothing further.

17 RECROSS-EXAMINATION

18 BY MR. BULSA

19 Q It's pretty important to tell the police some other  
20 people that could say you weren't around that area, right?

21 A I mean, I didn't know their names though, you see.

22 Q It would have been pretty important to tell them if  
23 somebody else was there, right?

24 A No, sir.

25 Q And you didn't tell them --

J'Corey Hull-Kilgore  
Recross-examination by Mr. Bulsa

1 A No, sir.

2 Q -- because it isn't true, right?

3 A No. It's true, sir.

4 Q Oh, it's only something that we heard today for the  
5 first time.

6 MR. ALLEN: No other questions.

7 THE COURT: You may step down.

8 MR. ALLEN: That's the defense case, Your Honor. We  
9 rest.

10 THE COURT: Any reply?

11 MR. BULSA: No, Your Honor.

12 THE COURT: All right. Ladies and gentlemen, that's  
13 all of the evidence that's going to be admitted during the  
14 trial.

15 What remains to be done are the final summations,  
16 after which I'll instruct you on the law, and then you can  
17 begin deliberations.

18 I've got a couple of matters I'll need to address with  
19 the lawyers first. So I'm going to ask you again please go  
20 to your jury room. Do not yet begin your discussions.  
21 I'll bring you back in just a few minutes to conclude.

22 (The following takes place outside the presence of the  
23 jury.)

24 THE COURT: All right. Renewal of any motions,  
25 Mr. Allen?

1 MR. ALLEN: Yes, Your Honor.

2 I do renew my motions for a directed verdict as based  
3 on the same grounds was stated in my first motion for a  
4 directed verdict, as well as on the additional ground  
5 concerning the Court's ruling on the admission of my  
6 client's conviction -- or impeachment on my client's  
7 conviction. I add that motion or add that objection to my  
8 motion.

9 THE COURT: All right. Motion for a directed verdict  
10 is denied.

11 Any other matters to address prior to instruction  
12 requests?

13 MR. ALLEN: Yes, Your Honor. I'm not sure --

14 THE COURT: I said prior to instruction requests.

15 MR. ALLEN: Oh, prior to. I'm sorry. I did not hear  
16 that. No other matters prior to instruction requests.

17 THE COURT: All right. Mr. Bulsa, have you got any  
18 requests for jury instructions?

19 MR. BULSA: No, sir.

20 THE COURT: Mr. Allen, have you got any?

21 MR. ALLEN: Yes, Your Honor.

22 We ask the Court to instruct on the lesser included  
23 offense of voluntary manslaughter based upon the testimony  
24 of some of the witnesses, specifically Taquil Nabors, that  
25 the other individual was armed and was bent down

1 reaching -- reaching towards or appearing -- I guess he was  
2 reaching towards the pocket where Mr. Nabors had previously  
3 seen a pistol -- as well as the other testimony of some of  
4 the other witnesses that Courtney Rogers had a pistol.

5 Also, request instruction under, I think, State vs.  
6 Belcher that -- specifically ask the Court not to instruct  
7 on the concept of they may infer malice from the use of a  
8 deadly weapon, simply because of this additional testimony  
9 that Mr. Rogers was armed and very well could have been  
10 reaching for that weapon, as well as other testimony that  
11 we heard from a variety of witnesses that there was some  
12 loud talking which may insinuate that there was some form  
13 of an argument as well.

14 THE COURT: All right. Mr. Bulsa.

15 MR. BULSA: Your Honor, as I understand Mr. Nabors's  
16 testimony, I can see where the defense is arguing. But if  
17 the Court follows that argument, then perhaps the hand of  
18 one, hand of all is admissible -- is appropriate as well  
19 since he also said there was a second man pulling up  
20 something to cover up his face.

21 The jury might get confused as to who might have  
22 actually had the gun during the shooting. So if you submit  
23 the voluntary manslaughter I would submit a hand-of-one  
24 charge.

25 THE COURT: Well, I don't intend to submit lesser

1 included offenses. I don't think there's any evidence that  
2 the defendant operated in sudden heat of passion, nor is  
3 there any evidence that it was based upon any sufficient  
4 legal provocation even if he did.

5       There was some testimony from Mr. Nabors that said  
6 that Mr. Rogers bent over. But there was no evidence in  
7 the record at all where you could reasonably even infer  
8 that Mr. Kilgore was aware that Mr. Rogers had a weapon,  
9 even if he did.

10       And there's no indication from anybody that Mr. Rogers  
11 and Mr. Kilgore were in an argument about anything, is  
12 there?

13       MR. ALLEN: As far as the argument goes, I think there  
14 was some testimony about the loud talking. And then of  
15 course there was the testimony of Mr. Keevin Anderson about  
16 what sounded like a robbery going down, words to that  
17 effect.

18       He was allowed to testify to that, so that's about the  
19 extent as I recall of the testimony concerning any robbery  
20 or some sort of --

21       THE COURT: Do you mean you think there's evidence  
22 that Mr. Kilgore was trying to prevent a robbery from  
23 occurring?

24       MR. ALLEN: No. I'm not saying that, Your Honor.  
25 That wasn't the testimony.

1 THE COURT: Well, I know.

2 MR. ALLEN: But it was more like -- obviously,  
3 Mr. Anderson was trying to claim Mr. Hull-Kilgore was  
4 robbing him. And then there was the other testimony  
5 about --

6 THE COURT: Well, if that's true would Mr. Kilgore be  
7 justified in shooting someone?

8 MR. ALLEN: No, sir.

9 THE COURT: No. I don't think there's -- I quite  
10 frankly don't find any evidence in the record from which  
11 you could reasonably find a lesser included offense. So  
12 I'm not going to instruct it.

13 MR. ALLEN: Is the Court going to instruct on they may  
14 infer malice from the use of a deadly weapon?

15 THE COURT: No, sir, although Belcher permits it.

16 MR. ALLEN: Okay.

17 THE COURT: All right. Any other matters we need to  
18 address?

19 MR. BULSA: No, sir.

20 THE COURT: Do you want an instruction on alibi,  
21 Mr. Allen?

22 MR. ALLEN: Yes, sir.

23 THE COURT: All right. Any -- do y'all need some  
24 time, or are you ready to go?

25 MR. BULSA: The state's ready.

## Closing arguments

1 MR. ALLEN: I'm ready.

2 THE COURT: Okay. Bring the jury back.

3 (The following takes place in the presence of the  
4 jury.)

5 THE COURT: All right. Ladies and gentlemen, as you  
6 know, all of the evidence is in. And you're now going to  
7 hear from the lawyers in their final summation, after which  
8 I'll provide you the instruction on the law. And then you  
9 can begin with your deliberations.

10 So please give the lawyers your attention now as they  
11 give you their final summations.

12 Mr. Allen.

13 MR. ALLEN: Thank you, Your Honor.

14 As I said in the opening statement, there is no  
15 scientific evidence, there is no forensic evidence, in  
16 other words, linking Corey Hull-Kilgore to the death of  
17 Courtney Rogers.

18 We've heard a lot of testimony about attempts to  
19 obtain scientific evidence, attempts to obtain  
20 fingerprints, attempts to obtain other forms of D. N. A.  
21 analysis and all of that, even the testimony concerning the  
22 matching of the case, the casing or the cartridge that was  
23 found in the house to State's Exhibit 19, the gun. But  
24 none of this answered the ultimate question as to who  
25 killed Courtney Rogers.

## Closing arguments

1           There is no evidence that the state presented that  
2 Corey did it except for testimony of a variety of witnesses  
3 that they presented, these people who told different  
4 versions of what they say happened, different versions  
5 beginning with I don't know anything, I wasn't there, I was  
6 coming back from eating at Pete's and saw somebody walking  
7 around before they collapsed, as Mr. Nabors's said to  
8 others as they first started talking to the police  
9 officers.

10           Some of these folks -- some of these folks knew and  
11 became aware that they were interested in Corey. One of  
12 those witnesses, specifically Mr. Anderson, Keevin  
13 Anderson, initially referred to him as that guy who shot  
14 Courtney.

15           The officers supplied the name without supplying the  
16 photograph. They supplied the name of Corey, yeah, Corey.  
17 And then it became J'Corey, although he is known as Corey.

18           These folks told different versions of when they named  
19 Corey. The pressure, it seems, stopped. The officers  
20 seemed satisfied. It fit their theory. That's how Corey  
21 has come to be accused in this courtroom and standing trial  
22 for this crime.

23           But going back to the scientific evidence, they have  
24 obviously the gun. We know the gun fired the casing that's  
25 up here you'll have back there because of the distinct

## Closing arguments

1 breach markings made when the gun fired that round.

2 But, ladies and gentlemen, let's think about that gun  
3 and the road that gun traveled to get here in this  
4 courtroom.

5 Whose gun was it? James Hull-Kilgore. He had it for  
6 about three to four months. Carries it around  
7 periodically. I don't know why. Maybe for protection. I  
8 don't know why he carries it around. I don't know why he  
9 carried it around that day. Protection, he guessed. But  
10 it is James' gun.

11 Who took that gun over to Ms. Dandy's house that day?  
12 James Hull-Kilgore. Who hid the gun, first picking it up  
13 from the pathway and putting it underneath a rock with  
14 another gun that came from Mr. Courtney Rogers that James  
15 got from Patrick Davis, and then James gives it to,  
16 apparently, or turns it over to his friend, Demetrius, the  
17 following day, 25th, Sunday, 25th of May?

18 Somehow according to James, although he turns it over  
19 to Demetrius, he says, it ends up being stored by Demetrius  
20 in James' grandmother's house and then at some point is  
21 taken from there about 300 meters away, about a block away,  
22 to be placed somehow alongside the road at Williams and  
23 near Harmony Street. And that's interesting in and of  
24 itself.

25 These officers wanted to get that gun for two reasons,

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1 for two good, legitimate reasons. They're being told it's  
2 the gun that was used. That's No. 1 of the evidence.

3 No. 2, get a gun off the streets so that one else can  
4 find it and use it, possibly hurt themselves with it, but  
5 very good reasons.

6 Now, these officers would go out first to that pathway  
7 and secondly to Williams and Wofford -- Williams and  
8 Harmony, excuse me. They bring in sanitation workers and  
9 bring in other officers and really search that area good to  
10 get that gun, but it wasn't there because Demetrius  
11 apparently hadn't put it there yet.

12 Investigator Porter no sooner gets back to his office  
13 that day that he gets this phone call from someone. And he  
14 goes back out and meets Demetrius and, low and behold, the  
15 gun's there without it being dirty, without it having any  
16 debris on it. You know, they had cleared that place. They  
17 were looking for the place. And certainly these officers,  
18 would have found it had it been out there during that  
19 6-hour search.

20 I mention all of this to simply ask -- are  
21 Mr. Hull-Kilgore, James Hull-Kilgore's actions the actions  
22 of someone who is trying to protect his brother, to help  
23 his brother or to protect himself?

24 Keep in mind that after he, in talking to the officers  
25 and was naming Corey, he never said anything, as he told

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1 you today, about, and as he told the officers even later,  
2 about handing the gun or giving the gun to Corey. And then  
3 keep in mind he never said anything to these officers about  
4 taking that gun and hiding that gun.

5 James is not interested in protecting his brother.  
6 James is interested in protecting himself. He's got a  
7 charge pending that arises out of this case, hasn't been  
8 disposed of. He is trying to get some favor with these  
9 officers, although he seems to deny it and seems to forget  
10 about it, to get a good word in from these officers about  
11 his cooperation so he can be treated more favorably. And  
12 he certainly, I would submit to you, certainly does not  
13 want to be convicted of a crime like this.

14 This, ladies and gentlemen, is powerful, powerful  
15 incentive for James to rollerblade it to someone and away  
16 from himself.

17 And I am sure when I'm finished the solicitor who also  
18 has a right to argue before you will talk about how James  
19 is Corey's brother. And this is his own brother saying  
20 this about him. That's apparently some reason why you  
21 should believe.

22 And when he talks about that I simply ask you to  
23 remember James' relationship with that gun, his gun. He  
24 brought it. He had it. He claims he just turned it over  
25 to Corey simply because he asked for it and to pit

## Closing arguments

1 afterwards and then deny, or rather didn't talk about what  
2 he did with that gun afterwards when he said he was being  
3 honest with the officers.

4 He mentioned the casing on the floor. Scientific  
5 evidence. But all that tells -- that does not tell us  
6 exactly where anyone was when the shot occurred or how the  
7 shot occurred. And it's, again, because, as has been  
8 testified, is difficult to get fingerprints from a casing.  
9 I can understand that. But it's difficult to get  
10 fingerprints from a casing. But the fact that there aren't  
11 any doesn't help you in deciding who did this crime.

12 The stain on the floor is the same thing. The stain  
13 on the threshold of the front door where there are pictures  
14 of it, where they took D. N. A. swabs. And it turned out  
15 to have the D. N. A. of Mr. Rogers, but it doesn't tell us  
16 anything more about who did it.

17 What about the fingernail scrapings? Now, I know  
18 there's not been any testimony that there was any close  
19 contact where they took them. I wonder what they would  
20 have found had there been close contact, because certainly  
21 from all of the versions that were being told by the  
22 state's witnesses about what happened, certainly there  
23 could have been something about that. Maybe that holds the  
24 key, someone else's D. N. A. It's not Mr. Rogers and not  
25 Corey's. How would that change your opinion?

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1           And the reason I mention these things is because while  
2 you consider this case one thing you're allowed to do is  
3 you're allowed to decide this case not only upon the  
4 evidence but to decide it on the lack of evidence.

5           In other words, if you're not satisfied with the  
6 evidence the state's presented in their attempt to prove my  
7 client's guilt, if you're not satisfied of that, then you  
8 are justified to return a verdict of not guilty.

9           There was a lot of talk, and I did a lot of it, while  
10 questioning about the hole in the wall, the hole in the  
11 wall at Ms. Dandy's house.

12           I'm showing you again Defense Exhibit 1. There's not  
13 any real proof of what this is. Interesting thing about  
14 this picture, Defense Exhibit 1, is that it shows some  
15 what's paint plaster, pointing not going in as you would  
16 expect that something went in without coming out.

17           Some of you may have had the experience of drilling  
18 something. And then of course you pull the drill bit back  
19 out, or nailing something and you pulled the nail back out,  
20 or something to that effect, which might leave a smooth  
21 hole but it will also show where something has come back  
22 out.

23           It was around the T. V., it was around the T. V. I  
24 think there's a picture in there showing the area that it  
25 was around. Could this have been some hole that was put

## Closing arguments

1 there in connection with some of these electrical  
2 connections? I don't know.

3 But what, what's clear is that the officers could not  
4 find, did not find any trace of a bullet behind that hole.  
5 And there was a lot of explanations about that. There was  
6 a lot of discussions about how a bullet could have hit  
7 things and could have started breaking up.

8 I understand that and I get that. But here's the  
9 interesting, here's the thing. If that bullet was set on a  
10 path and it goes through a hole, through and through hole,  
11 and does not go through the other side, there has got to be  
12 a mark somewhere in there that shows where something hit  
13 it -- an indentation, a scrape, embedded in, something to  
14 that effect.

15 And they went to a great length trying to find that  
16 bullet, because, again, that would have been evidence in  
17 this case. But yet they couldn't find. They even sawed  
18 another hole down at the bottom to see if the bullet  
19 dropped and pulled the insulation out to see if the bullet  
20 got trapped in the insulation. They looked down. They  
21 shined a flashlight down the hole. And while they say,  
22 well, we don't know, maybe somewhere else in the wall and  
23 we don't want to tear this house up any more than we did,  
24 this is a criminal case they're bringing before you. They  
25 have charged Corey with this crime. And they've got the

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1 burden to prove the guilt of anyone who committed this  
2 crime.

3         And it is a very small price to pay just drilling  
4 another hole to try to find or try to determine if that's  
5 actually a bullet hole. But because there's nothing behind  
6 that hole indicating that anything with that amount of  
7 force passed through there and hit the other side or  
8 bounced off the other side or bounced off a stud, it is not  
9 a bullet hole.

10         I'm not going to go over in detail the various stories  
11 you've heard from the other six or so folks who testified  
12 that they saw or experienced something.

13         We've heard a lot of things from three people in the  
14 dining room to two people in the dining room from other  
15 witnesses to -- I think some witnesses didn't say anything  
16 about the dining room. Only one person said anything about  
17 having heard a clicking sound. Mr. Nabors said that, I  
18 believe, having heard a clicking sound before the shot.

19         Mr. Miller who testified, I believe it was, yesterday  
20 said it occurred -- when he testified that it occurred  
21 inside, but it's clear he told the officers when he was  
22 talking to them after having previously said he didn't know  
23 anything about this case or know anything about this  
24 shooting, then he said that it occurred outside. So  
25 there's just a great deal of inconsistencies with this

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1 case.

2       So, and what's even more interesting is while all --  
3 while many of the others were hinting at it there is  
4 probably only one witness who testified that he actually  
5 saw Corey do the shooting, and that was Keevin Anderson,  
6 the individual previously convicted of crimes that you've  
7 heard about currently in a juvenile facility in Georgia.  
8 And he's the only one I believe who said he actually saw  
9 Corey do this. But, again, as I indicated earlier, he was  
10 fed the name or given the name by the officers after he  
11 described him as the guy that shot Corey. And of course he  
12 went with it. He didn't know Corey that well, didn't know  
13 Corey at all.

14       Ladies and gentlemen, Corey told you, his brother  
15 told -- his brother, Javaris, told you that as the sun was  
16 going down apparently around the time of this incident he  
17 was home playing games with his younger brother. And then  
18 he left again after it was dark because he heard sirens and  
19 went up to where he had heard the sirens.

20       And, yes, they didn't initially apparently talk about  
21 the girls that dropped by. There's a difference, I submit,  
22 in not wanting to talk about the girls that dropped by  
23 versus not wanting to talk about what James did hiding the  
24 gun.

25       The solicitor might ask you to not believe Corey and

## Closing arguments

1 not believe his younger brother because they didn't tell  
2 the truth about the girls. If that's so and if you're  
3 inclined to think that way, then I simply ask to be treated  
4 the same way with the witnesses who accuse Corey.

5 If you don't want to believe Corey or his younger  
6 brother because of something relatively insignificant about  
7 girls dropping by for about 30 minutes, should you believe  
8 their witnesses when they say I don't remember, I do  
9 remember, I didn't hide the gun, I didn't touch the gun,  
10 versus and then you heard that he actually hid the gun?  
11 And all the other things that were just so, so all over the  
12 board about this case.

13 Because if you analyze it that way, ladies and  
14 gentlemen, here's the bottom line. The state has not  
15 proven its case.

16 As I said earlier in my opening statement, we're not  
17 required to prove Corey's innocence. Corey is not required  
18 to prove his innocence. We start from that presumption of  
19 innocence, and it remains with him throughout the trial.

20 The state has got to prove his guilt beyond a  
21 reasonable doubt. This is not a situation, ladies and  
22 gentlemen, of you've got to believe us or you've got to  
23 believe them.

24 This is a situation where do you believe the state's  
25 evidence beyond a reasonable doubt. And I submit to you

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1 there is plenty, plenty of reasonable doubt in this case.

2 We're not required to prove Corey's innocence, because  
3 that would be pretty much impossible in most cases, in this  
4 case.

5 And I simply ask you, ladies and gentlemen, as you  
6 consider the evidence and think about the evidence the  
7 state's presented and the evidence that we've presented,  
8 that you realize there's plenty of doubt, plenty of  
9 reasonable doubt, in this case and find Corey not guilty.

10 Thank you very much.

11 MR. BULSA: Let me be a little formal.

12 Ladies and gentlemen, I thank you for your attention.  
13 It's been a long trial. It's an important trial. As I  
14 look back over this case to summarize to you, I see a  
15 tragic situation, senseless death of a 19-year-old boy.

16 I see a house where young people gather. They all  
17 know each other. Brandon drops by. A senseless shooting  
18 occurs. I see everyone flee the area. I see a friend  
19 follow his friend and almost essentially watch him die. He  
20 renders him aid. He speaks to 9-1-1. Yet what this is  
21 kicked into, he doesn't tell the police what he knows.

22 Everyone flees. No one wants to be involved. Perhaps  
23 Mr. Mills, Dwight Mills, summed it up the best. He says he  
24 was drunk and passed out and he knew nothing. But if  
25 that's true, why do you lie about your name?

## Closing arguments

1           That's the way of the street, ladies and gentlemen.  
2 People don't want to be involved. They know both parties.  
3 They're friends with both parties, and they don't want to  
4 be involved.

5           Ladies and gentlemen, justice requires that they be  
6 involved. Law and order of society requires that they be  
7 involved and that they talk to the police and tell the  
8 police what they know.

9           The police respond. What is their first response?  
10 They take over. They've got to save Courtney's life and  
11 they keep everybody back. They begin looking for  
12 witnesses, looking for the crime scene.

13           They secure the crime scene and they look for evidence  
14 to help show what happened. They spend hours there. They  
15 see blood on the floor. They see a shell a few feet away.  
16 They see a hole in the wall.

17           The lady of the house, Ms. Dandy, doesn't want them  
18 there. They have to get a search warrant for that home.  
19 She demands to see the captain trying to get them out of  
20 her home. Unfortunately, that's the way of the street.

21           Ladies and gentlemen, this case is about justice.  
22 It's about who shot Courtney Rogers.

23           The police did their job. They found the witnesses.  
24 They spoke to the witnesses. We can't hide the fact that  
25 they told different stories. I'm not going to do that.

## Closing arguments

1           We don't pick our witnesses. We don't go to the  
2 church parking lot and say, hey, would you mind coming and  
3 testifying.

4           These people all said that this man wasn't at his  
5 house at the time this shooting happened. He was at Sandra  
6 Dandy's house. Every last one of them. He wasn't at his  
7 mama's house. He was at Mama Sand's house. He wasn't  
8 playing video games. He was playing criminal. He was  
9 playing with guns.

10           That's what this is about. Every last one of the  
11 people testified he was there. I see Ms. Dandy testifying  
12 that she was drinking. Apparently she and Dwight like to  
13 drink and use alcohol. Fortunately, they do it at their  
14 own home. And they get -- they get drunk and they go sleep  
15 it off.

16           She went in the bed. She said she took the two kids  
17 with her. I see Ms. Keisha, Lakeisha, Brewton, the  
18 daughter of Sandra Dandy, leaving.

19           Dwight begins to leave with her. Excuse me. D'Angelo  
20 begins to leave with her. She sends D'Angelo back to get  
21 her daughter. I see D'Angelo back at the house with the  
22 daughter. And then the little boy woke up also and left  
23 Ms. Dandy.

24           Now D'Angelo has the two, the two children. He's  
25 outside. He sees and hears something about a gun and takes

## Closing arguments

1 the children away from the area.

2 He sees J'Corey following Courtney in. You know  
3 J'Corey is the one that asked for the gun. He takes the  
4 children into the other room, closes the door. And a short  
5 time later he hears a shot.

6 I see Penny Red on the porch playing cards. He didn't  
7 see all who went inside the house until he heard a click.  
8 That was one of the most telling parts of the testimony, is  
9 the evidence, the testimony of SLED Firearms Expert Dan  
10 DeFreese. What sound does this gun make when you load it  
11 or when you chamber a round? Click.

12 I see Penny Red look around the corner through the  
13 door and sees Courtney with a gun. He sees, excuse me, he  
14 sees J'Corey with a gun. He sees Courtney bent down.

15 I see Dr. Wren's testimony of the path of the bullet  
16 through the body at that angle consistent with Courtney  
17 bending down.

18 I see a shell casing near the door. I see blood in  
19 the doorjamb. And I see a hole in the wall. I see  
20 everyone fleeing. Courtney flees; Penny Red flees;  
21 everyone else flees, even the shooter. That's when he went  
22 home -- that's when he went home. And then he comes back,  
23 up to Ms. Bunch's house, the lady on Caulder Avenue, just  
24 like he said he saw him there later that evening.

25 I deliberately left out what Keevin Anderson saw. I

## Closing arguments

1 truly believe he saw it, but perhaps in a different  
2 fashion, because as you recall, and you've probably been  
3 surprised when I did this, but I do it because my job is to  
4 find the truth and to seek justice.

5 I'm deliberately reminding you of Penny Red saying he  
6 saw two guys in, the one, the shirt up. That was clearly  
7 J'Corey. He won't say who the other guy is.

8 But he named who else was in there. So the evidence  
9 suggests that it was Keevin. Keevin was clearly in the  
10 room. He clearly saw what happened. He too clearly is a  
11 criminal. But he told you what he saw but perhaps not  
12 everything.

13 And, ladies and gentlemen, if this is truly a  
14 conspiracy as the defendant would have you believe that the  
15 police put together and convinced all of these people to  
16 say that he was there and he had the gun and he did the  
17 shooting, then who better person to put in the -- the  
18 conspired against than Keevin Anderson, the man who fled to  
19 Georgia?

20 Remember, ladies and gentlemen, the demeanor of these  
21 witnesses. Remember the anger that a man had at himself  
22 for not doing something to stop this.

23 These people know both sides. They didn't want to be  
24 here, didn't want to have to have to testify against their  
25 friends. Mr. James Kilgore certainly don't want to have to

## Closing arguments

1 testify against his brother. He tried to protect him as  
2 long as he could.

3 Mr. Allen discusses the physical evidence, or he calls  
4 it lack of physical evidence. What in the world does the  
5 fingernail scrapings have to do with this case? Nobody  
6 talks about any fingernail contact. Nobody talks about the  
7 physical finding.

8 He does go through all of this great detail about this  
9 hole in the wall. Yeah. It would have been nice if we had  
10 a bullet, but it doesn't even have to be a bullet hole.

11 We clearly have a shell casing and blood we're certain  
12 of -- blood from the victim, the shell casing from the gun.  
13 The incident occurred at that doorway. The physical  
14 evidence corroborates the testimony.

15 If you look at each witness -- Ms. Dandy, Ms. Brewton,  
16 Angela Miller, Taquil Nabors, Penny Red, James Kilgore and  
17 even to an extent Keevin Anderson, they're all positioned  
18 in different parts of the house, different parts of the  
19 yard at the time of the shooting. They all start out in  
20 the same location on the outside before the shooting. And  
21 they all say he was there outside.

22 Then they begin to go in the different locations  
23 giving them different vantage points, different  
24 perspectives of what then they could see at the time of the  
25 shooting.

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1           They had Ms. Dandy in her room. She hears something  
2 which caused her to look in the dining room. We have  
3 Ms. Brewton leaving. She hears a shot while she's on the  
4 path. We have D'Angelo back with the kids. We have Penny  
5 Red on the porch playing cards. The cards are finished.  
6 He's still talking with his buddies. He hears the noise.

7           We have James who had passed his brother the gun  
8 standing in the yard near the porch. We have got Keevin  
9 inside the living room. And of course we have Dwight in  
10 the living room passed out to the world.

11           But they each come together and match the physical  
12 evidence as to where this happened. And they all tell you  
13 who was there and who did it.

14           You, ladies and gentlemen, judge the credibility of  
15 the witnesses. I told you at the beginning we were going  
16 to bring people in here in orange. We did. Ain't in  
17 tuxes.

18           Mr. Allen discussed criminal records. You use them to  
19 determine the credibility of the witnesses, whether you  
20 believe them or not. The judge will discuss that further  
21 in detail with you.

22           He'll tell you that you can believe all of what a  
23 witness tells you, none of what a witness tells you, or  
24 parts of what a witness tells you. He's going to tell  
25 you -- well, I'm going to let him define credibility in the

## Closing arguments

1 assets, but I'm going to -- I tell you to remember the  
2 demeanor.

3 You can look at their criminal records. You can look.  
4 They're in orange. Believe them or not. See if their  
5 story fits together.

6 But remember James has a pending charge of course.  
7 James had no criminal record. The defendant has a pending  
8 charge. He's got a criminal record. Use that to assess  
9 credibility, because you're going to do it with the state's  
10 witnesses. You do it with the defense witnesses just as  
11 well.

12 Ladies and gentlemen, we brought in all of the people  
13 that we were certain were at the house. We brought in and  
14 let them tell you what they know, explain why they lied to  
15 the police, explain why they didn't want to be involved.

16 We don't try cases on pieces of paper. That's why  
17 they have to come before you to listen and watch.

18 Penny Red had trouble. He didn't want to have to say  
19 this man did it. D'Angelo was upset. He also had trouble  
20 saying he did it. James testified against his own brother.  
21 He didn't want to have to say it.

22 This is not a conspiracy against J'Corey Hull-Kilgore.  
23 Ladies and gentlemen, I see a case where all of these  
24 people have different perspectives and different vantage  
25 points, different reasons for not wanting to be involved.

## Jury charge

1 I see a case, consistent identification of Mr. Kilgore. I  
2 see a consistent story, put it together, of the witnesses.

3 Most of all, I see a guilty man, guilty of murder.  
4 And I ask that you convict him of murder, the murder of  
5 Courtney Rogers. He is the person who killed Courtney  
6 Rogers. Thank you.

7 THE COURT: Mr. Foreman and ladies and gentlemen of  
8 the jury, you of course have heard and seen all of the  
9 evidence now, as well as the final summations of the  
10 lawyers. And therefore it now becomes my duty and  
11 obligation to instruct you on the law that's applicable in  
12 the case. And then you'll be asked to go back and begin  
13 with your deliberations. And through that process you'll  
14 examine the evidence, decide the facts, apply the law and  
15 arrive at a fair and just decision in this case.

16 It is your exclusive duty to determine what the facts  
17 are. You do that through your own common sense examination  
18 and evaluation of all of the testimony and other evidence  
19 received during the trial of this case.

20 You 12 jurors alone will decide what weight, value and  
21 effect to give to any particular testimony or other  
22 evidence in the case. Again, your sole objective is to  
23 simply reach the truth in the matter. By doing that you  
24 will have fulfilled your obligations as jurors, and that is  
25 to give both the state and the defendant a fair and

## Jury charge

1 impartial trial.

2 Now, in this case, as you know, the defendant has been  
3 accused by the prosecutor by way of this indictment with  
4 having committed the crime of murder.

5 The state alleges that Mr. Kilgore did here in  
6 Spartanburg County on or about May the 24th of 2008  
7 wilfully and with malice aforethought kill one Courtney  
8 Ralpheal Rogers by shooting him with a handgun and that he  
9 died as a proximate result of that gunshot wound.

10 As to those allegations and as to the charge contained  
11 in that indictment the defendant has entered a plea of not  
12 guilty. And as I've told you, that plea of not guilty has  
13 therefore placed upon the state the burden of proving the  
14 allegations that they have set forth in that indictment,  
15 the burden of proving each of the essential elements of the  
16 crime alleged in the indictment; and therefore the burden  
17 is upon the state to establish the defendant's guilt to the  
18 satisfaction of you 12 jurors beyond a reasonable doubt  
19 before any verdict of guilty could be returned.

20 The burden is always upon the state to prove a  
21 defendant's guilt. The burden is never upon a defendant to  
22 prove that he is not guilty or to prove that he is  
23 innocent, because in some cases that might not be possible.

24 It is a vital, important and cardinal rule of law that  
25 every defendant in a criminal trial, no matter how serious

Jury charge

1 the offense might be for which that defendant stands  
2 charged, he shall always be presumed innocent of that  
3 charge.

4 That presumption of innocence remains with any  
5 defendant, as it does with this defendant, from the time  
6 that he is placed under arrest, throughout the course of  
7 the criminal process and even throughout the course of the  
8 actual trial in the case.

9 As I've told you, that presumption of innocence will  
10 be with Mr. Kilgore even as you go back to begin with your  
11 deliberations in this case.

12 That presumption of innocence will be with him in that  
13 jury room, and it'll be with him forever unless you 12  
14 jurors determine that he's longer entitled to that  
15 presumption of innocence.

16 In other words, after you've carefully considered all  
17 the evidence in this case, and from that evidence you  
18 determine what you believe to be the true facts, and upon  
19 deciding those facts you apply the law that I will have  
20 provided you, if you 12 jurors unanimously determine that  
21 his guilt has been proven beyond a reasonable doubt, then  
22 he would no longer be entitled to that presumption of  
23 innocence. But it's only if, unless and until you are  
24 satisfied of his guilt beyond a reasonable doubt that the  
25 presumption of innocence would no longer be applicable.

## Jury charge

1           Now, while the state does have the burden of proving  
2 the defendant's guilt beyond a reasonable doubt, that  
3 doesn't mean that they have to prove his guilt beyond all  
4 doubt or beyond any possible doubt. But it does require  
5 the state to prove his guilt to your satisfaction beyond a  
6 reasonable doubt.

7           The term reasonable doubt should be given its plain  
8 and ordinary meaning. A reasonable doubt is the kind of  
9 doubt that would cause a reasonable person to hesitate to  
10 act upon the information provided.

11           A defendant in a criminal trial is entitled to any  
12 reasonable doubt that arises from the evidence or lack of  
13 evidence in a case. And if upon any factual issue  
14 essential to a finding of a verdict of guilty you have some  
15 reasonable doubt as to how that issue should be resolved it  
16 would be your duty to resolve that reasonable doubt in  
17 favor of the defendant.

18           And therefore if upon your consideration of the whole  
19 case you have a reasonable doubt as his guilt, you must  
20 resolve that reasonable doubt in his favor and return a  
21 verdict of not guilty.

22           And at the same time after you've carefully considered  
23 the evidence, decided the facts and applied the law, if you  
24 have no reasonable doubt as to his guilt it would be your  
25 corresponding duty to find him guilty of any crime the

## Jury charge

1 state has proven beyond a reasonable doubt.

2 The same law that provides that you are the judges of  
3 the facts also provides that I am the judge of the law.  
4 That simply means that nobody is going to tell you how to  
5 arrive at your determination of fact in this case.

6 You do that, as I've already stated, through the  
7 exercise of good judgment and common sense conscientiously  
8 applied to the testimony and evidence received during the  
9 trial.

10 You 12 jurors alone will decide what weight, value and  
11 effect to give to any particular witness' testimony or  
12 other evidence in the case.

13 You must however under our oath as a juror accept the  
14 law as I provide it to you as being the law that is  
15 applicable in this particular case. In other words, you're  
16 never to concern yourself with what you thought the law was  
17 before you came to serve as a juror this week or what you  
18 think the law ought to be.

19 Under your oath as a juror you must simply accept the  
20 law as I provide it to you as being the law that you are to  
21 apply in this case. And then you simply take that law and  
22 you apply it to the facts as you 12 jurors determine those  
23 facts to be in arriving at your decision.

24 Now, as you've been told, you are the sole judges of  
25 the facts in this case, and you are also therefore

## Jury charge

1 necessarily the sole judges of the credibility, that is the  
2 believability, of each witness that has testified during  
3 the course of this trial.

4       You 12 jurors alone will decide what weight, value and  
5 effect to give to any particular witness' testimony or even  
6 portions of a witness' testimony. But there are several  
7 factors which you should take into consideration in  
8 arriving at your assessment and evaluation as to a witness'  
9 credibility, and I'm going to list those factors for you.

10       You should consider the demeanor of the witness, that  
11 is how the witness appeared to you when the witness  
12 testified from the witness stand. Was the witness  
13 straightforward in responding to questions, or was the  
14 witness hesitant or evasive in responding to questions that  
15 were asked of that witness.

16       Simply put did the witness appear to you to be telling  
17 the truth and to have knowledge of the facts to which that  
18 witness has testified.

19       You should also consider whether or not the testimony  
20 of a witness is consistent, or is it inconsistent with that  
21 witness' own testimony or with other statements made by  
22 that witness, whether in court or outside of court. And  
23 you should consider whether or not the testimony of a  
24 witness is consistent or inconsistent with other witnesses'  
25 testimony and other evidence received during the trial.

## Jury charge

1           You should also consider how the witness came to know  
2 the facts to which a witness has testified. In other  
3 words, what was a particular witness' opportunity and  
4 ability to perceive the existence of those facts to which  
5 that witness has testified by having previously used his or  
6 her senses. And then what is that witness' ability to be  
7 able to court -- to be able to come into court and  
8 accurately recollect to you as to what they have previously  
9 perceived.

10           You should also consider any bias or prejudice or  
11 interest that the witness might have with respect to the  
12 case. In other words, do you find some reason that a  
13 particular witness would come into court and would testify  
14 one way or another to help or to hurt one side or the  
15 other.

16           And you may consider any interest that a witness might  
17 have in the outcome of the case if you determine that a  
18 witness does have such an interest and you find that that  
19 interest would bear upon that particular witness'  
20 credibility.

21           You may also consider whether or not the testimony of  
22 a witness is strengthened, or is it weakened by other  
23 testimony or other evidence received during the trial.

24           Now, during the trial of this case you have heard  
25 certain testimony elicited from certain witnesses that

## Jury charge

1 testified regarding them having prior convictions for  
2 criminal offenses.

3 Ordinarily prior convictions of a witness or the  
4 defendant are not admitted during the trial of the case  
5 because those, that evidence, is not relevant to any issue  
6 the jury has to decide.

7 However, where a witness, including the defendant,  
8 takes the witness stand and they testify, and where they  
9 have convictions for certain types of criminal offenses,  
10 then the fact that they have been convicted of those  
11 offenses may be admitted during their testimony.

12 But the admission of that testimony is restricted to a  
13 very limited purpose. The purpose for which such evidence  
14 is offered and the purpose for which such evidence is  
15 admitted and the purpose for which such evidence may be  
16 considered by the jury is solely as it relates to the issue  
17 of the credibility and the believability of the witnesses'  
18 testimony.

19 You may not consider prior criminal convictions for  
20 any other purpose. And therefore you may consider that  
21 evidence as it relates to the issue of the credibility or  
22 the believability of the witness' testimony if you  
23 determine that that evidence is credible and probative on  
24 that particular point, but you may not consider it for any  
25 other purpose.

## Jury charge

1           That evidence is not being offered as evidence of the  
2 defendant's guilt of the crime for which he now stands  
3 charged. And under your oath and duty as a juror you may  
4 not consider it as it relates the issue of guilt. You may  
5 only consider it as it relates to the issue of the  
6 credibility of testimony.

7           As the finders of the facts and as the judges of the  
8 credibility of each witness you are permitted to believe as  
9 much or as little of what a witness has testified to as you  
10 deem is appropriate in the exercise of good judgment and  
11 common sense.

12           And therefore you can believe everything that a  
13 witness testified to. You may choose to believe none of  
14 it. You may believe one portion of a witness' testimony  
15 and reject some other portion of that same witness'  
16 testimony. You may believe one witness as opposed to  
17 several, or several as opposed to one.

18           Whatever your good judgment and common sense tells you  
19 is the most believable and credible testimony is the  
20 testimony you should accept. And you should reject any  
21 testimony or other evidence that you find not to be  
22 credible or believable.

23           Again, your sole objective is to simply reach the  
24 truth in the matter. And by doing that you will have  
25 fulfilled your obligations as jurors, and that is to give

## Jury charge

1 both the state and the defendant a fair and impartial  
2 trial.

3 Now, in this case, you as are aware, the defendant is  
4 charged with the crime of murder. Murder is a crime that  
5 has been codified in the laws of South Carolina. The  
6 legislature has defined what the crimes are when they  
7 codify a crime by way of a statute.

8 This particular crime is codified in Section 16-3-10  
9 of the Code of Laws. And that particular section defines  
10 murder as the killing of any person with malice  
11 aforethought either expressed or implied, referring to the  
12 element of malice. It's the killing of any person with  
13 malice aforethought either expressed or implied.

14 Therefore in order for you to find the defendant  
15 guilty of the crime of murder it would be necessary that  
16 the evidence in this case has established to your  
17 satisfaction beyond a reasonable doubt that the defendant  
18 did commit some act which proximately caused the death of  
19 the decedent in this case, Courtney Ralpheal Rogers, and  
20 that the killing was done with malice aforethought. Malice  
21 aforethought is an essential element of the crime of  
22 murder.

23 And therefore what is malice? Well, malice as an  
24 essential element of the crime of murder is a state of mind  
25 connoting an ill will and having intent to do harm. Intent

### Jury charge

1 means a state of a person's mind which directs his actions  
2 towards a specific object or goal.

3 An intent would include those consequences which  
4 represent the very purpose for which an act is committed,  
5 as well as those consequences which are known to be  
6 substantially certain to result whether actually intended  
7 or not.

8 Malice is a technical term importing wickedness and  
9 excluding just cause or legal excuse. It is something  
10 which springs from depravity, from a heart devoid of social  
11 duty and fatally bent on mischief. It is a state of mind  
12 indicating an extreme disregard for or an extreme  
13 indifference to human life.

14 Malice may be likewise defined as a state of mind  
15 which indicates a formed purpose and design to do a  
16 wrongful act under circumstances that exclude any legal  
17 right to do it.

18 The element of malice may be proven by direct  
19 evidence, and therefore expressed malice, or by  
20 circumstantial evidence, and therefore implied malice.

21 The words expressed or implied malice do not mean  
22 different kinds of malice but merely the manner in which  
23 malice may be shown to have existed, that is to say either  
24 by direct evidence or by circumstantial evidence implying  
25 or inferring the existence of malice.

## Jury charge

1           An inference is simply a deduction of fact which may  
2 logically and reasonably be drawn from the proof of some  
3 other fact or set of facts. In other words, you may infer  
4 that a particular event occurred or that a particular fact  
5 exists based upon the proof of sufficient factual  
6 circumstances which would reasonably warrant your arriving  
7 at such a conclusion.

8           Malice may be expressed as where there is an expressed  
9 threat to kill or a lying in wait or where the  
10 circumstances show directly that an intent to kill was  
11 entertained by the defendant at the time any killing took  
12 place.

13           Malice may be inferred, though no expressed intent to  
14 kill is proven by direct evidence, where the facts and  
15 circumstances which have been proven by the evidence in  
16 this case satisfy you beyond a reasonable doubt that malice  
17 was present in the mind of the defendant at the time any  
18 killing took place.

19           The existence of malice may be inferred from any acts,  
20 declarations or conduct of the defendant, as well as any  
21 other circumstances shown to have existed at the time of  
22 the event in question and from which you might reasonably  
23 infer the existence of malice, as often the state of a  
24 person's mind can only be proven by circumstantial  
25 evidence.

## Jury charge

1           Even if the facts proven are sufficient to raise an  
2 inference of malice such an inference would simply be an  
3 evidentiary fact to be taken into consideration by you 12  
4 jurors along with all of the evidence in the case. And you  
5 may make such an inference if you determine it to be  
6 reasonable based upon your review of all of the evidence in  
7 the case.

8           Now, malice as an essential element of the crime of  
9 murder does not necessarily require proof of an actual or a  
10 specific intent to take human life, but rather it means a  
11 state of mind accompanying conduct which signifies a  
12 general malignant recklessness and an extreme disregard for  
13 or an extreme indifference to human life.

14           The state is required to prove malice just as it must  
15 prove any other essential of the crime charged. And it is  
16 for you 12 jurors to determine whether or not the evidence  
17 in this case establishes malice beyond a reasonable doubt.

18           It's also essential that there exist not only malice  
19 but that it be malice aforethought, in other words, prior  
20 to the commission of any act resulting in the death of  
21 another person.

22           The laws does not require that malice must exist for  
23 any appreciable length of time before the commission of an  
24 act causing a fatal result. Indeed, it may be conceived at  
25 the very moment that the fatal act is committed.

## Jury charge

1           It is sufficient in the law so long as the state has  
2 proven beyond a reasonable doubt both the existence of  
3 malice aforethought in the commission of an act or acts by  
4 the defendant which caused the death of Courtney Rogers.

5           You must determine whether or not malice aforethought  
6 exists based upon your consideration of all the evidence  
7 introduced during the trial of the case and any reasonable  
8 inferences that might be drawn therefrom.

9           Now, while the state must prove beyond a reasonable  
10 doubt that a killing did occur by the defendant accompanied  
11 by malice aforethought in order to establish the crime of  
12 murder, it is not necessary that the state prove any motive  
13 for such a killing.

14           Motive is not an essential element of the crime of  
15 murder which has to be proven, although there may be  
16 evidence relating to that fact introduced during the trial  
17 of the case.

18           Now, in this case the defendant has raised what is  
19 referred to in the law as the defense of alibi. An alibi  
20 means that the defendant was at another specified place at  
21 the time of the crime alleged by the state, was committed,  
22 and therefore it was not possible for the defendant to have  
23 committed the crime he is accused of committing because he  
24 was not present at the scene of that crime.

25           While a defendant may present evidence of an alibi,

Jury charge

1 there is no burden on the defendant to prove such an alibi.  
2 As I have previously stated, the burden is on the state to  
3 prove the defendant's guilt beyond a reasonable doubt, that  
4 is that he actually was present at the place where the  
5 crime was committed and that he actually committed the  
6 crime and therefore was not somewhere else.

7 In other words, because the state has the burden of  
8 proving the defendant's guilt, such a burden would  
9 necessarily require that the state prove beyond a  
10 reasonable doubt that the defendant was not somewhere else.

11 Now, ladies and gentlemen, I am not in any way  
12 concerned with what your decision is, but you are  
13 instructed, as I have told you before, your verdict has to  
14 be unanimous. All 12 of you must be in agreement before  
15 any decision may be rendered and returned to the Court.

16 Mr. Foreman, as you know, you're going to be called  
17 upon to preside over jury deliberations in the jury room  
18 simply to ensure that they are carried out in an orderly  
19 fashion. But all jurors are expected to participate in  
20 deliberations, because, as I've stated, the verdict has to  
21 be unanimous. All of you have to be in agreement.

22 Now, in addition to the evidence which has been  
23 introduced during the trial, Mr. Foreman, you are going to  
24 have the indictment which will serve as the verdict form.

25 As I've told you, this is an indictment. It's a legal

## Jury charge

1 document. It's what brings a defendant into court. It is  
2 not evidence of anything; it's not proof of anything.

3 It's going to be in the jury room solely for one  
4 purpose, and that is to serve as the verdict form. And  
5 it's there for no other purpose.

6 On the back of the indictment in the lower left-hand  
7 corner you'll see the word verdict. It's beneath that word  
8 that you're going to be asked to indicate the jury's  
9 unanimous decision, whatever that might be.

10 In this case there are two potential verdict forms,  
11 and those two forms are guilty and not guilty. So  
12 whichever that decision is that the jury reaches, Mr.  
13 Foreman, if you'll indicate that decision in the space  
14 provided, sign your name as the foreperson. You're the  
15 only juror that has to sign the verdict form. And place  
16 the appropriate date on it.

17 Now, during your deliberations there may come a time  
18 where you have a question about the facts of the case or  
19 evidence introduced or testimony of a witness.

20 I can't help you resolve those issues. I am never  
21 permitted to comment upon the facts or the evidence.  
22 That's simply for you to consider in arriving at your  
23 determination of fact.

24 Also, all of the evidence that has been introduced has  
25 been introduced. No additional evidence can now be

## Jury charge

1 received since you're going back to begin with your  
2 deliberations.

3 Even if some other piece of evidence exists out there  
4 somewhere and you think it might help you resolve the case,  
5 you can't have it, because if it was not introduced during  
6 the trial it can't be introduced now. So do not inquire as  
7 to the existence of something else if you think -- if you  
8 wonder if something exists and you wonder if you can have  
9 it, because you cannot even if it did exist.

10 If you need to have testimony of a witness replayed in  
11 whole or in part, I do not have transcripts to send back to  
12 the jury room. But we can bring you back into the  
13 courtroom to have a witness' testimony replayed for your  
14 benefit. And it can be played in its entirety or it can be  
15 played, just some portion if that's all you need. So no  
16 additional evidence can be received.

17 But, Mr. Foreman if you or your fellow jurors need to  
18 have testimony replayed, let the bailiff know. He'll let  
19 me know. The court reporter will locate it. We'll bring  
20 you back into the courtroom for that purpose.

21 If at any time during your deliberations you have a  
22 question about the law that is applicable, I am permitted  
23 to answer those questions. So if you need a reinstruction,  
24 you need an additional explanation or you need a  
25 clarification of the law that you are to apply, I am

## Jury charge

1 permitted to make those additional instructions or  
2 clarifications.

3       If at any time you have a matter that needs to be  
4 addressed to me, Mr. Foreman, if you'll write it on a piece  
5 of paper, give it to the bailiff, he'll provide it to me.  
6 And I'll address any issue or question that you or your  
7 fellow jurors may have.

8       I don't know if we have any smokers on the jury. But  
9 if we do and you want to smoke, you can. But you can't  
10 smoke in the jury room. You have to go outside if you need  
11 to smoke.

12       So if anybody wants to smoke, let the bailiff know.  
13 They'll take you outside to accomplish that purpose. You  
14 are however instructed that deliberations must stop. They  
15 may only resume and be engaged in when all 12 jurors are  
16 present so that all may participate.

17       I think that covers everything. If it doesn't, I'll  
18 have to bring you back.

19       I am going to ask the 12 primary jurors -- and so,  
20 Ms. Morgan, you'll stay with me. I'll ask the 12 primary  
21 jurors to please retire to your jury room. But do not  
22 begin deliberations until I send you word to do so. In  
23 that event the bailiff will bring the exhibits and the  
24 verdict form to you, Mr. Foreman.

25       I've got some matters I'll need to address with the

## Jury charge

1 lawyers. If I have to bring you back for something, I'll  
2 do so. If I don't, then I'll just tell the bailiff to tell  
3 you to begin your deliberations. So just await my  
4 instruction as to when to begin.

5 (Whereupon, the jury retired to deliberate at  
6 3:55 p.m.)

7 (Whereupon, the alternate juror was excused.)

8 THE COURT: Are there any exceptions taken to the  
9 instruction or requests for additions to the instruction by  
10 the state?

11 MR. BULSA: No, Your Honor.

12 THE COURT: By the defendant?

13 MR. ALLEN: The only exceptions, my request for the  
14 voluntary-manslaughter instruction which the Court had  
15 previously ruled on. No other additional requests from me  
16 however.

17 THE COURT: Okay. Let me ask y'all to verify the  
18 exhibits before they go back, please.

19 MR. BULSA: Your Honor, I did pull out the first call  
20 and put it on a separate disc and not label it however from  
21 the 9-1-1 call.

22 (Pause.)

23 THE COURT: All of the exhibits are accounted for?

24 MR. BULSA: Yes, sir.

25 MR. ALLEN: Yes, sir, Your Honor.

## Verdict

1 THE COURT: Send them back and notify the jury to  
2 begin deliberations and let us know when they have  
3 concluded.

4 We will be at ease while the jury is deliberating.

5 (State's Exhibit No. 1 changed to Court's Exhibit No.  
6 1; redacted portion of call marked State's Exhibit No. 1.)

7 (Whereupon, a recess was taken.)

8 THE COURT: All right. I understand the jury has  
9 reached a decision. Are we ready to receive it?

10 MR. BULSA: Yes, sir.

11 MR. ALLEN: Yes, sir, Your Honor.

12 THE COURT: There will be no reaction to the decision,  
13 whatever it might be, from anyone in the courtroom, or  
14 there will be repercussions to it.

15 All right. Bring the jury in, please.

16 (Whereupon, the jury returned to the courtroom at  
17 4:50 p.m. to report its verdict.)

18 THE COURT: Mr. Turner, let me ask you to get  
19 Ms. Morgan, the alternate juror. She's remained in the  
20 other jury room. If you will, please bring her in also.

21 (Whereupon, the alternate juror returned to the  
22 courtroom.)

23 THE COURT: All right. Mr. Foreman, have you and your  
24 fellow jurors reached a unanimous decision?

25 THE FOREMAN: Yes, sir, we have.

## Verdict

1 THE COURT: And have you indicated that decision on  
2 the back of the indictment as requested?

3 THE FOREMAN: Yes, sir. I did.

4 THE COURT: And did you sign your name as the  
5 foreperson and date it appropriately?

6 THE FOREMAN: I did.

7 THE COURT: If you will, please hand that verdict form  
8 up by way of the bailiff.

9 You may publish the verdict.

10 THE CLERK: State of South Carolina, County of  
11 Spartanburg, State vs. J'Corey Hull-Kilgore, Indictment No.  
12 2009-GS-42-4486, we, the jury, find the defendant guilty.  
13 Signed today's date. Foreperson, Robert Arvanites.

14 Ladies and gentlemen, if this is your verdict and  
15 still your verdict, please raise your right hand.

16 (Whereupon, all jurors responded in the affirmative.)

17 THE CLERK: So say you all.

18 THE COURT: Does the defendant wish to have the jury  
19 polled?

20 MR. ALLEN: Yes, Your Honor.

21 THE COURT: All right. Poll the jury, please, ma'am.

22 THE CLERK: Ladies and gentlemen, I will pose to you a  
23 question, that question being is this your verdict and  
24 still your verdict. When I call your name, please answer  
25 yes or no.

## Verdict

1           Jamie Houck.  
2           THE JUROR: Yes.  
3           THE CLERK: Toria Smith.  
4           THE JUROR: Yes.  
5           THE CLERK: Jerry Burrell.  
6           THE JUROR: Yes.  
7           THE CLERK: Steffen Lehnert.  
8           THE JUROR: Yes.  
9           THE CLERK: Robert Arvanites.  
10          THE JUROR: Yes, sir.  
11          THE CLERK: Brenda Rice.  
12          THE JUROR: Yes.  
13          THE CLERK: Shirley Bogle.  
14          THE JUROR: Yes.  
15          THE CLERK: Bridget Davis.  
16          THE JUROR: Yes.  
17          THE CLERK: Cecil Ballew.  
18          THE JUROR: Yes.  
19          THE CLERK: Jeffrey Hopkins.  
20          THE JUROR: Yes.  
21          THE CLERK: Thomas Veverka.  
22          THE JUROR: Yes.  
23          THE CLERK: William Bruce.  
24          THE JUROR: Yes.  
25          THE CLERK: The jury has been polled, Your Honor.

Sentence

1           THE COURT: All right. Any other matters to address  
2 with the jury present?

3           MR. ALLEN: No, Your Honor. Thank you.

4           (Whereupon, the trial jury was excused.)

5           THE COURT: All right. Mr. Allen, do you have any  
6 other legal matters to address prior to the imposition of  
7 sentence?

8           MR. ALLEN: I do, Your Honor.

9           At this time I request a new trial based on the  
10 grounds I previously stated in both my motions for a  
11 directed verdict, specifically concerning the testimony --  
12 the Court's ruling on the testimony of Keevin Anderson  
13 concerning the robbery or his testimony that -- about a  
14 robbery, as well as the additional grounds my motion -- my  
15 second motion for a directed verdict concerning the Court's  
16 ruling on the state's use of my client's prior record to  
17 impeach his credibility, as well as my request, the Court's  
18 ruling on my request, to charge the offense of voluntary  
19 manslaughter.

20           THE COURT: All right. Motion for a new trial is  
21 denied.

22           Any other legal matters to address?

23           MR. ALLEN: No other legal matters to address before  
24 we go into extenuation --

25           THE COURT: Mr. Bulsa, anything further to be

## Sentence

1 presented on behalf of the state?

2 MR. BULSA: Yes. We do have family members that would  
3 like to speak.

4 THE COURT: Okay.

5 JOSEMAE TALLOM: My name is Josemae Tallom (sic). I'm  
6 the mother of Courtney. I'm just glad to know justice have  
7 been served because it's been on my mind for two years.  
8 And I just want Juanita to know, the mother of the victim,  
9 that I feel her pain and I hope she feel mine.

10 THE COURT: Okay. Good luck to you, ma'am.

11 SHARON WYNN: My name is Sharon Wynn. I was  
12 Courtney's oldest sister. Excuse me. I'm suffering from a  
13 little bronchitis. But I would like to mention that  
14 J'Corey didn't only murder my brother, but he murdered my  
15 mom, he murdered me, he murdered my two sisters, along with  
16 so many other family members.

17 But most of all he murdered a father of an unborn  
18 child. I had a niece born four months after he was killed.  
19 She will never know her dad. All she has left is us and  
20 memories of him that we can represent to her. And that  
21 hurts us so bad. And we have to live with that forever. I  
22 have a beautiful little niece. She will never know her  
23 dad.

24 THE COURT: All right. Thank you. Good luck to you,  
25 ma'am.

Sentence

1 MR. BULSA: Your Honor heard his prior record during  
2 the course of the trial. That's all we have.

3 THE COURT: All right. Mr. Allen, I'll be glad to  
4 hear from you and Mr. Kilgore.

5 MR. ALLEN: Thank you, Your Honor.

6 As you've heard, he's 19 years old at this time.  
7 He -- a little bit more about his background, he went up to  
8 the 10th grade at Spartanburg High School. He up to the  
9 time of the earlier trial in December of this past year, he  
10 had been attending adult education with a view towards  
11 getting his G. E. D. At that time he was hoping to further  
12 his education after he got his G. E. D. to go to some place  
13 like Spartanburg Community College to get something else  
14 and learn a trade.

15 Right before the last trial in December he had --  
16 because he'd been out on bond -- I think he made bond in  
17 August of 2009 -- he had gotten a job through some help of  
18 family members -- I believe an aunt or a cousin -- at the  
19 Substation Two on Asheville Highway. He had worked less  
20 than a week before this case was tried the first time. And  
21 basically he was cleaning up, washing dishes and that kind  
22 of thing. But at least it was a job and honest employment.

23 After his release in August of 2009 he was living with  
24 his mother and his grandmother, as well as his younger  
25 brother. They had moved over to the grandmother's house at

## Sentence

1 Wilkerson Court that the Court heard about during the  
2 testimony of the trial.

3       It's my understanding that at some point after the --  
4 after December his grandmother passed away. And I  
5 understand his mother and his younger brother are still  
6 living at the grandmother's former residence.

7       Because they're not able to make another bond or to go  
8 back on the bond -- I think the grandmother helped them  
9 substantially with his bond originally -- he's not been  
10 able to make bond since the last trial. Therefore since he  
11 was taken into custody on December 2nd of 2009 he had  
12 remained in jail up until his trial.

13       By my calculations the total time he's been in jail is  
14 605 days, both the time from his arrest in May of 2008  
15 until August of 2009, and then from December up through  
16 today.

17       The Court's heard all of the facts and circumstances  
18 surrounding this matter, Your Honor. I ask the Court to  
19 take into consideration both his youth. Even though he has  
20 been in some trouble before it's not a substantial, long  
21 record. And I ask the Court to consider that.

22       For a young man such as Corey even the minimum  
23 sentence is a very long, very harsh sentence. And I would  
24 ask the Court to consider a sentence along the lines of 30  
25 years.

## Sentence

1 I explained to him of course that would be day for  
2 day. And it is my understanding of the law as it currently  
3 exists there is no chance for parole, as the law currently  
4 exists. And that will give this young man an opportunity  
5 to serve his sentence. And after a long period of time and  
6 after he has reached the age of maturity, significant  
7 maturity, that he would be able to hopefully get out and  
8 live an appropriate life. And I would ask the Court to  
9 consider that kind of sentence for this young man. Thank  
10 you.

11 THE COURT: All right. Mr. Kilgore, do you have  
12 anything you'd like to add to what your lawyer has told me?

13 THE DEFENDANT: The only thing I got to stay is I'm  
14 still not guilty of this charge. You might have heard it,  
15 but I am still not guilty, sir. I didn't do it.

16 THE COURT: Anybody else?

17 MR. ALLEN: His mother is present, Juanita Hull. But  
18 she's indicated to me she does not wish to speak at this  
19 time. She has been throughout this whole trial.

20 THE COURT: All right. On Indictment 2009-GS-42-4486,  
21 the State vs. J'Corey Suave Hull-Kilgore, indictment for  
22 murder, wherein you have been found guilty by the jury for  
23 that offense, the Sentence of the Court is you, J'Corey  
24 Suave Hull-Kilgore, be confined to the South Carolina  
25 Department of Corrections for the period of your natural

## Sentence

1 life.

2 You have a right to -- you have a right, you have a  
3 right -- you have a right to --

4 THE DEFENDANT: You ain't shit, man.

5 THE COURT: I'm not through, with you, sir.

6 What did you say?

7 THE DEFENDANT: Words.

8 THE COURT: What did you say?

9 THE DEFENDANT: Words.

10 THE COURT: You can't repeat it?

11 THE DEFENDANT: I mean, why I got to repeat it for?

12 The sentence already the same. So what's up? I'm ready to  
13 go. Come on let's go.

14 THE COURT: You have a right to appeal the verdict of  
15 the jury and the Sentence of the Court.

16 THE DEFENDANT: I'm going down the road though.

17 THE COURT: You must file that notice of intention to  
18 appeal within ten days of today's date.

19 THE DEFENDANT: I don't give a fuck about that, man.

20 THE COURT: I understand you don't. That's why you're  
21 in prison, sir.

22 THE DEFENDANT: Okay. Man, cause y'all ain't shit,  
23 man. Y'all know I wasn't guilty of all of that shit, man.

24 END OF REQUESTED TRANSCRIPT OF RECORD

25

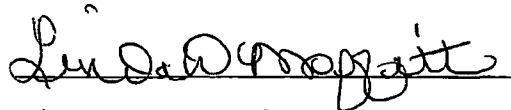
## Certificate

CERTIFICATE

1  
2 I, the undersigned Linda D. Moffitt, Official Court  
3 Reporter for the Seventh Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate and complete Transcript of Record of all the  
6 proceedings had and evidence introduced in the trial of the  
7 captioned cause, relative to appeal, in the Court of  
8 General Sessions for Spartanburg County, South Carolina, on  
9 the 18th, 19th and 20th days of May 2010.

10 I do further certify that I am neither of kin, counsel  
11 nor interest to any party hereto.

12  
13  
14  
15 November 3, 2010

16  
17 

18 Linda D. Moffitt  
19 Circuit Court Reporter

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

J'COREY HULL-KILGORE,

APPELLANT

---

FINAL BRIEF OF APPELLANT

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ROBERT M. DUDEK  
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South Carolina Commission on Indigent Defense  
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I.

Whether the court erred by refusing to charge voluntary manslaughter where there was evidence the decedent was armed with a gun during the fatal dispute since appellant was entitled to an instruction on voluntary manslaughter given these facts?

II.

Whether the court erred by allowing the solicitor to impeach appellant with the fact he had been convicted “of two crimes in December of 2007” since defense counsel correctly argued this allowed the jury to speculate about what appellant’s other criminal conduct consisted of particularly since the prior crimes were not ones of dishonesty, and the probative value of the impeachment evidence was substantially outweighed by its unduly prejudicial effect?

STATEMENT OF THE CASE

Appellant was indicted by the Spartanburg Grand Jury for the offense of murder. R. 440. His case was called to trial on May 18, 2010 before the Honorable J. Derham Cole, and a jury. Clay Allen represented appellant. Derrick Balsa was the assistant solicitor. R. 1.

On May 20, 2010 the jury found appellant guilty of murder. R. 433, ll. 10-13. Judge Cole sentenced appellant to life imprisonment. R. 438, l. 20 – 439, l. 1.

This appeal follows.

## ARGUMENT

1.

The court erred by refusing to charge voluntary manslaughter where there was evidence the decedent was armed with a gun during the fatal dispute since appellant was entitled to an instruction on voluntary manslaughter given these facts.

### **Relevant Facts**

Dr. John David Wren testified the decedent was shot in his left neck just above the collarbone. R. 4, ll. 19-23. Taquil Nabors was known as “Penny Red,” and he was a key witness in this case. R. 165, ll. 10-16. Nabors knew appellant from the neighborhood. R. 164, l. 16 – 168, l. 10.

Nabors was with appellant and other people on housing authority property when he saw the decedent and “heard a gun cock back.” R. 169, ll. 5-8. Nabors said appellant also had a gun. R. 169, l. 21 – 170, l. 3. Nabors remembered that “Courtney [the decedent] started walking out the door, and he, he [the decedent] was digging in his bottom pocket.” “I heard a gun go off.” R. 170, ll. 2-16. Nabors said he knew the decedent was armed with a gun and he heard a shot and saw the decedent running away. R. 174, ll. 6-20; R. 181, ll. 6-24. Although the decedent was initially able to run he eventually fell to the ground from the gunshot wound.

When asked why he did not tell the police what happened, Nabors said: “I didn’t want nothing to do with it.” R. 172, ll. 18-22.

Appellant testified in his own defense and he denied that he shot the decedent. R. 380, ll. 12-19. However, as this Court is well aware, when there is conflicting evidence the standard remains whether there was **any evidence** of a lesser included offense. In this case

any evidence of voluntary manslaughter. See, State v. Knoten 347 S.C. 296, 555 S.E.2d 391 (2001); State v. Brown 360 S.C. 581, 602 S.E.2d 392 (2004).

At the charge conference Defense Counsel Allen asked for an instruction on voluntary manslaughter citing the testimony of Taquil Nabors that the decedent was armed and appeared to be reaching for his pistol when he was shot. R. 390, l. 21 – 391, l. 13. The judge said he did not find any evidence appellant shot the decedent in sudden heat of passion or upon a sufficient legal provocation. R. 391, l. 25 – 392, l. 9.

### **Discussion**

As stated above, where there is any evidence from which the jury could infer the defendant committed the lesser-included offense, it is reversible to refuse the charge that lesser-included offense. See, State v. Brayboy 387 S.C. 174, 691 S.E.2d 482 (Ct. App. 2010); State v. Knoten 347 S.C. 296, 555 S.E.2d 391 (2001). Defense counsel correctly argued that Nabors had testified that the decedent had a gun and was in a menacing position at the time of his dispute with appellant. Although appellant denied that he shot the decedent, even where there is conflicting evidence such as in State v. Knoten 347 S.C. 296, 555 S.E.2d 391 (2001), the court must charge the lesser-included offense where there is evidence the crime was voluntary manslaughter rather than murder. Given the testimony of Nabors in this case, the judge committed reversible error by refusing to charge voluntary manslaughter.

## ARGUMENT

2.

The court erred by allowing the solicitor to impeach appellant with the fact he had been convicted “of two crimes in December of 2007” since defense counsel correctly argued this allowed the jury to speculate about what appellant’s other criminal conduct consisted of particularly since the prior crimes were not ones of dishonesty, and the probative value of the impeachment evidence was substantially outweighed by its unduly prejudicial effect.

**Relevant Facts**

Prior to appellant testifying the solicitor said that “the state intends to impeach him with juvenile conviction for assault of a high and aggravated nature and pointing a firearm in December of 2007, just six months prior to this incident. He was on probation at the time of these charges.” R. 342, l. 23 – 343, l. 2.

Defense counsel argued that the prejudicial effect of these prior convictions outweighed their probative value under Rule 609 (a)(1), SCRE. Defense counsel argued that the jury would be left to speculate about what other unlawful criminal conduct appellant had been involved in and that the convictions in this case did not involve dishonesty and that they should not be admissible. R. 343, l. 3 – 346, l. 14.

The judge agreed that appellant’s prior crimes did not involve dishonesty and the judge stated he was *not* inclined to exclude them unless the solicitor could show him some other reason why they were admissible. R. 345, l. 2 – 353, l. 14. The judge later changed his mind after a lunch break, and after appellant told the judge he wished to testify. The judge then ruled the probative value of the prior convictions outweighed their unduly prejudicial effect, and he noted appellant’s exception to his new ruling. R. 365, l. 21 – 370, l. 12.

7.

When appellant testified, the solicitor asked him: “[I]sn’t it true, Mr. J’Corey Hull-Kilgore, that you have been convicted of two crimes in December of 2007?” Defense counsel renewed his objection and appellant he admitted he had been convicted of these prior crimes. R. 387, l. 21 – 388, l. 2.

### **Discussion**

In State v. Young 378 S.C. 101, 661 S.E.2d 387 (2008), our Supreme Court found that the trial court committed reversible error by allowing the solicitor to impeach Young with prior convictions for criminal domestic violence and criminal sexual conduct since their unduly prejudicial effect under Rule 403, SCRE substantially outweighed their probative value. The Court reasoned that under Rule 609 the trial court was mandated to consider the impeachment value of the prior crime, the timing of the prior crime, the similarity between the past crime and the charged crime, the importance of the defendant’s testimony and the centrality of the credibility issue.

The Court found that the trial judge erred in allowing the defendant to be impeached with these crimes but that it was harmless error under the facts of that case. See also, State v. Al-Amin 353 S.C. 405, 578 S.E. 2d 32 (Ct. App. 2003).

Here, the testimony of the witnesses had to be hard for the jury to decipher. It was obvious Nabors did not want to be in the courtroom and that getting the truth out of him was like pulling teeth.

Defense counsel correctly argued that the jury was left to speculate about what criminal behavior appellant had committed in December of 2007 that resulted in him having a criminal record. The solicitor argued that the crime from December of 2007 should be used for impeachment because the shooting in this case happened not long after that

criminal behavior occurred. That was an admission of how unduly prejudicial those past crimes had as impeachment evidence. The jury not only left to speculate about appellant's prior criminal behavior, but to view appellant was a bad person who needed to be "off the streets," and in prison even if he was not guilty of the particular offense for which he was now on trial. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments appellant's conviction should be reversed and this case remanded to the Spartanburg County Court of General Sessions for a new trial.

Respectfully submitted,



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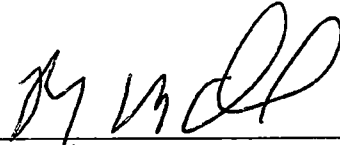
Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of March, 2012.

## CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



---

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J. Derham Cole, Circuit Court Judge  
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RESPONDENT,

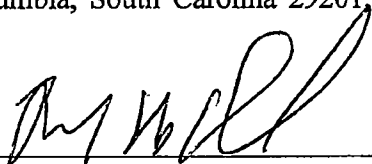
V.

J'COREY HULL-KILGORE,

APPELLANT

\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Brendan J. McDonald, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 27th day of March, 2012.

  
\_\_\_\_\_  
Robert M. Dudek  
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 27th day of March, 2012.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: May 16, 2021.