

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge

Appellate Case № 2018-000464
Lower Case No. 2014-CP-10-3019

Jerome Campbell, # 349454, ... Petitioner,

vs.

State of South Carolina, ... Respondent.

APPENDIX
VOLUME II

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DIRECT EXAMINATION OF CHARISE COAXUM BY MR. HARRIS

1 they all were there and I still was proceeding to pack clothes
2 in there.

3 Q: Okay.

4 A: And there were so -- So they had a lot of people with
5 them. There was guys standing at every corner. They hadn't
6 parked their cars out front and they had their cars in the
7 back. So they proceeded -- We started to get in our cars and
8 they proceeded to walk to Foster street.

9 Q: Okay.

10 A: And we all -- we all left.

11 Q: Okay and you never came back?

12 A: No, I never came back to the apartment.

13 Q: Okay. So and then this is not -- It's later on that
14 night you get a call from -- Did you get from someone else
15 later that night?

16 A: Yes. I got a call from Michael Allen.

17 Q: Okay. That's your husband?

18 A: Yes.

19 Q: What was that call about?

20 A: He said, "Your brother just killed Michael, Michael
21 German."

22 Q: Okay.

23 A: And I said, "My brother? Why -- why would you call my
24 brother's name? My brother would not do nothing like that."

25 I said, "Did you see my brother do that?" He said, "No, but I

DIRECT EXAMINATION OF CHARISE COAXUM BY MR. HARRIS

1 thought I heard his voice."

2 Q: Okay.

3 A: And so I hung up on him.

4 Q: Okay and then where did you go after that?

5 A: At that time, I was at my mom's house. I had just pulled
6 in my mom's house when he made that call to me. I answered
7 the phone. I was already back on James Island ---

8 Q: Okay.

9 A: --- at that time.

10 Q: Okay. So your mother came after the people showed up at
11 the door?

12 A: Yes..

13 Q: Okay.

14 A: My mother was there and they were blocking the doors
15 because my mom could hardly get in. I was like, "Let -- let
16 her in. Let my mom in."

17 Q: Okay.

18 A: My mom came in.

19 Q: How long do you think this went on?

20 A: How long do I think it went on?

21 Q: Yes.

22 A: I think they were there from maybe 20 to 30 minutes.

23 Q: Okay, okay and then everybody left kind of at the same
24 time?

25 A: Yes, everybody left at the same time. Well, they were

DIRECT EXAMINATION OF CHARISE COAXUM BY MR. HARRIS

1 walking, so I never saw them driving their car because they
2 didn't park -- Like I said, they didn't park to the front.

3 Q: Okay, okay.

4 MR. HARRIS: I beg the Court's indulgence, Your Honor.

5 THE COURT: Yes, sir.

6 Q: Okay. When you got to the apartment and Michael came
7 back and the argument happened, then you left and he left.
8 Did you tell him, you know, here's the key, come back. Did
9 you ---

10 A: No.

11 MR. VOIGT: Objection.

12 THE COURT: Basis?

13 MR. VOIGT: Leading.

14 THE COURT: Sustained, leading. Rephrase.

15 Q: Okay. What did you to say to Michael Allen when he left
16 -- as he was leaving or when he left the house?

17 A: I told him that I wasn't going to give him a key because
18 I only had that one key and that I will come back. Frank
19 asked me if I could come back and let Michael Allen get his
20 clothes and all his things and I said, "Yes, I will come back
21 and open the door." But I wasn't going to give him my keys to
22 the house.

23 MR. HARRIS: Okay, okay. Please answer any questions the
24 prosecution may have.

25 THE COURT: Any questions for the witness?

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 MR. VOIGT: Just a few, Your Honor.

2 THE COURT: You may proceed.

3 CROSS EXAMINATION

4 BY MR. VOIGT:

5 Q: Ms. Coaxum, how are you?

6 A: I'm good.

7 Q: Did your brother, Jerome, ever go by Coaxum?

8 A: Yes.

9 Q: Okay, but he now goes by Campbell?

10 A: Yes.

11 Q: Okay. I just wanted to clarify that. About what time
12 did you go to [REDACTED]? About what time were you there at the
13 same time with Michael Allen, Frank Haigler and the German
14 brothers? Do you recall?

15 A: I don't remember exactly, but I know I headed back to
16 West Ashley a little after six or 6:30.

17 Q: Was -- When you left [REDACTED], was it still light out?

18 A: No. When I left there, it wasn't light.

19 Q: It was still dark?

20 A: It was dark.

21 Q: Okay. Did you talk to your brother, Jerome?

22 A: Yes.

23 Q: When did you first talk to Jerome on January 9th, 2009?

24 A: I spoke to my brother I think around 3 o'clock that
25 afternoon. We were all on James Island at my mom's house at

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 that time.

2 Q: Okay. So earlier in the day you were all -- you were
3 down at your mom's house. Is that on Grimbale Road?

4 A: Yes.

5 Q: Okay and who was with you down there?

6 A: It was me and my mom was to the house and Jerome was to
7 the house and the kids came after because they got -- after
8 they got from school.

9 Q: Okay. So Jerome was down at your mom's house on James
10 Island at 3:30 or so?

11 A: I -- I can't actually remember the time, but I know he
12 was there before the kids got out of school and they have
13 extra-curriculum at school and I know when they saw him, they
14 all -- they ran to him and he took them out to eat and
15 everything. So I'm not sure exactly what time it was, but I
16 know we all were there on James Island at my mom's house.

17 Q: Okay. Was Aaron Burnham there?

18 A: No, not at the time.

19 Q: And had he driven -- Had Jerome, your brother, driven in
20 that day from Charlotte?

21 A: Yes.

22 Q: And why had he driven in from Charlotte?

23 A: Jerome was like home like every other weekend, so.

24 Q: So it wouldn't have been unusual for Jerome to drive the
25 three plus hours ---

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 A: No.

2 Q: --- down from Charlotte?

3 A: Not at all.

4 Q: Did any particular event make Jerome drive down that you
5 recall that day?

6 A: No, sir.

7 Q: Okay. How long did you spend with Jerome at your mom's
8 house on James Island?

9 A: I probably was there about -- about two hours, if that.

10 Q: And do you have any idea roughly when those two hours
11 would have been, when it would have started and when it would
12 have ended?

13 A: Let's see. It probably was like about -- Let's see. I
14 would say around time, but I'm going to estimate it probably a
15 little after four because I was home sleeping. I was on
16 eleven to seven shift and I got up. I always get up close to
17 the time the kids get out of school. But I went over there a
18 little earlier that day because of the altercation that went
19 off that morning.

20 Q: There was an altercation in the morning?

21 A: Well, for me and my husband, Michael Allen.

22 Q: When did that happen?

23 A: I got off of work at seven and when I got there, he was
24 out there in the parking lot at the apartment because of the
25 night before he had got arrested and then he got released, but

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 he was calling me for the keys and I -- Like I said before, I
2 would not give him the keys to our apartment.

3 Q: Did you have him arrested?

4 A: No, sir.

5 Q: So you got off work at about seven, seven something, in
6 the morning and this is out on Azalea Drive in North
7 Charleston?

8 A: Yes.

9 Q: And did you come immediately home from work?

10 A: Yes, I did.

11 Q: And so you -- you talked to your husband after you got
12 home from work?

13 A: I didn't talk to him. I went straight into the
14 apartment. He was sitting in the truck outside.

15 Q: Okay. So he's outside, but you don't talk to him?

16 A: No, sir.

17 Q: Okay and then you go inside and then you go to sleep
18 then?

19 A: No, sir.

20 Q: Okay and when you came home that morning, we're talking
21 about January 9th, right?

22 A: Yes.

23 Q: Okay. He's out in the truck. Is Frank with him?

24 A: No, sir.

25 Q: And -- and neither one of the German brothers are with

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

- 1 him?
- 2 A: No, sir.
- 3 Q: Okay. When did you go to James Island to go be with your
- 4 mom and Jerome?
- 5 A: See, actually I have to take my kids to school in the
- 6 morning. So my mom came over there that morning and I went
- 7 and I took my kids to school and I left my mom and my older
- 8 son to the house.
- 9 Q: How old is your oldest son?
- 10 A: He is at the age of 20 now.
- 11 Q: Okay. So he doesn't obviously have to go to school like
- 12 the other ones do, right?
- 13 A: No.
- 14 Q: And how old were the others? What grade were they in
- 15 back two and a half or three years ago?
- 16 A: [REDACTED] was in the eighth grade and I think [REDACTED] was in
- 17 seventh and [REDACTED] was in fifth.
- 18 Q: Okay.
- 19 A: Fourth grade, I'm sorry.
- 20 Q: Did they all go to different schools or the same school
- 21 or ---
- 22 A: Yes, they went to -- [REDACTED] went to James Island Middle
- 23 School and [REDACTED] and [REDACTED] at the time went to Charleston
- 24 Development Academy Charter School.
- 25 Q: Okay.

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

- 1 A: And that's downtown on Line Street.
- 2 Q: All right. So and you had to take each one of them to
- 3 the different places, right?
- 4 A: Yes.
- 5 Q: Okay. So did you go downtown first or did you go to
- 6 James Island first?
- 7 A: I went to James Island first.
- 8 Q: Okay and then from James Island you went downtown?
- 9 A: Downtown.
- 10 Q: Okay and then once you got downtown and after you dropped
- 11 your kids off, where did you go after that?
- 12 A: I went back to the house.
- 13 Q: And we're talking about [REDACTED]?
- 14 A: [REDACTED] Carriage Lane.
- 15 Q: On Carriage Lane?
- 16 A: Yes.
- 17 Q: Is that when you went and went to sleep finally?
- 18 A: Well, I tried to go to sleep, yes.
- 19 Q: Okay, but you didn't go to sleep?
- 20 A: No, not really.
- 21 Q: Okay. How long were you there at the -- the apartment on
- 22 Carriage Lane before you went to James Island to be with your
- 23 mom?
- 24 A: I think I went on James Island about two o'clock.
- 25 Q: Okay and you testified earlier that you stayed there for

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 about two hours or so?

2 A: Right. After I got the kids, then we went home.

3 Q: I'm kind of confused. Now when you're on James Island,
4 do you have the kids?

5 A: No. I didn't have the -- I didn't have the kids. I
6 didn't have to pick up the kids. I don't have -- I don't pick
7 up my kids in the afternoon from downtown because my mom picks
8 them up.

9 Q: Okay.

10 A: So I was already at the house. When she left my house
11 that morning, she went straight to work.

12 Q: Okay.

13 A: And I stayed at -- at my apartment.

14 Q: Okay and then -- then you stayed at your apartment, but
15 -- I'm sorry. I'm not trying to belabor this with you. I'm
16 not sure this is terribly important, but I'm just trying to
17 track where you were during the day, okay? You dropped your
18 kids off at school. You then went to James Island. Your
19 mom's there?

20 A: I didn't ---

21 Q: When you got to James Island, was your mom there?

22 A: No, my mom was at my house. I left my mom at my house on
23 James Island -- I mean on West Ashley.

24 Q: Okay.

25 A: I went to James Island to take Jordan to school.

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 Q: Right and then did you go back to your house or did you
2 stay at your mom's house?
3 A: No, I went back to my house.
4 Q: Okay. So then -- So you go from your house to James
5 Island to drop your son off and then you go back to your
6 house?
7 A: I went downtown and dropped my other two kids off.
8 Q: Okay. You dropped your other kids off and then you go
9 back to your house?
10 A: Right.
11 Q: And your mom, was she already at your house?
12 A: She was. Yeah, she was already. I left her there.
13 Q: All right. So at what point do you go to your mom's
14 house?
15 A: About two o'clock in the afternoon.
16 Q: Okay.
17 A: Somewhere around that time.
18 Q: Did your mom go with you or did she go ---
19 A: No, my mom left. My mom left when she had to be at work
20 at eight o'clock. My mom left that morning after I got back
21 home, but she went to work.
22 Q: Okay. So she went to work?
23 A: Yes.
24 Q: And then you went to her house, but she wasn't at her
25 house when you got there?

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 A: In the morning? No, I didn't go to her house in the
2 morning.
3 Q: No, no, no. I'm talking about ---
4 A: In the afternoon?
5 Q: In the afternoon.
6 A: No, because she gets off like three or something like
7 that.
8 Q: Okay.
9 A: She came in after.
10 Q: All right. Was Jerome at your mom's house at two o'clock
11 when you got there?
12 A: Jerome came in after, after I was there.
13 Q: Okay.
14 A: Because I was standing out in the yard with a neighbor of
15 mine when Jerome pulled up.
16 Q: Okay and what did he pull up in?
17 A: His white Impala.
18 Q: Okay. So that's -- that's Jerome's car?
19 A: Yes.
20 Q: You know that? Did Jerome tell you why he was there?
21 A: No.
22 Q: But you testified that that's -- it's -- He would come in
23 every other weekend or so. That was ---
24 A: He would come in every other -- every other weekend and a
25 matter of fact, this was already planned because he couldn't

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 make it home during the new year, so he said he would be home
2 the next weekend. I have the kids and he would come down here
3 just -- just to see the kids' games.
4 Q: Okay. So did he come down for the weekend? Was that his
5 plan?
6 A: Yes.
7 Q: And do you know where he was going to stay?
8 A: Yes.
9 Q: Where was he going to stay?
10 A: Normally he stay at my house or my mother's house.
11 Q: Well, I mean those are two different places. Do you know
12 that weekend whether he was going to stay at your mom's or
13 whether he was going to stay with you?
14 A: Right.
15 Q: Which one? Did you even know?
16 A: Well, he was going to stay -- he's was going to have --
17 If I was going to stay at my house, he was going to come home
18 with me that night.
19 Q: That was your plan?
20 A: That was my plan.
21 Q: Okay and what time did you go back to your house? I'm
22 talking about [REDACTED] on Carriage Lane. What time did you leave
23 your mom's house to go back to your house?
24 A: I want to say I left my mama's house somewhere after
25 five. I'm not direct with time and I don't remember the time.

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

- 1 Q: That's okay.
- 2 A: But it was somewhere after five.
- 3 Q: All right and was Jerome still at your mom's house when
- 4 you left to go over to your house?
- 5 A: Yes.
- 6 Q: Okay and was your mom still at your mom's house when you
- 7 left to go to your house?
- 8 A: Yes.
- 9 Q: And did you have your children with you?
- 10 A: Yes, I did.
- 11 Q: All right. When you got to your house, was there anybody
- 12 else in your house ---
- 13 A: No, sir.
- 14 Q: --- before you got there?
- 15 A: No, sir.
- 16 Q: About how long had it been after you got home before you
- 17 saw Michael Allen, Frank and the German brothers?
- 18 A: I'm thinking of what time. I believe they were there I
- 19 want to say any time after seven or eight.
- 20 Q: Okay. So you think they got there about eight o'clock?
- 21 A: I think.
- 22 Q: What time did your mom get there?
- 23 A: I can't remember exactly what time my mom got there, but
- 24 I know she probably got there about 8:30, something like that.
- 25 Q: And how long do you think y'all were there?

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 A: We were there -- After my mom got there, we probably were
2 there about maybe 30, 30, I'd say 35 minutes because my mom
3 had to be at work at ten o'clock that night.

4 Q: So she had worked at eight o'clock that morning?

5 A: Yeah, she has two jobs.

6 Q: And she had to work at ten o'clock at night?

7 A: Yes, she worked at eight o'clock in the morning and then
8 she gets her regular job at ten p.m. at night.

9 Q: Okay and were you going to work that night as well?

10 A: Yes.

11 Q: Did you call Jerome while Michael Allen and Frank Haigler
12 and the German brothers were at ~~XXXXXX~~ Carriage Lane?

13 A: I called my brother after they left and told him that
14 they were there looking for him and they said that he was
15 going to die tonight.

16 Q: So you told Jerome that?

17 A: Yes, for him to be careful.

18 Q: Okay and then you told that to Jerome so that he could be
19 careful?

20 A: Yes, because I know that he -- he sells sneakers. When
21 he's down here, he's coming to sell sneakers and he was
22 supposed to meet someone over there to sell sneakers because
23 normally in the neighborhood when my brother comes home --
24 because they even bought sneakers from -- from him.

25 Q: Were you afraid that Michael German was going to do

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 something to your brother, Jerome?

2 A: Yes.

3 Q: Later you talked to your husband on the phone, right?

4 A: Yes.

5 Q: And you told Mr. Harris that Michael Allen had told you
6 that your brother had just killed Michael German?

7 A: Yes.

8 Q: And you told Mr. Harris that Michael Allen told you that
9 you -- that he had heard Jerome's voice right when this
10 happened?

11 A: Yes. He said he didn't see him, but he thought he heard
12 the voice.

13 Q: Okay. Do you know when you got that phone call?

14 A: I don't remember the time, but I think it was after ten.
15 It might have been after ten and he called.

16 Q: Where were you when you got that phone call?

17 A: I was just pulling up in my mom's yard on James Island.

18 Q: What time did you leave your apartment on Carriage Lane?

19 A: I left my apartment. It was close -- close to maybe ten
20 o'clock because my mom had to go to work and we all left
21 together. It was probably quarter till.

22 Q: Okay. So you think that you and your mom left at quarter
23 till ten or thereabouts?

24 A: Yes.

25 Q: Did Frank and Michael and Michael and Anthony leave at

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 the same time?

2 A: Well, all I could say they proceeded to walk on Foster
3 Street. I don't know if they left or not. I know they left
4 from in front of the apartment.

5 Q: Okay, but did they leave at the same time you and your
6 mom did?

7 A: Yes, they were walking.

8 Q: Okay and did your mom -- Was your mom -- Did your mom and
9 you take separate cars?

10 A: Yes, we did.

11 Q: And did your mom to the best of your knowledge go to her
12 other job?

13 A: Yes, she did went to her other job.

14 Q: And you went back to her house on James Island?

15 A: Yes.

16 Q: And you had your kids with you at that time?

17 A: Yes.

18 Q: Had you given Jerome a key to your apartment?

19 A: No, sir.

20 Q: Do you recall meeting with Detective Burckhardt on
21 December [sic.] 16th, 2009, about a week after Michael German
22 was murdered?

23 A: Yes. He was the one that came to the job right here.

24 Q: At any point in that week on January 9th or 10th or 11th or
25 12th or 13th, 14th, 15th, did you call the police and relate to

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 them at all that Michael German had threatened to kill your
2 brother?

3 A: No, sir.

4 Q: Did you take that threat from Michael German seriously?

5 A: Yes, I did. I take any threat seriously.

6 Q: But specifically, you took a threat from Michael German
7 seriously that he was going to kill your brother, Jerome?

8 A: Yes, he said it.

9 Q: And just to be clear, Michael Allen didn't threaten to
10 kill your brother?

11 A: He just sent me a text and said that my brother called
12 him a punk, tonight we'll see, real niggers do real things.

13 Q: Okay and that -- those were the words on the text?

14 A: Yes.

15 Q: Just what you said?

16 A: Yes.

17 Q: Okay and you had the opportunity to tell Detective
18 Burckhardt about that text when he came to interview you?

19 A: Yes.

20 Q: Isn't that right?

21 A: Yes.

22 Q: And did you relay to him those words just like you
23 relayed them to us?

24 A: Yes, I did. I showed him the text because I had it in my
25 phone.

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 Q: Okay. You -- you showed him the text?

2 A: Yes.

3 Q: And after that statement was given -- You gave a
4 statement, right?

5 A: Yes, I did.

6 Q: Okay and there's a -- there's a part of the statement
7 that's written out what you said. Did you write that out
8 yourself or did they do that for you?

9 A: I wrote a statement out myself.

10 Q: You wrote it out yourself?

11 A: Yes.

12 Q: Okay and the words that you chose to put in that
13 statement, did they supply those words to you? Did the police
14 tell you what to say?

15 A: No, sir.

16 Q: So that was just something -- That was -- That came --
17 Those were your words, weren't they?

18 A: They were.

19 Q: Okay. I'm going to show you what I'm marking as State's
20 66.

21 THE COURT: ID only.

22 MR. VOIGT: For ID only. May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25 Q: Ma'am, could you take a look at that? Now that first

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 paragraph there on that first page, that's what we were just
2 talking about. Those -- That you wrote, right?

3 A: Yes.

4 Q: Okay and in there, right there on that second line, you
5 talk about the text message, don't you?

6 A: Yes.

7 Q: Okay. Now on the first line you say that you -- I mean
8 correct me if I'm wrong, but in your own words you say, "I
9 believe sometime after eight I got a text message from my
10 husband." Is that correct?

11 A: Yes.

12 Q: Okay and what are the -- what -- What is it that you told
13 Detective Burckhardt here in this statement that that message
14 said? Could you read that out for us?

15 A: I said, "I got a text message from my husband saying tell
16 my brother that he was on the way and that real people do real
17 things. Your mama called me a sissy and tonight we'll see."

18 Q: Okay. Now and I'm -- I'm not -- You wrote the word
19 people in that statement, didn't you?

20 A: Yes, I did.

21 Q: Okay. Now you were able -- Is that your signature down
22 at the bottom of that statement?

23 A: Yes.

24 Q: Were you able to -- And this is a four page statement,
25 right?

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

- 1 A: Mm-hmm.
- 2 Q: I mean you can check, but we've got four different pages,
3 right?
- 4 A: Two -- two pages from what I wrote.
- 5 Q: Excuse me?
- 6 A: Two of them from what I wrote.
- 7 Q: And then there's some questions that the police officers
8 asked you. Is that in their handwriting?
- 9 A: Yes, it is.
- 10 Q: Okay and on the bottom of each one of the four pages of
11 the statement do you see your signature?
- 12 A: Yes, I do.
- 13 Q: Okay. Did Detective Burckhardt -- And I think I'm
14 reading that right. The witness on each one of those says "R.
15 Burckhardt", does it not?
- 16 A: Yes.
- 17 Q: Okay. On each one of those pages, did Detective
18 Burckhardt give you the opportunity to look at what you had
19 told me, the important things that you had told him, and make
20 any corrections or additions?
- 21 A: Yes.
- 22 Q: And by this point, by January 16th, your brother had
23 already been arrested, right?
- 24 A: Correct.
- 25 Q: And you love your brother?

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 A: Yes, I do.

2 Q: No doubt?

3 A: No doubt.

4 Q: Okay and it was important for you to tell Detective
5 Burckhardt each and every thing that you remembered from that
6 night just in case something was important, right?

7 A: Yes and I also told him that some things that I didn't
8 remember. At the time I was very nervous writing the
9 statement and I might have missed some things.

10 Q: Oh, sure.

11 A: Or say some things not right in the right order.

12 Q: Sure. Now Detective Burckhardt came to your place of
13 work, right?

14 A: Yes, he did.

15 Q: And about how long did you meet with Detective
16 Burckhardt?

17 A: I think he came to the job I want to say around maybe one
18 and we left a little after three.

19 Q: So about two hours you think you spent with him?

20 A: I'm not sure, I'm not sure.

21 Q: Does that sound about right?

22 A: Probably is.

23 Q: Okay. Had you ever gone to any police station or tried
24 to contact the police in any way to tell them about the
25 important things you knew about this case?

CROSS EXAMINATION OF CHARISE COAXUM BY MR. VOIGT

1 A: No, the -- the detective came to me.

2 Q: Okay.

3 A: And I told my brother's lawyer at the time, who was his
4 lawyer at the time.

5 Q: Now when you told Detective Burckhardt what you put in
6 your statement and about the text message, did you want to
7 tell Detective Burckhardt every important fact that you could
8 think of that he needed to know about what happened before
9 Michael German got killed?

10 A: The best of my knowledge.

11 Q: Can you look on that statement and find for me where you
12 told Detective Burckhardt that Michael German said, "Your
13 brother gonna die tonight?"

14 A: I didn't state it what Michael German said, but I -- It's
15 in here.

16 Q: But in there that -- That's not on -- in that statement
17 anywhere, is it?

18 A: It's -- it's -- it's worded differently that what they
19 say they was going to do to him.

20 Q: Where?

21 A: And I told them Anthony and them was at the house looking
22 for him and what they was going to do to him.

23 Q: So you've told this jury that somebody who is not here to
24 defend himself told you, "Your brother's going to die
25 tonight." And you didn't think that was important enough to

REDIRECT EXAMINATION OF CHARISE COAXUM BY MR. HARRIS

1 tell Detective Burckhardt, did you?

2 A: No. At that time, the police were already involved, so.

3 Q: That wasn't important?

4 A: It was important.

5 Q: Now Anthony German says to your mother, "Your son gonna
6 die tonight." Let me guess. It's not in that statement, is
7 it? You can look if you like.

8 A: No, it's not in my statement.

9 Q: Okay. You didn't think that was important enough to tell
10 Detective Burckhardt, did you?

11 A: I think it all was important.

12 Q: It's not in that statement because nobody ever said that.
13 Isn't that right?

14 A: No, that's not right.

15 Q: You think you can come in here and just make it up, don't
16 you?

17 A: No, sir, not at all.

18 MR. VOIGT: I have no further questions, Your Honor.

19 THE COURT: Any redirect of the witness?

20 MR. HARRIS: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. HARRIS:

23 Q: You put your hand on that Bible when you walked in here,
24 didn't you?

25 A: Yes, I did.

REDIRECT EXAMINATION OF CHARISE COAXUM BY MR. HARRIS

1 Q: And you said I promise to tell the truth, the whole truth
2 and nothing but the truth, so help you God?

3 A: Nothing but the truth, God.

4 Q: Okay. You haven't been sitting in this courtroom this
5 entire three days, have you?

6 A: No, sir.

7 Q: You haven't been listening to what was going on in here?

8 A: No, sir.

9 Q: You haven't even been in the courthouse?

10 A: No, sir.

11 Q: Okay.

12 MR. HARRIS: I have nothing further, Your Honor.

13 THE COURT: Any objection to the witness being excused
14 from the State?

15 MR. VOIGT: None from the State, Your Honor.

16 THE COURT: From the defense?

17 MR. HARRIS: None, Your Honor.

18 THE COURT: Ma'am, you're excused. Counsel, approach the
19 bench, please.

20 (Whereupon, the witness leaves the stand at 3:21 p.m. and
21 a bench conference is held off the record in the presence
22 of the jury but out of the hearing of the jury.)

23 THE COURT: You may call your next witness.

24 MR. MIKELL: Your Honor, the defense calls Ms. Sandra
25 Campbell.

DIRECT EXAMINATION OF SANDRA CAMPBELL BY MR. MIKELL

1 THE COURT: If the witness would come forward to be sworn
2 and do we need to go out in the lobby and get her?

3 MR. HARRIS: She's in the hall. They're getting her,
4 Your Honor.

5 (Whereupon, there is a brief pause in the proceedings
6 until the witness enters the courtroom.)

7 THE CLERK: This way, Ms. Campbell. Put your left hand
8 on the Bible and raise your right hand. Do you swear or
9 affirm that your testimony will be the truth, the whole truth
10 and nothing but the truth, so help you God?

11 MS. CAMPBELL: Yes.

12 THE CLERK: Be seated. Ms. Campbell, if you'll please
13 speak into this microphone. You've got to get kind of close
14 to it and state your full name and then spell your last name.

15 MS. CAMPBELL: Sandra M. Campbell, C-A-M-P-B-E-L-L.

16 THE COURT: You may proceed, Mr. Mikell.

17 MR. MIKELL: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 SANDRA CAMPBELL, being first duly
20 sworn, testifies as follows:

21 DIRECT EXAMINATION

22 BY MR. MIKELL:

23 Q: Good afternoon, Ms. Campbell. Ms. Campbell, tell me
24 where are you from?

25 A: James Island.

DIRECT EXAMINATION OF SANDRA CAMPBELL BY MR. MIKELL

- 1 Q: Okay.
- 2 A: I live at ---
- 3 Q: Born and raised -- born and raised there?
- 4 A: Yes.
- 5 Q: Okay and where did you go to school?
- 6 A: Fort Johnson High, graduated from Fort Johnson High.
- 7 Q: Okay. After you graduated, did you get married or ---
- 8 A: Yes.
- 9 Q: Okay and do you have any children?
- 10 A: Yes.
- 11 Q: Tell me about your children. Who are they?
- 12 A: I have Edwina, Katrina, Charise, Jerome and Rosalyn.
- 13 Q: Okay. Jerome is your only boy?
- 14 A: Yes.
- 15 Q: Okay. Let me ask you about Jerome. Tell me how old is
- 16 he?
- 17 A: Thirty-seven.
- 18 Q: And what does Jerome do for a living?
- 19 A: He was working for -- The last job was working for an
- 20 insurance company.
- 21 Q: Okay.
- 22 A: Mm-hmm.
- 23 Q: And what -- what did he do for that insurance company?
- 24 A: Sold insurance.
- 25 Q: Okay and about how long?

DIRECT EXAMINATION OF SANDRA CAMPBELL BY MR. MIKELL

- 1 A: I would say maybe from six months to a year.
- 2 Q: Okay and back January 9th of 2009, was Jerome working for
- 3 that insurance company?
- 4 A: No.
- 5 Q: What was he doing then?
- 6 A: He was working. He was a loan officer for a bank,
- 7 Wachovia, if I'm not mistaken, Wachovia.
- 8 Q: And where did he have that position?
- 9 A: In Charlotte, North Carolina.
- 10 Q: Okay. Now tell me about -- about Jerome's education.
- 11 Where did he go to school?
- 12 A: He went to James Island High School. He graduated from
- 13 -- He went to Spartanburg Methodist, Anderson College, and
- 14 then he graduated from the University of South Alabama.
- 15 Q: Okay. Do you -- did he get a bachelor's?
- 16 A: Yes, he did.
- 17 Q: Okay and how long had he been working there at -- in
- 18 Charlotte?
- 19 A: I guess about two, three years.
- 20 Q: Okay. Is Jerome married?
- 21 A: Yes, he is.
- 22 Q: Okay. Who is his wife?
- 23 A: Sharonda Campbell.
- 24 Q: Okay and where did he meet Sharonda?
- 25 A: They were high school sweethearts.

DIRECT EXAMINATION OF SANDRA CAMPBELL BY MR. MIKELL

- 1 Q: Okay. So they met here in Charleston?
- 2 A: Yes.
- 3 Q: At James Island High School?
- 4 A: I don't think they met at James Island High School.
- 5 Q: Okay.
- 6 A: But I don't know when they met, but I know they -- he was
- 7 in school when he was seeing her.
- 8 Q: Okay. How long have they been married?
- 9 A: I think maybe about three years.
- 10 Q: Okay and do you have any grandchildren?
- 11 A: Yes.
- 12 Q: Does Jerome have any children?
- 13 A: No, he doesn't.
- 14 Q: Okay. So your grandchildren are from your -- your
- 15 daughters?
- 16 A: Yes.
- 17 Q: Okay. How many grandchildren do you have?
- 18 A: I have eight biological grandchildren and I have four
- 19 that calls me Grandmother, but I'm not actually their
- 20 grandmother.
- 21 Q: Okay. Your grandchildren from Charise, tell me who are
- 22 they?
- 23 A: Tremaine, ~~xxxxxx~~, ~~xxxxxx~~ and ~~xxxxxx~~.
- 24 Q: Okay. So four grandchildren from Charise?
- 25 A: Yes.

DIRECT EXAMINATION OF SANDRA CAMPBELL BY MR. MIKELL

1 Q: Okay and how -- Tell me their ages?

2 A: [REDACTED] is eleven, twelve. It's between eleven and
3 twelve. [REDACTED] just had a birthday. He just turned fifteen.

4 Q: Okay.

5 A: [REDACTED] is sixteen and Tremaine is nineteen.

6 Q: Okay, okay. Thank you. Now I want to call your
7 attention to January 9th, 2009, and ask you about that entire
8 day. So can you tell me how you -- how you started that day?
9 It was a Friday.

10 A: I was -- I think I worked that night.

11 Q: Where do you work?

12 A: I work with Disability Board of Charleston County.

13 Q: Okay. So when did you work from? Did you ---

14 A: I worked from ten at night to six a.m. in the morning.

15 Q: Okay. So we would say you started at ten o'clock on
16 Thursday?

17 A: Yes.

18 Q: And then you finished up that job at six a.m. Friday
19 morning.

20 A: Yes.

21 Q: Is that right?

22 A: Yes.

23 Q: Okay. Now after you got off work, tell me what did you
24 do?

25 A: I went to bed.

DIRECT EXAMINATION OF SANDRA CAMPBELL BY MR. MIKELL

1 Q: Okay and around what time did you get up from that?

2 A: It would have been about ten o'clock.

3 Q: Ten o'clock in the morning?

4 A: Mm-hmm, mm-hmm.

5 Q: Okay. When you got up, did you -- Tell me what was the
6 next thing? Did you -- Did you speak with anyone in the house
7 or do you remember?

8 A: Well, you know, we chat.

9 Q: And -- and -- and let me ask you, Ms. Campbell, who lives
10 with you?

11 A: At that time, my daughter, Charise.

12 Q: Your daughter, Charise?

13 A: Yes.

14 Q: Okay. Did Charise have another place that she was
15 living?

16 A: Yes.

17 Q: Okay and where was that?

18 A: She lived with -- Oh, God, Plantation Apartments.

19 Q: Okay. Now tell me after you woke up that morning, you
20 spoke with Charise for a little while?

21 A: I can't remember.

22 Q: Okay.

23 A: I can't remember exactly.

24 Q: Okay. That's fine. So let me ask you this: Did you --
25 When was the first time that you remember talking with Jerome?

DIRECT EXAMINATION OF SANDRA CAMPBELL BY MR. MIKELL

1 A: Jerome, it seemed to me like he came in later on that
2 day.

3 Q: Okay. Did he come to your house?

4 A: Yes. He came to my house.

5 Q: Okay. Did he -- Were you expecting Jerome?

6 A: No, I wasn't expecting him.

7 Q: Okay. When -- when he came in, why did he tell you he
8 was there?

9 A: He came -- He usually comes down to sell sneakers. He
10 sells sneakers. So he usually come down and sell sneakers to,
11 you know, different people.

12 Q: So it's not uncommon for Jerome to come without you
13 expecting him?

14 A: No, no, no.

15 Q: Okay and that's -- And so tell me about him selling
16 sneakers. What's -- what's that all about?

17 A: Well, he sold the Jordans and I don't -- I'm from the old
18 school, I'm old fashioned, so I don't know about the different
19 sneakers and stuff, but different types of sneakers and people
20 would go to the house and come to the house and sometimes they
21 would call him and ask him to come by their house and you
22 know.

23 Q: Okay. So tell me later on that afternoon, you said
24 Jerome came to the house?

25 A: Mm-hmm.

DIRECT EXAMINATION OF SANDRA CAMPBELL BY MR. MIKELL

1 Q: Did you have a chance to talk with him?

2 A: Yeah. Actually, I -- I was a little -- When he came in,
3 I think I was a little upset.

4 Q: Okay. Can you tell me why?

5 A: And well, I had a -- a conversation with someone on the
6 phone and, you know, some things were said and -- and I was
7 kind of upset.

8 Q: Okay. Let's talk about the conversation on the phone.
9 Can you tell me who you were talking to?

10 A: Anthony German.

11 Q: Okay and how -- Did he call your cell phone or ---

12 A: Yes, yes.

13 Q: Okay and tell me about that?

14 A: Well, my daughter was talking to my granddaughter at
15 first and, you know, about some things and so after they hung
16 up the phone, then the phone ring again and then I got told --
17 I answered the phone and it was him and, you know, we had a
18 conversation. He was kind of, you know, disrespectful to me.

19 Q: And -- and how was he disrespectful? What do you mean by
20 that?

21 A: Well, he was using some curse words. I was explaining to
22 him -- It concerned the baby. I was explaining to him that it
23 was no big deal that we couldn't see the baby and I told him,
24 I said, "I have twelve grandchildren and, you know, I'll be
25 able to see them." I said, "When y'all are ready for me to

DIRECT EXAMINATION OF SANDRA CAMPBELL BY MR. MIKELL

1 see the baby, then I'll see her, but until then, you know,
2 it's okay." And he -- he was kind of -- He was disrespectful
3 at first, but, you know, he sort of calmed down and after he
4 calmed down, I think he got a -- a phone call and he told me
5 to hold on, but I -- I hung up the phone on him and, you know,
6 I didn't have any more conversation with him again that day.

7 Q: You didn't?

8 A: No.

9 Q: Okay. Tell me after that phone call, did you stay at
10 home for the rest of the evening?

11 A: No.

12 Q: Tell me what was the next thing you did?

13 A: About -- Later on, I got a phone call that my grandson
14 asked me to come over to the Plantation Apartments.

15 Q: And who -- and around what time did you get this phone
16 call?

17 A: I -- I would say between seven and eight.

18 Q: And who -- who -- who called you? You said your
19 grandson?

20 A: It was one of the grandsons. At that time, it -- But it
21 had to be or because they were the ones at home.

22 Q: Okay. Did they tell you why they wanted you to come
23 over?

24 A: They didn't tell me why. They just asked me, "Grandmama,
25 please come over."

DIRECT EXAMINATION OF SANDRA CAMPBELL BY MR. MIKELL

1 Q: Okay. So what did you do?

2 A: So I went over. I got -- You know, I didn't go right
3 then, but I went over and when I got there, do you want me
4 finish it?

5 Q: Yeah. Around what time did you get there?

6 A: I'd say it was something to eight.

7 Q: Okay.

8 A: Around that time.

9 Q: Okay and when you got there, who was there?

10 A: When I got there, Frank was there and he was talking to
11 my daughter in the living room.

12 Q: Okay, okay and tell me about that when you -- when you
13 came in? Tell me?

14 A: Well, when I came in, they were talking at the time, you
15 know, they were having a nice conversation. It was nothing,
16 you know, going on. I walked in the -- in the back and I
17 talked to [REDACTED] and [REDACTED] and I asked them why they wanted
18 me to come and, you know, their parents were having a little,
19 you know, disagreement and they wanted me, you know, to come,
20 but and then I came back in the area that Charise and Frank
21 was at.

22 Q: Okay. Did you see Michael Allen?

23 A: Not at that time.

24 Q: Okay and how long did you stay there?

25 A: I would say till something -- We was there till something

DIRECT EXAMINATION OF SANDRA CAMPBELL BY MR. MIKELL

1 to ten.

2 Q: Okay and so probably about two hours. Is that -- is that
3 accurate?

4 A: I'd say.

5 Q: Okay and the entire time it was just Frank in the house
6 with Charise?

7 A: It was -- it was Frank, myself, my other daughter and the
8 kids were there and I think Mike came in later.

9 Q: Okay and do you know if anyone else was there?

10 A: No, there was no one else in the house at that time to my
11 knowledge.

12 Q: Okay and tell me what was going on for the two hours?

13 A: Well, Frank and Charise was discussing -- was having a
14 discussion. I listened in on it and they were talking about
15 different things and I stood there for a while and, you know,
16 we talked and talked and I can't remember everything that was
17 said, but the topic that Charise and Frank was talking about
18 was her husband and his friends.

19 Q: Okay, okay and then tell me what happened around ten?

20 A: Okay. It wasn't before ten because I have to -- I was
21 supposed to go be to work.

22 Q: Where -- Is that back at the Disabilities Board?

23 A: Yes.

24 Q: Okay.

25 A: Yeah and I was getting ready to leave. The children was

DIRECT EXAMINATION OF SANDRA CAMPBELL BY MR. MIKELL

1 going to come over with me because Charise had to be to work
2 at eleven o'clock. So I was getting ready to leave and when I
3 opened the door, Michael and Anthony was standing right there
4 at the door.

5 Q: Okay. What did -- What did they say to you?

6 A: I asked them, I said, "Why y'all standing in front of the
7 door?" I said, "What are y'all doing here?" I said, "Y'all
8 don't live here." I said, "This is not right for y'all to
9 be." I said, "I couldn't come -- We couldn't come in your
10 area like that, so y'all shouldn't be here."

11 And Mike -- Anthony said, "Your son's gonna die tonight."
12 I said, "My son?" I said, "Why? Why is my son gonna die?" I
13 said, "What's the problem?" And I said, "Anthony." I said,
14 "You need to go home." I said, "You got a little baby and a
15 wife there, so you need to go home and take care of your
16 little baby and -- and your wife."

17 And I think he got sort of agitated. We exchanged words
18 and, you know, different words that I cannot remember every
19 word that was said, but we did exchange words.

20 Q: Okay.

21 A: And Michael was standing right by Anthony. It was, you
22 know, right there right in front of the door. Michael was
23 standing by Anthony and I said -- I said, "What's your
24 problem?" He said he came here. He said he is a Blood. "I'm
25 a Blood and I come here to kill your punk -- curse word --

DIRECT EXAMINATION OF SANDRA CAMPBELL BY MR. MIKELL

1 son." That's what he said to me and we -- we -- we talked,
2 talked and I said, "Michael." I said, "Son." I said, "Go
3 home." I said, "Trouble is easy to get into and hard to get
4 out." And we, you know, kind of got a little nasty. Michael
5 kind of got -- you know, he just sort of went off and he said
6 he got out of his bed. "I got out of my bed to come here and
7 I'm a Blood and something's gonna happen tonight."

8 Q: After you heard that -- Did you -- Did you still have to
9 leave or what did you do?

10 A: Okay. After I heard that ---

11 Q: Did you call the police?

12 A: I said I -- I got my cell phone out. I had a flip phone
13 at the time and I took the phone out and I said, "I'm going to
14 call 9-1-1." And that's when Frank grabbed my hand and shut
15 my phone down and he said, "You don't have to do that. We're
16 gonna leave."

17 Q: Okay and then what happened next?

18 A: And they left. They went to the street. Fusilier Street
19 is on the side of my daughter's apartment. So they went on
20 Fusilier Street and they went like to the back of the
21 building. When I got in the car with my grandchildren and
22 myself, that's the area we -- we went, Fusilier Street and
23 they were in the back of the building because the car -- Their
24 cars wasn't there, you know, where we were at, so they were in
25 the back of the building. I don't know if their cars were

DIRECT EXAMINATION OF SANDRA CAMPBELL BY MR. MIKELL

- 1 back there or not. I didn't check to see, but I know when
2 they went in the back of the building, it was -- it was four
3 of them that left there, but in the back of the building there
4 was more than four people.
- 5 Q: Okay. Did you have a chance to talk with Jerome?
- 6 A: No. I never spoke with Jerome, never.
- 7 Q: Okay and then you went to work?
- 8 A: I went to work and then I -- I went to work and I got a
9 call, you know, later -- late that, you know, what, you know,
10 everything, that Jerome turned himself in or something like
11 that and that was -- that was it, you know, till. . .
- 12 Q: Okay. During that time, were you ever interviewed by any
13 detectives from the ---
- 14 A: No.
- 15 Q: --- Charleston Police Department?
- 16 A: No.
- 17 Q: Did anyone from the Charleston Police Department ---
- 18 A: One. Somebody came to the house. He came. He had a
19 police officer with him, but he asked to speak to my daughter,
20 Charise.
- 21 Q: Okay.
- 22 A: And I told them Charise wasn't here, she was at work and
23 I told them what time, you know, she would be here and he left
24 a card for me to give to Charise to tell her to call him.
- 25 Q: Okay. Other than that, did anyone ever contact you in

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 regards to what happened on that night of January 9th, 2009?

2 A: No.

3 Q: Okay. Thank you.

4 MR. MIKELL: No further questions.

5 THE COURT: Any questions for the witness?

6 MR. VOIGT: Yes, Your Honor.

7 THE COURT: You may proceed.

8 CROSS EXAMINATION

9 BY MR. VOIGT:

10 Q: Ms. Campbell, how are you?

11 A: Fine.

12 Q: I just have a few questions for you.

13 (Whereupon, Mr. Mikell approaches the witness stand to
14 retrieve papers.)

15 MR. MIKELL: I apologize.

16 MR. VOIGT: Okay.

17 MR. MIKELL: Thank you.

18 Q: When -- Let me see if I understand what -- what you said.
19 At the time on January 9th, 2009, your daughter, Charise, was
20 living with you on James Island on Grimble Road?

21 A: No. She was living at her apartment.

22 Q: Oh, okay. Was she staying with you on Grimble Road? Did
23 I misunderstand you?

24 A: She -- she comes there and they used to spend the night
25 from time to time.

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 Q: Okay and on the morning of the 9th or rather in the
2 afternoon of the 9th, did you pick up -- pick any of the kids
3 up from school?

4 A: I don't recall picking anyone up.

5 Q: Okay. During -- Back in 2008, early 2009, did you talk
6 to your son, Jerome, on a fairly regular basis?

7 A: 2000 what?

8 Q: Like November, December 2008, January 2009, did you talk
9 to your son, Jerome, on a fairly regular basis?

10 A: I talked to him, yeah, but I'm -- I'm -- I'm not a phone
11 person and everybody could tell you I'm hard to get in touch
12 with.

13 Q: Okay. You're hard to reach on the phone?

14 A: I'm hard to reach. They'll call me and leave a message
15 for me or I'll see that they called.

16 Q: Okay and I think you told Mr. Mikell that you weren't
17 expecting Jerome that day?

18 A: No, I wasn't.

19 Q: Okay. The baby that we're talking about here, that's
20 your ---

21 A: Great-grand.

22 Q: Great-grandbaby?

23 A: Mm-hmm.

24 Q: And on January 9th that baby was three days old?

25 A: I -- I really don't -- I really don't know how old the

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 baby was, but I know that's what the conversation was about
2 the baby.

3 Q: It was about -- it was about the great-grandbaby and your
4 granddaughter is [REDACTED]?

5 A: Yes.

6 Q: Were you upset that [REDACTED] was having a child at such a
7 young age?

8 A: Yes, I was.

9 Q: Were you upset at Anthony German?

10 A: Not so much upset with him. I was upset -- upset at the
11 situation.

12 Q: Was your daughter, [REDACTED]'s mother, upset to your
13 knowledge?

14 A: I don't think she was. I can't speak for her.

15 Q: But y'all have a fairly close family, don't you?

16 A: Yes, we do.

17 Q: And these are the kind of things I imagine at this time
18 Vasha getting pregnant was something that y'all talked about?

19 A: Yes. I think I was the last one to know.

20 Q: Do you think maybe they were keeping that from you
21 because it might upset you?

22 A: Of course, it would upset me.

23 Q: Was your son, Jerome, upset at all?

24 A: Not at all.

25 Q: Had you had many dealings with Anthony German?

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 A: No.

2 Q: You said that you're difficult to get on the phone. Did
3 you have many telephone conversations with Anthony German?

4 A: No.

5 Q: Before January 9th, had Anthony German ever disrespected
6 you on the phone in any way?

7 A: No, but he disrespected me in my yard.

8 Q: And this is before January 9th?

9 A: Mm-hmm.

10 Q: And if I understand this conversation that you testified
11 to, you were telling -- And I'm not going to -- Tell me if I'm
12 wrong. You were telling Anthony that it was okay because you
13 had other grandchildren and you had kind of been through this
14 before, that it was okay that you didn't see your great-
15 grandbaby right away?

16 A: Well, first of all, I was at -- I -- It wasn't my
17 decision. I didn't know anything about the baby was supposed
18 to come over to my house. I found that out after -- Actually
19 after the telephone conversation, that's when I found out that
20 Vasha was going to bring the baby over to see me and they
21 didn't bring the baby again because she said they didn't have
22 gas in the car and I was saying that if you needed money for
23 gas, that was not the excuse. I could have -- I could have
24 put gas in the car.

25 Q: And that was part of the conversation that you had with

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 Anthony?

2 A: I -- I was -- Well, actually I wasn't talking on the
3 phone at the time. My daughter was on the phone, but I was
4 saying in the background if that was the case, after I found
5 out why she didn't come, I said that if she needed money for
6 gas, I would have put gas in the car.

7 Q: I guess my question is that what you just said right
8 here, that wasn't part of your conversation that you had with
9 Anthony?

10 A: No, no, that wasn't.

11 Q: That was something -- That was a conversation you had
12 with somebody else? Not Anthony?

13 A: I was there. My daughter was on the phone when Vasha was
14 telling her on the phone and I was there. I was in the house,
15 but like that was a comment that I made while she was on the
16 phone.

17 Q: Okay and I'm not trying to confuse you. That's just you
18 -- The putting gas in the car, that wasn't something that you
19 relayed to Anthony during this conversation that you two had
20 on the phone?

21 A: No, no, I didn't.

22 Q: Okay and the conversation that you said you had with him
23 involved the fact that for right now you didn't need to see
24 the baby?

25 A: Well, he was -- he was sort of -- I guess he was upset

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 and he wanted to know why we were sort of harassing Vasha. I
2 wanted him to know that I was not harassing Vasha. You know,
3 we was talking about the baby and why the baby couldn't come
4 over and I just told him that was okay. I -- I wasn't going
5 to get upset about them not -- I wanted to see the baby, but I
6 couldn't make them bring the baby over to me and I wasn't
7 upset to the point. I just let him know that it's okay you
8 don't want me to see the baby. Whenever I get to see him,
9 I'll see the baby. That was it.

10 Q: Okay and on this particular day you had worked all night,
11 correct?

12 A: Yes.

13 Q: And when you got to your house, your daughter, Charise,
14 was there after working all night? Am I right? I'm sorry.
15 That -- That's a question.

16 A: I think Charise came later. She wasn't there that early.
17 I think she came -- She might of was there. I can't -- I
18 can't remember right now.

19 Q: Okay and do you recall what time you would have had this
20 conversation with Anthony?

21 A: I can't remember the time. I really can't, but I know I
22 had a conversation with him. I can't remember the exact time.

23 Q: Okay and during this conversation with Anthony, your --
24 your son Jerome's name didn't come up at all, did it?

25 A: No. Jerome didn't really come up.

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 Q: Was Jerome at your house when you had this conversation
2 with Anthony?

3 A: No, Jerome was not there.

4 Q: Was anybody else at your house when you had this
5 conversation with Anthony?

6 A: My daughter was there. I think two of my daughters was
7 there, if I'm not mistaken.

8 Q: Just so that we're clear, a little bit more clear, which
9 -- which daughters were there?

10 A: Charise and Candy.

11 Q: Okay and did you tell your daughters about the
12 conversation that you had with Anthony?

13 A: They were there.

14 Q: Okay. Was it a speakerphone situation or did they just
15 hear your end of the conversation?

16 A: They basically hear my end of the conversation.

17 Q: All right and you said that at some point Anthony calmed
18 down?

19 A: Yeah, yeah. We saw that, you know, he was explaining to
20 me about why the baby -- he didn't want to stop us from seeing
21 the baby and, you know, this and that.

22 Q: Okay and did you know how old the baby was at that point?
23 You may have in 2009, but I know it's been a couple years.

24 A: I -- I really can't remember what day the baby was born.

25 Q: The baby just had another birthday, right?

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 A: In January.

2 Q: Do you remember? Did you celebrate it at all?

3 A: No.

4 Q: Okay. So you had to be at work at ten o'clock that night

5 on January 9th?

6 A: Yes.

7 Q: And that's downtown?

8 A: No.

9 Q: Is that downtown? Oh.

10 A: No, that's in James Island.

11 Q: Okay and -- and I know I'm probably asking a question

12 that you can't answer, but you said that you went to Charise's

13 apartment in Plantation Apartments at something to eight. Do

14 you have any idea? Was it quarter to eight or half to eight

15 or do you have any idea?

16 A: That night really I was not paying attention to the time.

17 I -- When my grand -- When my grandson called me, I had to get

18 ready, like I said, and I didn't go right then because I have

19 to get prepared to go because I wasn't dressed properly. So I

20 went over there. I did not pay attention to the time. I'm

21 saying it could have been between seven and eight o'clock.

22 Q: Okay and before you went over there, did you get dressed

23 so that you could go from there to work?

24 A: No, because I didn't think I was going to be -- I was

25 going to be -- I didn't know. I didn't think I was going to

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 be over there that long.

2 Q: Okay. About how long does it take you to get from your
3 house on Grimble Road to Charise's apartment without unusual
4 traffic circumstances?

5 A: It takes me about 15, 20 minutes.

6 Q: After you left Charise's apartment later that night, did
7 you have to go back to Grimble Road ---

8 A: Yes.

9 Q: --- to get dressed again?

10 A: Yes, I went back there.

11 Q: When you got back to your house on Grimble Road, was
12 Jerome there?

13 A: No, he wasn't.

14 Q: Was his car there?

15 A: I don't -- I don't recall.

16 Q: At any time, did you have the keys to Jerome's car?

17 A: No.

18 Q: Other than Jerome, who obviously had keys to his car, do
19 you know of anybody else who may have had keys to Jerome's
20 car?

21 A: I don't know.

22 Q: Now when you were at the house -- And I'm sorry. When
23 you were at Charise's apartment, you testified or you told Mr.
24 Mikell that when you got there, that Frank was talking to
25 Charise?

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 A: Mm-hmm.

2 Q: And I think you said that Michael came later or Mike came
3 later?

4 A: Yeah, he came in. I didn't see him. When I first went
5 there, I didn't see him.

6 Q: And you didn't see Michael German and you didn't see
7 Anthony German either, did you?

8 A: They weren't in the house at that time.

9 Q: Did Anthony German or Michael German ever physically walk
10 all the way into the house?

11 A: They were at the -- the threshold.

12 Q: The threshold?

13 A: Mm-hmm.

14 Q: Okay. Approximately how many times before he died had
15 you met Michael German?

16 A: I might have been in his company around three, three
17 times.

18 Q: Three times? Okay. During any of those times, did you
19 ever notice any unusual tattoos on him?

20 A: No.

21 Q: Okay. The same for Anthony German?

22 A: No.

23 Q: When you left your house on Grimble Road in James Island
24 to go to Charise's apartment after your grandson called you,
25 was Jerome, your son, at your house on Grimble Road?

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 A: I don't -- I don't recall. I don't remember.

2 Q: Okay. Did you talk to your son Jerome at any time from
3 the time you left your house on Grimble Road to go to your
4 daughter Charise's apartment and the time you went to work
5 that night?

6 A: No.

7 Q: From the time you got to work during that shift that
8 night from the 9th going into the 10th, did you talk to your
9 son, Jerome, at all?

10 A: No.

11 Q: Okay.

12 A: No.

13 Q: During the time that you were at Charise's apartment from
14 sometime before eight until sometime before ten, did you and
15 Michael ever -- I mean Michael Allen ever have words? Did you
16 ever have any sort of heated conversation between just the two
17 of you?

18 A: Yeah, we did.

19 Q: What was the substance? What were you saying to Michael
20 Allen?

21 A: Well, he was making remarks concerning my son. He wanted
22 my son and I told him, I said, "My son is not here. My son is
23 in Charlotte." And I said, "Why do you want my son?" And he
24 said something about a conversation he had, but I don't know
25 anything about it.

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 Q: Okay. My question to you was not what Michael told you,
2 but what rather you were telling Michael. What was his --
3 Were you talking to Michael about the situation he was having
4 with -- with your daughter Charise?

5 A: No, no. We -- No, no.

6 Q: Did you feel so threatened by what Michael Allen told you
7 that you called your son, Jerome?

8 A: I would never do that.

9 Q: Did you feel so threatened by what Michael Allen told you
10 that you'd pick up your phone and call the police? Just what
11 Michael Allen told you.

12 A: Well, at that time, I -- I could have, but I didn't.

13 Q: Okay, I understand. Now you've told Mr. Mikell about a
14 conversation that you had with Michael German about his being
15 a Blood. Did you know what that meant?

16 A: I -- I thought it -- I didn't know at first, but then I
17 was told that that means a -- a gang.

18 Q: Okay. So when -- In the story that you've told Mr.
19 Mikell and all of us, Michael German tells you that he's a
20 Blood and he's going to kill your son?

21 A: Mm-hmm.

22 Q: Now did you see -- I mean how old was Michael German when
23 you were having this conversation?

24 A: I -- I haven't the slightest idea how old he is.

25 Q: He was a teenager?

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 A: Michael German?

2 Q: Uh-huh.

3 A: I don't know. I don't know. I don't know.

4 Q: And when you're having this conversation and I'm
5 presuming it's in the threshold of your daughter's apartment,
6 did you see a gun, the glimpse of a gun?

7 A: I -- I didn't see -- I didn't see a gun.

8 Q: He didn't show you any sort of weapon or anything?

9 A: No, he didn't.

10 Q: Did he imply that he had one? Did he put his hand in his
11 pocket or anything?

12 A: I don't -- I didn't see any.

13 Q: Did you feel threatened by this teenager?

14 A: No, but, you know, I might -- Until he -- When he started
15 ranting off, that's when I said I was going to call the
16 police.

17 Q: Were you worried that he was going to kill your only son,
18 Jerome Campbell?

19 A: I wasn't. I was concerned, but Jerome wasn't there, so
20 that give me the assurance, you know. He wasn't there.

21 Q: Do you know where he was?

22 A: I don't know where he was, but I know he wasn't there at
23 that point.

24 Q: Okay. How did you -- What did you do to express your
25 concern when you heard Michael German say that he was a Blood

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 and that he was going to -- and he was there to kill your son?
2 And I think you used some expletives in there. How did you
3 express that concern?
4 A: That's when I told him, I said, "Son, you need to go
5 home. Trouble is easy to get into and hard to get out."
6 Q: So you scolded him? Is that fair?
7 A: If you want to say that.
8 Q: During the time you were there in the threshold with
9 Anthony German, am I correct to assume that Anthony German was
10 a teenager at the time as well, if you know? You may not
11 know.
12 A: I don't know.
13 Q: Okay. What did Anthony German -- How did -- Did Anthony
14 German show any sort of weapon or anything that indicated that
15 he was a threat to your son Jerome?
16 A: No, he didn't.
17 Q: To your knowledge, before January 9th, before the day when
18 Michael German was murdered, did anyone in your family that
19 you know of threaten Anthony German?
20 A: No, not that I know of.
21 Q: Before that day, before his brother's murder, had Anthony
22 German been welcomed with open arms into your family?
23 A: I would say yes.
24 Q: And you testified that when you first got there, Frank
25 Haigler was in the apartment with Charise and they were having

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 a conversation?

2 A: Yes.

3 Q: Could you tell from the tone and the context of the
4 conversation, what you may have overheard, was Frank there to
5 cause problems?

6 A: I -- I think so.

7 Q: And you were there for about two hours, right? Roughly?

8 A: Yeah, I would estimate around that time.

9 Q: And -- and during that two hours, what sort of trouble
10 was Frank causing?

11 A: Well, I -- Well, I said trouble because while he was
12 talking to my daughter, he was bad mouthing Michael and he was
13 bad mouthing Anthony. So I would say that was a trouble
14 making to me.

15 Q: Now when you're saying that Frank was bad mouth -- bad
16 mouthing Michael, which Michael are we referring to?

17 A: Allen.

18 Q: Michael Allen. So Frank is talking to your daughter,
19 Charise?

20 A: Yeah.

21 Q: And you overhear. Are you in the same room with them?

22 A: I was in the same room.

23 Q: And he's bad mouthing Michael Allen?

24 A: Yes.

25 Q: And he's also -- And he's bad mouthing Anthony German?

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

- 1 A: Yes.
- 2 Q: Is he bad mouthing Michael German?
- 3 A: I didn't hear him say anything about Michael.
- 4 Q: Okay and how long did that conversation last? Do you
5 know?
- 6 A: I'd say about 20 minutes or 20 -- about 20 minutes.
- 7 Q: All right. During the time that you were at the
8 apartment, which is approximately two hours, was Frank there
9 the whole time with you?
- 10 A: He was there the majority of the time. When I left, you
11 know, before -- He left before I left.
- 12 Q: He left before you?
- 13 A: Because they were the one that went around the building.
- 14 Q: Okay and was he talking to Charise the whole time before
15 he left?
- 16 A: He was talking to Charise the majority of the time. You
17 -- you say when I left?
- 18 Q: Huh?
- 19 A: I don't know about -- I -- I couldn't say that because
20 Charise and I basically left the same time.
- 21 Q: Did Frank and Charise ever have heated words between them
22 during the time that you were in that room with them?
- 23 A: When I was there, there was no heated words.
- 24 Q: Okay. Did Frank make any threats towards Jerome in your
25 presence?

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 A: No, because the conversation was not about Jerome at --
2 You know, at that time it wasn't.

3 Q: So your conversation in the -- in Charise's -- I guess
4 it's a living room area?

5 A: Right.

6 Q: It was about Charise and Michael Allen, right?

7 A: Yes.

8 Q: Is that a safe assumption?

9 A: Mm-hmm, mm-hmm.

10 Q: At the time, your daughter, Charise, was very upset with
11 her husband, Michael Allen, was she not?

12 A: Well, when I got there, she didn't seem upset to me
13 because her and Frank was talking.

14 Q: So the -- the talk with Frank had calmed her down
15 somewhat?

16 A: I couldn't say that. All I know is when I got there, she
17 was -- they were talking.

18 Q: Now when Frank was getting ready to leave, you said that
19 you were going to call 9-1-1?

20 A: I said I was -- was going to call 9-1-1.

21 Q: And Frank closed your phone?

22 A: Mm-hmm.

23 Q: Did you feel threatened by that action of Frank's?

24 A: I didn't feel threatened, but I don't -- I don't think he
25 should have done that. But then when I asked him what, he

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 said, "Don't do that, we'll leave." So when they left, you
2 know, it was -- it was fine, you know.

3 Q: Frank said he was going to leave and ---

4 A: He said, "We'll leave."

5 Q: And the next thing is they left, right?

6 A: Yes.

7 Q: And you said that they went back around to the back side
8 of the apartment. Is that what you said?

9 A: They went towards Fusilier Street.

10 Q: Okay. Did you see them getting into a car and leave or
11 anything like that?

12 A: I didn't see them get in any car.

13 Q: And then you left and you had driven your car over there?

14 A: Yes.

15 Q: And you got into your car and your daughter, Charise,
16 left right around the same time?

17 A: Yes.

18 Q: And did she leave with her kids?

19 A: I -- She had [REDACTED] and [REDACTED], I think, and then I had
20 [REDACTED] with me.

21 Q: Okay and y'all went back to your house on Grimble Road?

22 A: Yes.

23 Q: And then you had to go to work?

24 A: Mm-hmm.

25 Q: It was about 15 minutes from your house or rather from

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 Charise's house to your house on Grimble Road?

2 A: Yeah, 15 to 20 minutes.

3 Q: Okay and then approximately how long from your house on
4 Grimble Road back to your work?

5 A: I can -- I can get to work in about five minutes or ten
6 minutes if I don't have the lights.

7 Q: Just straight over the connector and there you are.

8 Okay. During that fifteen minute drive to -- from Charise's
9 house to your house on Grimble Road, did you have your phone
10 with you?

11 A: Yes, I did.

12 Q: Did you call your son to tell him about the threat on his
13 life by a Blood?

14 A: No, I didn't.

15 Q: Did you call the police to let them know that there was
16 this Blood who had threatened your son's life?

17 A: No, I didn't.

18 Q: And when you got home and changed to go to work, Jerome
19 wasn't there?

20 A: No, he wasn't.

21 Q: And then you went to work and then during that time at
22 work and going to work, did you pick up the phone and call the
23 police and say, "Hey, there's this guy who is threatening my
24 son's life?"

25 A: No, I didn't.

CROSS EXAMINATION OF SANDRA CAMPBELL BY MR. VOIGT

1 Q: Okay and you never told Jerome about that threat, did
2 you?

3 A: No, I didn't.

4 Q: And I think you told Mr. Mikell that a police officer
5 came to talk to your daughter?

6 A: Yes, yes.

7 Q: After your son had been arrested?

8 A: Mm-hmm.

9 Q: Do you know how your son got to your -- nearby your house
10 on Grimble Road the night he was arrested?

11 A: I don't have a clue.

12 Q: Now a police officer came to your house. Did you tell
13 the police officer about the threats on your son's life from a
14 member of the Blood gang?

15 A: No. I didn't because I didn't know what he wanted to
16 talk Charise about. He didn't explain to me anything, so I
17 didn't have any reason to, you know, tell him about that.

18 Q: There was -- there was no reason to tell him?

19 A: At that time, I didn't think there was.

20 Q: And then in the months and years afterwards, there has
21 been no reason to tell the police about that, has there?

22 A: Well, I would say it is a reason to tell them, but I
23 didn't tell them because at that time I felt that, you know, I
24 didn't think anything was going to come up.

25 Q: So the first time that, for example, a lead detective in

REDIRECT EXAMINATION OF SANDRA CAMPBELL BY MR. MIKELL

1 this case has heard that would have been when you told Mr.

2 Mikell about it 40 minutes ago, if you know? You never told
3 that to the police ---

4 A: No, I didn't.

5 Q: --- when they contacted you?

6 A: No.

7 MR. VOIGT: Thank you.

8 THE COURT: Any redirect of the witness?

9 MR. MIKELL: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. MIKELL:

12 Q: Ms. Campbell, today when you took your oath, you swore to
13 tell the truth, correct?

14 A: Correct.

15 Q: Have you done that?

16 A: Yes, I did.

17 MR. MIKELL: Okay. No further questions.

18 THE COURT: Any objection to the witness being excused
19 from the State?

20 MR. VOIGT: Not from the State, Your Honor.

21 THE COURT: From the defense?

22 MR. HARRIS: No, Your Honor.

23 THE COURT: Ma'am, you're excused.

24 (Whereupon, the witness leaves the stand at 4:10 p.m.)

25 THE COURT: The defense may proceed.

1 MR. HARRIS: Your Honor, may we approach?

2 THE COURT: You may.

3 (Whereupon, a bench conference is held off the record in
4 the presence of the jury, but out of the hearing of the
5 jury.)

6 THE COURT: Madam Forelady, ladies and gentlemen, we're
7 having a little bit of a scheduling challenge with travel with
8 a witness and instead of having you all wait, we're not
9 completely clear as to when that -- whether that person would
10 be able to arrive before the close of business today. So
11 instead of having you wait, I'm going to go ahead and excuse
12 you for the afternoon.

13 During this break, please do not discuss the case among
14 yourselves or with anyone else. Please do not allow
15 yourselves to be exposed to any media coverage about this
16 case. That includes anything on radio, television -- I'm
17 missing something, newspaper or internet. Please don't do any
18 independent research on the internet.

19 Again, you are the fact finders in this case and it is
20 absolutely essential that you not make any decisions until you
21 have heard all of the evidence in this case, the arguments of
22 counsel and the Court's closing arguments. Also, please don't
23 have any contact with anyone in or about the courthouse. We
24 would not want an innocent conversation to be observed and
25 misinterpreted.

1 We will resume in the morning at 9:30. We anticipate
2 that we will finish this case on tomorrow. So I tell you that
3 for purposes -- for your planning purposes. If you would
4 leave your notepads in your seats, we'll secure them during
5 the recess. Have a great evening. We'll see you in the
6 morning at 9:30.

7 (Whereupon, the jury leaves the courtroom at 4:12 p.m.)

8 THE COURT: You may take your seats. Did y'all have any
9 requests to charge that you wish the Court to consider? If
10 you do, can you hand those up to me?

11 MR. VOIGT: Your Honor, I don't have any specific
12 charges. I'll rely on the Court's charges for those things
13 such as hand of one that seem to fit this.

14 THE COURT: I'm sorry. I didn't hear the last part of
15 that.

16 MR. VOIGT: I'm sorry. I -- I -- I know how the Court
17 charges reasonable doubt and that's what I prefer anyways and
18 the hand of one, hand of all. I've been through that with
19 Your Honor and I think that that's the appropriate charge. So
20 I don't have any specific charges for you.

21 THE COURT: Does the defense have any requests to charge
22 that it wishes the Court to consider?

23 MR. HARRIS: Your Honor, I don't have any written
24 requests right now. I'd ask that if I could do that first
25 thing in the morning, if I could have until then to do that.

1 THE COURT: If you want to go to that trouble, you can.
2 I can tell you that I have pretty much already written my
3 instruction. I'll be glad to consider anything that you would
4 like to submit, but I prefer to have it way in advance. I
5 don't like to have to think about things ten minutes before
6 I'm going to do it.

7 MR. HARRIS: I understand, Your Honnor, and the only one
8 I would ask is if there would be a self-defense charge in
9 there.

10 THE COURT: I assume there's going to be some evidence of
11 self-defense?

12 MR. HARRIS: I hope so, Your Honor, yes.

13 THE COURT: Okay. We'll talk about that at charge
14 conference, but I -- I got a little ahead of myself. I'll --
15 I'm going to give y'all a general overview. We'll have a
16 formal charge conference after the defense rests and I assume
17 based on what you've told me your last witness is Christopher
18 Robinson, your GSR expert?

19 MR. HARRIS: Yes, Your Honor.

20 THE COURT: Now, Mr. Voigt, is the State going to have
21 any rebuttal witnesses?

22 MR. VOIGT: I would anticipate at most two, Your Honor.

23 THE COURT: Okay. So let's see, we might need to give
24 them lunch orders when they come in in the morning.

25 THE CLERK: Okay.

1 THE COURT: Just in case. Do you know how long those
2 rebuttal witnesses might be, Mr. Voigt?

3 MR. VOIGT: I anticipate for them to be very brief, Your
4 Honor.

5 THE COURT: Give me just a round number.

6 MR. VOIGT: With cross examination, maybe about 20
7 minutes each.

8 THE COURT: So about 40 minutes?

9 MR. VOIGT: That would be my estimation.

10 THE COURT: Okay. Now I took the motion for directed
11 verdict under advisement because I needed time to review my
12 notes and just to -- I don't -- I didn't want to rely solely
13 on my recollection at that moment and, frankly, I wanted some
14 time to think, which I don't think anybody would begrudge me
15 that.

16 In considering a motion for directed verdict, the Court
17 is concerned with the existence or non-existence of evidence
18 and not its weight. The Court must be careful, however, that
19 the evidence merely -- that the evidence is more than that
20 raising a mere suspicion that the accused is guilty. A
21 suspicion applies to belief or opinion as to guilt based upon
22 facts or circumstances which do not amount to proof.

23 However, a trial judge is not required to find that the
24 evidence infers guilt to the exclusion of any other reasonable
25 hypothesis. Again, without being redundant, the Court is

1 concerned with the existence or non-existence of evidence and
2 not its weight and the Court must determine at a threshold
3 whether there is direct evidence or substantial circumstantial
4 evidence reasonably tending to prove the defendant's guilt.

5 There has been an argument that the evidence is tenuous
6 at best and does not amount to meeting a prima facie case
7 regarding the State's claims of murder and AWIK and I --
8 Again, I've reviewed my notes and what I am able to glean at
9 this point is that the issues that have been raised are issues
10 of the weight of the evidence, not the existence or non-
11 existence.

12 Again, the Court is not the fact finder. It's not for
13 the Court to weigh evidence, only to determine if there is
14 direct evidence or substantial circumstantial evidence
15 reasonably tending to prove the defendant's guilt and there
16 exists both. Therefore, the motion for directed verdict is
17 denied.

18 Now as it regards the jury instruction -- And I'll give
19 you all this since we have this extra time and then you all
20 can let me know if there is anything else I need to be
21 researching during the evening or the remainder of the
22 afternoon prior to resuming in the morning.

23 The Court will give a general instruction regarding my
24 responsibility and the jury's responsibility, how they are to
25 judge witness credibility and believability. I'll give a

1 general instruction on expert witness testimony.

2 Now I did have a question. There was a -- There was
3 testimony that the defendant was Mirandized and he made a
4 statement which generally amounted to -- I'm trying to
5 remember the exact words, but it was some -- And if I'm -- If
6 I'm inaccurate, overlook that inaccuracy on my part, but the
7 gist of it was: I was working in Charlotte and now I'm in this
8 mess. I mean that's somewhere around that.

9 Does that -- Are you all going to take the position that
10 that amounts to a statement subject to Miranda? Because I'm
11 asking because generally I would instruct any statements made
12 after Miranda for the jury to weigh that and to determine
13 whether the State has proven beyond a reasonable doubt that
14 the statement was made freely, voluntarily, etcetera,
15 etcetera.

16 And I was going to give that instruction, but I'll give
17 y'all time to think about that and you can let me know if you
18 have any exception to that during charge conference, which
19 deals with, of course, the usual elements of Miranda: whether
20 the defendant was Mirandized and for the jury to look at
21 things such as the length of detention, the mental ability,
22 capacity, IQ, background, environment, the usual elements that
23 you look at and the fact that the State has the burden of
24 proving beyond a reasonable doubt that the alleged statement
25 was voluntary and if they cannot prove it was voluntary, then

1 the jury should not consider the statement at all.

2 I'll give a general instruction from *State v. Grippon* on
3 direct and circumstantial evidence. I will give an
4 instruction that the charge, the arrest and the indictment are
5 not evidence, as well as a general instruction on the
6 presumption of innocence. I'll charge *Victor v. Nebraska* on
7 reasonable doubt and I will give a general instruction
8 regarding the fact that the defendant did not testify.

9 I debated whether I would instruct on identification as
10 the State having to prove the identity of the defendant as the
11 person who committed the offense beyond a reasonable doubt and
12 I think I probably will give that instruction and it deals
13 with witnesses who have identified him as the person who
14 committed this offense and those usual elements, such as how
15 long a time or short was available to observe him, whether
16 they had an adequate opportunity to observe him at the time of
17 the offense, lighting, whether they had a chance to see or
18 know him in the past, the -- those usual elements.

19 And I also want to instruct the elements of assault with
20 intent to kill, which I think everybody is familiar with. I
21 don't think I need to go through that, as well as the elements
22 of murder.

23 Now if there is some evidence that rises to the level of
24 self-defense -- Of course, I would not instruct implied
25 malice, I believe, based on the case law, which is -- would

1 not be appropriate. I will also instruct mere presence, hand
2 of one, which is accomplice liability, and if there is
3 evidence of self-defense, I will instruct that, but I haven't
4 heard everything yet, so I will hold off on making a final
5 determination regarding that.

6 And I will give a general instruction regarding multiple
7 indictments. In other words, that each indictment has to be
8 proven on the law applicable to it beyond a reasonable doubt,
9 irregardless of how the jury finds on each individual
10 indictment. In other words, he can be acquitted on all or
11 convicted on all and then I would instruct the form of the
12 verdict.

13 Is there anything that you all can glean that has been
14 omitted, that needs to be included, that I need to look at
15 this evening or that would have been within the gambit of
16 something you would have requested as an instruction? From
17 the State?

18 MR. VOIGT: Not at this time, Your Honor.

19 THE COURT: From the defense?

20 MR. HARRIS: Nothing at this time, Your Honor.

21 THE COURT: Okay. I'm going to let -- You know, lawyers
22 are funny, "at this time".

23 MR. HARRIS: Nothing at all, Your Honor.

24 THE COURT: It doesn't mean I won't consider something,
25 but please don't bring it to me at noon and ask me to try to

1 research it. If you want me to consider it, bring it first
2 thing in the morning so that I can look at it. Okay? All
3 right. Is there anything else before we break for the evening
4 from the State?

5 MR. VOIGT: None from the State, Your Honor.

6 THE COURT: From the defense?

7 MR. HARRIS: Nothing, Your Honor.

8 THE COURT: Have a good evening. Make sure that the
9 court reporter has all the evidence, please, before y'all
10 leave.

11 (Whereupon, there is a break in the proceedings from 4:21
12 p.m. on Wednesday, January 25, 2012, until 9:51 a.m. on
13 Thursday, January 26, 2012. When the proceedings resume, the
14 defendant is present along with all counsel. The jury is not
15 yet present.)

16 --- END DAY THREE OF TRIAL ---

17

18 (continued in Volume 4)

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 2009-GS-10-6730
) CASE NO. 2009-GS-10-6731
) CASE NO. 2009-GS-10-6732
) CASE NO. 2009-GS-10-6733

THE STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
)
-vs-)
)
JEROME CAMPBELL,)
A/K/A JEROME COAXUM,)
)
Defendant.)
)

TRANSCRIPT OF RECORD
(DAYS 4&5 of 5)

January 23-27, 2012
Charleston, South Carolina

B E F O R E:

THE HONORABLE DEADRA JEFFERSON, Judge, and a jury

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

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KRYSTAL J. SMITH
Official Court Reporter

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1 JANUARY 26, 2012

2 (Whereupon, the proceedings resume at 9:49 a.m. with the
3 defendant and all counsel present. The jury is not yet
4 present.)

5 THE COURT: Is the State ready to proceed?

6 MR. VOIGT: Yes, Your Honor.

7 THE COURT: Is the defense ready to proceed?

8 MR. HARRIS: Yes, Your Honor.

9 THE COURT: And is your witness here?

10 MR. HARRIS: He is, Your Honor.

11 THE COURT: Okay. You can go ahead and get the jury, Mr.
12 Earl.

13 MR. VOIGT: Your Honor?

14 THE COURT: Yes, sir?

15 MR. VOIGT: Mr. Harris just told me that his client has
16 rejected my latest offer.

17 THE COURT: Okay. I assumed them when they told me y'all
18 were ready to proceed.

19 MR. VOIGT: I just wanted to let you know.

20 THE COURT: And Mr. Harris, while the jury is coming, are
21 there going to be any requests for any lesser included
22 charges?

23 MR. HARRIS: Your Honor, I think I said I was going to
24 request a self-defense charge, but not lesser includeds.

25 THE COURT: Okay.

1 MR. HARRIS: And I can go into that later if we get to
2 it.

3 THE COURT: We're going to have a charge conference.

4 MR. HARRIS: Okay.

5 (Whereupon, there is a pause in the proceedings.)

6 BAILIFF: Ready, Your Honor?

7 THE COURT: Mm-hmm.

8 (Whereupon, the jury enters the courtroom at 9:52 a.m.)

9 BAILIFF: Jury is all present, Your Honor.

10 THE COURT: You may be seated. Ladies and gentlemen, I
11 hope that you all had a pleasant and restful evening. We're
12 now going to resume the testimony, but if you all could bear
13 with me one second, I neglected to ask a scheduling question
14 of the attorneys and I need to get some information to my
15 deputy clerk. So if y'all could approach for me, please.

16 (Whereupon, a bench conference is held off the record in
17 the presence of the jury, but out of the hearing of the
18 jury.)

19 THE COURT: Thank you all for being so indulgent.

20 (Whereupon, the Court confers briefly with the clerk.)

21 THE COURT: You may proceed.

22 MR. HARRIS: Thank you, Your Honor. The defense calls
23 Christopher Robinson. Your Honor, may I move the podium?

24 THE COURT: You may.

25 THE CLERK: This way, sir. I'm going to swear you in.

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 Put your left hand on the Bible and raise your right hand.

2 Do you swear or affirm that your testimony will be the truth,
3 the whole truth and nothing but the truth, so help you God?

4 MR. ROBINSON: I do.

5 THE CLERK: Be seated. Sir, please speak into the mic
6 and state your full name and then spell your last name for the
7 record.

8 MR. ROBINSON: My name is Chris Robinson, R-O-B-I-N-S-O-
9 N.

10 THE COURT: You may proceed.

11 MR. HARRIS: Thank you, Your Honor.

12 CHRISTOPHER ROBINSON, being first
13 duly sworn, testifies as follows:

14 DIRECT EXAMINATION

15 BY MR. HARRIS:

16 Q: Good morning, Mr. Robinson.

17 A: Good morning.

18 Q: Mr. Robinson, tell me about your background?

19 A: I am a private forensic consultant. I received my
20 Bachelor of Science degree in chemistry from Berry College in
21 Rome, Georgia, in May of 1995. For the past 15 years, I have
22 worked in the field of forensics. I'm certified in the
23 disciplines of firearms, gunshot residue, blood spatter, crime
24 scene, and shooting reconstruction. During the past 15 years,
25 I have logged over 15,000 hours on the comparison microscope,

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 I've performed over 150,000 firearms examinations, I've
2 completed eight armors courses, I've been to eight
3 manufacturing plants, and I've currently worked over 7,000
4 actual cases.

5 Q: How many cases have you testified in as an expert
6 witness?

7 A: Five hundred and eighteen today.

8 Q: Okay. So 518, this is the 518th case as an expert
9 witness?

10 A: Yes, sir.

11 Q: And how many of those dealt with gunshot residue?

12 A: I would say in the neighborhood of 100.

13 Q: Okay and how about firearm -- bullet trajectory?

14 A: About 150.

15 Q: Okay. How about differentiating the noise a gun would
16 make?

17 A: I believe it's around 15 to 20 times.

18 Q: Okay and where did you work and get this experience?

19 A: I worked for ten years at the Georgia Bureau of
20 Investigation and then I left there and became the crime lab
21 director for the City of Atlanta Police Department and now,
22 like I said, I'm just a private forensic consultant from
23 Atlanta.

24 Q: Okay and have you ever been disqualified as an expert?

25 A: No, sir.

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 MR. HARRIS: Your Honor, at this time I'd like to tender
2 Mr. Robinson as an expert.

3 THE COURT: In what area?

4 MR. HARRIS: In gunshot residue, bullet trajectories and
5 gun sounds, I guess you'd say differentiating gun sounds.

6 THE COURT: Any questions or objections?

7 MR. VOIGT: I have no objection to gunshot residue, Your
8 Honor. If I may take a moment to predicate for the others?

9 THE COURT: You may proceed.

10 MR. VOIGT: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 BY MR. VOIGT:

13 Q: Thank you, Mr. Robinson.

14 A: Yes, sir.

15 Q: You testified that you have testified in court 15 to 20
16 times in the State of Georgia concerning the noise that
17 firearms make?

18 A: Yes, sir.

19 Q: And on each of those were you qualified as an expert in
20 gun noise?

21 A: Yes, sir.

22 Q: Okay and is there any sort of special certification
23 involving firearm noise?

24 A: No, sir. It's more that's just the -- It's a trait of
25 the job, if you will. I've heard so many different guns. Now

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 I've had cases where I've had a decibel meter and I could
2 actually tell you what the type of sounds a certain gun makes
3 based on the decibel noise, but in most cases I'm called to
4 say can you differentiate between a handgun and a shotgun or a
5 handgun and a high-powered rifle. That -- that's pretty easy.
6 Now when you start talking about handguns to handguns, that --
7 that's very difficult and I won't even attempt to do something
8 like that. I can tell the difference between one gun from
9 another. You can hear those different sounds, but I would
10 never try to go into caliber wise.

11 Q: Okay and isn't it true that the -- For you to be able to
12 make that sort of differentiation, you need the best data
13 possible?

14 A: Sure.

15 Q: And in each of those cases that you testified as an
16 expert, did you do independent -- independent testing in any
17 of those cases for the purposes of identifying sound?

18 A: I would say on three to four of them. Most of the cases
19 just involved, like I stated, they wanted to know if it was a
20 handgun or a high-powered rifle, shotgun. The ones that I did
21 do the testing on, I just took the gun out to reproduce the
22 sounds so you could hear them on a recording so we could
23 compare the two.

24 Q: Is there a specific training or course or school where
25 you can go to learn -- I guess it's the skill of

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 differentiating between different types of firearms?

2 A: That was part of the training at the GBI. I was lucky to
3 have the instructors that I did. I was kind of thrown into
4 the fire when I first started there. We averaged about 600
5 cases a year when I first started. So again, that's what I'm
6 telling you, it's a trade. You just have to hear guns. Now
7 I've been shooting guns all of my life since I was young. So
8 a lot of that comes from just how you're brought up, but the
9 number of guns you listen to.

10 We have to test fire the guns to put them onto a
11 database. So we have to fire guns constantly, constantly. So
12 that is part of the training that -- But there's also we shot
13 different guns and then they would give me a test. They would
14 shoot something and they would shoot a rifle and I'd have to,
15 you know, just listen to the two sounds and that's how I
16 differentiated it.

17 Q: Okay and this was on the job training at the Georgia
18 Bureau of Investigations?

19 A: Yes, sir. Yes, sir.

20 Q: Okay and that's an agency that's similar in nature to
21 what we call SLED or ---

22 A: Yes, sir.

23 Q: --- South Carolina Law Enforcement Division?

24 A: Absolutely, yes, sir. Yes, sir.

25 Q: And am I to understand that this skill that you acquired

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 really is -- is listening?

2 A: It is.

3 Q: And knowing what it is that you've heard?

4 A: Yes, sir. Yes, sir.

5 Q: Now approximately how many times have you testified as to
6 trajectory?

7 A: I would say around 150. It's as well as firearms
8 together. I've been asked to reproduce the crime scene just
9 as much.

10 Q: And that's a much more common skill if you have it that's
11 necessary in criminal cases ---

12 A: Absolutely.

13 Q: --- and cases like this?

14 A: Yes, sir, absolutely.

15 Q: And that -- What does -- What does the skill of
16 identifying trajectory involve? What -- what -- what sort of
17 -- What are the components of that skill set?

18 A: Sure. You have to learn, you know, how bullets strike
19 different materials. You can do the -- that passes through
20 glass, first and second shots, inside or out, how they
21 impacted metal, different angles where it strikes the metal.

22 You use trajectory rods. You can place the rods in
23 certain holes if you can find them and track the -- the lines
24 back to find out where the gun was at the time of the
25 shooting. So it's a very common field, yes, sir.

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 Q: And -- and the word trajectory, what -- That really means
2 kind of path of travel, right?

3 A: That's correct.

4 Q: So I mean you're -- When you're using the skill of the
5 trajectory or path of travel, what you're talking about of the
6 rods those indicate where bullets may have come from, wherever
7 that may be?

8 A: That's correct.

9 Q: And then where -- wherever they may go from where, you
10 know ---

11 A: That's correct.

12 Q: Okay and that's -- that's something that ordinarily an
13 investigative agency will do on the scene where possible. Is
14 that correct?

15 A: Yes, sir.

16 Q: Okay.

17 MR. VOIGT: I have no further questions, Your Honor, and
18 I have no objection to this witness' qualifications.

19 THE COURT: The object -- The witness is admitted without
20 objection in the areas of gunshot residue, bullet trajectory
21 and differentiating gun sounds. You may proceed, Mr. Harris.

22 MR. VOIGT: May I move the podium slightly?

23 MR. HARRIS: Sure.

24 MR. VOIGT: Just for my sight sake.

25 BY MR. HARRIS:

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 Q: Good morning again, Mr. Robinson.

2 A: Good morning.

3 Q: Okay. You've had a -- a chance to review the evidence in
4 this case. Correct?

5 A: Yes, sir.

6 Q: Okay. First and foremost, let's -- Explain to me and the
7 jury this -- This case does involve gunshot residue. It
8 involves metals and lead and barium and antimony. Can you
9 explain what a -- how a bullet works?

10 A: Okay. A cartridge itself has four components. A bullet,
11 the bullet is seated inside of a cartridge casing, you fill
12 the cartridge case up with gunpowder and on the back side of
13 the cartridge case is the primer. The firing pin strikes the
14 primer, igniting the powder, building up pressure inside the
15 barrel and sending the bullet down range. So that is how a
16 particular cartridge works. Now are you wanting me to
17 elaborate?

18 Q: Well, where -- Now you hear the term and we've heard the
19 term in this courtroom "gunshot residue."

20 A: Okay.

21 Q: Now can you kind of differentiate what -- what happens at
22 this point, why there is gunshot residue and where it goes?

23 A: That's a common misconception. There's two types of
24 gunshot residue. The gunshot residue on your hands from
25 firing a weapon, it's emitted from the sides of the gun or out

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 of the ejection port on a pistol. So therefore, if you have
2 barium, lead, antimony, zinc, things like that, those are
3 contained within the primer of the cartridge case.

4 Now the gunshot residue that is sent down range that
5 follows the bullet is the gunpowder, nitrocellulose,
6 nitroglycerin components, vaporous lead, soot, things of that
7 degree, but they only travel so far. After about four to five
8 feet, they're going to fall away from the bullet and the
9 bullet is going to continue down range.

10 So there's two different types of gunshot residue:
11 Gunpowder, if you will, will come out the muzzle and gunshot
12 is what's emitted from the sides of the weapon.

13 Q: Okay. When that pin is hit and there's primer at the
14 back of it, where does that primer go?

15 A: The primer stays within the gun. If it's a revolver, the
16 cartridge case stays in the weapon. If it's a pistol, it
17 would eject the cartridge case, but at the moment it's struck,
18 it lights the powder inside of the cartridge case. But then
19 that's when the cloud of all these elements, barium, antimony,
20 lead, zinc, there's about 25 of them that are in the mixture
21 itself.

22 So if you're firing a weapon or you're in close proximity
23 to a weapon, that's deposited on your hands. So when you test
24 the person's hands and it comes back positive for gunshot
25 residue, you know they either fired a weapon or they've

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 recently come into contact with a weapon that's been fired or
2 they're in very close proximity to a fired weapon.

3 Q: Okay and you said that these casings, do they call -- Are
4 these called shell casings? Is that where the primer and all
5 this stuff is?

6 A: That's correct.

7 Q: Okay and that's ejected out of a pistol?

8 A: That's correct.

9 Q: And so that's the difference between a pistol and a
10 revolver?

11 A: That's correct.

12 Q: So the revolver is the one with the cylinder. The bullet
13 stays in after it's fired?

14 A: It does just what it says. The cylinder revolves inside
15 the gun. So you have to manually extract those cartridge
16 cases. If you do fire the pistol, it will eject the cartridge
17 cases after each shot until the last shot is fired. The slide
18 locks to the rear, you remove the magazine and reload.

19 Q: Okay. So when you reviewed the evidence, they found five
20 what they called live rounds in this?

21 A: That's correct.

22 Q: And then there's one shell casing, which is where the
23 primer is?

24 A: That's correct.

25 Q: And do you recall where they found -- when you reviewed

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 this evidence where they found that?

2 A: The one cartridge case was I believe down the road a
3 little ways beyond the gas station and then the live
4 cartridges were found right there down that alleyway.

5 Q: Okay. Behind the gas station?

6 A: Yes.

7 Q: Okay. Now you had a chance to review this case and
8 review the findings of the gentleman, John Roberts. Is that
9 right?

10 A: Yes, sir.

11 Q: And what's called his reports and then what are called
12 bench notes?

13 A: That's correct.

14 Q: Okay and what did you discover in those?

15 A: It stated that two of the victims, Michael Allen and
16 Michael German, his reports show there is apparent GSR on the
17 hands. Based on the examination of the elements that were
18 found, the amount that was found, the only way that that
19 gunshot residue could have been on their hands is if they
20 fired a weapon or they were standing right beside a gun when
21 it went off. So I don't see any other way possible that that
22 gunshot residue was on their hands in the levels that were
23 found.

24 Q: Okay, because they have all the elements, lead, antimony,
25 barium?

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 A: That's the key.

2 Q: Okay.

3 A: That's the ---

4 Q: These are -- these are things that -- Do these happen in
5 nature?

6 A: They're not happening in nature at such high levels, no.

7 Q: Okay. Now hypothetically, let's say a bullet is fired,
8 it hits a wall sixty feet away. Would the person below it --
9 What would -- What would be on that person below it?

10 A: What kind of wall was it?

11 Q: A brick wall.

12 MR. VOIGT: Objection, Your Honor.

13 THE COURT: Basis?

14 MR. VOIGT: Improper hypothetical.

15 THE COURT: You need to phrase it in the form of a
16 hypothetical, although the way he phrased it was not improper.
17 It was a follow-up question clarifying the nature of the
18 hypothetical and the parameters for which the expert ---

19 MR. HARRIS: Okay.

20 THE COURT: --- was to testify, but you may rephrase.

21 Q: For any kind of wall, doesn't matter.

22 A: Yeah, I would expect to find whatever substance the wall
23 was made of to have fallen down on top of the people below
24 where the bullet hole was struck.

25 Q: What else?

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 A: I wouldn't expect to find too much of anything else. I
2 mean if the bullet fragmented, you might find a couple pieces
3 of lead or you might find pieces of the jacket, be it nickel,
4 copper, whatever jacket it was made of, you might find pieces
5 of that, but I wouldn't expect to find too much else from that
6 distance.

7 Q: Would you find barium?

8 A: No.

9 Q: Antimony?

10 A: No.

11 Q: Would you find copper if it was -- I thought you just
12 said copper.

13 A: The jacket.

14 Q: Okay, but you might find lead?

15 A: You might find lead because the lead is the lead core.
16 It's almost in every bullet. They just use different types of
17 metals to make the jackets out of.

18 Q: So in this scenario, a person could have lead on them?

19 A: It's possible. I wouldn't expect to see a great deal of
20 lead like -- I mean we're not talking about it's a shower of
21 lead. The bullet fragments in a certain design. They're
22 engineered that way. They're designed to stay together, but
23 when it hits something very hard, of course, they fragment
24 because they have to break apart. But it's not like finite
25 pieces. It's larger pieces.

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 Q: Could they vaporize?

2 A: Absolutely not. I've shot bullets into everything you
3 could imagine: wood, steel, concrete. I can still match the
4 bullets back to the guns in almost every situation.

5 Q: Okay. So in that hypothetical, that bullet wouldn't
6 vaporize into gunshot residue?

7 A: I've never heard of anything. A bullet vaporizing, I've
8 never heard of any research, any statements from anyone that
9 would make a claim like that.

10 Q: So in the 7000 plus cases you've worked, this hasn't
11 happened?

12 A: No, sir.

13 Q: Okay. So in this case that you've reviewed the evidence
14 on, the gunshot residue -- Oh, one thing. You've reviewed the
15 gunshot residue tests for Jerome Campbell?

16 A: Yes.

17 Q: And what were the results of that?

18 A: Negative.

19 Q: Does that mean he didn't have it on his hands?

20 A: That's what it would indicate in this situation, yes,
21 sir.

22 Q: Okay. What about Anthony German?

23 A: Again, it revealed no -- the presence of no GSR was
24 detected.

25 Q: Okay. So in this case with the bench notes and the

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 reports from the SLED agent that you reviewed with your expert
2 -- Is it your expert opinion that Michael Allen fired a
3 firearm?

4 A: He has levels to indicate, again, where you either were
5 close to the firearm when it was discharged or you handled it.
6 His levels are low enough to say he could have been standing
7 beside it. On the second victim, Michael German, his levels
8 are to the -- indicate they're on the extreme high level. Now
9 I can't say one hundred percent certainty that he discharged a
10 firearm, but just because you're standing beside one when it
11 goes off, the levels that were indicated on his hands are
12 extremely high, which would indicate to me in my opinion that
13 he fired a weapon.

14 Q: And how certain would you be that he fired a weapon?

15 A: I'd say 85 to 90 percent, that high.

16 Q: Okay. With the levels of gunshot residue on those two
17 people that were standing next to each other, would -- would
18 it show one that had fired a firearm?

19 A: Absolutely.

20 Q: One hundred percent?

21 A: Absolutely.

22 Q: So in our hypothetical, to get to that level of GSR
23 that's on this case, is that possible from that bullet in the
24 wall?

25 A: No, sir.

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 Q: Let's talk about where the gunshot residue is on these
2 two people. Where did they -- Where did they find gunshot
3 residue?

4 A: Michael Allen, on the right palm, the right back and the
5 left palm.

6 Q: Okay. So here, here and here?

7 (Whereupon, Mr. Harris points to his right palm, the back
8 of his right hand and his left palm.)

9 A: Correct.

10 Q: What's that -- What's the significance of that?

11 A: Well, the palms you see I told you if you picked up a
12 firearm, then you handled it, then you could get it on your
13 palms. But how do you account for the back? It has to be
14 from firing the weapon. So -- Or you're standing beside a man
15 that is firing a weapon right beside you, so it gets on you.
16 But' how would the man shooting here get on both your palms?
17 No. What am I doing? This right in the vapor, that's not how
18 it happens. It's holding the gun like this.

19 (Whereupon, the witness demonstrates a two handed
20 gunhold.)

21 A: My palms, front and back of my hands. That's how it
22 happened, how Michael German, right back; left palm and left
23 back. Again, same thing. So the only way you can get it on
24 the back of your hands is if you're firing a weapon.

25 Q: Are there occasions -- Are there types of guns that

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 discharge different types of GSR?

2 A: Meaning?

3 Q: Meaning different levels?

4 A: Absolutely. Pistols, like I told you before, everything
5 has to come out that ejection port and the gun only opens up
6 for about maybe half a second, if you're lucky if it cycles
7 that slow. It's only like an eighth of a second. So it all
8 has to be emitted at that moment. So you would be much less
9 -- And plus, your hand is seated much lower than the ejection
10 port on the gun. On a revolver, it's emitted to all sides of
11 the weapon. So if you're holding it at all, you have higher
12 levels for the revolver.

13 Q: And it comes out of where? Where the primer is?

14 A: It comes out of what we call the barrel cylinder gap.
15 It's where the bullet has to jump between the cylinder and the
16 barrel and it's emitted from all sides of the gun around the
17 cylinder, yes, sir.

18 Q: Okay. Now when someone has -- Is there an occasion -- Is
19 there another occasion where someone could get it on their
20 palms?

21 A: Sure. If you were in a defensive posture like this,
22 please don't shoot me, and the gun is within about ten inches
23 of your hands, then the cloud -- the victim could be in the
24 cloud with the weapon saying, "Please don't shoot me." But
25 I'm not sure about the back of the hand and if it's that

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 close, you're going to see gunpowder, stippling, all kind of
2 things on the body of the victim.

3 Q: And stippling is what?

4 A: Bruising of the skin by unburned gunpowder particles.

5 They strike the skin and bounce off. So when they bruise the
6 skin, you can see the pattern very clearly.

7 Q: Okay. So you wouldn't get it on your hands like this if
8 someone is shot from 60 feet away?

9 A: Absolutely not.

10 Q: Why is that?

11 A: Because the gunpowder only travels about -- Five feet is
12 as far as I've ever seen it travel. So anything beyond that,
13 it falls away. So you won't see any kind of certainty with
14 gunpowder from that distance.

15 Q: Okay. So it's your expert opinion that one or both of
16 Michael Allen and Michael German fired a firearm?

17 A: Yes, sir.

18 Q: One hundred percent?

19 A: Absolutely.

20 Q: Now you've also looked at -- You've also looked at other
21 evidence. You looked at the diagram?

22 A: Yes, sir.

23 MR. HARRIS: I'm going to mark this, Your Honor, if I
24 may.

25 THE COURT: Have you shown it to opposing counsel?

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 MR. HARRIS: I did that, Your Honor.

2 THE COURT: Any objection?

3 MR. VOIGT: No objection, Your Honor.

4 THE COURT: Marked and admitted without objection.

5 (Whereupon, the diagram of the crime scene is marked and
6 admitted as Defendant's Exhibit Number 1.)

7 THE COURT: And if you would, identify it by number for
8 the record.

9 MR. HARRIS: This is Defendant's Exhibit 1, Your Honor.

10 THE COURT: You may proceed.

11 Q: You've seen the photos and you've seen the pictures.

12 This is the diagram and this is what you were talking about
13 earlier? This over here was what, this 7A?

14 A: This is a cartridge case, a 9 millimeter cartridge case
15 that was found.

16 Q: Okay and up there there's four behind the building?

17 A: That's correct. Those are live rounds I believe that was
18 found.

19 Q: Okay and you saw up here where the -- the body is, right?

20 A: Yes, sir.

21 Q: And you saw a picture of the hole in the wall?

22 A: I have not clearly seen the hole in the wall yet.

23 Q: Okay.

24 A: I've seen the diagram that you're speaking of here.

25 Q: Okay.

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 A: And I've read the autopsy report.

2 Q: Okay. You have read the autopsy report?

3 A: Yes, sir.

4 Q: And which direction do you recall in that autopsy report
5 that that bullet traveled into the victim?

6 A: It struck him on the back left of his head and it came
7 slightly forward into the right. So it went a little bit off
8 center.

9 Q: Okay. I ---

10 MR. HARRIS: Your Honor, may I?

11 THE COURT: Yes.

12 Q: I'm showing you State's Exhibit 7. That's a hole in a
13 brick wall. Okay?

14 A: Okay.

15 Q: And I believe that -- I believe that that's been
16 described as about two inches wide?

17 A: That's fine.

18 Q: I believe that's been testified to it's about two inches
19 wide.

20 A: Well, first of all, that's not a hole, sir. That's just
21 a ricochet mark where the brick broke off.

22 Q: Okay.

23 A: When you say a hole, I thought I was going to see a hole
24 that went into the brick. That right there is just a ricochet
25 mark where it broke the brick off when the bullet supposedly

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 struck it. So that's not a hole at all. That's just a defect
2 in the brick where I guess the bullet in this case supposedly
3 struck the brick. So I beg to differ that how we call it a
4 hole.

5 Q: Okay. This is the first time you've seen that?

6 A: That's correct.

7 Q: Okay. I apologize. I thought it -- I was told this was
8 a hole. Let me ask you: Knowing firearms, being a firearms
9 expert, this 9 millimeter casing here, they've estimated that
10 that's 60 to 70 feet away I believe is what they said earlier.
11 Could a 9 millimeter from 60 or 70 feet create what you saw in
12 that picture?

13 A: Easily, easily.

14 Q: Why is that?

15 A: A 9 millimeter, think about this. The diameter of the
16 bullet is .355 inches, a little bit less than half an inch.
17 It's shot at a thousand feet per second or 700 miles per hour.
18 The energy of the bullet is 330 foot pounds. So that's like
19 me dropping 330 pounds on a target from a foot when it strikes
20 the surface. So that little mark on the -- the brick, easily.
21 I would even go so far as to say, you know, 380s, 25s, even
22 weaker stuff could have made that mark because the -- I was
23 expecting -- When I heard the word a hole, I'm thinking of a
24 nice hole. That's just a ricochet mark. It just chipped off
25 the brick.

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 Q: Okay.

2 THE COURT: Could you speak directly into the microphone,
3 please?

4 MR. ROBINSON: I'm sorry, I'm sorry.

5 THE COURT: That's okay. I was just having some
6 difficulty hearing you.

7 MR. ROBINSON: Yes, ma'am.

8 Q: So that is a ricochet hole there and so a 9 millimeter
9 could easily create that?

10 A: Absolutely.

11 Q: So it would not have to be a high-powered rifle?

12 A: No, sir.

13 Q: Or high-powered caliber -- high-powered bullet?

14 A: No, sir.

15 Q: What is a high-powered, high caliber bullet?

16 A: Well, that's -- You just made two statements.

17 Q: Okay.

18 A: A high-powered would be an AR-15, 223 like a military
19 uses, an AK-47, an SKS. That's the kind of weapons that you
20 see on the street. No one's carrying a bolt action rifle or a
21 lever action rifle. So for this instance, let's just say
22 either a 223 or an AR-15 and then an AK-47 would be the two
23 most common ones.

24 Q: Okay. So could that come from a shotgun?

25 A: Absolutely not because there would be multiple defects

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

- 1 unless someone is carrying a sabot, which is a huge slug
2 that's in the end of a shotgun and it would have knocked a
3 hole in the brick. It would have knocked the brick out of the
4 wall, the slug. So we can eliminate that and it was not
5 birdshot because you'd be missing multiple marks. It's not
6 buckshot because you'd see larger marks. So it had to be made
7 from some type of single shot that struck that wall.
- 8 Q: Okay and if five shots were fired into that wall or into
9 that corner, what would you expect to see?
- 10 A: I would expect to see more defects across the bricks like
11 we saw on the picture you just showed me a minute ago.
- 12 Q: Okay. Now you've had also an instance to review the
13 video. Is that correct?
- 14 A: Yes, sir.
- 15 MR. HARRIS: I beg the Court's indulgence, Your Honor.
- 16 THE COURT: Mm-hmm.
- 17 MR. HARRIS: For just a minute.
- 18 (Whereupon, there is a brief pause in the questioning
19 while counsel confers with staff and the store
20 surveillance video is then shown on the screen again.
21 The portion of the video shown is the outside wall view
22 with no sound.)
- 23 Q: Do you remember this video?
- 24 A: Yes, sir.
- 25 Q: What is this a video of?

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 A: The outside of the gas station where the victims were
2 supposedly standing.

3 MR. HARRIS: Okay, okay. Hold on. Let me see this. Can
4 we fast forward?

5 Q: Okay. Now this is the alley or the side of the building
6 and this is the one we just showed you. Is that right?

7 A: Yes, sir.

8 Q: Okay. Here's a person walking into the middle there.
9 Okay, can you tell us what you saw there?

10 A: Yeah. Can you bring it back, please, to around the 56.
11 Bring it back just a bit farther. Keep going, right before
12 the gentleman walks by. All right, stop right there for a
13 minute. Can you play it?

14 Q: Okay, sure.

15 A: Sorry. Do you see right there? It's very grainy up
16 here, but right before -- And you can't even see the wall
17 explode, but right before the wall has the debris coming
18 through the air as if a bullet struck it, there's a great deal
19 of smoke that comes up from this area. Now if this camera is
20 twelve feet high off the ground, so if I fire a weapon and all
21 that smoke and residue is emitted from the sides of the gun,
22 it has to go up to twelve feet until you can get there.
23 That's a great deal of residue that I see on that smoke coming
24 out.

25 Now the smoke doesn't get there before the bullet does.

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1 It's -- it's impossible. So the bullet has to be fired from
2 another direction. The smoke has to come from underneath this
3 camera as if, again, someone had to fire a weapon from
4 underneath this. Now either it's a really poorly made weapon
5 where all the residue is escaping or either there's multiple
6 weapons being fired here and all that smoke is being emitted
7 and then you see the shot come from another direction that
8 strikes this and you see all that debris.

9 Now if we're talking about a brick wall, yeah, I would
10 expect to see all that concrete dust and brick on them. But
11 on their hands, there's only way it gets on their hands. They
12 had to fire a weapon.

13 Q: Okay. Now you also had an occasion to see a video that's
14 on the interior of this gas station. Is that correct?

15 A: Yes, sir.

16 Q: And you viewed that tape?

17 A: Yes, sir.

18 MR. HARRIS: I'm going to try this again. It kind of
19 worked the other day, it kind of didn't.

20 (Whereupon, the video view is switched to the store
21 interior surveillance video with sound.)

22 Q: Do you -- Do you recognize this?

23 A: Yes, sir.

24 Q: Okay.

25 MR. HARRIS: Can you fast forward it to where you hear

DIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 the shots?

2 (Whereupon, the video is played through the shots being
3 heard and then the video is stopped.)

4 Q: Okay. What was that?

5 A: Okay, it sounded like gunshots to me. If you listen real
6 close, the first three are very close and even -- You don't
7 have to be experts. The second -- The fourth shot that comes
8 is farther away and then the fifth shot is even farther away.
9 So something is moving at that moment. Can you play that one
10 more time, please?

11 Q: Sure.

12 (Whereupon, the video is played again and then stopped
13 after the sounds of the shots being fired.)

14 A: Can you hear that? Those are the first three shots and
15 even -- You're not experts yourself, but it sounds like two
16 different guns. That's evident to me and you can tell that
17 one is moving farther away. The last two shots, it's louder
18 and it gets softer. So something is moving away at that
19 shooting.

20 Q: Now is one of those a shotgun?

21 A: No, sir. It just has a very distinct sound, just like
22 the AK-47 and AR-15. When you hear those, they are very
23 distinct. So ---

24 Q: So these AK-47s and AR-15s, this would be what you have
25 called a high-powered?

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 A: Or assault rifle, yes, sir.

2 Q: Okay. So ---

3 A: That's not what it sounds like to me. It sounds like --
4 more like handgun fire.

5 Q: Okay. So you think all those are handgun fire?

6 A: Yes, sir.

7 Q: Okay, but you said that the first two sound close and
8 then the second two kind of like they're going away?

9 A: That's correct.

10 Q: Okay.

11 MR. HARRIS: I beg the Court's indulgence, Your Honor.

12 THE COURT: Mm-hmm.

13 MR. HARRIS: Please answer any questions Mr. Voigt has
14 for you.

15 THE COURT: Any cross examination of the witness?

16 MR. VOIGT: Just a little bit, Your Honor.

17 THE COURT: You may proceed when you're ready.

18 CROSS EXAMINATION

19 BY MR. VOIGT:

20 Q: Now, Mr. Robinson, I'm going -- I'm going to ask the
21 cheap questions first. Okay? These are the ones that you're
22 prepared for. You were paid to be here today, right?

23 A: Yes, sir.

24 Q: Okay and you don't come -- and you don't come for free.

25 The defense paid you and you traveled here today to testify on

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 his behalf?

2 A: Yes, sir.

3 Q: Fair assessment?

4 A: Yes, sir.

5 Q: Okay and here's my second kind of cheap shot and then

6 I'll get into a little more substance. When did you get

7 retained on this?

8 A: I believe it was early last week.

9 Q: Okay. So you've been familiar with the facts of this

10 case for at best nine, ten days?

11 A: Sure.

12 Q: Okay. I like to get those out of the way early because

13 you know they're coming, right?

14 A: Yes, sir.

15 Q: Okay. Now I think Mr. Harris had you testify and I think

16 you did testify that you reviewed all the evidence in this

17 case?

18 A: Yes, sir.

19 Q: Okay, but that's not really true, is it?

20 A: I reviewed the reports that I was given. That -- that's

21 true. That's correct.

22 Q: Okay. The evidence is kind of a little bit more

23 expansive than the reports and I think -- Let me see. I think

24 Mr. Harris has it. I'm going to show you what's been marked

25 as Defense Exhibit 1. I think I got that right. This is part

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 of a report, is it not?

2 A: Yes, sir.

3 Q: Okay and this report was something that was actually --

4 Do you know who created this report?

5 A: I'm sure the -- either the Police Department or SLED did.

6 Q: Okay.

7 A: I'm not sure whose or anything.

8 Q: And it says M.R. Sherman up there and do you have any

9 idea who he is?

10 A: No, sir.

11 Q: Okay. He worked for the Charleston Police Department and

12 this is one of those things that you reviewed, right?

13 A: Yes, sir.

14 Q: Okay and 7A over here you testified was a 9 millimeter

15 casing?

16 A: That's what it's listed as, yes, sir.

17 Q: Okay and that would have -- that -- that indicates that

18 it was collected. Am I right?

19 A: Yes, sir.

20 Q: You didn't review what they collected, did you?

21 A: No, I did not.

22 Q: Okay and you have no idea how that casing could have

23 gotten there?

24 A: No, I do not.

25 Q: And you don't know when that casing got there?

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 A: No, sir.

2 Q: And you don't know who shot a firearm or how it may have
3 gotten there?

4 A: No, sir, I do not.

5 Q: Okay and it's kind of hard to see, it's a little unclear,
6 2A, 3A, 4A, 5A up there, but those are bullets which have not
7 been fired.

8 A: Cartridges, yes, sir.

9 Q: Cartridges?

10 A: Yes, sir.

11 Q: They have not been fired and you haven't looked at those
12 at all, have you?

13 A: No, sir.

14 Q: And you haven't eyeballed not a single one of them?

15 A: No, sir.

16 Q: Those are evidence in this case and you haven't reviewed
17 that?

18 A: That's correct.

19 Q: Okay. Could the same gun have fired both of those?

20 A: No, sir. Those are .38s. This is a 9 millimeter. This
21 is a pistol. Those are revolvers, but there again, I will
22 tell you I don't know when they came to be there, I don't know
23 how long they've been there and I don't know what brand or
24 anything they are. I just know they're supposed to be .38
25 rounds and this is a 9 millimeter cartridge case that's been

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 fired.

2 Q: And I'm going to just kind of hold up here what's been
3 previously marked as State's 65. I'm guessing this is the
4 first time you've ever put your eyes on this little antique,
5 isn't it?

6 A: That's correct.

7 Q: Okay and that's -- This is evidence and this is evidence
8 you never looked at?

9 A: That's correct.

10 Q: Okay and you don't know if that gun was ever fired?

11 A: No, sir, I do not.

12 Q: Okay. I mean it looks to be ancient. It may have been
13 fired at some point, but you don't know if it was fired on
14 January 9th, 2009, or at any time around there, do you?

15 A: No, sir, I do not.

16 Q: You don't even know what caliber of gun it is, do you?

17 A: I -- I'm assuming it's a .38 just based on the -- the
18 cartridge, but no, I do not, sir.

19 Q: Okay.

20 A: But it's an Iver Johnson from the handle, so I'm assuming
21 it's a -- a .38 just from that.

22 Q: Okay and now -- And because you're an expert and because
23 I'm curious, approximately how old based on that -- on your
24 look that that firearm would be?

25 A: Some of those Iver Johnson's were made, on those break

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 open where the top breaks like that, that could have been from
2 the 40's or 50's. Those are extremely old, so.

3 Q: Okay. So it's a fairly -- fairly antique firearm?

4 A: Yes, sir. Yes, sir.

5 Q: Okay. Now let's talk about just something and get it out
6 of the way. One thing that Mr. Harris did not ask you about
7 at all, not a single question, the gunshot residue from inside
8 of Jerome Campbell's car.

9 A: Okay.

10 Q: Based on your expert opinion, did John Roberts get that
11 one right?

12 A: Yes, he did. All indications say that there is gunshot
13 residue that was taken from the car. Yes, sir, it did. It
14 tested positive for gunshot residue.

15 Q: Okay. So -- And -- and again, and I don't mean to harp
16 on this too much, but when we're talking about reviewing
17 evidence, you didn't review any of the lifts that Mr. Roberts
18 took?

19 A: No, sir.

20 Q: All right or rather that were taken by the police and
21 then submitted to Mr. Roberts and you would agree with me,
22 wouldn't you, that you would rather have done all this testing
23 and analysis yourself rather than rely on Mr. Roberts,
24 wouldn't you?

25 A: Absolutely. I don't -- I told Mr. Harris when I was at

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 the GBI or the APD, I did all the testing myself, no
2 technicians. I like to do the whole thing from beginning to
3 end because I just don't trust people.

4 Q: Okay and that is -- And you would have loved to have
5 looked at those lifts. You didn't, you couldn't, you didn't.
6 And so what you're relying on is reports that other people
7 made and notes that they've made that they based their opinion
8 on?

9 A: Absolutely.

10 Q: So you'd agree with John Roberts that there is gunshot
11 residue inside of Jerome Campbell's car?

12 A: Yes, sir.

13 Q: Based on what you've reviewed?

14 A: Yes, sir.

15 Q: And that the very -- And you said that you looked at the
16 evidence. Did you look at photos of the crime scene? Did Mr.
17 Harris supply those to you?

18 A: No, sir.

19 Q: Okay. Getting back to this gun, you have no way of
20 knowing if it's operable or not, do you?

21 A: Not without looking at it, sir.

22 Q: Okay and you weren't provided that by the defense?

23 A: I was just told that it was reported that it was
24 inoperable at the time the officers took possession of it, but
25 I do not know anything about the gun. I've never looked at

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 it.

2 Q: And I think that there is a -- Correct me if I'm wrong.

3 It looks like there is a little car drawn on that. Do you
4 know if that was drawn by Officer Sherman or -- Here, let me
5 approach and ---

6 A: Oh, yeah, the little car at the bottom? I've seen that.

7 Q: Who drew the little car at the bottom?

8 A: I don't -- I don't know where that came from. I just
9 know the drawing. So I do not know that, sir.

10 Q: And this is what you reviewed, right? This?

11 A: That's correct.

12 Q: And ---

13 A: That's correct.

14 Q: Does that car look to be written in pencil?

15 A: Yes, sir, it does.

16 Q: Is the rest of that report in pencil?

17 A: No, sir, it appears to be in ink.

18 Q: You wouldn't expect a police report to be written in
19 pencil, would you?

20 A: No, sir.

21 Q: Okay. Again, now this has been marked as State's Exhibit
22 78 [sic.] and this is evidence in this case. You didn't
23 review that, did you?

24 (Whereupon, counsel is referring to the State's Exhibit
25 which is a color photo showing victim Michael German's

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 hand next to a cell phone. The State's exhibit number is
2 not 78.)

3 A: No, sir.

4 Q: Do you know what that is?

5 A: Is it a cell phone?

6 Q: Well, that's part of what's in the picture. Do you know
7 whose hand that is?

8 A: No, sir, I do not.

9 Q: Do you see a firearm in that picture anywhere?

10 A: No, sir.

11 Q: Now ---

12 MR. VOIGT: Joann, can you cue up that video just to
13 where Mr. Harris had it, the side view?

14 MS. GOULD: Yes, sir.

15 (Whereupon, the store surveillance video showing the side
16 wall of the gas station is shown on the screen at the
17 point where the victims walk into the scene before the
18 shooting.)

19 Q: That's sort of a ---

20 MR. VOIGT: All right. Can you back that just a little
21 bit, Joann? Just play it.

22 Q: Can you tell me where you see a firearm anywhere in that
23 picture?

24 MR. VOIGT: Can you stop it now, Joann?

25 A: I did not see one in that picture.

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 Q: Okay.

2 MR. VOIGT: Now can you play it a little bit further?

3 Q: Can you tell me where you see a bullet or a projectile in
4 that picture?

5 A: I do not.

6 Q: Okay. Do you see a gun in that picture?

7 A: No, sir, I do not.

8 Q: All right. So you don't see any guns in any of the
9 pictures I've shown you. You don't see -- I think you
10 testified earlier that the projectile or the bullet came from
11 one direction, but you can't really see it in that picture.

12 That's ---

13 A: Yes, sir.

14 Q: That's just the nature of that particular camera I
15 suppose?

16 A: That's correct, yes, sir.

17 Q: And the evidence that you -- The very first time that you
18 ever saw this picture, which is State's 7, was on the witness
19 stand?

20 A: That's correct.

21 Q: That's something you would have liked to have reviewed
22 before you took the witness stand, isn't it?

23 A: Yes, sir. It would have been fine, but I was under the
24 impression it was a hole and it's just a ricochet. Yeah, that
25 would have been good.

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 Q: Okay and you don't know where on the wall it is, do you?
2 You haven't been out to that crime scene, have you?
3 A: No, sir. I was told it was like eight and a half feet to
4 nine feet high is all I was told. I -- I've never been to
5 that scene, no, sir.
6 Q: I'm going to show you, because if I put it up on here
7 it's not going to be visible at all, State' Exhibit 5, again
8 evidence in this case. This isn't evidence though that you've
9 ever reviewed, is it?
10 A: No, sir.
11 Q: Okay. Do you see that divot or that -- that mark on the
12 wall?
13 A: Yes, sir.
14 Q: Okay. It is hard to tell from there how high up on the
15 wall it is, isn't it?
16 A: That's true.
17 Q: Does that appear to be the same mark?
18 A: Yes, sir, it does.
19 Q: Okay. Can you tell from that mark the trajectory? Do
20 you even know what made that mark in your expert opinion?
21 A: No, sir, I do not.
22 Q: All right. If we make the assumption that a bullet made
23 that mark and I understand that's an assumption from where
24 you're sitting, do you know where that bullet would have
25 landed?

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 A: No, sir, I do not. I understand the victim was standing
2 close to the -- where the bullet strike came in. So
3 therefore, it could have ricocheted off the wall and struck
4 the victim in the head, but no, it would be impossible to do a
5 trajectory on this because the way it broke the brick out, you
6 know, on all sides here, you know, it's impossible to tell in
7 this area where the bullet actually entered at. I can just
8 tell the bullet hit here.

9 Now I will say based on the video we watched, the force
10 that was exerted on this wall that caused it to explode, that
11 would be like a bullet, but if you were to ask me do you know
12 with one hundred percent certainty that it was a bullet, no, I
13 do not, but I know a shooting occurred in this area.

14 Q: And ---

15 A: So we could assume it was a bullet.

16 Q: And -- But -- And you would like to be a hundred percent
17 certain?

18 A: That's correct.

19 Q: And in your experience in all those thousands and
20 thousands of cases that you've reviewed, your goal, your
21 objective insofar as the evidence will let you get to it is --
22 is certainty, is it not?

23 A: Absolutely.

24 Q: And when you testify in court, certainty is something
25 that you highly prize, isn't it?

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 A: Absolutely.

2 Q: I think you told Mr. Harris that you got to review the
3 autopsy report?

4 A: Yes, sir, I did.

5 Q: Did you get to review the report from Kenneth Whitler,
6 the ballistics examiner from SLED?

7 A: No, sir.

8 Q: Okay. So that was some -- That is some evidence that Mr.
9 Harris didn't share with you?

10 A: That's true.

11 Q: Okay. Now you know from reading the autopsy that two
12 pieces of probably some sort of projectile were taken from Mr.
13 German's head, one on the outside behind the ear and then one
14 that traveled through and was the source of his death. Were
15 you able to review that evidence?

16 A: Just the autopsy report, but not the bullet itself, no,
17 sir.

18 Q: You don't know if it was a -- And you weren't here to
19 hear Mr. Whitler or to hear Mr. Roberts testify, so you don't
20 know what they would have said?

21 A: That's true.

22 Q: As a matter of fact, the only -- the only information you
23 have about what Mr. Roberts may have testified to I'm guessing
24 probably comes from over here. Is that right?

25 (Whereupon, Mr. Voigt makes a motion towards the defense

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 table.)

2 A: That's correct and his reports, yes, sir.

3 Q: And you -- and so you don't -- There's evidence in this
4 case that was taken from the body in two pieces that was
5 examined to determine what it was, but you didn't do any
6 examination like that?

7 A: No, sir.

8 Q: Would -- would the examination of that evidence assist
9 you in coming to an expert opinion on what that may have been
10 that killed Mr. German?

11 A: I would have liked to have seen it just for the fact that
12 maybe the weight would have indicated possibly the caliber. I
13 understand they're lead fragments is what my understanding is.
14 So the jacket has been stripped off, which is -- which is
15 understandable. It struck a brick wall, so the jacket is
16 stripped off the -- the lead core itself, but I would have
17 liked to have -- to have seen the -- You know, I wasn't here
18 at the time, so I couldn't go out to the crime scene. I would
19 have liked to have tried to find the jacket, but I would have
20 liked to have seen the core. Yes, sir, it could have helped.

21 Q: Okay.

22 A: I mean just for me, for my edification now and so far as
23 what I'm being called to testify to, maybe not, but like you
24 said, to be, you know, fully aware of all the -- the facts,
25 sure, it could have helped.

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 Q: Okay and it would have been helpful if you had been able
2 to find some part of the jacket, would it not?

3 A: It would have been, but I'm not second guessing the
4 police officers because, again, 700 miles per hour. It's
5 because it struck -- when it struck that, it was traveling
6 extremely fast, so the jacket could have traveled 3-400 yards
7 away from the scene. Just the core hit the victim. The
8 jacket could be anywhere. So I -- I won't say it was even
9 possible to find the jacket. I'm saying it would have been
10 nice, but we don't know that.

11 Q: So based on your expertise, would the jacket have even
12 been in one piece given the force?

13 A: No, it could have been in several pieces. You're right,
14 that's correct, sir.

15 Q: And it could have -- So you're saying that it basically
16 would have -- Now you haven't been to the scene, right? Just
17 ---

18 A: No, sir, I have not.

19 Q: And the only -- You don't know what those brick looking
20 objects are made of, do you?

21 A: No, sir. I mean I'm not a mason. I do some concrete
22 work, but I'm assuming it's made of various materials. So I
23 would never venture a guess on that. That's not my field.

24 Q: That's just a little beyond ---

25 A: Yes.

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 Q: --- what you know?

2 A: Absolutely, yes, sir.

3 Q: And -- But I mean you know just as a layman that there

4 are various types of bricks?

5 A: Oh, absolutely.

6 Q: And they come in different hardnesses?

7 A: Depending on how much concrete is used, absolutely.

8 Q: And how old the bricks are?

9 A: Sure.

10 Q: And the age of the bricks sometimes will change. If

11 they're porous, it will change kind of their characteristics

12 and how spongy they might be?

13 A: Absolutely.

14 Q: It might also matter how thick the wall behind there is

15 and what it's made of?

16 A: Absolutely, sir.

17 Q: And all those things also change the acoustics and that's

18 something you do know something about, right?

19 A: That's -- Yes, sir.

20 Q: So, but you don't know what that material is?

21 A: No, sir, I do not.

22 Q: And -- and that material may react differently than other

23 types of bricks. You said that you have fired weapons at

24 various sorts of materials?

25 A: Yes, sir.

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 Q: But you don't know, you have no point of comparison for
2 this particular material compared to anything else in all your
3 years of experience that you may have had?

4 A: That's true. I mean I may have shot a brick just like
5 it, but there's no way for me to tell you that it's the exact
6 same material. That's correct.

7 MR. VOIGT: Now let's go back to that tape, Joann. Same
8 spot? I want to go back to where the action starts.

9 (Whereupon, the store surveillance video showing the
10 outside wall is shown on the screen again.)

11 MR. VOIGT: Would you stop it right there? Can you --
12 Can you go back?

13 MR. ROBINSON: I don't know.

14 MR. VOIGT: I'm doing that, aren't I?

15 MR. ROBINSON: Okay.

16 MR. VOIGT: Okay, stop.

17 Q: Now this little -- this little white area up here, this
18 is what you told Mr. Harris was smoke?

19 A: Here, here, here.

20 (Whereupon, the witness is standing and motioning toward
21 the screen.)

22 Q: Yeah, this up there on the right?

23 A: Here and it's emanating from underneath the camera, yes,
24 sir, absolutely.

25 Q: It's emanating and -- and the -- what projects up, the

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 little pieces of what we're presuming is brick and mortar and
2 what -- whatnot, and brick and mortar are different, right?
3 A: That's true. I mean you put the mortar in between the
4 joints of the brick, yes, sir.
5 Q: And they have a slightly different composition, they have
6 a different hardness, they -- they respond to pressure and
7 stress differently?
8 A: Absolutely.
9 Q: And you might expect them to break differently and
10 traject differently?
11 A: Absolutely.
12 Q: But again, we're -- You're not a masonry expert in any
13 way?
14 A: No, sir.
15 Q: So that's not -- You're just talking as a layman that
16 that -- to the best of your knowledge?
17 A: That's correct, absolutely.
18 Q: Now -- But you called that smoke right there?
19 A: I do.
20 Q: Okay. Does gunpowder or does the firing of a weapon --
21 That -- And I'm just a layman on this, but that ignites
22 gunpowder, right?
23 A: Sure.
24 Q: And gunpowder has a specific smell, doesn't it?
25 A: Yes, sir.

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 Q: And that smell, if somebody smelled that, whatever that
2 is that you call smoke, if their olfactory was in the normal
3 range, they'd smell something burning, like gunpowder?

4 A: Sure.

5 Q: And I think we've all lit fireworks and even if we
6 haven't fired a gun. I think in South Carolina at least we
7 do. I don't know how it is in Georgia. But we light
8 fireworks at least twice a year.

9 A: I've seen them.

10 Q: And we're kind of familiar with that smell, right? I
11 mean that's -- So that smoke, what you call smoke, would have
12 a gunpowder smell?

13 A: Yes, sir.

14 Q: Okay. What -- What is smoke?

15 A: What is smoke?

16 Q: Yeah, what is smoke? And I'm not talking about
17 necessarily smoke from gunpowder, but smoke in general?

18 A: It's just the burning of different materials. So you
19 have the smoke is the actual emission of the fumes and things
20 like that. So when you're saying you could smell the
21 fireworks or you could smell if a gun was fired, it's how it
22 was burned off. So you could see the smoke. Now in this
23 case, you know, I just think there's a great deal of smoke
24 there. You're saying it could have been fireworks?

25 Q: Oh, no, no, no. No, no.

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 A: Okay.

2 Q: That's not what I'm saying.

3 A: Okay.

4 Q: And you know that. Isn't smoke, what we call smoke,
5 light reflecting off particles suspended in the air or in some
6 other gas? That's smoke, isn't it?

7 A: I guess that's the textbook definition, yes, sir.

8 Q: And you're an expert, you know textbook definitions,
9 right?

10 A: Yes, sir.

11 Q: All right. So those are particles?

12 A: Okay.

13 Q: And that's reflecting off the light. The particles
14 suspended in the air reflecting off the light right into that
15 camera, probably the light emitted from that camera, right?

16 A: Yes, sir.

17 Q: Are you a hundred percent certain that that is -- those
18 are particles from the firing of a weapon directly below?

19 A: I would say I'm a hundred percent sure based on the
20 video, based on the GSR, based on the overall things that I
21 was asked to look at. I'm a hundred percent sure, but if you
22 just say -- If you took me this video and you said, "What is
23 that showing there?", then I would say it's a great deal of
24 smoke that comes up right there and I wasn't trying to be rude
25 to you. I'm saying ---

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 Q: Oh, I know.

2 A: If you were to say that a fireworks went off down here
3 and it caused that, if I didn't know anything else about the
4 case, then I would say, "Okay, I'll go with that." But based
5 on all the other evidence, yes, sir, I feel pretty confident
6 that all that being emitted right there would be from a
7 gunshot in this location, yes, sir.

8 Q: Okay. So based on what you got to review, you're a
9 hundred percent certain?

10 A: Yes, sir.

11 Q: Okay and did you get to review all the witness statements
12 in this case?

13 A: No, sir.

14 Q: No. So that's -- that's evidence that you didn't get to
15 review?

16 A: That's true.

17 Q: All right and so if witness statements contradicted that
18 gunfire came from this side of the building, that would have
19 been information that you would have liked to have had to make
20 your expert opinion, wouldn't it?

21 A: Yes, sir.

22 Q: Okay, but you weren't -- Nobody made you aware of any of
23 that, did they?

24 A: No, sir.

25 Q: So your expert opinion and your hundred percent certainty

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 isn't based on all of the evidence, is it?

2 A: That's true.

3 Q: Now you testified earlier ---

4 MR. VOIGT: And you can take this down, Joann.

5 Q: You testified earlier when Mr. Harris put up the inside
6 video showing the cashier and you listened to the shots.

7 A: Yes, sir.

8 Q: And would you agree with me that your expert opinion,
9 were you a hundred percent certain that those were gunshots?
10 Or rather that those were -- I bet you were certain those were
11 gunshots.

12 A: I would say -- I would say so.

13 Q: I am, too.

14 A: I'm pretty certain on that.

15 Q: Yeah, I'm certain about that, too, but were you a hundred
16 percent certain that they were -- the first series of shots
17 were shots from a handgun? Are you a hundred percent certain?

18 A: I'm -- I'm -- Yes, sir I would say that.

19 Q: Okay.

20 A: Yes.

21 Q: And are you a hundred percent certain that the next
22 couple sounds that we heard were handgun shots as well?

23 A: Yes, sir. I think they're moving away.

24 Q: Okay and the basis of your opinion is -- This isn't
25 scientific, this is experience related, right?

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 A: That's true. Like I told you, if we went to go out and,
2 you know, again we're at the mercy of a speaker inside of a
3 gas station. So even if I put a decibel meter on the speaker,
4 it would not be the same as me standing beside a 9 millimeter
5 or standing beside a .38. So you're right, I'm just going off
6 of my experience.

7 Q: And that ---

8 A: So on a scientific basis, yeah.

9 Q: And sometimes that's all expertise is is you've been in
10 the field a long time and you kind of get a feel for these
11 things and this is what you think, right?

12 A: Yes, sir.

13 Q: Okay and the -- Unfortunately, the narrow lens that you
14 as the expert have to look at this is just what is captured on
15 the store video and the store microphone. Is that right?

16 A: That's true.

17 Q: And -- and you're kind of at the whim of the quality of
18 the microphone and the quality of the camera for all these
19 cameras?

20 A: Yes, sir.

21 Q: As a matter of fact, when we looked at that camera that
22 we just looked at of outside, did that look like it was going
23 minute or second for second?

24 A: No.

25 Q: Or did it seem a little jumpy?

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

- 1 A: It was jumpy, yes, sir.
- 2 Q: So we're not even certain that we have the right "one one
3 thousand, two one thousand, three one thousand" in terms of
4 sequence, how fast things seemed to go?
- 5 A: Sure.
- 6 Q: Because we're -- we're kind of at the mercy of whatever
7 that is, old technology?
- 8 A: Yes, sir.
- 9 Q: Do you agree with me?
- 10 A: Yes, sir.
- 11 Q: So when you make your expert opinion based on the
12 evidence that Mr. Harris gave to you, you're really kind of --
13 you're having to -- you're limited somewhat by the technology
14 that -- that you get to see?
- 15 A: I am, I am as it pertains to this video. Yes, sir, I am
16 limited as it pertains to this video.
- 17 Q: Now for all the -- Well, let me back up for just a
18 second. You did have the opportunity to review the autopsy in
19 this matter and I think you testified under Mr. Harris'
20 questions that -- that by the weight -- the angle of the
21 bullet, you at least know the trajectory of the path of the
22 fragments through ---
- 23 A: Yes, sir.
- 24 Q: --- Mr. German's head.
- 25 A: Yes, sir.

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 Q: And that's noted by another expert. That's noted by the
2 pathologist?

3 A: Yes, sir.

4 Q: Does that tell you anything as an expert as to where that
5 bullet came from, the trajectory of that fragment?

6 A: Can we see the photograph of the cartridges and the
7 cartridge case again?

8 Q: Oh ---

9 A: Can I -- Could we put that back up?

10 Q: Is it -- Are you talking about the diagram?

11 A: Yes, sir.

12 MR. VOIGT: (To Mr. Harris) Do you have it?

13 Q: You might have it.

14 A: I'm sorry, sir.

15 Q: Okay.

16 A: I've got it right in front of my face.

17 Q: That's all right. Here, I'll just bring this up.

18 A: Again, no trajectory was found on this, but it is very
19 curious to me the 9 millimeter is here, the bullet strike is
20 to the left. So when it strikes, it enters the back of his
21 left head and kind of comes up here to the right a little bit,
22 the midline toward the front. So does that angle -- That
23 looks pretty good to me.

24 Q: So that looks good to you?

25 A: That looks good to me as a shot.

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 Q: It doesn't bother you at all that that what we're calling
2 a bullet mark or a divot or whatever is in the wall eight and
3 a half feet off the ground that -- I'll tell you one thing:
4 Mr. German's not eight and a half feet tall.

5 A: Yes, sir. I -- Again, I didn't go out here and look at
6 the scene. The cartridge case is from this angle, so if it
7 did ricochet off the wall and strike him in the back of the
8 left head and come through, I'm just saying this angle looks
9 -- looks pretty good.

10 Now when a bullet strikes a hard surface, it does strange
11 things and no one can -- I would never sit here before you and
12 say I knew exactly what happened when that bullet struck that
13 wall. I can't even tell the trajectory because all the brick
14 is broken out on the wall. So no one could tell you that, but
15 I would say it is peculiar that it strikes at the proper angle
16 that would have come through his head.

17 Q: So it strikes at the proper angle to enter just above his
18 left ear and travel upwards and by upwards meaning kind of it
19 starts here and then goes here?

20 A: Sure.

21 Q: Upwards and to the right and we started this off when I
22 asked you did -- did that trajectory tell you anything about
23 how Mr. German was placed. Does that tell you anything about
24 how his head may have been?

25 A: Sure. At the time -- Again, I'm not a pathologist, so

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 let me just tell you that, but the body begins to move. When
2 you say it started down here and it ends up higher, you know,
3 if I tilt my head a little bit, if I'm shooting at someone, a
4 gunshot happens. Now it's going to be milliseconds from the
5 shot to the wall, but at that time, you know, I kind of wince
6 a little bit or I'm ducking down, okay, I changed my
7 direction. It hits the wall, it comes through and then see,
8 my head's kind of down a little bit. So then it does go at an
9 upward angle. That's how I would create it, but again, I'm
10 not a pathologist and I would not presume to tell you that's
11 what happened. I'm just saying it's peculiar to me.

12 Q: Okay and -- and that's really what I was -- And so we're
13 talking about somebody who -- And I'm outside your expertise,
14 aren't I?

15 A: Yes, sir.

16 Q: Somebody may have been ducking, right?

17 A: That's true.

18 Q: As a matter of fact, it's reasonable based on what you've
19 seen that that person was ducking?

20 A: Either ducking or you're kind of, you know, running.

21 You're getting ready to move, you know, anything, any number
22 of things where the head had to be positioned at a certain --
23 Yes, sir.

24 Q: Right.

25 A: Yes, sir.

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 Q: And this whole conversation is predicated on the fact
2 that 7A is shot from a stationary target? That 7A -- That
3 something got shot there, right?

4 A: That's still possible. It's still possible you could be
5 in that car moving. It would just be an unfortunate shot is
6 what that would be. If you just -- you're traveling, stick
7 the car -- the gun out the window and you fire. That would be
8 just a, you know, an unfortunate strike.

9 Q: Could -- Now that's a 9 millimeter and -- and those are
10 the type that eject, right?

11 A: That's correct.

12 Q: And is there any way of telling based on where it landed
13 where it may have ejected from?

14 A: Not in this case. Depending on how fast the car is
15 going, how the gun's being held, if it's held in normal
16 fashion, sideways, all these will eject. When it bounces on
17 the ground, is the surface concrete? Is it dirt, gravel? The
18 cartridge case bounces with the speed of the car. So all of
19 those, sir. I would not even want to venture a guess.

20 Q: Could it have been caught by part of the car and carried
21 by the car ---

22 A: Sure.

23 Q: --- in some way?

24 A: Sure.

25 Q: We have no way of knowing if 7A -- All we can say about

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 7A is that a 9 millimeter casing was found there. We have no
2 way of knowing how it got there and where it started its
3 flight?
4 A: Absolutely.
5 Q: Correct?
6 A: Absolutely.
7 Q: It could have started its flight up here?
8 A: Sure.
9 Q: And been carried in some piece of the car, in some piece
10 of trim, and fallen down here?
11 A: Absolutely, sir.
12 Q: So we don't know?
13 A: No.
14 Q: And in your expert opinion based on you listening, there
15 was no point where you said, "Oh, that's a 9 millimeter"?
16 A: No, sir.
17 Q: You didn't have that opinion?
18 A: No, sir.
19 Q: At no point did you go, "Oh, that's the .38"?
20 A: No, sir.
21 Q: No and you didn't. The best you can say in your expert
22 opinion is you think that we're listening to handguns?
23 A: That's correct.
24 Q: Okay and you weren't able to review the lead fragments
25 that were taken from the body of Mr. German. That may have

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 assisted you in that -- in a -- in a more thorough

2 determination that that was a handgun?

3 A: Correct.

4 Q: Let's -- Let's see what we can agree on. We agree that
5 John Roberts found gunshot residue in Jerome Coaxum's car. We
6 agree and John Roberts testified this way that there was
7 gunshot residue found on Michael German. We agree that there
8 was gunshot residue and you -- I'll say you agree rather with
9 John Roberts' conclusions that there was gunshot residue found
10 on the hands of Michael Allen?

11 A: Yes, sir.

12 Q: And we agree that there was no gunshot residue found on
13 the hands of Jerome Campbell?

14 A: That's correct.

15 Q: And we -- And were you able to review -- You said you
16 reviewed the evidence, but in -- in what Mr. Harris may have
17 given you, were you able to determine when Mr. Campbell's --
18 how long Mr. Campbell had between the shooting and the time
19 that sample was taken?

20 A: I'm not quite sure about that time frame.

21 Q: Because that wasn't something that was provided to you,
22 was it?

23 A: He may have told me. I just can't remember, but ---

24 Q: And if it was hours, that might be significant, would it
25 not?

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 A: Yes, sir. It does become significant the longer it is,
2 the more surfaces you touch, you put your hands in your
3 pockets, you wash your hands, you're sweating. You're talking
4 about part per million levels here, very, very small levels.
5 So when you start touching things, put my hands in my pockets,
6 all these things, I'm losing a little bit. So normally you
7 would ---
8 Q: Washing your hands?
9 A: The policy is within about three hours ---
10 Q: So ---
11 A: --- is what we like used to be at GBI, three hours, but
12 ---
13 Q: So the policy that you got is three hours. That's a
14 little narrower. I mean John Roberts' policy in his testimony
15 was that it was six.
16 A: Okay.
17 Q: And you're a little tighter if you're ---
18 A: It was, yes, sir.
19 Q: At the Georgia Bureau of Investigation?
20 A: But that -- that's what we wanted. That's not what
21 happened, but you like it done fairly quickly.
22 Q: And if you'd had the opportunity to wash your hands,
23 again, no GSR and if you had been wearing gloves?
24 A: That's correct, that's absolutely correct.
25 Q: Okay and you don't know about Jerome Campbell's sample?

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 Now Anthony German is also somebody who was tested and you
2 agree with John Roberts he didn't have GSR on his hands
3 either?

4 A: I didn't see anything that indicated that, that's
5 correct.

6 Q: And did the evidence provided to you or that snapshot of
7 evidence provided to you by Mr. Harris, did that let you know
8 who on the scene was reported to have had a weapon?

9 A: No, sir.

10 Q: Okay. So nothing that Mr. Harris provided to you
11 indicated witnesses saying that Mr. German did not have a
12 weapon?

13 A: I understand that someone threw a weapon up on top the
14 roof and it fell back down and they were just trying to get
15 rid of it and I cannot tell you the exact name, but someone
16 was trying to get rid of a -- I guess supposedly this Iver
17 Johnson.

18 Q: Okay and based on the evidence that you reviewed,
19 including Mr. Roberts' reports, would you have -- would you
20 hazard an expert guess as to who that may have been?

21 A: No, sir, I would not.

22 Q: Really, do you disagree with any conclusion ---

23 THE COURT: Be careful with the pitting, Mr. Voigt. He
24 cannot comment on the veracity of another witness' testimony.

25 MR. VOIGT: Okay. Thank you. I think if I finish it, I

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 ---

2 THE COURT: You're going to -- You've been ---

3 MR. VOIGT: I ---

4 THE COURT: Yeah.

5 MR. VOIGT: I think I'm ---

6 THE COURT: I'm just cautioning you.

7 MR. VOIGT: I think I'm going to still ---

8 THE COURT: You can rephrase the question.

9 Q: You've reviewed John Roberts' conclusions in his reports?

10 A: Yes, sir.

11 Q: Do you agree with all of those conclusions?

12 THE COURT: That's pitting. Move on. You're asking him

13 to comment on the veracity of another witness' testimony. If

14 you want to ask him the very same questions and elicit much

15 the same answers or different answers, you're allowed to do

16 that.

17 MR. VOIGT: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 Q: Based on what you reviewed, Anthony German and Jerome

20 Campbell don't have GSR, Michael Allen and Michael German do

21 have GSR?

22 A: Yes, sir.

23 Q: Michael German has higher levels of GSR than Michael

24 Allen does?

25 A: Yes, sir.

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 Q: In the tests that you reviewed, do the test results on
2 Michael Allen contain barium and antimony?

3 A: Yes, sir.

4 Q: Okay. The GSR from the inside of the Campbell vehicle is
5 positive and you -- that would be your conclusion based on
6 what you've reviewed?

7 A: Yes, sir.

8 Q: Okay. We've talked a little bit about certainty. Based
9 on the evidence that Mr. Harris provided to you, is there any
10 possible way that Michael German got GSR on his hands other
11 than firing a weapon, handling a weapon that had just been
12 fired, or being in close proximity to a fired weapon?

13 A: No, sir.

14 Q: And you can say that with a hundred percent certainty
15 based on what Mr. Harris provided to you?

16 A: Based on that and my training and education, I can a
17 hundred percent say that's the only way in all my training
18 that I know that you can get levels that were seen on that
19 high, yes, sir.

20 Q: In all those cases that you've done involving GSR when
21 you worked for the State of Georgia -- And I'm assuming that's
22 the lion's share of the numbers is when you were actually
23 employed by the GBI in Atlanta?

24 A: Yes, sir.

25 Q: Okay.

CROSS EXAMINATION OF CHRIS ROBINSON BY MR. VOIGT

1 A: Yes, sir.

2 Q: And that's just the nature of the business?

3 A: Yes, sir.

4 Q: Have you ever had a GSR result that conflicted with the
5 testimony of witnesses?

6 A: Yes, sir.

7 Q: Okay. Have you ever had a GSR result that you could not
8 explain with a person having fired a weapon, being in close
9 proximity to a weapon that has been fired or having handled a
10 recently fired weapon?

11 A: Numerous in the case of suicides, numerous cases like
12 that. They were unexplainable because of, you know, negative
13 results or, you know, things like that, but in the case of
14 levels this high, yes, it conflicted with the stories of the
15 witnesses, but at the time of a shooting, people are running
16 around, they don't know what they're seeing. I can only go
17 off the hard evidence. As he stated before, I'm scientific,
18 that's what I have to be.

19 MR. VOIGT: I'm going to object that this is not
20 responsive to my question.

21 THE COURT: Question is responsive. He can answer yes or
22 no and explain his answer.

23 MR. VOIGT: Thank you very much, Your Honor. Thank you
24 very much. I don't have any further questions.

25 THE COURT: Any redirect of the witness?

REDIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 MR. HARRIS: Briefly, Your Honor.

2 THE COURT: You may proceed when you're ready.

3 REDIRECT EXAMINATION

4 BY MR. HARRIS:

5 Q: Okay. Does me not giving you the entire file change the
6 science?

7 A: No, sir.

8 Q: Is your answer still with a hundred percent certainty
9 Michael German fired a weapon?

10 A: Yes, sir.

11 Q: Is your answer still with a hundred percent certainty
12 Michael Allen either fired, handled or was next to a weapon
13 being fired?

14 A: Yes, sir.

15 Q: Okay. When you're asked to do forensics on a case,
16 gunshot residue, trajectory, things like that, I mean would
17 what a witness/victim said in a case change the science?

18 A: No, sir.

19 Q: Would it change your opinion in this case if both people
20 standing next to them said, "I didn't fire a weapon"?

21 A: No, sir, it does not. The -- In all fairness, I do like
22 to see the whole report, but I don't care what the witnesses
23 say, I don't care what anyone says. I have to test it and
24 then I'm going to tell them what happened because that's what
25 it has to be. So the fact that I was hired to look at the

REDIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 GSR, to do certain things, I wasn't asked to look at the
2 bullet, I wasn't asked to look at the cartridge cases, I
3 wasn't asked to look at the weapon. I was asked to come in on
4 this case as a GSR person. So the fact that the witnesses say
5 anything is irrelevant. It's just nice to read so you can
6 keep it in your mind.

7 Q: Okay. I have another question. You've testified 518
8 times to date on GSR?

9 A: Yes, sir.

10 Q: How many times have you testified for the prosecution?

11 A: 512.

12 Q: Okay. So you've testified for the defense six times?

13 A: Yes, sir.

14 Q: Okay and that was for the prosecution in Atlanta?

15 A: In Alabama.

16 Q: In Alabama?

17 A: Yes, sir.

18 Q: Okay. So if -- You're saying if you would have seen the
19 entire file, if I would have gotten you more than a snapshot
20 of the file, that that might have changed your opinion?

21 A: No, sir. My opinion would be the same about regards to
22 Michael Allen, Michael German, the GSR on the car, the sounds
23 on the video, everything would have been the same as it is.

24 Q: One hundred percent?

25 A: Absolutely.

REDIRECT EXAMINATION OF CHRIS ROBINSON BY MR. HARRIS

1 Q: Okay.

2 MR. HARRIS: I have nothing further, Your Honor.

3 THE COURT: Any objection to the witness being excused
4 from the State?

5 MR. VOIGT: Not from the State, Your Honor.

6 THE COURT: From the defense?

7 MR. HARRIS: No, Your Honor.

8 THE COURT: Sir, you're excused.

9 MR. ROBINSON: Thank you, Your Honor.

10 THE COURT: You're welcome, sir.

11 (Whereupon, the witness leaves the stand at 11:17 a.m.)

12 THE COURT: Madam Forelady, ladies and gentlemen, you all
13 have been sitting about an hour and -- about an hour and 15,
14 20 minutes. I'm going to give you a brief rest room break.
15 During the break, please do not discuss the case and please
16 leave your notepads in your seats. We'll be out about ten
17 minutes, after which we'll resume the proceedings. Enjoy your
18 break.

19 (Whereupon, the jury leaves the courtroom at 11:18 a.m.)

20 THE COURT: You may be seated.

21 MR. HARRIS: Your Honor, can I give this to the court
22 reporter?

23 THE COURT: Yes, sir, absolutely.

24 MR. HARRIS: And I do apologize. This is out of my file.
25 We were trying to figure out the car direction and put the

1 pencil on there.

2 THE COURT: Well, I mean y'all can argue that, yeah.

3 MR. HARRIS: Yeah.

4 THE COURT: It doesn't matter to me.

5 MR. HARRIS: Okay.

6 THE COURT: Yeah. Do y'all still need the element on or
7 can that be -- Can y'all turn it off? We'll be out for about
8 ten minutes. Well, actually, let me ask this question prior
9 to doing that. Is the defense going to have any further
10 witnesses?

11 MR. HARRIS: None, Your Honor.

12 THE COURT: Are you going to -- Do you need to -- You said
13 that tentatively. Do you -- Is there something you need to
14 think about or are you telling me no?

15 MR. HARRIS: No, I'm saying right now that we don't have
16 any more.

17 THE COURT: So are you ready to rest?

18 MR. HARRIS: We are.

19 THE COURT: Why don't you go ahead and rest and I'll hear
20 motions and then we'll take our break and then I'll allow you
21 to rest in the presence of the jury and then you won't have to
22 stop and start again. Is the State still going to have
23 rebuttal witnesses?

24 MR. VOIGT: Yes, Your Honor.

25 THE COURT: Are those witnesses present?

1 MR. VOIGT: Yes, Your Honor.

2 THE COURT: Okay. Now that the defense has rested their
3 case, are there any motions?

4 MR. HARRIS: From the State, Your Honor?

5 MR. VOIGT: Not from the State, Your Honor.

6 THE COURT: From the defense, are there any motions?

7 MR. HARRIS: Your Honor, I would renew all previous
8 motions and objections.

9 THE COURT: Again, the Court would deny the motions based
10 on its previous ruling. Without belaboring time, the Court is
11 concerned with the existence or non-existence of evidence and
12 not its weight and there is direct and substantial
13 circumstantial evidence reasonably tending to prove the
14 defendant's guilt and therefore, the motion is denied.

15 Enjoy your break. I'll see y'all in about ten minutes.
16 It is 11:19, so I guess -- Well, you might as well just round
17 it out to 11:30.

18 MR. VOIGT: Thank you, Your Honor.

19 MR. HARRIS: Thank you, Your Honor.

20 (Whereupon, there is a break in the proceedings from
21 11:20 a.m. until 11:43 a.m.)

22 THE COURT: Is the State ready to proceed?

23 MR. VOIGT: Yes, Your Honor.

24 THE COURT: Is the defense ready to proceed?

25 MR. HARRIS: Yes, Your Honor.

1 THE COURT: And who is your witness, Mr. Voigt?

2 MR. VOIGT: Detective Burckhardt, Your Honor.

3 THE COURT: Okay and if he could go ahead and take the

4 stand for me. You can bring in the jury when they get to the

5 door and who is your other rebuttal witness?

6 MR. VOIGT: I believe I'm going to call Anthony German

7 again, Your Honor.

8 THE COURT: Okay and then I'm going to have you rest in

9 the presence of the jury.

10 (Whereupon, the jury enters the courtroom at 11:44 a.m.)

11 THE COURT: You may be seated. Ladies and gentlemen, I

12 hope you enjoyed your break. We'll now resume with the trial.

13 Mr. Harris, you may proceed.

14 MR. HARRIS: Your Honor, at this point, the defense

15 rests.

16 THE COURT: Ladies and gentlemen, the defense has rested.

17 The State may proceed.

18 MR. VOIGT: Thank you, Your Honor. The State recalls

19 Detective Richard Burckhardt.

20 THE COURT: Detective Burckhardt, I'll remind you you're

21 still under oath. You may proceed. Please state your name

22 for the record and spell your last name for the court

23 reporter.

24 MR. BURCKHARDT: Richard Burckhardt, that's B-U-R-C-K-H-

25 A-R-D-T.

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 THE COURT: You may proceed.

2 MR. VOIGT: Thank you.

3 THE COURT: You're welcome.

4 DIRECT EXAMINATION

5 BY MR. VOIGT:

6 Q: Detective, I'm going to -- You were present through the
7 testimony that we heard yesterday from the defense witnesses?

8 A: Yes, I was.

9 Q: Specifically, the testimony of Mrs. -- Mrs. Campbell,
10 Sandra Campbell?

11 A: I was here, yes.

12 Q: During the course of your investigation, did you ever
13 have the occasion to go to Ms. Campbell's residence?

14 A: I did.

15 Q: And have you -- Tell -- Do you recall approximately when
16 that would have been?

17 A: I don't have the date. I would say it was about a week
18 after the incident occurred, several days.

19 Q: Was -- was Mr. Jerome Campbell already -- Had he already
20 been taken into custody by that point?

21 A: Yes, he was -- he was arrested by then.

22 Q: And for what purpose did you go to Ms. Campbell's
23 residence?

24 A: It was two-fold. I went in an attempt to -- I had some
25 trouble locating Ms. Charise Coaxum. I had been to her

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 apartment and back and forth, so I went to their house on
2 Grimble Road to let her know that I had been looking for her
3 and I needed to speak to her to further the investigation and
4 while I was there, I took the opportunity to -- There were
5 several what I perceived to be family members inside of the
6 residence that I had asked and I told them, I said that Jerome
7 here was in a lot of trouble. He had a serious charge on him
8 and was there anybody in the residence that I could speak to
9 that would -- could add -- could shed any light on this, was
10 there any information that I could get from them and nobody
11 told me anything.

12 Q: Did they allow you into the residence at all?

13 A: I did. I was in. I think I made it as far as the living
14 room area.

15 Q: Were you alone or did you go with another officer?

16 A: I had a uniformed -- I believe it was Jennifer Havistat,
17 a CPD officer in uniform come in a black and white.

18 Q: At that point in your investigation, did you believe that
19 Mr. Campbell had operated alone?

20 A: No.

21 Q: And what did you believe? Did you believe that there
22 were other persons involved in this?

23 A: I did.

24 Q: Did you request assistance identifying those persons from
25 Ms. Campbell and her family?

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 A: I did.

2 Q: Was any assistance rendered?

3 A: No.

4 Q: As the case agent in this matter, did you -- Were you
5 ever told by any person that this was gang related in any way?

6 A: No, none whatsoever.

7 Q: Are you familiar in your experience and training with the
8 gangs that operate in Charleston County?

9 A: Professionally, I've had a small number of cases that
10 mostly -- Mostly I've had armed robbery cases that have
11 indicated some type of gang affiliation and that information
12 isn't based on me being any gang expert. This is coming
13 strictly from statements from suspects and people that I've
14 arrested during the course of an -- of an investigation that
15 indicated the motivation for this particular crime was some
16 type of gang initiation, if you will.

17 Q: Are you familiar with Bloods as the name of a gang?

18 A: I am.

19 Q: Does that gang operate in Charleston County?

20 A: There is indication that there is some Blood affiliation
21 to my knowledge in the North Charleston/Goose Creek area.

22 Q: Is that a national gang?

23 A: It is and my understanding on gangs -- And I go back to
24 -- I've been -- I've been to a few seminars on gangs, but I
25 won't go any further because I'm not an expert, but it's --

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 There are gangs and then there are -- There's a national your
2 question was affiliation, yes, but there's also these small
3 cells and if you've heard the term "wannabes", you'll see that
4 on occasion. Do they have a direct line? Do they have a
5 direct connection? I can't answer that. I -- I don't know
6 that for sure.

7 Q: And -- and what are some of the -- What are some of the
8 things that you would look for to see if someone was
9 associated in some way with the Bloods?

10 A: In Bloods and other gangs, Crips and such, MS-13, there's
11 a -- They have a -- They're tagged or tatted out with tattoos.
12 They seem to be proud of that. It seems to be a marker.
13 There's also color affiliations. I think it's not unusual or
14 I would think a lot of people know that colors represent
15 certain gang families. Bandannas on certain locations, be it
16 the forearm or around the ankle and things like that, but a
17 lot of it is tattoos mostly.

18 Q: In your review of this case, were you able to -- Were you
19 -- Was a bandanna of any sort ever found in or around the body
20 of Michael German?

21 A: No.

22 Q: During the course of your investigation, did you have the
23 opportunity to review the autopsy of Mr. German, as well as
24 the photographs taken by CPD relating to that autopsy?

25 A: I had the opportunity to review all of the photographs

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 that were taken from the autopsy of Michael German.

2 Q: And this would have been -- Would this have been the body
3 of Michael German without clothing?

4 A: It would be.

5 Q: In your review, did you -- Did your review discover any
6 tattoos or other marks associated with any gang activity?

7 A: My recollection of reviewing the photographs of Michael
8 German didn't indicate any tattoos at all on his body.

9 Q: Do you have any -- Have you developed in this case in the
10 two and a half years any evidence whatsoever that Michael
11 German or Anthony German or anybody else in this case was
12 associated with a gang?

13 A: No.

14 MR. VOIGT: Please answer any questions that Mr. Harris
15 may have for you.

16 THE COURT: You may proceed.

17 MR. HARRIS: Briefly. Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION

20 BY MR. HARRIS:

21 Q: You mentioned three things when you talked about gangs
22 there: tattoos, and MS-13 has a lot of tattoos. That's -- You
23 mentioned MS-13. Is that a gang?

24 A: I mentioned all of the gangs.

25 Q: Right.

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

- 1 A: Tattoos seem to be a prime thing that goes with them.
- 2 Q: But you're not an expert on gangs?
- 3 A: I am absolutely not.
- 4 Q: Okay and one thing you did mention is colors?
- 5 A: Yes.
- 6 Q: Okay. The night of the incident, do you recall what
- 7 color was the victim wearing?
- 8 A: The victim was wearing a red jacket
- 9 Q: Okay.
- 10 A: Blue jeans, I think, or dark jeans.
- 11 Q: What color t-shirt under the red jacket?
- 12 A: I believe that was red.
- 13 Q: What color sweatshirt was his brother wearing?
- 14 A: Red.
- 15 Q: Okay and you said that when they came to your house -- or
- 16 when you went to their house, they didn't talk to you because
- 17 you were looking for other people?
- 18 A: I was looking for information ---
- 19 Q: Right.
- 20 A: --- to assist in identifying additional suspects.
- 21 Q: When you go to the homes of defendants regularly to
- 22 interview the family, do they talk to you one hundred percent
- 23 of the time?
- 24 A: Not all the time, no.
- 25 Q: Okay.

DIRECT EXAMINATION OF ANTHONY GERMAN BY MR. VOIGT

1 MR. HARRIS: I have nothing further.

2 THE COURT: Any redirect?

3 MR. VOIGT: No, Your Honor.

4 THE COURT: Any objection to the witness stepping down?

5 MR. VOIGT: None, Your Honor.

6 THE COURT: Sir, you may step down.

7 MR. BURCKHARDT: Thank you.

8 THE COURT: You're welcome.

9 (Whereupon, the witness leaves the stand at 11:53 a.m.)

10 THE COURT: You may proceed.

11 MR. VOIGT: The State calls Anthony German.

12 THE COURT: (To clerk) You need to swear him. It's been
13 three days.

14 THE CLERK: Do you swear or affirm that your testimony is
15 the truth, the whole truth and nothing but the truth, so help
16 you God?

17 MR. GERMAN: Yes, sir, I do.

18 THE CLERK: Be seated. State your full name and spell
19 your last name for the record.

20 MR. GERMAN: Anthony Michael German, G-E-R-M-A-N.

21 THE COURT: You may proceed.

22 MR. VOIGT: Thank you very much, Your Honor.

23 THE COURT: You're welcome.

24 DIRECT EXAMINATION

25 BY MR. VOIGT:

DIRECT EXAMINATION OF ANTHONY GERMAN BY MR. VOIGT

- 1 Q: Mr. German, you're still under oath.
- 2 A: Yes, sir.
- 3 Q: You heard Charise Coaxum testify yesterday, you heard Ms.
- 4 Campbell testify yesterday. Is that right?
- 5 A: Yes, sir.
- 6 Q: Did you ever tell Charise Coaxum, "Your brother gonna die
- 7 tonight"?
- 8 A: No, sir, I didn't.
- 9 Q: Did you ever hear your brother, Michael, say, "Your son's
- 10 gonna die tonight"?
- 11 A: No, sir, I didn't.
- 12 Q: On January 9th, you were wearing red?
- 13 A: Yes, sir.
- 14 Q: Why were you wearing red?
- 15 A: It was just, you know, if I put on a red shirt, I'm
- 16 pretty sure my brother's going to try and, you know, put on
- 17 the same color as me because we're twins. If he wears a blue
- 18 shirt, then I'm going to put on a blue shirt. If he wears a
- 19 black shirt, you know, we're twins.
- 20 Q: As twins, did you frequently wear the same color as he
- 21 did?
- 22 A: Yes, sir. We were known to wear the same colors.
- 23 Q: Did you wear red that night because you were a member of
- 24 the Bloods?
- 25 A: Oh, no, sir.

DIRECT EXAMINATION OF ANTHONY GERMAN BY MR. VOIGT

- 1 Q: Do you have any Blood tattoos?
- 2 A: I don't have any tattoos.
- 3 Q: Did your brother have any tattoos?
- 4 A: No, sir, he didn't.
- 5 Q: Was your brother a member of the Bloods?
- 6 A: No, sir, he wasn't.
- 7 Q: Were either of you ever members of any gang of any sort?
- 8 A: No, sir.
- 9 Q: Did you ever hear your brother say, "I'm a Blood and I'm
- 10 here to kill your blankety-blank son"?
- 11 A: No, sir.
- 12 Q: Did Michael ever say any words to that effect?
- 13 A: No, sir.
- 14 Q: You heard Ms. Campbell say that in a telephone
- 15 conversation that you were disrespectful to her?
- 16 A: Yes, sir.
- 17 Q: Do you recall being disrespectful to Ms. Campbell in a
- 18 telephone conversation?
- 19 A: No, sir. I remember I may have used a few profane words,
- 20 like hell and damn, but it never went further than that.
- 21 Q: So your testimony is that you said hell or damn?
- 22 A: Yes, sir, but I would never take it further than that
- 23 because that -- that particular conversation wasn't even a
- 24 heated conversation at all.
- 25 Q: Now you also heard Ms. Charise Coaxum talk about an

DIRECT EXAMINATION OF ANTHONY GERMAN BY MR. VOIGT

1 arrest that had happened the night before?

2 A: Yes, sir.

3 Q: Did you talk to Charise Coaxum about that arrest?

4 A: Yes, sir, I did.

5 Q: Was -- And when did you have that conversation with Ms.
6 Coaxum?

7 A: Later on that night after Michael Allen was arrested, she
8 called me on my cell phone.

9 Q: Was she upset?

10 A: Yes, she was.

11 Q: Why was she upset?

12 A: Because I guess it was told to her that her husband was
13 with a couple of females that were with my brother and my
14 brother had asked Michael Allen to take him to carry the
15 females home, as well as Frank Haigler's nephew and son.

16 Q: Do you know what Michael got arrested for?

17 A: Having an open container, driving with an open container.

18 Q: And he had two other women in the car?

19 A: Oh, yes, sir.

20 Q: Was that while she was at work?

21 A: I'm not sure.

22 Q: Was the fact that the women were in the car the reason
23 why she called you upset?

24 A: Yes, sir.

25 MR. VOIGT: Please answer any questions that Mr. Harris

CROSS EXAMINATION OF ANTHONY GERMAN BY MR. HARRIS

1 may have for you.

2 THE COURT: Mr. Harris, you may proceed.

3 MR. HARRIS: Again, briefly. Thank you, Your Honor.

4 THE COURT: You're welcome.

5 CROSS EXAMINATION

6 BY MR. HARRIS:

7 Q: When you testified yesterday, I asked you if you had lied
8 to the police the first time. Do you remember your answer?

9 A: Yes, sir, I believe I do.

10 Q: So you lied to the police?

11 A: It was like, you know, so quick. I believe I didn't lie,
12 I just didn't tell the truth at the time, like I wasn't asked
13 whether I had a gun.

14 Q: Okay, but yesterday you said you lied. Did you lie to
15 the police? You said yes.

16 MR. VOIGT: Objection.

17 THE COURT: Basis.

18 MR. VOIGT: I believe it's beyond the scope.

19 THE COURT: I'm going to give him a little latitude as it
20 may possibly bear on credibility, but you need to tie ends
21 together, Mr. Harris.

22 MR. HARRIS: Okay. Thank you.

23 THE COURT: Mm-hmm.

24 Q: Did you testify yesterday that you lied to the police?

25 A: Yes, sir.

CROSS EXAMINATION OF ANTHONY GERMAN BY MR. HARRIS

1 Q: But you're telling the truth today?

2 A: Yes, sir.

3 Q: And yesterday?

4 A: Yes, sir.

5 MR. HARRIS: Nothing further.

6 THE COURT: Any redirect of the witness?

7 MR. VOIGT: No, Your Honor.

8 THE COURT: Any objection to the witness being excused
9 from the State?

10 MR. VOIGT: None, Your Honor.

11 THE COURT: From the defense?

12 MR. HARRIS: None, Your Honor.

13 THE COURT: Sir, you're excused.

14 MR. GERMAN: Thank you.

15 (Whereupon, the witness leaves the stand at 11:58 a.m.)

16 THE COURT: The State may proceed.

17 MR. VOIGT: That's all the witnesses I intend on calling,
18 Your Honor.

19 THE COURT: Does the State rest?

20 MR. VOIGT: It does, Your Honor.

21 THE COURT: Okay. Madam Forelady, ladies and gentlemen,
22 both the State and the defense have rested their case. There
23 are some matters of law that I need to take up with the
24 attorneys. The next part of the process is closing arguments
25 and the Court's instructions on the law. We have ordered your

1 lunch, it should arrive by 12:30. So what I'm going to do, I
2 need to debate a little bit about what I'm going -- how --
3 what we're going to do. I might let you all just go walk
4 around for 30 minutes and then when your lunch comes, you'll
5 -- you know, you can eat and then we can resume with the
6 proceedings, but if you all could indulge me for a moment
7 while I figure that out, I appreciate it. During this break,
8 please do not discuss the case and please leave your notepads
9 in your seats.

10 (Whereupon, the jury leaves the courtroom at 11:59 a.m.
11 While the jury is exiting, the sound of a cell phone
12 ringer is heard.)

13 THE COURT: Was that a phone? Was that your phone?

14 MR. HARRIS: I don't have a phone on me.

15 THE COURT: That's okay. You may be seated. Now that
16 the State has rested, are there any motions?

17 MR. VOIGT: None from the State, Your Honor.

18 THE COURT: Any from the defense?

19 MR. HARRIS: Your Honor, I'll just again renew my motions
20 from before and objections.

21 THE COURT: And the Court will mark those renewed and
22 denied based on its previous ruling.

23 (Whereupon, there is a break in the proceedings as the
24 Court confers with the clerk regarding the lunch
25 delivery.)

CHARGE CONFERENCE

THE COURT: I will give the jury a general instruction regarding their responsibility and my responsibility, how they are to judge witness credibility and believability. I'll give a general instruct -- instruction regarding expert witness testimony.

I'll give a general instruction regarding statements or a statement alleged to have been made by the defendant and how the jury is to judge that statement or whether -- You know, I think you all know the standard language.

And I will give a general instruction from *State v. Grippon* on direct and circumstantial evidence. I'll give a general instruction that the charge, the arrest and the indictment are not evidence, as well as a general instruction on the presumption of innocence.

I will then give a general instruction regarding the fact that the plaintiff -- that the defendant did not testify and that that cannot be considered by the jury in any manner or discussed in any manner in the jury room regarding his constitutional right to remain silent.

I will instruct *Victor v. Nebraska* on reasonable doubt. I will give a general instruction regarding identification testimony and then I will charge the elements of assault with intent to kill.

(Whereupon, there is a break in the proceedings as the

1 Court confers with the clerk again regarding the lunch
2 delivery time.)

3 THE COURT: I will then give a -- instruct the elements
4 of murder. I will then give a general instruction regarding
5 mere presence, as well as the hand of one is the hand of all.

6 I will then give a general instruction regarding the fact
7 that there are multiple indictments in the case. I will go
8 through what each one instructs -- what each one charges, I
9 apologize, and instruct the jury that each indictment is
10 separate and distinct, that each must be decided separately on
11 the evidence and the law applicable to it and that he may be
12 convicted or acquitted on any or all of the offenses charged
13 and that they will have to write a separate verdict on each
14 indictment.

15 I will then give a general instruction regarding the form
16 of the verdict and I wanted to ask an additional question just
17 for clarity. When we were doing voir dire, you all indicated
18 that y'all were not going to refer to Mr. Campbell as Coaxum.
19 So do we need to redact that from these indictments? Well,
20 it's one indictment, only one indictment has it, which is
21 6730. The rest just have Jerome Renaldo Campbell.

22 MR. VOIGT: Your Honor, I believe there was some
23 testimony both by State witnesses as well as defense witnesses
24 that at some point Mr. Campbell used Coaxum as well. His
25 sister's name is Coaxum. I don't think it's unnecessarily

1 confusing and I don't think it's prejudicial in any way to
2 him.

3 THE COURT: Mr. Harris?

4 MR. HARRIS: I don't have an opinion on that. I'm not
5 opposed to redacting or leaving it.

6 THE COURT: Okay. Well, I would redact it if y'all had
7 consensus on it. I just didn't know whether -- I was just
8 going on what y'all instructed me before because if that was
9 the case, then I would have done it in voir dire and since you
10 all asked me not to and said you weren't going to refer to him
11 in that -- by that name, but then when the testimony was
12 elicited from the witnesses, it sort of threw me off because
13 then there was a reference to him as Coaxum. I'll defer to
14 what -- whatever you all prefer. So do y'all want me to just
15 leave it on there or what do you want to do?

16 MR. HARRIS: Your Honor, I'm fine with it. I'm not
17 opposed to leaving it on there.

18 THE COURT: Okay and the State's not opposed either,
19 correct?

20 MR. VOIGT: Correct.

21 THE COURT: Then it'll stay on Indictment 6730. Are
22 there any exceptions to the charges proposed from the State?

23 MR. VOIGT: None from the State, Your Honor.

24 THE COURT: From the defense?

25 MR. HARRIS: Your Honor, I'd just again ask for a self-

1 defense charge.

2 THE COURT: Tell me what evidence is there of self-
3 defense in the record that would justify an instruction of --
4 on self-defense?

5 MR. HARRIS: Your Honor ---

6 THE COURT: Let me ask the question differently. Does
7 the State have any exception to a request to charge on self-
8 defense?

9 MR. VOIGT: Yes, Your Honor, the State does have an
10 exception.

11 THE COURT: Okay, then I'll hear from Mr. Harris and then
12 I'll hear from the State. You may proceed.

13 MR. HARRIS: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 MR. HARRIS: May it please the Court.

16 THE COURT: Yes, sir.

17 MR. HARRIS: Your Honor, in the case at hand, I feel that
18 we have put up testimony that this was a possible self-defense
19 case.

20 THE COURT: Tell me what evidence there is of self-
21 defense.

22 MR. HARRIS: Expert testimony says that someone fired a
23 shot from that gas station. Expert testimony also put that
24 shots as being the first shots.

25 THE COURT: Well, I think there's evidence that some

1 shooting took place. There's evidence there's a bullet hole
2 in the car, but I mean what evidence is there that your client
3 shot at somebody in self-defense? Because that's what self-
4 defense is.

5 MR. HARRIS: Right.

6 THE COURT: Self-defense isn't somebody shooting at him.

7 MR. HARRIS: Right.

8 THE COURT: That goes to the imminent danger or his
9 perception, you know, the other elements, but I need to know
10 what evidence there is that he shot other than the GSR in his
11 car.

12 MR. HARRIS: Right. Your Honor, there is testimony from
13 Michael Allen that says he heard my client's voice in his car.
14 There is testimony from everyone that this is the car that
15 fired a shot that killed a person. There's also -- They're
16 using hand of one is the hand of all, so they're saying
17 everyone in the car is responsible for this murder.
18 Therefore, everyone in the car should be afforded the self-
19 defense of the person that is the shooter in that car because
20 if we didn't, we ---

21 THE COURT: You're arguing defense of others within ---

22 MR. HARRIS: Right.

23 THE COURT: --- self-defense.

24 MR. HARRIS: Yes and castle doctrine also, Your Honor,
25 because it is his automobile. But, Your Honor, I'm arguing

1 that if we begin to just try one person each in a car that's
2 not the shooter to avoid letting them have a self-defense
3 charge because they're not the ones that admitted shooting the
4 person. I mean I think that they're all in one car, defense
5 of others, it is his car. Therefore, castle doctrine I think
6 applies.

7 THE COURT: Well, castle applies to your house, not to
8 your ---

9 MR. HARRIS: It applies to your automobile, too.

10 THE COURT: Well, I think that's stretching the castle
11 doctrine a little. Castle doctrine means my house is my
12 castle. If you come on my property, I can shoot you. That's
13 lay person's ---

14 MR. HARRIS: Your Honor ---

15 THE COURT: --- articulation of the castle doctrine ---

16 MR. HARRIS: I ---

17 THE COURT: --- or the privilege of my property.

18 MR. HARRIS: But ---

19 THE COURT: But I don't know. If my car is on my
20 property and you're in my car, yeah, I can shoot you, but I
21 don't know on the highway. We'd have the wild, wild west.

22 MR. HARRIS: Well, Your Honor, the -- in the City of
23 Charleston, everyone has used castle doctrine in a car and
24 there's a case recently where they didn't make an arrest where
25 a gentleman shot a person breaking into his car that was down

1 the street because the car was considered part of his castle.

2 THE COURT: You know, what -- what the police do, I ---

3 MR. HARRIS: I mean the castle doctrine does refer to
4 your automobile, the law -- I mean the amended law does from I
5 believe 2008 and that's before this case. It refers to your
6 automobile. It says that if you feel like someone is -- It's
7 basically saying the carjacking statute. If you feel like
8 someone's coming in to break into your car, you can fight them
9 off with deadly force. It doesn't have to be at your house.

10 THE COURT: We're not talking about someone breaking into
11 someone's car. We're talking about a car riding down the
12 highway expelling bullets.

13 MR. HARRIS: I understand, Your Honor.

14 THE COURT: I think that is an illogical extension of the
15 castle doctrine.

16 MR. HARRIS: Okay.

17 THE COURT: You need to move on. You need to tell me
18 what evidence is in the record that supports self-defense.

19 MR. HARRIS: Okay, Your Honor. The evidence is
20 scientific evidence from an expert that says someone from that
21 gas station fired a shot. Their police officer, Detective
22 Burckhardt, said if there would have been retaliatory -- if
23 there would have been pointing or firing, this would have been
24 a different case because it would have been retaliatory fire,
25 which applies to self-defense. I said -- I said to the

1 officer, "If I pointed a gun at somebody, can they shoot back
2 at me?" He said, "Yes." But this is defense of others in the
3 car, this is applying self-defense of the shooter to the
4 person driving the car because again, if we ---

5 THE COURT: Are you going to argue that the people in the
6 car had the right to shoot back to defend Mr. Campbell because
7 someone was shooting at them?

8 MR. HARRIS: If someone was shooting at them, they're
9 defending the person ---

10 THE COURT: That wasn't my question.

11 MR. HARRIS: Yes?

12 THE COURT: It has -- It has fascinated me lately lawyers
13 never answer the question I ask.

14 MR. HARRIS: I apologize.

15 THE COURT: They answer the question they want to answer.

16 MR. HARRIS: Yes, Your Honor.

17 THE COURT: I need you to answer the question I asked
18 you, which is: Is your argument going to be that the people in
19 the car, unidentified who the State is going to argue -- He is
20 -- and I'm just going to anticipate the State's argument based
21 on what they said in opening argument, which is that -- and
22 the way the case has developed, which is that Mr. Campbell may
23 not have shot the gun, but he certainly was a part of the
24 collusive effort to make sure the gun was shot.

25 MR. HARRIS: Right.

1 THE COURT: In other words, he was a part of the
2 conspiracy to aid and abet this illegal activity.

3 MR. HARRIS: Right.

4 THE COURT: Therefore, he is as culpable as the people
5 who shot the gun, even though we cannot identify those folk
6 and we don't have to.

7 MR. HARRIS: Right.

8 THE COURT: Now is your argument in response going to be
9 we don't really know who shot the gun in the car, clearly
10 there's GSR in the car, but these people have the right to
11 shoot to defend my client or to protect my client because they
12 were being shot at?

13 MR. HARRIS: Yes.

14 THE COURT: Okay. Now I'm clear what you're arguing.
15 All right, you may continue.

16 MR. HARRIS: Your Honor, I would say that -- Like I said,
17 if we are not going to apply defense of others or self-defense
18 to the people in the car that are being shot at, then what's
19 to keep the prosecution from just trying the people that are
20 riding in the car and not the shooter for murder because they
21 can't exercise self-defense? So that's why I'd ask that a
22 self-defense charge be added.

23 THE COURT: What's the State's exception?

24 MR. VOIGT: May it please the Court, Your Honor.

25 THE COURT: Yes, sir.

1 MR. VOIGT: I have actually different arguments for
2 different counts and let me refer to the AWIK involving Mr.
3 Frank Haigler. I think that the only evidence in this
4 particular matter as regards to the AWIK against Mr. Haigler
5 by the very definition of self-defense, I believe that the
6 State's evidence has nullified the very first element of a
7 self-defense claim, which is that the defendant was without
8 fault in bringing on the difficulty.

9 The only evidence before the Court is the testimony of
10 Mr. Haigler, who said he approached as a peacemaker and that
11 Mr. Campbell punched him, said words to the effect of "get it"
12 or "get him" and persons unknown came from within Charise
13 Coaxum's apartment and fired weapons at him, which is the
14 source of the AWIK. I believe that the -- the only evidence
15 negates one of the four elements of self-defense and
16 therefore, self-defense as to that particular charge would not
17 apply.

18 As to the other charges, there are -- I actually have two
19 arguments: one that involves the elements and then there is a
20 separate one and this kind of goes to Mr. -- goes to Mr.
21 Harris' argument about the defense of others. I'm going to
22 give the Court a cite and I'm going to recognize up front that
23 this cite is not directly on point, but it is *State v. Francis*
24 *Ann Price*, which is found at 278 SC 266, 294 S.E2d 426. So
25 that's 294, 426.

1 That case involves another one of the various defenses
2 that defendants can pose and my argument in this particular
3 case is that this defense of self-defense, this is a personal
4 defense under the facts of this case and is not available to
5 the -- is not available to the principal in this matter. In
6 that case, it analyzes when ---

7 THE COURT: But that's where your query -- that's where
8 your quandary comes in because you're either in for a pound or
9 you're in for a penny. You can't separate it out. Either
10 he's culpable for everything that happened in that car or he's
11 not and you can't say then that -- Because your theory is
12 going to be -- Well, I don't know what your theory will be or
13 necessarily what you're going to argue, so I won't try to
14 anticipate it, but I don't think that you can say that he
15 doesn't have defenses available to him.

16 If you're going to hold him culpable for the acts of the
17 people in that car and say that he conspired and he aided and
18 abetted them in doing what they did, you cannot then deprive
19 him of a defense as well that would be available because if
20 they were two sitting at that table with him, the three of
21 them would be one person and that it would be applicable to
22 all of them, which of course you know you don't have to try
23 all co-conspirators because it's -- In fantasy on television,
24 you're able to identify everybody, but most times in life you
25 aren't.

1 MR. VOIGT: And perhaps, Your Honor, I brought up my --
2 my weakest argument first because I put it out there because
3 there was a cite and I do think that the analysis does bear on
4 this. However, I think the -- the more clear analysis again
5 goes back to the four elements that the State must disprove
6 when self-defense is put forward. In that case, the facts of
7 this case I believe impact all of those four elements.

8 The fact that the defendant, you know, must be without
9 fault in bringing on the difficulty. The defendant -- And
10 according to the State's theory of the case, after aiding and
11 abetting the shooting of Frank Haigler, shooting towards Frank
12 Haigler, then persons unknown and Mr. Campbell got into Mr.
13 Campbell's car and traveled to where Mr. Allen said, "There
14 they are" -- or where Mr. Allen said that he heard Mr.
15 Campbell's say, "There they are" or words to that effect and
16 then from inside of Mr. Campbell's car, where I believe Mr.
17 Campbell was, shots were fired, as I believe the
18 circumstantial evidence is that Mr. Campbell intended and that
19 is certainly not being without fault in bringing on the
20 difficulty.

21 And it also impacts the defendant has no other probable
22 means of avoiding the danger of losing his own life or
23 sustaining serious bodily injury other than to act as he did
24 in this particular instance. It is clear after the shooting
25 at Frank Haigler that there were a wide variety of behaviors

1 and actions that the defendant and the persons with the
2 defendant could have taken and they did not necessarily mean
3 driving by and shooting at the German brothers and Michael
4 Allen.

5 So I believe that the only evidence that we have in this
6 case directly -- directly contradicts two of the elements and
7 as the Court knows, I only have to -- I only have to disprove
8 one of the elements for self-defense not to be applicable.

9 I believe it also impacts the second element, which is
10 the defendant's belief -- And the third element is his actual
11 belief and we don't have any evidence of his actual belief,
12 but ---

13 THE COURT: We have testimony from his family that says
14 threats were made and that they communicated -- at some point
15 they had to have been communicated to him.

16 MR. VOIGT: We have the threats that Ms. Sandra Campbell
17 believed she heard she testified she did not relay to him.
18 She -- Ms. Charise Coaxum did indicate that she had related
19 some of those things to him. But then we have to do the
20 analysis and, you know, whether or not that was reasonable. I
21 think we already have -- We've already knocked out essentially
22 two elements and I'm not sure that we really need to knock out
23 the third. We only need to knock out one.

24 And again, I would just here mention the line of cases
25 involving mutual combat and that's where mutual combat means

1 when you both bring guns to a fight, self-defense is not a
2 defense available to you and clearly ---

3 THE COURT: Well, that's a part of the instruction and
4 actually, self -- mutual combat is -- There are different
5 parts of mutual combat. Of course, if he voluntarily
6 participated in combat for purposes other than protection,
7 then it's not self-defense, even if during the combat he
8 feared death or serious bodily injury.

9 MR. VOIGT: But those are all the basises [sic.], Your
10 Honor, and I believe that the -- the second two AWIKs and the
11 murder have a slightly different basis than Mr. Haigler's
12 count, but I believe that they all revolve round the same.
13 Thank you.

14 THE COURT: You're welcome. Would the defense like to
15 respond?

16 MR. HARRIS: Judge, just that the evidence they brought
17 up has been -- And I understand that it's a jury question,
18 evidence that's been contradicted in different ways. There
19 was a threat to Jerome, the threat was relayed to my client,
20 my client doesn't -- I mean there's case law all over the
21 place that says, you know, if the threats -- you know, that's
22 where we got -- how we got half that stuff in yesterday was
23 from the State's questioning, which you didn't bring up, but,
24 you know, unvoiced threats basically that are brought to the
25 attention.

1 But, Judge, it's the -- It's the -- their responsibility
2 to disprove it. This is not an affirmative defense anymore.
3 It's -- The jury charge, like you said, with the mutual combat
4 or, you know, if they don't -- if we don't show the elements
5 of self-defense, then the jury has instructions. They don't
6 have to follow self-defense. I mean the jury instructions
7 will cure this problem.

8 I'm just saying, like I said, if we don't allow the
9 person in the car -- If we're saying the person in the car is
10 just responsible for the person in the back seat and we don't
11 allow them the defense we're giving the person in the back
12 seat, then again, what is going to stop us from just trying
13 the people in the car and not the person in the back seat and
14 getting three convictions for murder because we're not
15 allowing them a self-defense because the State decides or
16 somebody decides to sever all the clients or all the
17 defendants because they may ---

18 THE COURT: But you don't know who the other defendants
19 are, do you?

20 MR. HARRIS: No, I don't, Your Honor. Based on that, I
21 would ask that the charge be brought because like we did say
22 that the mutual combat instruction is in there. If it's
23 proven to be mutual combat, the jury can disregard self-
24 defense.

25 (Whereupon, there is a pause in the proceedings for

1 several minutes.)

2 THE COURT: Our case law is very clear that if there is
3 any evidence of record from which it can be reasonably
4 inferred that an accused justifiably inflicted a wound in
5 self-defense, then the accused is entitled to an instruction
6 on the law of self-defense and the failure to do so
7 constitutes reversible error.

8 I am of -- I would be disingenuous if I said this was not
9 an odd set of facts. It's a very unusual set of facts,
10 probably one that would be a first impression in this state.
11 At least I don't recall ever reading one similar to this
12 although I would not say that there isn't one at all as I
13 would have no way of corroborating that, at least not at this
14 moment. But at least, I don't recall reading any facts
15 similar to these.

16 I think that it is -- When you listen to all the experts,
17 nobody can tell which -- We know that the shots were fired.
18 There's no one that, at least of independent when we talk
19 about the experts because they weren't there, to say who shot
20 when, who shot first, where it was shot from, what weapon they
21 were expelled from, and there is evidence of words being
22 spoken and threatening words.

23 There is evidence that there were some significant family
24 disputes that were -- that were going on among the families.
25 Of course, only those there would know, you know, exactly the

1 complexity of what happened on that evening, whether it was
2 misunderstood or intentional, and there is evidence that the
3 car was hit by a projectile, that being a gunshot, and there
4 is evidence of -- from the defense's expert that other
5 individuals at the scene fired weapons or a weapon.

6 And so in light of those facts and in light of the hand
7 of one, which is accomplice liability theory, I think that it
8 would be probably be error under those facts with the novel
9 way this case has been presented not to instruct self-defense.
10 I think all the arguments that have been made you all can make
11 those to the jury. In other words, that, you know, he doesn't
12 meet the elements of self-defense. You know, in other words
13 that he had no other way to avoid the danger, that he was not
14 without fault in bringing about the difficulty.

15 However, I do not think that it would be appropriate for
16 me to instruct defense of others because there is no testimony
17 that he shot a weapon to defend someone else and that's what
18 defense of others is about. It's about you having the ability
19 or the legal right to basically stand in the shoes of someone
20 else and to exercise their right to defend themselves. And so
21 I don't think that -- And actually, to some extent it's --
22 it's cumulative because it's basically the same instruction.

23 However, I think I probably will add some language that
24 says -- No, I don't -- Actually, I think that might be
25 confusing. I will leave it as straight because I don't think

1 defense of others would be -- would be applicable because that
2 would apply -- That's when a defendant shoots someone else to
3 defend someone else who did -- who had the legal right to
4 defend themselves but didn't and I -- and I'm being probably
5 convoluted in -- in that description, but I don't think under
6 these circumstances that would be factually applicable.

7 So I will give the -- the standard instruction on self-
8 defense from *State v. Fuller* and *Addison* and *Rowell*, which
9 indicate the elements of -- The following elements are
10 required to establish self-defense, that you are without
11 fault. I will instruct that contemptuous language is not
12 available to a person who uses -- who uses language which is
13 so contemptuous that a reasonable person would expect it to
14 bring on a physical encounter and it did. I will instruct
15 mutual combat and then the next element that must be
16 established is that the defendant was actually in eminent
17 danger of death or serious bodily injury or that he actually
18 believed that and I think we know what those elements are.

19 I will then instruct the right to act on appearances. I
20 will also instruct words accompanied by hostile acts, which is
21 words accompanied by hostile acts may depending on the
22 circumstances establish self-defense. Prior difficulties as
23 well, which is evidence of prior difficulties between the
24 defendant and the victim may be considered in deciding whether
25 a threat existed, whether the defendant had a reason to

1 believe the threat existed and how serious that threat was.
2 Size and age, which is the relative sizes, age and weights of
3 the defendant and the victim may be considered in deciding the
4 apparent or actual need for force in self-defense.

5 There has been no testimony regarding any reputation of
6 the victim and, therefore, I will not instruct that and there
7 has been no indication of prior violence by the victim.
8 Therefore, I will not instruct that as well.

9 (Whereupon, there is a brief pause in the proceedings.)

10 MR. VOIGT: May I interject, Your Honor?

11 THE COURT: Give me one second.

12 MR. VOIGT: Okay.

13 THE COURT: There is no indication of intoxication and I
14 would not instruct that and then the other element, of course,
15 is no other way to avoid the danger. The remaining -- And
16 then I would, of course, instruct that there is no duty to
17 retreat if by doing so you increase your chance of being hurt
18 and then also on the degree of force, as well as continuing
19 until the threat of harm is ended. And give me one second
20 because I need to look at something.

21 (Whereupon, there is a pause in the proceedings.)

22 THE COURT: And then threats by the victim, which is
23 threats made by the victim may be considered in determining
24 whether the defendant actually was or believed he was in
25 imminent danger, that being the testimony from the defense

1 witnesses regarding any alleged threats that were made
2 regarding the life of the defendant.

3 Also, because self-defense is being instructed, I will
4 not instruct pursuant to *State v. Belcher* anything regarding
5 inferred malice, that being I will instruct that malice may be
6 inferred from conduct showing the total disregard for human
7 life, but I will redact the language regarding inferred malice
8 may also arise when the deed is done with a deadly weapon
9 because our case law has articulated that that is not
10 appropriate when instructing self-defense.

11 So that would be redacted from both the AWIK and the
12 murder because I think by extension based on the language of
13 *Belcher*, it would be applicable in both situations. Yes, sir?

14 MR. VOIGT: And I apologize for standing, Your Honor, and
15 I stood because I didn't wish to interrupt, Your Honor. When
16 the Court enunciated the reasons and listed the evidence for
17 which a -- some self-defense could be inferred, one of the
18 things the Court listed, as a matter of fact I think it was
19 the third thing that the Court listed, was a bullet hole found
20 in the defendant's car.

21 THE COURT: I thought I saw a picture of that.

22 MR. VOIGT: You saw a picture of a bullet hole in a car
23 in the parking lot at ---

24 THE COURT: Oh, so it was a different thing?

25 MR. VOIGT: Completely different car.

1 THE COURT: Well, then it's -- But it still doesn't
2 impact ---
3 MR. VOIGT: But it ---
4 THE COURT: So I stand corrected and I apologize. I
5 misunderstood.
6 MR. VOIGT: And -- and -- But that would be evidence that
7 someone was firing at the defendant's car
8 THE COURT: And that's something ---
9 MR. VOIGT: --- and that would be important.
10 THE COURT: Mm-hmm.
11 MR. VOIGT: But we don't have that here, so I just wanted
12 to make that clear.
13 THE COURT: I'm sorry. I thought that picture was
14 admitted and I misunderstood. It's the same color as the car,
15 isn't it?
16 MR. VOIGT: It's a completely different car. It was in
17 the parking lot.
18 THE COURT: But it's the same color as the other car,
19 isn't it?
20 MR. VOIGT: Well, one is white and one is silver.
21 THE COURT: Yeah, it all kind of - that silver looks --
22 yeah.
23 MR. VOIGT: But I wanted to make sure that we know.
24 THE COURT: And I'm glad you made that correction for the
25 record because I misunderstood and I apologize. I thought

1 there was a bullet -- There was a bullet hole in a vehicle,
2 but I misapprehended which vehicle it was. But it doesn't
3 alter the Court's ---

4 MR. VOIGT: And -- and ---

5 THE COURT: I think the case law is just so very clear
6 that if there is even a scintilla of evidence about self-
7 defense that we have to instruct it.

8 MR. VOIGT: And my last one before I'll sit down is that
9 I believe that my argument on the very first day, which is
10 separate and apart in location and time, I don't believe that
11 the factors enunciated by the Court for instructing self-
12 defense as to the other two AWIKs as opposed to the murder are
13 present in that particular case. Based on that ---

14 THE COURT: I don't think you can separate them out. I
15 think that you have to -- I agree there's testimony regarding
16 Mr. Haigler, but that's for y'all to argue.

17 MR. VOIGT: Okay.

18 THE COURT: That's not for the Court to make that
19 distinction.

20 MR. VOIGT: I just wanted to ---

21 THE COURT: Because then that would be an impermissible
22 comment regarding the facts on my part and I can't do that.
23 You all have to argue within your argument that even if you
24 believe that self-defense applies to these other things, that
25 it does not apply to this because it doesn't meet the

1 elements.

2 But I assume that you're going to argue that it doesn't
3 meet the elements in any of them, so that would cover it and
4 I'm certain Mr. Harris will make his argument, but I can't
5 comment on the facts regarding that because it would be
6 impermissible. Those are facts that you all have to argue
7 within your closing argument. Now we've killed -- I guess
8 lunch got here, huh?

9 THE CLERK: I'll go check on that.

10 THE COURT: Okay. What I'm going to do is if y'all would
11 indulge me for a moment to see whether lunch has arrived and
12 then I can let you all know how long y'all have for lunch.
13 Okay?

14 MR. VOIGT: Thank you, Your Honor.

15 THE COURT: So if y'all would just stick with me for just
16 a second and then we'll -- Could you for me? Thank you. And
17 then we'll see and then once we get the jury situated, I'll
18 let y'all go to lunch.

19 MR. HARRIS: Your Honor, can I approach?

20 THE COURT: Sure and I need y'all to make sure that the
21 -- the court reporter has all of the exhibits.

22 MR. HARRIS: Judge?

23 THE COURT: And I need y'all to look at these, too. I'm
24 sorry. I totally forgot.

25 MR. HARRIS: Okay.

1 THE COURT: And I think they are in numerical order or
2 they might be in reverse order. I'm not sure.

3 MR. HARRIS: Okay.

4 THE COURT: Any exception to the verdict forms as
5 proposed from the State?

6 MR. VOIGT: None from the State, Your Honor.

7 THE COURT: From the defense?

8 MR. HARRIS: None.

9 THE COURT: Okay, thank you, sir. Yes, sir?

10 MR. HARRIS: I am -- I brought my computer from my
11 office. I'm letting you know ---

12 THE COURT: Mm-hmm.

13 MR. HARRIS: --- because I can't really show much on
14 this. I can't show the clarity. I mean there have been
15 people talking about the clarity of these videos.

16 THE COURT: Okay.

17 MR. HARRIS: What I'm asking is is there a way I can put
18 it on the -- on the ---

19 THE COURT: The problem is you're going to have people
20 leaning over each other trying to ---

21 MR. HARRIS: Yeah, I thought I could put it up on this.
22 I had forgotten that was flat. Okay, I've got a plug on the
23 other side of there. I just wanted to make sure because -- I
24 mean it's big, it's like watching a TV.

25 THE COURT: Oh, your TV -- your computer?

1 MR. HARRIS: Exactly. I brought my office computer with
2 me.
3 THE COURT: Oh, I thought you meant like a laptop.
4 MR. HARRIS: No.
5 THE COURT: Oh, I was confused.
6 MR. HARRIS: No, that thing down there.
7 THE COURT: Yeah, you can put it up there if you want to.
8 MR. HARRIS: Okay.
9 THE COURT: You just need -- If we need to take a break
10 -- I assume the State is going to open and close? Or are
11 y'all ---
12 MR. VOIGT: I'm just going to save it for one.
13 THE COURT: Okay. Well, then if you're going first, then
14 what I would suggest before you leave for lunch is you get all
15 that hooked up.
16 MR. HARRIS: Okay.
17 THE COURT: Because there are things -- I can't see.
18 There's stuff -- I think there's an outlet down in the floor
19 somewhere that you're going to have to hook that up to.
20 MR. HARRIS: There's something over here.
21 MR. VOIGT: If you can get an extension cord, you can
22 probably ---
23 MR. HARRIS: I brought one, but there's also two over
24 there.
25 THE COURT: But you could put it up on there.

1 MR. HARRIS: Thank you, Your Honor.

2 THE COURT: Yeah and then get yourself -- you know, get
3 yourself situated and make sure it's working before you go to
4 lunch as well.

5 MR. VOIGT: Just in case, Your Honor, Mr. Harris, what
6 are we going to -- I just -- How are we going to -- They're
7 going to want to watch this video while they're in there.

8 THE COURT: We're going to have to -- Does it take
9 special software? No, we didn't watch that one. We watched
10 that one. How -- Does it take special software?

11 MR. VOIGT: It probably does. I mean I had to download
12 software to get this on here.

13 MR. HARRIS: It works on mine. I mean like I said ---

14 THE COURT: It will work on yours without downloading
15 something? It takes special software.

16 MR. HARRIS: I don't know. Avery, did we have to
17 download something?

18 AVERY: It works on my computer fine.

19 MR. HARRIS: Did we have to download something?

20 AVERY: To play the surveillance cameras?

21 MR. HARRIS: Yeah.

22 AVERY: Nothing. It worked on my computer.

23 MR. HARRIS: It worked on mine.

24 MR. VOIGT: So it may be something that ---

25 THE COURT: We can try. We can play with it and see.

1 MR. VOIGT: Okay.

2 THE COURT: And experiment and see. Why don't -- and
3 before lunch why don't you all do that as well to see, but,
4 you know, we probably need to -- I don't think -- I say this
5 every trial, civil or criminal, the Court probably doesn't
6 have the money to invest in a laptop to play stuff in the jury
7 room for juries. Actually, what you could do though is if one
8 of y'all's computers works, what we have done lately is sent
9 the computer in with the clerk and a bailiff ---

10 MR. HARRIS: Mm-hmm.

11 THE COURT: --- and let them watch it, but instruct them
12 that they can't talk while they're watching it.

13 MR. HARRIS: Mm-hmm.

14 THE COURT: And, you know, they can direct the bailiff or
15 usually my law clerk and the bailiff go in and they play it
16 for them.

17 MR. VOIGT: And I don't want ---

18 THE COURT: And if they want it replayed, something
19 replayed, you know, they'll just play it several times.

20 MR. HARRIS: Yeah.

21 THE COURT: And if they want it stopped or something,
22 they do it, but they're instructed that they cannot
23 deliberate. I think it's a better situation than bringing
24 them in here ---

25 MR. HARRIS: Right.

1 THE COURT: --- under the eye of everybody.

2 MR. VOIGT: I'd just as soon in this particular case,
3 it's going ---

4 THE COURT: And the lighting actually is much better in
5 there.

6 MR. VOIGT: --- go over it over and over again.

7 MR. HARRIS: All right.

8 THE COURT: So that's what we'll do if they need ---

9 MR. VOIGT: Okay.

10 THE COURT: But we'll send it in with them and then I'll
11 instruct them that if they need it played to let us know and
12 we'll send the equipment in for them to do it.

13 MR. HARRIS: Okay.

14 MR. VOIGT: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 (Whereupon, there is a brief pause in the proceedings
17 while the computer is set up for closing arguments.)

18 THE COURT: Mr. Harris, you're probably going to need to
19 put it in the middle because the way you have it now, the
20 foreperson wouldn't be able to see it.

21 MR. HARRIS: Okay.

22 THE COURT: Or the alternates.

23 MR. HARRIS: Okay.

24 THE COURT: But do you have enough room to do that?

25 MR. HARRIS: I will I think.

1 THE COURT: And Mike went to get their lunch, so I think
2 it's probably safe to say that we'll be adjourned until 1:30.

3 MR. VOIGT: Thank you.

4 THE COURT: And if something changes, we'll call you in
5 your offices, but let's just plan to resume at 1:30.

6 (Whereupon, there is a break in the proceedings from
7 12:41 p.m. until 1:57 p.m. When the proceedings resume,
8 the defendant and all counsel are present.)

9 THE COURT: After the jury ate, they wanted to go
10 downstairs and mingle I guess, take a walk, so I had to
11 accommodate them. I'm sorry that you all had to wait. Is the
12 State ready to proceed?

13 MR. VOIGT: Yes, Your Honor.

14 THE COURT: Is the defense ready to proceed?

15 MR. HARRIS: Yes, Your Honor.

16 THE COURT: Okay. Please bring in the jury.

17 (Whereupon, there is a brief pause in the proceedings.)

18 BAILIFF: Ready for them, Judge?

19 THE COURT: Yes, sir.

20 (Whereupon, the jury enters the courtroom at 1:59 p.m.)

21 THE COURT: You may be seated. Ladies and gentlemen, I
22 hope that you all had a pleasant lunch recess. I think it's
23 about 78 degrees outside, so I'm sure you all enjoyed the
24 sunshine and the air and after eating I'm certain it's going
25 to assist in keeping you all awake.

1 We -- As I explained, we have -- Both the State and the
2 defense have rested their cases. We have now reached the
3 stage of the trial where we will have closing arguments and
4 the Court's instructions. You will hear from Mr. Harris,
5 followed by Mr. Voigt, and then you will hear from the Court.

6 Depending on how long arguments take, we may take a break
7 in-between to give you all a rest room break or just the
8 opportunity to stretch a little bit. We appreciate your
9 patience and I would ask that you give the attorneys your
10 undivided attention. Mr. Harris, you may proceed when you are
11 ready.

12 MR. HARRIS: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 MR. HARRIS: May it please the Court.

15 THE COURT: Yes, sir.

16 CLOSING ARGUMENTS

17 MR. HARRIS: Good afternoon, ladies and gentlemen, a
18 lovely day. I thank y'all for being here with us for the last
19 four days. I know you have better places to be, but this is
20 an important process and we do appreciate every minute you
21 give us.

22 We talked four days ago and we did what they call opening
23 arguments. The prosecutor gave you an opening argument and
24 gave you a PowerPoint presentation. I told you a few things.
25 I said I want you to use your ears and I want you to use your

1 eyes and I want you to use your common sense. I want you to
2 listen to what -- to what you hear and I want you to watch the
3 videos and I want you to listen to the audio and I want you to
4 watch how people react in that chair when being cross examined
5 and being directly examined and I want you to use your common
6 sense. That's one thing I said most people need when they
7 look at the facts of a case. The prosecutor said that he
8 wanted you to look at this through a lens, through a prism.

9 THE COURT: Mr. Harris, I need you to speak up so the
10 court reporter can hear you.

11 MR. HARRIS: Okay.

12 THE COURT: I apologize for interrupting you, but she's
13 -- Your voice is sort of droning out. You need to speak up
14 for her.

15 MR. HARRIS: They wanted a lens or a prism. He said it's
16 going to be a difficult case for you to decide. They're going
17 to want you to look at it in a different way. I didn't
18 realize they wanted you to look at through the lens that would
19 distort the facts, a prism that would refract the facts, so
20 maybe you won't notice the lack of evidence in this case that
21 would convict my client.

22 They want you to look at it in a way that magic bullets,
23 mystery lead dust clouds that have never been heard of by
24 anybody other than a person that's found 50 cases, maybes, a
25 lot of maybes. Remember, we talked about maybes on Monday. I

1 said let's listen to maybes, possiblies, not facts, but this
2 may have happened, this possibly happened, maybe and possibly
3 are -- Like I said, if anybody knows the Superman movies,
4 kryptonite is what kills Superman. Maybe is what kills beyond
5 a reasonable doubt. You cannot have a maybe and think maybe
6 this happened and find somebody guilty beyond a reasonable
7 doubt.

8 Now normally in a case where I've got a lot of witness
9 testimony that has a lot of inconsistencies, I sit there and
10 hammer on it all day, but this is one of those cases where
11 we've got so much inconsistency with the witnesses and their
12 stories from three years go and I like calling it three and
13 three. They've had three years and three days of watching
14 this trial and watching testimony to get their story
15 consistent with each other. Even sitting there watching, they
16 still can't get the same story.

17 They had three different stories three years ago the
18 night of the incident when they were separated by police,
19 three different stories. One of them was there for five
20 seconds and then gunshots rang out, one of them went up and
21 apparently had -- had a party and then came running back, one
22 of them said none of them left the gas station, but all four
23 were standing there and then gunshots rang out. Not one of
24 them said anything about a gun, not one of them said anything
25 about, oh, we went over to the apartments.

1 That was three years ago. They've had three years of
2 being friends, of saying -- They were not separated by police
3 now. They've had three years to get this story straight.
4 They want to convict Jerome. They want somebody to pay for
5 this thing. They've had three years.

6 Then they had three days. They've been sitting in here
7 for three days watching. My witnesses didn't sit here for
8 three days. That's called sequestration. They had to sit
9 outside. The victims get to sit in here and watch and they
10 got to listen to every word every person said up there and one
11 would think that they would at least after watching these
12 things come up with the same story.

13 One person walks up, there's a shotgun out the window,
14 no gun in the front. He doesn't see Jerome with a gun. One
15 person walks up and there's tinted windows apparently in the
16 car doesn't have tinted windows. Another person walks up, no
17 shotgun in the back, but now for the first time in this trial
18 he puts a gun in Jerome's hand. He's never put a gun in
19 Jerome's hand for three years, but Anthony German sat here and
20 said, "Oh, yeah, Jerome was driving the car. He rolled down
21 his window and put a gun in my face." That's the first time
22 anybody's ever heard that.

23 The prosecutor likes to sit there and say you've had all
24 this time, you didn't call the police, you didn't do that. He
25 never called the police and said, "Oh, by the way, I know

1 you're trying to convict Jerome Campbell of my brother's
2 murder. By the way, three years ago I remember now he had a
3 gun and put it in my face." He's the only person that puts a
4 gun in Jerome Campbell's hand and he did it after he watched
5 everybody's testimony and realized, wait a minute, nobody put
6 a gun in his hand, I'd better resolve that. He was the last
7 person to testify.

8 Why, after all these years of getting all this straight,
9 they see the physical evidence, they see the videos, they see
10 the fact they're hiding evidence, they see that they're
11 throwing guns on the roof, they're throwing bullets away, why
12 won't they just say, yeah, we fired or we shot a gun? There
13 is indisputable one hundred percent scientific evidence that
14 one of them shot a gun, but you know why they won't say it?
15 Because then they'll realize and everybody else will realize
16 that they are part of the reason that their brother is dead.
17 They don't want to admit that them firing first, whether it
18 was his brother or whether it was Michael Allen, them firing
19 first not only led to, but caused their brother's death.

20 You fire into another the car, the car fires back at you,
21 what do you think is going to happen? You go armed to
22 somebody's house with guns after you claim you've seen them
23 with guns, after there's been threats all day. They'll say,
24 oh, he threatened me on the phone. He said if I don't let my
25 grandmother or the grandma see the baby, I'm going to come

1 down and kill him.

2 The banker from North Carolina is going to drive down and
3 murder somebody because he won't let the grandmother see the
4 baby. Common sense, that didn't happen, that doesn't make
5 sense. Why would a banker who has a wife, a house, a job, a
6 college degree, lives three hours away, say you won't let the
7 grandmother see the three day old baby, so I'm going to come
8 kill you? It just didn't happen. It's somebody that's
9 creating threats.

10 Let's go into more threats. You got a text message. The
11 prosecution is going to say, oh, she added words to the text
12 message three years later. The text message says, "Real
13 people do real things. Tell your brother we're coming for
14 him." We ask Michael Allen, what's "real people do real
15 things"? "Oh, I was talking about when she kicked me out.
16 That's just not a real thing." Just back pedaling. Come on,
17 just say you sent the text message and say you were mad at
18 Jerome. Don't give me this, oh well. When you see the thing
19 on the stand, oh, yeah, if I would have sent that message, it
20 would have meant that my wife and I had been having
21 difficulties. She had been kicking me out of the house.

22 You know, like I said, I can sit here all day and all day
23 tomorrow and point out all the problems with the three people
24 who have had three years and three days to get a story
25 straight, but they haven't. You know why they haven't?

1 Because they're not telling the truth. The story is they
2 drove over to the Plantation Apartments after there had been
3 bickering all day between people on the phones and who
4 threatened who? We don't know. We may never know. We know
5 threats were going back and forth all day long. They go armed
6 to a person's house.

7 Here is another part that nobody really I guess thought
8 about until Michael Allen tried to change his story and say
9 they came in two cars. If you're taking somebody home and you
10 want to make sure they get there okay, why would you take
11 their car only? I mean you're just going to go there and make
12 sure they're okay with weapons in their car. How are you
13 going to get back? You have your own car. We already heard
14 that. There's a Firenza and there is some other car. They've
15 got their own cars.

16 And why do they -- why do they need four people when
17 Michael -- We already know Frank Haigler is going to walk up
18 and play peacemaker. Why do they need four people with guns?
19 Because it wasn't them taking Michael Allen home. This was
20 them going after Jerome Campbell. They had just seen him.
21 They claimed he just pointed a gun at them. You know, if
22 we're going to ask why didn't you call the cops to my
23 witnesses, why didn't you call the cops. I tried, but they
24 covered up the phone.

25 Oh, you didn't call the cops for three years. You got

1 somebody pointing a gun in your face and you don't call the
2 cops. Anthony German didn't call the cops. Frank didn't call
3 the cops. What did they do? They armed themselves and went
4 over to Jerome's sister's house, where he had said he was
5 going to be. They brought weapons in a car to the house.

6 But that's almost enough. I -- The way you're going to
7 see this case is the way I told you we were going to see it in
8 the beginning: The facts, hard evidence, science, scientific
9 evidence, video, audio, things that are not biased. You talk
10 about biased testimony. What is biased testimony? Well,
11 let's see. Their witnesses want to convict my client.
12 They're going to say my witnesses want to spare my client. So
13 let's take out any of them that can be biased. Let's look at
14 that.

15 Let's take out the three people that had three years and
16 three days to perfect the story and yet they didn't. They
17 still came up with different stories. Let's take out my two
18 witnesses that we apparently decided we were going to go
19 through a one hour where were you then, are you sure you
20 didn't get there at 3:20? You said earlier 3:20 and it's 3:00
21 now. Hold on, let's try to pin you down all day where you had
22 been.

23 You know, okay, let's take both of those out. Let's take
24 out the fact that my client's family said they came to the
25 house, they threatened Jerome, they were both wearing red and

1 they said, "We're Bloods. Bloods take care of each other."
2 Let's take that out. Let's say, you know, I'm assuming the
3 prosecutor is going to try to attack those statements. Let's
4 take them out. Let's take out the statements of the witnesses
5 that were there, too, because I think I would argue they're
6 biased, too. I think they have a motive. I think they want
7 Jerome to go to prison.

8 Now let's do that. Let's look at the unbiased witnesses
9 in this. Tim McCarthy, nice English fellow that was buying
10 cigarettes. He's a boat captain, I believe he said. The
11 gentleman, I can't remember his name, that was sitting behind
12 the counter at the gas station. The experts. You know, they
13 try to say my expert is paid for. He's testified more times
14 -- He's testified 512 times for the prosecution. He's not
15 going to sit here for the small amount of money we give him
16 and say, you know what, I'm going to sully my reputation and
17 what I've been working for for fifteen years and I'm going to
18 make the evidence point to what Stephen Harris wants it to
19 say. It doesn't happen that way, experts don't do that. You
20 would not have a career if you sat there and said, you know
21 what, I'm going to change the way this is.

22 And I do love the fact that we kept saying what about the
23 little photograph, the snapshot of evidence that Mr. Harris
24 gave you? You know what I gave him? I gave him the
25 scientific evidence that their expert had testified to. We

1 didn't give him the statements because I wanted to know what
2 science said. I didn't want him to think, oh, well, these
3 people say there wasn't a gun shot. Let me see, what does
4 science say? Science says one hundred percent with gunshot
5 residue this person fired a gun. Remember I walked up and I
6 said one hundred percent and he said one hundred percent they
7 fired a gun.

8 Could this explosion happen? No. Is there any other way
9 they got it? Mr. Voigt asked him is there any other way they
10 could have gotten this gunshot residue on their hands. No.
11 Not a possibly, not a maybe, but a no.

12 Let's take out the bias and let's look at it this way.
13 It's not my job obviously to prove that my client didn't do
14 this. It's the State's job to prove that he did beyond a
15 reasonable doubt. But let's say I show you evidence. Let's
16 say I bring up a video, which we've seen videos in this, and I
17 take you to -- I apologize. Can everybody see this? Can
18 y'all see that? Okay.

19 You've seen this video a bunch I'm assuming. I'm going
20 to fast forward through it and this is the time stamp that you
21 guys didn't see on the other videos. It doesn't show up on
22 those. This is the camera. This is the time stamp not from
23 my computer. This is the evidence that -- This is the video
24 that's into evidence. This is the time stamp you can see
25 1/9/2009. That's the date that we've been talking about all

1 week.

2 Let's go here to what we talked about earlier, this --
3 this mysterious vapor cloud, dust. Okay, here comes -- Here.
4 We're going to watch and we're going to see. Here comes
5 Michael German. He walks into the picture. He's by himself.
6 We don't know where Michael Allen is. I'm assuming he's over
7 here out of camera like he says he is. He walks up, he
8 reaches his hand in his pocket, steps by, you start to see
9 smoke rise up and then boom, we see debris. Okay?

10 You can see a little bit clearer. Now this is a little
11 bit clearer than this thing up here. He walks by. Let's see
12 here. Here's where the smoke is. You start to see the smoke.
13 This is the smoke that my expert said that's gun smoke.
14 That's a gun that was fired and if you watch, you look at
15 these numbers down here and when you listen to that video,
16 it's gun smoke. It coordinates with the bullets firing. The
17 State wants you to believe that this is not gun smoke, that
18 this is somehow, like I said, a mysterious lead cloud and it's
19 also apparently -- There goes the bullet come out after smoke,
20 then bullet. Apparently, the wall is anticipating being hit
21 by starting to smoke according to the State, but this is --

22 Again, I don't understand how this would happen. It's
23 science. We had an expert say that that's gun smoke and then
24 you see the bullet hit. Okay, let's say that was the only
25 thing I have and then I said, "Michael German fired a gun

1 based on this smoke." You'd all would look at me and you'd
2 go, yeah, it's possible, it's a maybe, a definite maybe, but
3 I'd still like to hear about this mysterious lead explosion,
4 this lead cloud that apparently can cover people with gunshot
5 residue. Okay. Well, if that's all I had, then I don't
6 believe you know, you could that this guy fired a gun.

7 But let's go back. Let's go to our guy in the store and
8 I want you to hear it because it didn't -- We never had
9 speakers that were good, but if you remember, my expert said I
10 think it's two different firearms and somebody's firing back
11 here close to the building and then there's somebody driving
12 away firing a gun.

13 (Whereupon, the video of the interior store surveillance
14 with sound is played.)

15 MR. HARRIS: Okay, I fast forwarded it to, again, the
16 time we're talking about. Okay, you see the cashier? He's
17 doing his business. I'm going to be quiet because I want you
18 to hear it.

19 (Whereupon, there is a pause in the argument as the video
20 is played through the sound of the gunshots and then
21 stopped.)

22 MR. HARRIS: Okay. You can hear it a little better now,
23 you hear what they're talking about. It's a bang, bang,
24 crack, crack. When he said -- Let's see it again.

25 (Whereupon, the same portion of video is played again.)

1 MR. HARRIS: Okay. After that, he gets up and testifies.
2 He says, yeah, that's gunshots I heard. He said it sounded
3 like it was right outside the building and then I heard two
4 more. He said I heard it right outside the building and this
5 is what he said. He said he heard four shots and he said,
6 well, I heard more like a boom, boom and then two more, bang,
7 bang. Again, my expert testifies those are close fired
8 gunshots.

9 That microphone is right there. He said it's right above
10 the register. That microphone would not pick that sound up
11 from the road. You tell me that noise is that loud to where
12 he's -- he's scared and you almost see the building shake.
13 But it's a shot from the road from a pistol? No, it's shots
14 from right here and then shots from over here, a car driving
15 away. I mean that's what it sounds like. He even said you
16 don't have to be an expert to hear that.

17 It's clear and I'm sure you're going to hear it again,
18 but now we got two things, three things actually. We got
19 smoke. There's evidence gunshots go off. We've got bang,
20 bang, crack, crack, and we've got a witness saying it seemed
21 like it happened right outside the building right here. He
22 didn't say it seemed like it happened coming from -- I heard
23 something coming from the street. He said it seemed like it
24 happened right out by the building, and you know this wall
25 they are standing on is right here behind him. So him saying

1 right out behind the building right here would be right behind
2 the building.

3 Let's say that's all I had. Let's say that's all the
4 evidence we had that these people fired a gun, shot a gun at
5 my client's car allegedly first. Let's say that's all we
6 have. Okay?

7 I'd still say, you know, maybe, it's a little more
8 probable, not a hundred percent yet. Okay. Again, I don't
9 have to prove anything beyond a reasonable doubt. I'm trying
10 to prove beyond a reasonable doubt that this guy fired first.
11 I think at the end of this thing we might see that, but let's
12 just say that's the only two I've got.

13 Well, then let's go to Mr. McCarthy. I believe we've got
14 Mr. McCarthy here. Mr. McCarthy is the English guy, the guy
15 with the -- Sorry, that's this side. Sorry. He's the English
16 guy with the accent who was going to buy cigarettes. He says
17 in his statement originally that I heard two cracks and then
18 saw smoke. I thought the five black guys on the corner were
19 messing with fireworks. That's what he said three years ago.
20 He wrote it, he signed it.

21 He doesn't know anybody in this case. He's what you
22 would truly call an unbiased witness. He's the guy that
23 stopped there to buy a pack of cigarettes. He's not a guy
24 that knows this family. He's not a guy that knows Michael and
25 his family.

1 Let's talk about that. Now we're going to bring up
2 something I -- We talked about these -- this view. I'm
3 talking about I want you to look at it in a different view. I
4 want you to -- Okay, the shooting was in a little while at 56.
5 Okay, here he comes. Here he parks his car a couple feet from
6 the thing here, from the pump about three or four feet. He
7 gets out, takes one, two, three paces toward the place, stops,
8 says that where I heard the shots. I looked to my right, I
9 saw the smoke.

10 Okay, this is where I want to talk about view. Okay?
11 The State's witness earlier where -- They want to show you
12 this view they want you to see it from. Their witness showed
13 you this picture that shows that from there you can see around
14 that corner. You see what I'm saying?

15 (Whereupon, counsel is showing State's Exhibit Number 10
16 for the jury to see.)

17 MR. HARRIS: I mean I can see around the corner a little
18 bit and you can kind of see what was going on around there
19 from this picture. That's the gas pump line right there.
20 There's the gas pump. He's all the way over here. Okay?
21 He's way over here. This is the view they want you to think
22 he had. This is the view their investigator took three weeks
23 before this to show you an accurate depiction of what this
24 crime scene looked like. That's the view they want you to
25 see. They want you to think he's standing at the pump. He

1 can see so much around the building that he sees what's going
2 on.

3 They're like, did you see muzzle flare? No, I didn't.
4 You know why? Because he couldn't see through the building.
5 He saw smoke come out, he heard the pops. I said did you look
6 toward where the sound came from? Yeah. You hear pops, you
7 looked over there towards where the sound comes from because
8 the sound comes from the corner and the smoke comes out. Pop,
9 pop, I think they're messing with fireworks. You'll also
10 notice he says they're all standing on the corner when I heard
11 the pops and then I noticed one of them was down. Okay?

12 He's way out here. He says I looked to my right. So
13 let's say the corner is over there, he's walking toward the
14 gas station. He looks to his right to where the sound is
15 coming from, he hears two pops and sees smoke. He didn't say
16 I heard two pops and I looked at the car in the street. He
17 didn't say I'm standing at the gas pump and I can see around
18 the corner, I can clearly see these guys. He actually said,
19 could you tell the shots came from the corner? No. They
20 wanted him to say that he could see it and they definitely
21 tried, but no, he couldn't because he couldn't see through the
22 store. He could see the gun smoke though.

23 Let's say that's all I have to show you that Michael
24 German or Michael Allen fired a gun that night. Let's say
25 that's it. Now I've got four or five pieces of evidence that

1 show that's unbiased, nobody's making it say one thing,
2 nobody's making it say another. This is just testimony from
3 witnesses, this video and audio. This is stuff you cannot
4 edit. This is stuff you cannot make biased. It doesn't
5 change its mind. It's inanimate.

6 And the two witnesses don't change their mind. They
7 don't care. Why do they care what happens here this week?
8 One guy, you know, what difference does it make if he says I
9 saw bullets or I saw fire or I saw whatever? Mr. McCarthy
10 doesn't care. This doesn't involve him. It's probably more
11 of a burden to him just to be here.

12 Let's say we got that. Now do we think Michael Allen or
13 Michael German fired a gun first? Well, if we still don't,
14 let's go back to yet another camera. Again, this is physical
15 evidence, folks. This is what I've talked about. This is the
16 physical stuff that you can't change.

17 All right, remember they said they walked up here, went
18 across, were over by the dumpsters? I mean they do not. You
19 can watch the whole video later on and I'll fast forward it.
20 They do not go up there, they do not walk up there. The only
21 person that walks near there is Michael German. That's the
22 only person we see. Let's see here. Let's go back. We've
23 got Michael German walking. He puts his hand in his pocket.
24 We've got smoke, we've got gunshot, we've got three, four.
25 Oh, wait a minute, didn't even get to four after that gunshot

1 on this wall. Did you notice how fast a person ran away from
2 there?

3 We didn't even get to four, yet Anthony German wants you
4 to believe he hit the ground or hit the floor, that's what
5 they kept calling it in this, hit the floor when he heard the
6 shots, gets up. While he's hitting the floor the gun that he
7 said was in his pocket -- He told police three years ago the
8 gun I was holding. Right now I wouldn't say I'm holding my
9 wallet. It's in my pocket. Now I'm holding my wallet. Okay?
10 You know, you talk about mixing words, but he was holding a
11 gun, he dropped it by his brother. He says, "I bent down,
12 checked on my brother." The gun fell out after he hit the
13 floor. He bends down, checks on his brother, sees how he's
14 doing, gun falls out. Michael Allen walks over and says,
15 "Hey, man, get rid of that gun."

16 In three seconds? Let's give him five. Let's say that
17 this -- According to everybody -- According to the detective
18 this camera is slow. According to Anthony German, it's fast.
19 You know, whatever way helps their case, that's the way the
20 camera goes. It's slow because oh, these things happen
21 simultaneously, but the camera is so slow that it looks like
22 they're separate.

23 Okay. Well, then that means that he waited less than one
24 second. While his brother is dying, the first thought he had
25 was let me get rid of this gun. It wasn't let me check on my

1 brother, it was let me go hide evidence, let me get rid of
2 this gun. Why? Because they didn't know if the people in the
3 car were dead. They fired into a car, they don't know if
4 those people are dead, they know that this guy is. But let me
5 go hide evidence because I may have just killed somebody.

6 That's why he immediately sprints around and you look.
7 He's gone, he comes back, makes sure nobody's watching, goes
8 back, now I'm hiding evidence, still not checking on my
9 brother. I'm hiding evidence, I'm still telling you I'm
10 checking on my brother and my brother is over here giving his
11 last words. What am I doing? I'm still behind the building.
12 I mean how long can somebody be behind the building hiding
13 evidence? He's throwing a gun. Now he comes back running.

14 We don't know how far he went. There's no camera back
15 there. He didn't tell the cops that night he threw a gun up
16 there. He didn't tell the cops that night that he hid bullets
17 back there. You know why? Because he was afraid that
18 somebody with him, Michael Allen, his brother or himself or
19 Frank Haigler for that matter, they didn't know if they had
20 killed somebody in that car they were shooting at. They fire
21 on a car, they get fired back. They didn't know if they had
22 hit the car or not. They fired first.

23 So now you still don't think that's enough to show that
24 this shot fired first? -Now let's talk about the biggest piece
25 of evidence, maybe even the whole case. These two guys have

1 gunshot residue all over their hands, experts said to a level
2 that's so high that it could only be one thing, from firing a
3 gun. I said are you one hundred percent sure? I am one
4 hundred percent sure.

5 So all of a sudden, we've got smoke on video, unbiased
6 video. Of course, it's described as a lead cloud. We've got
7 bang, bang, crack, crack. We've got a guy saying these shots
8 were fired right behind the building. We've got a guy that
9 the State wants you to believe is standing on the gas pump
10 looking around the corner. Meanwhile, he's in the middle of
11 the bay looking through the building, hears two pops, looks in
12 the direction of them, sees smoke. Then we've got a guy
13 hiding evidence. We got a guy hiding not only evidence, but
14 firearms, live ammunition and firearms.

15 The State may say well, this gun -- the gun we found is
16 so old we don't even know if it works. Some gun they had
17 worked. I don't know what happened. They have two days after
18 this thing because the officer didn't go there until two days
19 later. They cordoned off the crime scene for a whopping two
20 hours. So anybody could have gone over there and gotten
21 whatever they had thrown.

22 If you look on certain pictures they put the piece of
23 tape right behind those bullets. They don't put it in the
24 ditch across the street. They don't put it in the street.
25 They don't put it in the building next door. He was behind

1 that building doing something.

2 They find a broken, old, antique gun. Some gun they had
3 worked though. Somebody had a gun that fired because if they
4 didn't, why do they have all this gunshot residue on the back
5 of their hands and the palm of their hands like they fired a
6 bullet? The guy said they fired a bullet, one hundred percent
7 they fired a gun. It was either Michael or Michael, one of
8 them was firing a gun and the other one was standing next to
9 him.

10 This cloud theory, this mysterious lead cloud theory,
11 doesn't work. Scientifically, it's impossible. Yes, you can
12 get lead, he said, if you hit that wall with a bullet. I said
13 have you ever found this result from hitting a wall with a
14 bullet? No, but you can have metal on metal in a car, yeah,
15 six times.

16 What did the guy who had 7,000 cases and testified in 516
17 say? Nope, not possible, never seen it in 15 years of work.
18 I've tested 150,000 bullets. I've testified as an expert 516
19 times. I've never seen that, it's not possible. You know
20 why? Because, yes, you can get lead on you if you're around
21 the bullet. Antimony and barium don't, they're not in
22 bullets. They're in the primer. Antimony and barium don't
23 travel with that bullet.

24 So this exploding, vaporizing bullet theory that sprayed
25 everybody in the parking lot with lead and made it appear that

1 they had gunshot residue on the inside and outside of their
2 hands doesn't work scientifically. We're talking about
3 science here. We're not talking about something that I can
4 make up, that they can make up, it's science. It's fact.
5 It's not biased. It's true. There was a gun. There was a
6 gun that was fired. If you listen to it, there was a gun that
7 was fired twice.

8 Another one: If none of this was true and you've got a
9 car that was driving by a building, you've got a 14 foot wall.
10 If that car is driving by and they're trying to shoot three
11 people that are on the corner there, the guy is sitting in the
12 car, he puts the gun out the window and fires five times.
13 Where are the shots? Where are the potholes in the wall?
14 There's one, eight and a half feet up, which suggests a little
15 more that they're being fired on and they do this number and
16 start firing at them because if you fire like that, you're
17 going to shoot eight and a half feet in the air.

18 If their theory is right, this car is the only car that
19 fired that night. If they fired one shot eight and a half
20 feet up and then four shots fifteen feet in the air, if
21 they're driving by and trying to point at somebody, why -- I
22 mean, I've heard of bad shots, but you've heard the term the
23 broad side of a barn. I mean it's a 14 foot wall high that's
24 about 40 feet wide with another wall in it that almost acts
25 like a catcher's mitt. If you watch, it's like there's a

1 corner there. It's all concrete, there's no grass, there's no
2 nothing. Where are the other bullets? You've got one bullet.
3 You know why? Because two of them went that way. Two of them
4 were fired that way. Two of them came back.

5 It's self-defense. It's retaliation. I asked the
6 detective, I said, why would it matter? Why would you ask if
7 he fired a shot? When he said no, why did you ask him again
8 did you point the gun in a threatening manner and I said,
9 Officer, I said, why is that relevant? He said I wanted to
10 make sure it wasn't retaliatory fire and I said oh, so you
11 mean if I point a gun at somebody, not shoot, don't shoot, but
12 point, they can shoot me back? He said yes.

13 It's self-defense. You don't have to wait till somebody
14 shoots you and kills you to try to shoot back. If you are
15 shot at and they retaliate, again, it's called retaliatory
16 fire. It's self-defense.

17 Nobody is telling that story on the stand. They're just
18 not. Why? Because them firing first got their brother
19 killed. They took an armed crew of people to go get Jerome
20 Campbell. When they took that armed crew of people, their
21 intent was to kill Jerome Campbell or at worst let's say scare
22 him. They got gun, they admitted it. No one can tell one
23 person knew about it, the other one didn't, you know. I mean
24 at this point, their stories differ so much I don't believe
25 any of them.

1 That's why I took out the people that are biased in this
2 case and I'm going with just science right now. Like I told
3 you all before, science doesn't leave maybes. Facts, video,
4 audio doesn't leave maybe. It's either this way or it's not
5 and you've seen the video.

6 They take an armed group of people in one car claiming to
7 be dropping somebody off, but yet they're driving his car. I
8 know when I'm going to drop somebody off, I don't take their
9 car because then I'm stuck. Why did they need four people if
10 Frank Haigler was already going to walk up and make
11 peacemaker. Why do you need four? What's the purpose in
12 having four people there if not but to wait and ambush Jerome
13 Campbell? And when they did, when they fired on him twice,
14 somebody in that car fired back in desperation, maybe hoping
15 that -- I don't know, maybe hoping that if I fire a gun,
16 they'll duck, which they claim they did.

17 If they had -- The detective said I checked. If they had
18 pointed a gun threateningly, it would have been different. If
19 they would have told the truth three years ago, we would have
20 a different case. We wouldn't be here. If they had told the
21 truth that, yeah, we pointed a gun, we fired a gun, maybe they
22 still would have said we got fired on. The evidence doesn't
23 say that, but maybe they might have said that. It would have
24 been a different case. It would be either self-defense or
25 some other charge, but they would have investigated it

1 differently.

2 Remember when he said I switched from investigation mode
3 to apprehension mode that night while I had been there for a
4 few minutes? They quit investigating the case. They stopped
5 looking into this, even two days later when they found that he
6 had a gun, they still looked at it as a murder. Why? Because
7 they had a suspect and they wanted to build their case around
8 the suspect. They said let's make these facts fit Jerome
9 Campbell as a murderer, the 37 year old banker, college
10 basketball player, scholarship athlete at South Alabama, has a
11 wife, a great job at a bank.

12 What makes more sense? Common sense doesn't say Jerome
13 Campbell called and drove down from Charlotte to organize a
14 hit squad on somebody that wouldn't let him see -- his mother
15 see a baby. What makes more sense? Somebody got disrespected
16 that's a -- Maybe they're a gang member or maybe they're not.
17 They're twenty something -- They're 19 year olds hanging out
18 with 45 year old guys with weapons, going to somebody's house
19 after they claim they had been told don't come over here. If
20 you know what's good for you, don't come over.

21 Why wouldn't you call the cops then? Why would you go
22 over there? You've been told. According to them, you've been
23 told don't go over there. Wait and see what happens. Why
24 would he go over there? Why would you bring four people over
25 there? Their reason is, well, Frank -- or Michael Allen, we

1 were taking him home. Well, you'd been there earlier. You
2 know, your mother -- your wife told you not to come back.
3 Your wife kicks you out and she's got the only key. Why are
4 you going home? Oh, in the window. That's what it is.

5 They weren't going home. They weren't taking Michael
6 Allen home. Michael Allen had his own car. He could have
7 driven home. Why didn't they park the car in front if he was
8 a peacemaker? Why didn't they ever park their cars in front?
9 You know why they didn't park the car in front the first time?
10 Because they had sent Charise a text message saying real
11 people do real things, we're coming to get your brother. They
12 park around back, go in and I'm glad Jerome's not there.

13 Michael Allen -- or Michael German and Anthony German,
14 Anthony claims they never got out of the car. Frank Haigler
15 says they weren't even in the car. Michael Allen says they
16 weren't even in the car. You know why? It started to lend a
17 little truth to the fact they might have said we're here to
18 kill your brother. We're Bloods and Bloods stick together.

19 Why wouldn't they -- Why would -- Why would Frank Haigler
20 and Michael Allen not want Michael and Anthony German to be
21 there the first time? Why would they lie on the stand and say
22 they weren't there the first time? Because we know Michael --
23 or Anthony German said yeah, I was there. I stayed in the car
24 and somehow saw an argument at the front door from behind the
25 building, which it's not true. He didn't stay in the car.

1 This is the same person that admitted he lied to the police,
2 but he wants you to believe every word he says today.

3 I didn't have to prove beyond a reasonable doubt that
4 Michael Allen or Michael German fired two shots at my client's
5 car. I didn't have to prove that. I feel like I did. I feel
6 like we showed you through about seven or eight pieces of
7 hard, physical evidence, scientific evidence, that my client's
8 car was taking on fire, somebody fired back and this magic
9 bullet either threw a dust cloud up, nobody ever fired or like
10 he said, this is just a luck shot. This thing goes eight feet
11 in the air, hits, ricochets, bounces down, hits a guy in the
12 back of the head and kills him. Nobody wants anybody to die.
13 This is a bad situation for every person involved here.

14 But the State wants you to use maybes, magic bullets,
15 lead clouds that defy science. They want you to use that to
16 make somebody pay for this. They want you to make Jerome pay
17 for it. You know, it's like sports. If you go challenge
18 somebody and play them in a sport and then you lose, you can't
19 come back and say, "Hey, ref, that's not fair. Can you make
20 -- can you make them pay? Can you disqualify them?"

21 They went armed. They went armed to somebody else's
22 house to kill them. One of the people in their party gets
23 killed and they want you to make somebody pay for that.
24 That's not your job. Your job is not to take maybes and
25 theories that are preposterous. Your job is not to take those

1 and go, well, it could have happened, he could have killed
2 him, maybe this happened. Because you know what? Maybe is
3 not beyond a reasonable doubt. Maybe is not even close to
4 beyond a reasonable doubt. Probably is not beyond a
5 reasonable doubt. More than likely is not beyond a reasonable
6 doubt. Beyond a reasonable doubt is without hesitation it
7 happened.

8 If you're thinking about it and you say -- They want you
9 to say Jerome Campbell murdered this person with malice
10 aforethought, this was planned, he took advantage, he killed
11 this person and then tried to kill three other people. That
12 was his intention, his plan. They want you to believe beyond
13 a reasonable doubt that's what happened.

14 If you believe science, if you believe video, if you
15 believe that there was shots being fired at him and people in
16 his car reacted in self-defense, that's reasonable doubt right
17 there. If you believe that he's taking on fire, their car is,
18 somebody fires back.

19 Nobody in this whole thing has said Jerome Campbell ever
20 fired a shot, by the way, not one person. There's never been
21 gunshot residue on his hands, never been anybody saying he
22 fired a shot. The closest we've come to that is somebody
23 saying he had a pistol. So if you believe that the State has
24 proven beyond a reasonable doubt with maybes, magic bullets,
25 this cloud that just can't exist -- It doesn't have antimony

1 and barium. Walls don't have that in it, they're concrete.
2 Antimony and barium is in the primer of a bullet. We heard
3 expert testimony to that, one hundred percent those people
4 fired shots. They won't admit they did.

5 So if you don't believe science, unbiased evidence,
6 video, audio that shows these people fired on them, then
7 they're going to ask you to convict beyond a reasonable doubt.
8 But if you see doubt, if you see, you know what, it's possible
9 that these people fired first, these people fired back and
10 somebody unfortunately died, if you can see that, that's
11 reasonable doubt. That's hesitation to act.

12 Hesitation to act is you think about it. They said
13 Jerome Campbell murdered this guy and you go, heh, well,
14 maybe. If you say that, you can't find him guilty beyond a
15 reasonable doubt because in your mind you think there's a
16 possibility that he didn't, that maybe these people did fire.

17 It's not a maybe, they did. There's gunshot residue on
18 their hands. There's smoke coming from the camera that
19 they're implying is something else. You clearly hear two
20 shots here, two shots there. You got a guy that turns and
21 looks and sees the shots from coming over there and then you
22 got the brother who instead of checking on his brother, goes
23 to hide the evidence. That's the first thought that comes to
24 mind, let me get rid of the gun because we might have just
25 killed somebody.

1 They got their brother killed and they want you to make
2 Jerome pay for it. Don't make Jerome pay for this. Don't
3 make him give his life for them making their brother -- their
4 brother lose his life. You go armed to a gun fight and then
5 you get -- you get a bad result and you want somebody else to
6 get the blame. You don't want to blame yourself, but you
7 realize you got your brother killed. If you feel that that's
8 beyond a reasonable doubt, and I don't see how you can in this
9 case, then we understand.

10 But remember one other thing I told you at the beginning.
11 You're twelve people. You're twelve judges, twelve individual
12 judges sitting in this room. You've watched the evidence.
13 It's not a team. You're not a team. It doesn't matter what
14 the other person thinks. You vote the way you vote. If you
15 think that they fired on him and they're reacting in self-
16 defense, you acquit. You don't say I think that's possible,
17 but I'm going to go ahead and find beyond a reasonable doubt
18 because you've hesitated to act right there and you haven't
19 followed what the judge is going to tell you to do.

20 Again, it's not all of y'all have to vote the same way.
21 This is individuals. You are individuals. This is what makes
22 this country beautiful. Each one of you gets to make your own
23 decision. Don't make the decision to make Jerome pay for a
24 mistake made by other people. This is an unfortunate,
25 horrible situation. Nobody wants this, but don't make another

1 person lose.

2 You're going to hesitate to act because the evidence, the
3 science, the unbiased shows you what happened. This was self-
4 defense. This was retaliatory fire. This case would have
5 been different if they would have told the truth from the
6 beginning.

7 I'd ask you as twelve individual jurors to decide the
8 State has not met the burden. If you hesitate to act, the
9 State has not met the burden. Don't make Jerome pay for it.
10 Don't ruin another family over an unfortunate accident.

11 I ask you when you go back and deliberate, if you think
12 you need to see this again, watch it. Do not make snap
13 judgments on either side of this thing, but I think if you
14 watch the evidence and you see the science, the video, the
15 audio, the unbiased testimony of unbiased witnesses that have
16 nothing to do with this case, I think you only have one choice
17 but to acquit my client and vote not guilty. Thank you.

18 THE COURT: Ladies and gentlemen, why don't you stand up
19 and get your blood circulating a little bit.

20 MR. VOIGT: May we approach for just a minute, Your
21 Honor?

22 THE COURT: Sure.

23 (Whereupon, a bench conference is held off the record in
24 the presence of the jury, but out of the hearing of the
25 jury.)

1 THE COURT: Ladies and gentlemen, I'm going to give you
2 an opportunity to -- to go to the rest room. You all have
3 been sitting almost an hour. During the break, please do not
4 discuss the case and please leave your notepads in your seats.
5 If you would, go with the bailiffs for me, please.

6 (Whereupon, the jury leaves the courtroom at 2:51 p.m.)

7 THE COURT: You may be seated. You all can go ahead and
8 refresh yourselves.

9 MR. VOIGT: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 (Whereupon, there is a break in the proceedings from 2:51
12 p.m. until 3:06 p.m.)

13 THE COURT: You may be seated. Is the State ready to
14 proceed?

15 MR. VOIGT: Yes, Your Honor.

16 THE COURT: Is the defense ready to proceed?

17 MR. HARRIS: Yes, Your Honor, when my client gets here.

18 (Whereupon, there is a brief pause in the proceedings
19 while waiting for the defendant to enter the courtroom.)

20 THE COURT: And to just to give you all a heads up, our
21 break was a little longer because we have -- we had a juror
22 that needed to make arrangements for her child care and we're
23 probably going to have to break -- let them break early
24 because he has a -- He's a single parent and he has a child he
25 needs to prepare, you know, make arrangements for. So we're

1 probably going to have to let them go home by 5:30, six
2 o'clock.

3 (Whereupon, the defendant enters the courtroom.)

4 THE COURT: Okay, is the defense ready to proceed?

5 MR. HARRIS: Yes, Your Honor.

6 THE COURT: Please bring in the jury.

7 (Whereupon the jury enters the courtroom at 3:07 p.m.)

8 BAILIFF: All are present, Your Honor.

9 THE COURT: You may be seated. Ladies and gentlemen, I
10 hope that you had a pleasant recess. We'll now resume with
11 argument. Mr. Voigt, you may proceed when you're ready.

12 MR. VOIGT: Thank you very much, Your Honor.

13 THE COURT: You're welcome.

14 MR. VOIGT: Ladies and gentlemen, thank y'all for being
15 here and thank y'all for being so patient with us. It's been
16 a long week. Here we are back to where we were and I'm sorry.
17 You'll notice when they designed this courthouse, they made
18 these light fixtures about six inches too low for this -- for
19 this.

20 Well, science has said so, a hundred percent, therefore I
21 should just be quiet and sit down because science said so.
22 You remember I said at the beginning what lawyers say isn't
23 evidence and what I say isn't evidence and what Mr. Harris
24 says isn't evidence. What science says isn't evidence and I
25 don't think science is a hundred percent, not in this case.

1 (Whereupon, the State presents a PowerPoint file on the
2 courtroom screen.)

3 MR. VOIGT: This is South Carolina versus Jerome Renaldo
4 Campbell and I have listed on there murder, but what it really
5 is a tragedy and I'm not talking about the sense of tragedy
6 that we use today. When things are sad, we say that's a
7 tragedy.

8 I want to take you back to high school when you studied
9 histories and comedies and tragedies. The tragedy is the fall
10 of a man, usually through his own hubris, through his own bad
11 decisions, a man who has everything and in an instant he ruins
12 it for himself. That's tragedy.

13 He set out to be a success, a college graduate, a man
14 with a good family, a man with a good job and he reaches too
15 far and he does something out of spite, out of anger, out of
16 carelessness and out of malice and it begets tragedy. The
17 tragedy is Jerome Campbell. Michael German is dead and that's
18 sad, but the tragedy is how he died and who was responsible
19 for that.

20 A nice, long argument of Mr. Harris, very long and it
21 hits all the good spots for him and misses the bad ones. Of
22 course, you might accuse me of doing the same thing in follow-
23 up.

24 What about Frank Haigler? I was about 50 minutes in
25 before the name Frank Haigler came up. Did we forget about

1 Frank? Did we forget about Frank getting shot at? If that's
2 true, then all of what you heard for the last hour and a half
3 doesn't make any difference whatsoever and I'm going to
4 explain.

5 Never mentioned this piece of evidence and that would be
6 State's 44, a bullet in a car parked outside where Frank says
7 he was shot at, opposite the apartment where he was shot at.
8 It travels into the car parked opposite [REDACTED]. They don't
9 mention it because it hurts and that's before Jerome gets in
10 that car and before Michael German gets killed and Frank is a
11 peacemaker.

12 And I admit yesterday I tried to discredit Ms. Coaxum and
13 I tried to discredit in a more gentle way Ms. Campbell, the
14 mother, and because I -- because it's a tragedy. They're
15 covering for their tragic son and brother, but they don't.
16 One of the things that did come through is you've got a sense
17 of this whole family drama and you got a sense that Frank
18 really was the peacemaker when he was sitting up here telling
19 you that. You may have had doubt in your mind and think maybe
20 Frank wasn't all he was cracked up to be, maybe he's not a
21 peacemaker or maybe he stirred this up a bit. No, no, no.
22 When things got hot, he calmed them down.

23 Things were calm when they left, but they weren't calm
24 when Frank came back to the house and Jerome popped him and
25 told whoever to shoot him. But you don't want to ever mention

1 that. You want to spend two hours talking about this case,
2 but you don't want to mention the fact that one of the four
3 things he's charged with is shooting at Frank Haigler.

4 Let's talk a little bit about the law. Murder, we did
5 this before and it's with malice aforethought, either express
6 or implied, malice aforethought. Now one of the things I
7 didn't say about malice aforethought before the trial started
8 and I'll tell you now, it's an element of malice aforethought
9 and I think it comes in the standard jury instructions, is
10 that it can happen in an instant.

11 (Whereupon, Mr. Voigt snapped his fingers.)

12 MR. VOIGT: Just like that, you can go from not having
13 the prerequisites of murder to you're there. Something
14 changed. You got a phone call. You saw Frank Haigler.
15 Something changed and in your mind you went from being a
16 banker and having a nice job selling sneakers on the weekends
17 to somebody with the mental intent to kill.

18 Guns are killing machines. They are killing machines.
19 Oh, they didn't mention it once, gunshot residue inside of
20 Jerome Campbell's car. That's kind of important, isn't it? I
21 think -- I'd like to think so. It's worth a mention. A
22 hundred percent un-contradicted scientific evidence, two
23 experts tell you all about it, inside Jerome Campbell's car.

24 Assault with the intent to kill, we went through this and
25 you're going to get to go through this again. The hand of

1 one, yeah, nobody saw Jerome shoot out of the car and when it
2 comes to Frank Haigler, I'll tell you right now Jerome didn't
3 shoot at Frank. Okay? He didn't. That wasn't -- that wasn't
4 the evidence that you heard. That wasn't the testimony that
5 you heard. It's not the evidence and it doesn't matter.

6 Again, Frank [sic.] was at his sister's apartment with
7 unknown people, like a spider in a web, he has waited for the
8 moth to be drawn to the light, that moth probably Michael
9 Allen. That's who they think is going over there. Frank?
10 Frank is an afterthought, but they don't want to see Frank
11 either.

12 Somebody other than Jerome Campbell shot at Frank
13 Haigler. Inconvenient evidence, let's not talk about it.
14 Somebody other than Jerome Campbell shot at him, but it
15 doesn't matter, not in the terms of the law, the law that you
16 as jurors must uphold, that you must consider, that you must
17 find to the highest degree, the law that he is charged with as
18 to Frank, assault with the intent to kill. Because somebody
19 else shot at him, he set them up, he caused it all, he aided,
20 he abetted and he's just as guilty as that mysterious young
21 man.

22 And we're going to get into the mystery vapor and all
23 that stuff. I don't -- I wish I had a term for it, but
24 instead here at that apartment we have at least two, maybe
25 three, individuals armed with Jerome. Not Frank. Did anybody

1 ever say Frank had a gun with him at any point ever? Anybody?
2 Any witness? Any indication that Frank had a gun? No.

3 The peacemaker walks up and the one who's the stirrer,
4 the straw that's stirring this drink, is the tragic man,
5 Jerome Campbell. He punches him in the face, tells his boys
6 to get him and they try and they miss. Thank goodness we
7 don't have two murders.

8 Aided, abetted, encouraged, set it up. There it is, two
9 or more persons acting together. The judge is going to
10 instruct you on the law and then the judge is going to come
11 back and anytime you need a little clarification on the law,
12 you can ask and the judge will, depending on what the
13 circumstances are and what you ask, do what's appropriate to
14 let you know the law and it's is important that you know.

15 And I know I'm asking you to bite off a big chunk of law
16 here. I know I am and that's why I said this case has a high
17 degree of difficulty for you as the finders of fact. I know
18 that and I do appreciate the job that you're doing.

19 Well, we're going to talk about that. We didn't talk
20 about that at the beginning probably because it doesn't apply
21 and by the way, self-defense, somebody's claiming self-
22 defense. Who? Who is claiming self-defense? You're going to
23 hear the instruction on self-defense and you're going to be
24 asked to consider self-defense and Mr. Harris spent a long
25 time walking up here telling you all about self-defense. Who?

1 Who was defending themselves?

2 Let's see. When Frank Haigler walks up to Jerome Coaxum,
3 the only testimony you have is from Frank. Frank was popped
4 in the face for his trouble and gets shot at. Who is
5 defending himself? Frank is running, running down and I've
6 got pictures of where he ran and I -- you know, courtyards and
7 pathways and here's one that's State's 20 and here's one
8 that's State's 22, because he's trying to get away from people
9 who are shooting at him. Who -- Who is -- Where is the self-
10 defense there?

11 Oh, you know what? When we talk about self-defense,
12 let's just talk about it in a vague way, not talk about who,
13 what when and where. Let's not actually talk about the law of
14 self-defense because that way I can confuse you. Oh, wait, if
15 we actually talk about what the law of self-defense is, it
16 seems to have actual legal requirements.

17 One of things is when you pose the law of self-defense, I
18 have to disprove one of four things. It makes me do
19 something. I'm up to the challenge. My evidence is up to the
20 challenge. The witnesses that you heard, the evidence that
21 you saw disproves more than one of these things and the law is
22 if any one of these things is disproven by me, by the State of
23 South Carolina, you cannot consider self-defense. Even if
24 you're not exactly clear who is defending themselves because you
25 weren't told.

1 "The defendant was without fault in bringing on the
2 difficulty." Okay, let's start with that one. The defendant
3 there, Mr. Jerome Campbell, is without fault for bringing on
4 the difficulty. What would be the difficulty regarding the
5 assault with intent to kill Frank Haigler? Well, that would
6 be somebody shooting at Frank Haigler. So for him to claim
7 self-defense, he would have to be without fault. Well, that's
8 not the evidence, that's not the case you heard. That's not
9 where we are. There's no self-defense there. I can stop
10 there. Okay?

11 But this really is a chain of events, a series of
12 unfortunate happenstances. Are they really happenstances?
13 Are they really? Is there nobody really directing these
14 things? No, there really is someone directing this, Jerome
15 Campbell. Ms. Coaxum would have you believe that he comes in
16 every weekend and that everybody was expecting him, but his
17 poor, sweet mom was surprised to see him. He wasn't supposed
18 to be there. Why is he there? I think he's got two reasons
19 to be there and I think you heard two reasons.

20 The first one was Anthony German, a baby, disrespect for
21 a grandma, a man welcomed with open arms? The Campbell family
22 through their own male representative welcomes the Germans
23 into their family by killing Michael German, not exactly a --
24 not exactly welcoming with open arms.

25 You also heard from Michael Allen about the difficulties

1 that he had with his wife and you heard from his wife about
2 some of those difficulties and you heard -- You heard a couple
3 things from her actually and you actually learned not because
4 we were trying to present it, because, you know, there's --
5 there is obviously a lot of history with all of these people.
6 I mean there are obviously real issues and problems going on
7 in their relationships, their inter-family relationships.

8 Nothing that deserved anybody ever shooting anybody, but
9 nevertheless, these are contentious problems and Michael Allen
10 gets arrested with two women in his car while Charise is at
11 work the night before. That's where she would have been and
12 that's what she testified to and you heard testimony that he
13 gets arrested for having an open container and he's got
14 Michael German's girlfriend and another woman in the car. Now
15 that's why he was getting thrown out of the house, folks, and
16 that's why Jerome Campbell makes a surprise visit to mom's
17 house.

18 And it gets worse from there because now you start to
19 hear about the messages. Jerome telling them I'm going to
20 come, I'm going to be there. You heard from Mrs. Campbell,
21 Ms. Campbell, she's got daughters and a son. He is the only
22 man in the Campbell family of sufficient age to handle all of
23 these problems. He is the one that they look to to handle it.
24 If there's a problem with a niece, Vasha, and her soon-to-be
25 husband and if that's a a problem and people are upset by

1 that, someone has to handle it. He's the one.

2 Charise is having a hard time with Michael Allen. There
3 are problems in that marriage, there is strife, there is
4 contention. There is one man in the family who can be there
5 for her, too. He has to come down. He does.

6 And to claim self-defense, you have to be without fault
7 from bringing on the danger. Okay? You heard from three
8 people that said that he drove to Anthony's and Michael's
9 apartment complex before any of this happened, before any
10 shooting ever happened and he had unidentified people with him
11 and they had guns. At some point earlier that day, they were
12 on James Island. Somewhere on James Island I'm guessing there
13 are men with guns who know exactly what happened, but we
14 don't. All we know is that Jerome was there and there were
15 guns in that car.

16 It's not a reach for me to say that guns are threatening.
17 When you bring a gun to an argument and you display a gun in
18 an argument, you don't have to say anything. The person
19 looking at the gun gets your message. Anthony got the message
20 and it scared Anthony and this sad, rusty, decrepit antique is
21 the only gun in this case that I have, this pathetic gun. It
22 looks like it should have been in some old wild west show.

23 He testified he never fired it and there's no evidence he
24 fired it. There's no expert to tell you a hundred percent
25 that he did one or the other thing with it because the expert

1 was only -- Talk about looking through a prism. Talk about
2 refracting the truth to the way you want to see it. There are
3 some experts who want to look at the most narrow sliver of
4 something and tell you with a hundred percent certainty that
5 they know exactly what's going on.

6 Well, thank goodness that we have a law on experts and
7 the judge will give it to you. If it were just experts, we
8 don't need you. Thanks, but we don't need you. Experts got
9 this handled. Of course, we'll just let the experts handle it
10 so we'll know what's going on. That's why you're here because
11 you don't have to take a hundred percent as one hundred
12 percent.

13 Would you really trust any expert in any field who just
14 told you a hundred percent of everything and would never allow
15 for the possibility that there's some other explanation? I'm
16 not saying being firmly convinced is a bad thing. Be careful
17 of people who are too certain.

18 Well, let's get back to our story that relates to self-
19 defense. Again, we don't know exactly who was firing in self-
20 defense. There are people in Jerome's car and we think that
21 Jerome is in Jerome's car at that other -- at the Georgetown
22 Apartments. That was the evidence that you heard, the
23 testimony that you heard.

24 And then we go back to the gas station where all this
25 hard science is, where all the -- where all the hundred

1 percent stuff is, and Frank gets shot at and science has
2 nothing to say about that. Apparently, it's a hundred percent
3 of nothing because nobody gets asked and then a car comes
4 squealing out and the testimony is the shots come from the car
5 and the actual evidence and one of those things we'd like to
6 consider when we're considering important questions is that
7 there is gunshot residue in the back seat of that car.

8 I don't know who's driving the car. I don't know, but I
9 know who set this whole thing up. I know that there was a
10 person making threats earlier in the day. I know that because
11 of the evidence and what the testimony is and that person is
12 Jerome Campbell and I know that that person didn't drive to a
13 place where they never expected him before and that is Anthony
14 and Michael's apartment and he shows up with a gun. It's kind
15 of threatening and then they try to get Michael Allen back
16 into his house and Frank Haigler gets shot at and then the car
17 comes squealing out.

18 We don't know who is in that car, but there's sign posts
19 all over this courthouse about cell phones. Okay? There's
20 cameras all over this courthouse. I think you get your cell
21 phones confiscated, if I remember correctly, because we don't
22 want you -- Now that cell phones have become little computers
23 we don't want you surfing the web or looking up something or
24 texting while I'm talking. It's real important to pay
25 attention to what I say, so you don't have your cell phones on

1 you, at least not here, but I do. My cell phone is near me
2 where I've been all week, right here. We're in the modern
3 age, we're connected to them.

4 In the back seat of the car, that is State's 60 right
5 there, there is Jerome Campbell's cell phone in the back seat
6 of the car, gunshot residue back seat, Jerome Campbell's cell
7 phone back seat. I actually introduced the cell phone as 62B.
8 If he's like everybody else on the planet, he's near his cell
9 phone in the back seat of the car.

10 Michael Allen says, "I heard him say there they are" or
11 words to that effect and it's not in the police report and I
12 think we got some sense that Mr. Harris was trying to tell you
13 if it wasn't in the statement that they took, well, when there
14 was in shock, 15, 20 minutes after the murder of their friend
15 and their brother, that somehow it couldn't possibly be true
16 because they're going to -- they're going to get together and
17 tell perfectly coherent stories because that's what witnesses
18 do. They get together and they eliminate all the doubt.
19 Right? No, that's not what truthful witnesses do.

20 Charise Coaxum, who may be telling the truth, what she
21 said was Michael Allen called her and told her exactly that.
22 She used the same words he did. She remembered the phone call
23 that Michael said, "Your brother just killed Michael German.
24 I heard him." He's not back tens or hundreds of yards away
25 back at the apartment, back here at [REDACTED] and this is State's

1 13, he's not back here with a real loud voice. He's in that
2 car. Now does he have his finger on the trigger? I don't
3 know. That car speeds by and it's gone. Who is he shooting
4 at? Who are they shooting at? Because we know there's some
5 other people in there.

6 That's what Detective Burckhardt went out to the family
7 home on James Island to find out. Who were the other people
8 here? Somebody knows who they are. Maybe the person who owns
9 and was in the car knows who they were. The police never find
10 out. We don't know. Frank doesn't know. He can't identify
11 anybody. He doesn't know who those guys are. Who are these
12 guys?

13 Well, you have to be without fault in bringing on the
14 difficulty. You shoot at someone, you hop in your car, and
15 you say "There they are" and you shoot at them again. You're
16 without fault? I don't think so. That's not how self-defense
17 goes.

18 So as to the other ones, I don't know if we've got self-
19 defense there either. He actually believed he was in imminent
20 danger of losing his life? He shoots at somebody or rather
21 has his -- his guys shoot at somebody, hops in his car and
22 chases the ones. He knows I saw this one. If I know -- If
23 Frank's here, Michael's not very far away. There they are
24 right there by the gas station. There they are. Bam, bam,
25 bam, bam as they keep driving down Carriage Lane.

1 The first shots were closer, the next two are farther.
2 Is there only one guy firing from the car? I don't know. Are
3 there two guys firing from the car? Is that why they sound
4 different? There's one guy in the car firing, another guy in
5 the car firing and they sound slightly different? Maybe, I
6 don't know.

7 He doesn't want me to ever say maybe because in certain
8 worlds it's supposed to all be crystal clear. Most of you
9 can't remember your 21st birthday. It ain't crystal clear in
10 real life. There are certain things, like there are vacations
11 you went on with your family, you don't remember that trip.
12 You don't remember riding in the back seat of the station
13 wagon all the way to Illinois that summer. It blends in with
14 some other memory that you had because the world isn't
15 perfect. Our memories aren't perfect and when people tell the
16 truth, it doesn't come out perfect because each one of those
17 men --

18 If Michael Allen and Frank Haigler and Anthony German had
19 each taken the stand and their stories had matched perfectly,
20 Mr. Harris has a different theory for that. Oh, no, it's too
21 perfect, too perfect. They got together. They've been
22 sitting in this courtroom. They made it all match. They're
23 not perfect and perfect people and perfect witnesses and
24 normal human beings, people without gang tattoos or any of
25 that. Their memories are not perfect.

1 So for some of this, we have to rely on the videotapes.
2 The odd thing is that the videotapes actually match what they
3 remembered. I'm not going to show you the videotapes. You
4 saw them over and over and over again and you're going to get
5 a chance and we all talked about this. There may be things
6 you want to see, things you don't want to see, but you can
7 have all the opportunity you want to look at them. All right?
8 When you do, go back a little ways, go forward a little
9 ways. You know, we kind of kept it into about a three minute
10 period for you, but look at the little details that years
11 later were important. Frank saw a police car at the light. I
12 ran towards it. Remember that little video where you see Mr.
13 McCarthy pull up? Keep going there for a while. We did in
14 court. You may remember this. You may have notes on it,
15 maybe you don't. Maybe it didn't seem important to you, but
16 there's Frank running through the parking lot waving, looks
17 like he's yelling. There's no sound on that and then he stops
18 and then you look off in the distance as the black and white
19 police car pulls off just seconds after the shooting. Frank
20 was so upset. He doesn't know what to do. He's looking
21 around. He sees a police car. His friend was just on the
22 ground and he runs.
23 The telephone conversation. Michael Allen said I called
24 Charise. Charise said Michael called me. Right there in
25 front of the store, not hiding evidence, not doing anything

1 nefarious or wrong or evil or sneaky, Michael Allen is on the
2 phone just like he said he was.

3 He has to believe he's in danger. All right, he hops in
4 the car with some guns and some guys with guns and they go
5 shoot the other guys. But that didn't happen so he doesn't
6 get -- Remember, I only need one of these and there's two.

7 I'll skip to three because four -- I mean I'll skip to
8 four because three is kind of like two. The defendant had no
9 other probable means of avoiding the danger of losing his
10 life. Now we already -- We know it's not self-defense with
11 Frank Haigler, but when he hops in his car, driving to James
12 Island is a real good idea, not driving looking for Michael
13 Allen, which is exactly what he did. He's looking for Michael
14 Allen because he saw Frank and he was looking for Michael
15 because that's who he wants. There's no self-defense.

16 This is kind of a corollary and you're going to hear this
17 from the Court as well. It's kind of a part of self-defense.
18 It's kind of like -- And we didn't talk about it in the
19 beginning because I didn't know where we were -- Sometimes you
20 don't know exactly what law is going to apply and this is what
21 we call mutual combat.

22 It's kind of like the hand of one and I think it goes
23 back to South Carolina. I think the first reported case
24 talking about this legal concept is from 1843. Where a person
25 voluntarily participates in mutual combat, two people fighting

1 for the purposes other than protection, you can't justify that
2 and self-defense is a part of the law we call justification.
3 Yes, I did what you say I did. I shot and killed somebody or
4 I caused somebody to be shot and killed, but I have a really
5 good reason, actually a legal reason that stopped you from
6 convicting me. Well, that's justification.

7 Well, you don't get to justify if you kill an adversary,
8 but when you both bring guns to the fight when you -- when
9 you're each -- And this assumes something here that I'm not
10 really willing to concede. That assumes that some gun other
11 than this existed at the Kangaroo station that night that
12 anybody fired towards that car. If they did, and if we all
13 bring guns to the gun fight, none of us get to say self-
14 defense. All right? That's what mutual combat says and it's
15 clear from his actions that he did.

16 Let's talk a little bit about one of the things that I
17 think is troubling a little bit. Well, let's -- let's talk
18 about what we've just done here a little bit and that's what
19 Mr. Harris would have you do is try Michael German and that's
20 really why he put up those two family members of -- of Mr.
21 Coaxum because we have no evidence in this case that Michael
22 German was anything to anybody, I mean other than a brother to
23 someone that he liked to wear the same kind of clothes as and
24 the same color as his twin brother, because he's a twin.

25 There was that hundred percent scientific video that

1 never shows Michael German shoot anybody, never shows it. You
2 know, you heard a lot of talk about the science in this. No
3 video, no witness ever said that Michael German fired a gun
4 ever. What did Mr. McCarthy say? He heard the pops, he
5 ducked and you see him duck on the video and a lot was made
6 that the angle is different. I'm talking here about State's 9
7 and you can see a little bit of it or it may be State's 10
8 here.

9 We do the best we can. Sometimes no matter what we do,
10 we're accused of it and we're really not trying to mislead
11 you, but I think you can imagine that if you were to stand
12 here, remember you can see the camera here in this picture,
13 you could still see the four guys on the corner, on the
14 corner. Now where's the body of poor Michael German? On the
15 corner, right there under the camera on the corner. He didn't
16 see a muzzle flash. He didn't hear the sounds coming from the
17 corner. He didn't hear the gunshots coming from the corner.
18 He didn't hear them coming from out the other side of the
19 grass. That's just lawyer talk. That's just spinning words
20 to make it sound like, ah ha, I've got something here.
21 There's nothing there. He went over immediately and you see
22 it on the video. It doesn't lie.

23 And I asked him a question and then I asked Mr. Hundred
24 Percent Expert a question and they're tied together. What did
25 you smell when you were over there? Did you smell anything

1 burning? No.

2 What does gunpowder smell like? You can smell gunpowder
3 and we all have experienced smelling gunpowder. The same
4 gunpowder that fires bullets fires fireworks into the air. If
5 you light up a whole bunch of black cats on the 4th of July,
6 you know you did it. Even if you -- even if you can't hear
7 it, if you put headphones on, your nose will tell you. Mr.
8 McCarthy didn't smell the gunpowder. Why not? Because the
9 gunpowder was in a car traveling down Carriage Lane. That's
10 where the shots were from. That's why I asked that question
11 and he didn't --

12 And here's the other thing we all talk about. It's
13 smoke. It's smoke. We talk about it like it's smoke. You
14 can look at it. He's not an expert in everything and I had to
15 kind of back him down as to what smoke actually is and how
16 what we're really talking about is small particles of things
17 reflecting in the light and there's a light up there and this
18 is where you get to use your common sense again and why
19 experts aren't the smartest guys in the room always. Okay?

20 Smoke particles travel faster than large particles. It's
21 not shocking, it's science. They travel first and you see
22 them first. What you see there in that video is the same
23 impact, the same impact, the same bit of masonry being struck
24 by a projectile at the same time. It's not smoke because if
25 that's smoke, goodness gracious.

1 To hear this expert talk, you'd think that we were in the
2 1840's firing flintlock muskets and you know there's powder
3 you stick in there and there's a flash and boom and a big boom
4 and a little ball comes out the front. He'd expect you to
5 believe that a cloud of gunpowder smoke wafts instantly into a
6 camera that's, I don't know, 15 feet in the air. That's what
7 he wants you to believe because that's a hundred percent
8 science.

9 How about -- That's State's 10 for your benefit. How
10 about a more plausible explanation and I've done a very good
11 job of thoroughly mixing these pictures up so that I will be
12 unable to exactly find the one I want exactly when I want to
13 find it. How about a little hundred percent science instead
14 and this is 5 and 6. How about instead of gunpowder smoke
15 wafting up 15 feet, directly under the camera is the impact of
16 a projectile, the small particles travel first and fastest and
17 then slow down.

18 That's kind of what smoke does. If you've ever tried to
19 blow chalk out of your hand, it will go pretty quickly and
20 then just slow down and that's what you see. That's what you
21 see there and the large particles require more energy to get
22 them moving and once they get moving, boom, they go and that's
23 what you see. It all happens at the same time, all from this
24 impact, all from the impact that Mr. Hundred Percent Expert
25 never looked at, never saw, never saw a picture of, didn't

1 consider. When you consider part of the facts, you get part
2 of the answer, but don't -- don't mislead yourself into
3 thinking that you get the whole answer.

4 Next, needs to avoid the danger. Everybody knows whose
5 car it is. Everybody knows who was in it. Everybody knows
6 who was driving it. A hundred percent science, okay. Mr.
7 McCarthy was immediately over there and he doesn't see a gun.
8 They have -- In Mr. Harris' view, not only does Anthony have
9 to take this rusty thing here and go behind the wall and throw
10 it up, he's got to go gather a gun from this and gather a gun
11 from this one. He's gun gathering and I don't know how fast
12 all that is on that tape, but I know it was pretty fast and we
13 addressed that with him, but he didn't have enough time to do
14 any of that either. He's not grabbing a gun from one and
15 grabbing from another and you don't see that in that video.
16 You don't see all that.

17 That's what he's got in his hand. That's it. That's the
18 mystery, that's a hundred percent science right there, a
19 scientific photo of the poor deceased young man laying on the
20 ground with his phone, a shot never meant for him, probably
21 meant for Michael Allen or maybe Anthony German or somebody
22 that Mr. Campbell had a beef with. As far as we know, nobody
23 had a beef with Michael German. A lucky shot, an unlucky
24 shot killed the wrong man.

25 Now Mr. McCarthy, the English guy -- You know, when we

1 talk about sounds and what we hear, who's the expert of what,
2 and the sound inside the store, was it close? Was it far?
3 You saw this map, right? It's got Defendant's 1. It has the
4 cute little drawing of a car here and this is Defendant's 1.
5 Closer to the store, farther from the store, closer, farther,
6 same road, same direction of travel, different right here.
7 You need to listen to those sounds. No expert should be able
8 to tell you what you just heard.

9 One of the things we tell people when we ask them to look
10 at if people are telling you the truth on the witness stand,
11 the veracity, you know, you're looking for clues, each one of
12 you are when the witness takes the stand. Each one of you is
13 looking for little things, little what's going to set this
14 apart? What's going to make you believe and not believe this
15 guy?

16 One of the things we tell you is when you're
17 uncomfortable with something, you do this with your hand over
18 your face. We tell a witness don't you ever put your hand
19 there. A jury knows. You may not have ever been told that,
20 but you're expected to know that. You know when somebody's
21 not quite believing what they're saying.

22 Mr. Hundred Percent Expert -- By the way, he's an expert,
23 he is. He's an expert on GSR. He's an expert on trajectory.
24 He's in expert on gun noises. His testimony on trajectory,
25 you probably remember that. Let's talk about the gun noises.

1 (Whereupon, counsel puts his hand over his mouth and
2 makes some mumbling sounds.)

3 MR. VOIGT: Maybe you remember that. Now when he's
4 talking about GSR, he's bold. He wants to stand up. He wants
5 to express this to you. He's going to point stuff out to you.
6 He's excited because this is -- That's right down the center
7 for him. Gun noise, well,

8 (Whereupon, counsel again puts his hand over his mouth
9 and makes mumbling noises.)

10 MR. VOIGT: Mr. Hundred Percent is not exactly a hundred
11 percent. Trajectory, he's got no idea. He's got no idea. He
12 can't explain, you know, how is this? How does that work? I
13 didn't have to have somebody come tell you that if you duck
14 down like this, maybe something hits you here. It can go up
15 and this way and this again, you know the common sense that
16 you're supposed to use? You can still use it when you apply
17 it in my case. You can still use it. It cuts both ways.

18 Rather than that kind of weird wing shot that he thought
19 he could do bouncing off, you know, on some angle, don't trust
20 people that are too confident. They're talking out of both
21 sides of their mouth.

22 Now he's confident on GSR. Okay, he is. He doesn't have
23 to say -- He was qualified in three things and he muddled two,
24 but he got the GSR. That's where he was a hundred percent of
25 the science is, but you know what? He really agreed with John

1 Roberts almost in every -- every aspect of his case: gunshot
2 residue on Jerome Campbell's car, gunshot residue on Michael
3 and Michael, no gunshot residue on Jerome, no gunshot residue
4 on the one guy with the gun, Anthony.

5 No possible way on earth under any circumstances ever,
6 ever, ever, ever, ever, ever, ever, ever, ever, ever that it
7 could have happened any other way. That's the only place
8 where he and John Roberts diverge. John Roberts has seen six
9 cases where it has happened another way and it's really hard
10 to explain and he said it could have happened that way, but he
11 also said because he's got a reputation, too, that the normal
12 way you see somebody firing a gun, yep, but that's a lot of
13 gunshot residue, not just boom, boom, that's boom, boom, boom,
14 boom, boom, boom, boom, boom on Michael German.

15 So are you going to believe the guy who says he reviews
16 the world through a prism where some things don't have any
17 explanations that you can tie bows on or are you going to
18 believe a guy who is a hundred percent certain based on the
19 twenty percent of the evidence that he's looked at? Based on
20 the little snippet that he was allowed to see and then some
21 other things that he saw in court because he would have to do
22 some explaining. He's going to tell you a hundred percent and
23 then at the end he tells you even then he's got some cases he
24 can't explain. Out of those thousands and thousands of cases,
25 he's got some cases he can't explain either. Oh, I guess they

1 don't count towards the hundred percent.

2 But what if -- What if you were being asked to ignore all
3 the testimony, all the testimony from Michael, who stays on
4 scene and allows them to search his car. There's no bullets
5 in that car, nothing interesting in the car, nothing in the
6 car, nothing in Michael's pocket, nothing on Michael's person,
7 microscopic traces of lead on his hands.

8 Michael German doesn't move. He doesn't give us any
9 evidence, nothing, nothing in his pockets, nothing that would
10 indicate he had a gun, a video of him before he died walking
11 around, walking in the store, no bulges, nothing, nothing
12 indicating a gun. We have a gun and there it is.

13 (Whereupon, counsel indicates State's Exhibit Number 65.)

14 MR. VOIGT: The day after -- You know, the shooting was
15 at night. The detective is working on this case through the
16 night. He gets to the point in the video where he was like
17 that needs an explanation, that's not exactly what I was told
18 and he confronts the 19 year old man who told him about it in
19 the presence of his family. This is kind of a different
20 meeting than we had on James Island, isn't it, than what
21 Detective Burckhardt related to you?

22 We've got one group that circles the wagons, zip,
23 nothing. Then we got one group that says, Anthony, what was
24 up? Anthony fesses up that's me and I'm throwing this gun and
25 look at the special treatment he got from Detective

1 Burckhardt. He got arrested. My office had him convicted.
2 That's the special treatment he got and that's what you heard
3 and he testified to it. That's how the cops work. That's how
4 we do it. Those are the favors we give them so that they tell
5 the right story on the witness stand so that we can convict
6 somebody. That's the footsy we play.

7 Now there are other people out there. There are people
8 out there who also fired guns. There are people out there
9 just as responsible as Jerome Campbell. Jerome Campbell in a
10 very brief encounter with Detective Burckhardt - Somehow, you
11 know, this car is found very close to the shooting, actually
12 the next day or the day after. It's not where Jerome is.
13 Jerome is on James Island. Don't know how he got there. He
14 won't say. He won't say who took him there. He won't say.
15 He won't say anything. That's justice.

16 Now I'm going to wrap this up. We've got one more slide
17 here. What's malice? The State also has to prove malice.
18 Malice is proven in this. The one they weren't shooting at,
19 the one who hadn't done anything, the brother, the son, the
20 friend. You hate Michael Allen so you shoot blindly and you
21 kill Michael German. You got issues with Michael, with
22 Anthony, Michael's brother, you shoot blindly, whoever you
23 are. Right there, that's malice in an instant and in that
24 instant Michael German was gone, as his brother came back to
25 hold his hand right there with Tim McCarthy, right there with

1 the other fellow who was walking his dog, with his friends
2 running around the parking lot trying to get the police.

3 This is a tragedy, but it's not just a sad story. One
4 man had everything, had everything and in a play in three the
5 acts he threw it away and I can't tell you why. That's the
6 point of a tragedy because it shouldn't have happened. It
7 never should have happened. The tragedy comes when you are
8 held accountable for your sins, for your crimes, for the
9 anger, for the desire for retribution, the desire to save
10 face, the desire to achieve respect through threatening other
11 people.

12 I am the man of the Campbell family, you must fear me. I
13 will come to where you live. Now I know where you live and I
14 will bring these those you don't know and their fire and I
15 will get you and if you come to my territory, to my sister's
16 apartment where you are not allowed to be, she threw you out,
17 she had me come down here to enforce it. I will show you,
18 Frank Haigler, what's happening to you. I will show you what
19 happens to you when you think you can just walk up to where I
20 am. You don't know me. You don't know me, Frank Haigler.
21 Get him. You don't know me. There they are, every single one
22 of these stinking people who are bothering my family. You
23 disrespected my mother, you disrespected my sister and in an
24 instant he threw it all away and he's guilty and that's a
25 tragedy.

1 I proved it. Mr. Harris told you to stick to your guns.
2 I'm going to tell you the same thing. I proved it. If you
3 think I did, then vote guilty. Thank you.

4 THE COURT: Madam Forelady, ladies and gentlemen, you all
5 have been sitting an hour. I'm going to give you a brief rest
6 room break, about five minutes, and then we'll resume with the
7 Court's close -- with the Court's instructions on the law.
8 Please leave your notepads in your seats and please do not
9 discuss the case during the break. You all can take your
10 seats or go to the rest room if you wish to do so.

11 (Whereupon, they jury leaves the courtroom at 4:03 p.m.
12 and there is a break in the proceedings until 4:19 p.m.)

13 THE COURT: Is the State ready to proceed?

14 MR. VOIGT: Yes, Your Honor.

15 THE COURT: Is the defense ready to proceed?

16 MR. HARRIS: Yes, Your Honor.

17 THE COURT: They should be out there by now, you think?

18 BAILIFF: Bring them in now?

19 THE COURT: Mm-hmm.

20 (Whereupon, the jury enters the courtroom at 4:20 p.m.)

21 BAILIFF: All jurors are present.

22 THE COURT: You may be seated. Ladies and gentlemen, you
23 have heard the closing arguments of both the State and the
24 defense. You will now hear the Court's instructions on the
25 law.

JURY CHARGE

THE COURT: During this trial, you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case and I also have the duty to rule upon or pass upon the admissibility of evidence offered during the trial. You are to consider only the competent evidence that is before you, which has been put into the record of this case either through the lips of sworn witnesses or the other evidence that may have been introduced during the course of the trial.

I have the additional duty to charge or instruct you on the law applicable to this case. As the presiding judge, I'm the sole judge of the law of this case and it is your duty as jurors to accept and apply the law as I precisely -- precisely as I now state it to you.

If you have a preconceived idea as to what the law is or what the law ought to be in a case or in this case and it should not agree with what I now tell you the law is, you are obligated under the oath which you have taken to abandon this preconception on your part because you are sworn to accept the law and apply the law precisely as I state it to you.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judges of the facts. You are the judges of the facts in this case. This Court is the judge of the law. The Constitution of our state has declared that a

1 trial judge shall not intimate, state, comment upon or make
2 any statement to a trial jury about the facts in a case.

3 Since you, the jury, are the sole judges of the facts in
4 this case, you are not to infer anything from what I have said
5 during the progress of this trial in ruling upon the
6 admissibility of evidence or otherwise or anything that I say
7 now during the course of this instruction to you that I have
8 any opinion about the facts. The law does not permit me to
9 have an opinion about the facts.

10 This is a matter solely for you the jury to determine.
11 As jurors then, it is your duty as I have instructed to
12 determine the effect, the value, the weight and the truth of
13 the evidence presented.

14 Necessarily, you must assess the credibility of witnesses
15 who have testified in this case. Credibility is simply a
16 legal term meaning believability. It becomes your duty as
17 jurors to analyze and to evaluate the evidence and determine
18 that evidence which convinces you of its truth.

19 Some of the things you may consider as you decide whether
20 or not to believe a witness' testimony about a particular
21 matter include: What was the manner and appearance of the
22 witness who testified? Was he or she straight forward or
23 hesitant in answering? Was the testimony of a witness
24 consistent or inconsistent? How did the witness come to know
25 the facts that he or she testified to or what was his or her

1 ability to know these facts? Is there some reason a witness
2 would want to give testimony which would help or hurt one side
3 or the other? In other words, was the witness biased or
4 prejudiced? And was the testimony of a witness strengthened
5 or weakened by other testimony or evidence?

6 I instruct you further that in determining the question
7 of the credibility or believability of witnesses who have
8 testified in this case, you may believe one witness as against
9 several witnesses or several witnesses as against one witness.
10 You may believe a part of the testimony of a witness and
11 reject the remaining part of the testimony of that same
12 witness. If you have a good and sound reason, you may believe
13 the testimony of a witness in its entirety or reject the
14 testimony of a witness in its entirety.

15 You may consider whether any witness has exhibited to you
16 any interest, any bias, any prejudice or other motive in the
17 case. You may consider the demeanor of a witness, that is the
18 manner and appearance of a witness from the witness stand. As
19 I've instructed, you can believe as much or as little of each
20 witness' testimony as you think proper. Ladies and gentlemen,
21 you have but one objective through this process, to seek the
22 truth regardless of its source.

23 Our rules of evidence ordinarily do not permit witnesses
24 to testify to opinions or conclusions. An exception to this
25 rule exists for witnesses we call expert witnesses, a witness

1 who by their education, training and experience has become an
2 expert in some art, science or profession or calling may state
3 an opinion as to relevant and material matters in which the
4 witness claims to be an expert and may also state the reasons
5 for that opinion.

6 You should consider any expert opinion received in
7 evidence in this case like any other evidence. Give it the
8 weight you think it deserves. If you decide that the opinion
9 of an expert is not based on sufficient education and
10 experience or if you conclude that the reasons given in
11 support of the opinion are not sound or that the opinion is
12 outweighed by other evidence, you may disregard the opinion
13 entirely. An expert witness' testimony is to be given no
14 greater weight than that of other witnesses simply because the
15 witness is an expert and you are not required to accept an
16 expert's opinion even though it is not contradicted.

17 Ladies and gentlemen, there is a statement alleged to
18 have been made by the defendant in this case. While the Court
19 has determined that the statement is admissible, I instruct
20 you that you make the ultimate decision of whether or not the
21 defendant made the statement. If the defendant did make the
22 statement, you must determine whether the statement was made
23 by the defendant voluntarily and of his own free will. This
24 means that the statement was not caused by pressure, force,
25 fear, threats, coercion or intimidation or by hope or a

1 promise of leniency or a reward of any kind.

2 In determining whether the statement was voluntary, you
3 should consider both the characteristics of the defendant and
4 the details of any questioning. Some of the factors that you
5 must consider are the age of the defendant, the defendant's
6 education or lack of education, the defendant's mental ability
7 or capacity, the defendant's IQ or intelligence, the
8 defendant's background and environment, the place and length
9 of detention, the nature of the questioning and the lack --
10 and the advice or lack thereof to the defendant of his
11 constitutional rights, including but not limited to, the right
12 to remain silent, that any statement could be used against him
13 in a court of law, the right to have a lawyer present, that if
14 he could not afford a lawyer, a lawyer would be appointed to
15 represent him without any cost, and that he could stop making
16 a statement at any time.

17 You must carefully consider all the surrounding
18 circumstances before you give any weight to an alleged
19 statement. The State has the burden of proving beyond a
20 reasonable doubt that the alleged statement was voluntary. If
21 you determine it was, you may give the statement any further
22 consideration that you deem proper. You must decide what
23 weight, if any, should be given to an alleged statement. If
24 you determine that the alleged statement was not the free and
25 voluntary statement of the defendant, you should not consider

1 the statement at all.

2 Ladies and gentlemen, there are two types of evidence
3 which are generally presented during a trial, direct evidence
4 and circumstantial evidence. Direct evidence is the testimony
5 of a person who asserts or claims to have actual knowledge of
6 a fact, such as an eyewitness. Circumstantial evidence is
7 proof of a chain of facts and circumstances indicating the
8 existence of a fact. The law makes absolutely no distinction
9 between the weight or value to be given to either direct or
10 circumstantial evidence, nor is a greater degree of certainty
11 required of circumstantial evidence than of direct evidence.

12 You should weigh all of the evidence in this case. After
13 weighing all the evidence, if you are not convinced of the
14 guilt of the defendant beyond a reasonable doubt, you must
15 find the defendant not guilty. Conversely, if you are
16 convinced of the guilt of the defendant beyond a reasonable
17 doubt, then you must find him guilty.

18 I instruct you, ladies and gentlemen, the fact that the
19 defendant was arrested, charged and indicted is not evidence
20 in this case and cannot be considered by you as evidence of
21 guilt in this case, nor does it create any presumption or
22 inference of guilt. This documentation, ladies and gentlemen,
23 are simply the formal in -- formal written instruments which
24 contain the charge or charges made against a defendant. They
25 serve as the formal documentation by which the case is

1 processed or brought into this court.

2 The defendant has pled not guilty to the indictments and
3 that plea casts a burden on the State to prove the defendant
4 guilty because a person charged with committing a criminal
5 offense in South Carolina is never required to prove himself
6 innocent. I instruct you, Madam Forelady, ladies and
7 gentlemen of the jury, that it is a cardinal and important
8 rule of the law of evidence that the defendant in a criminal
9 trial, no matter what the seriousness of the charge or charges
10 made against him may be, will always be presumed to be
11 innocent of the crime for which he is indicted unless his
12 guilt has been proven by evidence satisfying you of that guilt
13 beyond a reasonable doubt.

14 This presumption of innocence does not cease when you
15 retire to deliberate, but it accompanies the defendant from
16 the time of his appearance throughout the trial until you
17 reach a verdict in this case. Our Supreme Court has said that
18 the presumption of innocence is like a robe of righteousness
19 placed about the shoulders of the defendant and it remains
20 with him and assigns him to that class of innocent until that
21 presumptive robe of righteousness has been stripped from his
22 person by evidence satisfying you of that guilt beyond a
23 reasonable doubt.

24 The presumption of innocence is not mere legal theory.
25 It is not just a legal phrase. It is a substantial right to

1 which every defendant is entitled unless you, the jury, are
2 satisfied from the evidence of his guilt beyond a reasonable
3 doubt.

4 I instruct you, ladies and gentlemen, and emphasize that
5 the fact that the defendant did not testify is not a factor to
6 be considered by you in any way in your deliberations and in
7 your consideration on the question of the guilt or innocence
8 of the defendant. It must not be considered by you in any
9 manner whatsoever. A defendant has the constitutional right
10 to remain silent and the assertion of this right must not be
11 considered by you in any manner whatsoever in your
12 deliberations.

13 I repeat, under your oath you are to draw no conclusion
14 whatsoever from the fact that the defendant in this case did
15 not testify. The fact that this defendant did not testify
16 should not even be discussed in the jury room in any manner
17 whatsoever. The burden of proof, as I have stated to you, is
18 on the State. The defendant is not required to prove his
19 innocence. The burden of proof remains on the State to prove
20 his guilt beyond a reasonable doubt.

21 The State has the burden of proving the defendant guilty
22 beyond a reasonable doubt. Some of you may have served as
23 jurors in civil cases where you are told that it is only
24 necessary to prove that a fact is more likely true than not
25 true, such as by the greater weight or the preponderance of

1 the evidence. In criminal cases, the State's proof must be
2 more powerful than that, it must be beyond a reasonable doubt.
3 Proof beyond a reasonable doubt is proof that leaves you
4 firmly convinced of the defendant's guilt. There are very few
5 things in this world that we know with absolute certainty and
6 in criminal cases the law does not require proof that
7 overcomes every possible doubt.

8 If based on your consideration of the evidence you are
9 firmly convinced that the defendant is guilty of the crime
10 charged, you must find the defendant guilty. If on the other
11 hand you think there is a real possibility that the defendant
12 is not guilty, you must give him the benefit of that doubt and
13 find him not guilty.

14 An issue in this case is the identification of the
15 defendant as the person who committed the crime charged. The
16 State has the burden of proving identity beyond a reasonable
17 doubt. You must be satisfied beyond a reasonable doubt of the
18 accuracy of the identification of the defendant before you may
19 convict the defendant. Identification testimony is an
20 expression of belief or impression by a witness.

21 You must determine the accuracy of the identification of
22 the defendant. You must consider the believability of each
23 identification witness in the same way as any other witness.
24 You may consider whether the witness had an adequate
25 opportunity to observe the offender at the time of the crime.

1 This will be affected by things like how long or short a time
2 was available, how far or close the witness was, the lighting
3 conditions, and whether the witness had the chance to see or
4 know the person in the past.

5 Once again, I instruct you the burden of proof on the
6 State extends to every element of the crime charged and this
7 specifically includes the burden of proving beyond a
8 reasonable doubt the identity of the defendant as the person
9 who committed the crime. If after examining the testimony you
10 have a reasonable doubt as to the accuracy of the
11 identification, you must find the defendant not guilty.

12 Ladies ---

13 (Whereupon, the Court paused briefly for coughing and
14 throat clearing.)

15 THE COURT: Excuse me. Ladies and gentlemen, the
16 defendant is charged with assault with intent to kill. In
17 order to prove assault with intent to kill, the State must
18 prove beyond a reasonable doubt that the defendant with malice
19 aforethought unlawfully attempted or offered to commit a
20 violent injury upon another person and had the present ability
21 to complete the attempted injury.

22 An assault is the intentional creation of a reasonable
23 fear of immediate bodily harm. It is not necessary that the
24 attempted injury or harm actually take place. For example, if
25 I walk up to you and when we are within arm's reach I draw

1 back to hit you, that is an assault.

2 Malice is hatred, ill will or hostility towards another
3 person. It is the intentional doing of a wrongful act without
4 just cause or excuse and with an intent to inflict an injury
5 or under circumstances that the law will infer an evil intent.
6 Malice aforethought does not require that malice exist for any
7 particular time before the act is committed, but malice must
8 exist in the mind of the defendant just before and at the time
9 the act is committed. Therefore, there must be a combination
10 of the previous evil intent and the act.

11 Malice aforethought may be express or inferred. These
12 terms express and inferred do not mean different kinds of
13 malice, but merely the manner in which malice may be shown to
14 exist, that is either by direct evidence or by inference from
15 the facts and circumstances which are proven.

16 Express malice is shown when a person speaks words which
17 express hatred or ill will for another or when a person
18 prepared beforehand to do the act which was later
19 accomplished. For example, lying in wait for a person or any
20 other acts of preparation going to show that the deed was
21 within the defendant's mind would be express malice. Malice
22 may be inferred from conduct showing a total disregard for
23 human life.

24 Ladies and gentlemen, I further instruct you that if
25 facts are proven beyond a reasonable doubt sufficient to raise

1 an inference of malice to your satisfaction, this inference
2 would simply be an evidentiary fact to be considered by you,
3 the jury, along with the other evidence in the case and for
4 you to give it the weight and value -- weight and value you
5 decide it should receive.

6 A specific intent to kill is not an element of assault
7 with intent to kill, but there must be a general intent to
8 commit serious bodily injury. Intent means intending the
9 result which actually occurs, not accidentally or involuntary.
10 Intent may be shown by acts and conduct of the defendant and
11 other circumstances from which you may naturally and
12 reasonably infer intent.

13 Evidence of the character of the assault, the character
14 of the instrument used, the manner it was used, the purpose to
15 be accomplished, and the resulting wounds or injuries may be
16 considered in determining the intent with which the assault
17 was committed. Intent may also be inferred when it is
18 demonstrated that the defendant voluntarily and willfully
19 commits an act the natural tendency of which is to destroy
20 another's life.

21 Ladies and gentlemen, the defendant is also charged with
22 murder. The State must prove beyond a reasonable doubt that
23 the defendant killed another person with malice aforethought
24 and again, as I've instructed, malice is hatred, ill will or
25 hostility towards another person. It is the intentional doing

1 of a wrongful act without just cause or excuse and with an
2 intent to inflict an injury or under circumstances that the
3 law will infer an evil intent.

4 Malice aforethought does not require that malice exist
5 for any particular time before the act is committed, but
6 malice must exist in the mind of the defendant just before and
7 at the time the act is committed. Therefore, there must be a
8 combination of the previous evil intent and the act.

9 Again, as I've instructed, malice aforethought may be
10 express or inferred. These terms express and inferred do not
11 mean different kinds of malice, but merely the manner in which
12 malice may be shown to exist, that is either by direct
13 evidence or by inference from the facts and circumstances
14 which are proven.

15 Express malice is shown when a person speaks words which
16 express hatred or ill will for another or when a person
17 prepared beforehand to do the act which was later
18 accomplished. Again using the same example for example, lying
19 in wait for a person or any other acts of preparation going to
20 show that the deed was within the defendant's mind would be
21 express malice. Malice may be inferred from conduct showing a
22 total disregard for human life. Again, this would simply be
23 an evidentiary fact to be considered by you along with the
24 other evidence in the case and it is for you, the jury, to
25 give it the effect, value and weight you decide it should

1 receive.

2 Ladies and gentlemen, I instruct you that mere presence
3 at the scene is not sufficient to prove someone guilty of a
4 crime. A defendant's presence where a crime is being
5 committed or mere association with a person who commits a
6 crime does not make a defendant an accomplice or an aider or
7 abettor of the person committing the crime. The burden is on
8 the State to prove every element of the crimes charged.

9 If you find after reviewing all the evidence that the
10 State has proven that the defendant was only present at the
11 scene of a crime and that they have not proven beyond a
12 reasonable doubt any other participation in the crime, then
13 you must find the defendant not guilty. The law is that proof
14 of or at the scene of the crime is not sufficient to find
15 someone guilty.

16 Ladies and gentlemen, I further instruct you that if a
17 crime is committed by two or more people who are acting
18 together in committing a crime, the act of one is the act of
19 all. A person who joins with another to commit an unlawful
20 act is criminally responsible for everything done by the other
21 person which happens as a probable or natural consequence of
22 the acts done in carrying out the common plan and purpose.

23 For example, two people can be guilty of killing another
24 person when only one of the two had a gun, there was only one
25 bullet and only one of the two fired the shot that caused the

1 death. If two or more people are together, acting together
2 assisting each other in committing the offense, the act of one
3 is the act of all -- is the act of all or as it is sometimes
4 said, the hand of one is the hand of all.

5 Prior knowledge that a crime is going to be committed
6 without more is not sufficient to make a person guilty of that
7 crime. Mere knowledge that another person is going to commit
8 a crime, even if the defendant is present when the crime is
9 committed, is not sufficient to convict the defendant as a
10 principal. Guilt as a principal is shown by actual or
11 constructive presence at the scene as a result of prior
12 arrangement. Therefore, a finding of a prior arranged plan or
13 common scheme is necessary for a finding of guilt as a
14 principal.

15 The State must prove beyond a reasonable doubt by
16 competent evidence the theory of the hand of one is the hand
17 of all. A principal in a crime is one who either actually
18 commits the crime or who is present aiding, abetting or
19 assisting in the committing of the crime. When a person does
20 an act in the presence of and with the assistance of another,
21 the act is done by both. Where two or more are acting with a
22 common plan or intent are present at the commission of a
23 crime, it does not matter who actually commits the crime, all
24 are guilty. The hand of one is the hand of all.

25 Present at the commission of a crime means to be

1 sufficiently near to aid and abet and assist in the commission
2 of the crime. However, mere presence at the scene of a crime
3 is not sufficient to convict one as a principal on the theory
4 of aiding and abetting.

5 Intent is also a necessary element for there must have
6 been a common design or intent to commit the crime and the
7 crime must have been committed pursuant thereto with the
8 person aiding and abetting by some overt act. Intent means
9 intending the result which actually occurs, not accidentally or
10 involuntarily. Intent may be shown by acts and conduct of the
11 defendant and other circumstances from which you may naturally
12 and reasonably infer intent. The State must prove these
13 elements beyond a reasonable doubt.

14 The defendant has raised the defense of self-defense.
15 Self-defense is a complete defense and if it is established,
16 you must find the defendant not guilty. The State has the
17 burden of disproving self-defense by proof beyond a reasonable
18 doubt. If you have a reasonable doubt of the defendant's
19 guilt after considering all the evidence, including the
20 evidence of self-defense, then you must find the defendant not
21 guilty. On the other hand, if you have a -- If -- On the
22 other hand you, if you have no reasonable doubt of the
23 defendant's guilt after considering all the evidence,
24 including the evidence of self-defense, then you must find the
25 defendant guilty. The following elements are required to

1 establish self-defense..

2 First, the defendant must be without fault in bringing on
3 the difficulty. If the defendant's conduct was the type which
4 was reasonably calculated to and did provoke a deadly assault,
5 the defendant would be at fault in bringing on the difficulty
6 and would not be entitled to an acquittal based on self-
7 defense. Self-defense is not available to a person who uses
8 language which is so contemptuous that a reasonable person
9 would expect it to bring on a physical encounter and which did
10 actually contribute to the physical encounter.

11 If the defendant voluntarily participated in mutual
12 combat for purposes other than protection, the killing of the
13 victim would not be self-defense. This is true even if during
14 the combat the defendant feared death or serious bodily
15 injury. However, if before the killing is committed the
16 defendant withdraws and tried in good faith to avoid further
17 conflict and either by word or act makes that fact known to
18 the victim, he would be without fault in bringing on the
19 difficulty.

20 For mutual combat, there must be a mutual intent and
21 willingness to fight. This intent may be shown by the acts
22 and conduct of the parties and the circumstances surrounding
23 the combat. In addition, it must be shown that both parties
24 were armed with a deadly weapon.

25 The second element of self-defense is that the defendant

1 was actually in imminent danger of death or serious bodily
2 injury or that the defendant actually believed he was in
3 imminent danger of death or serious bodily injury. If the
4 defendant was actually in imminent danger, it must be shown
5 that the circumstances would have warranted a person of
6 ordinary firmness and courage to strike the fatal blow to
7 prevent -- to prevent death or serious bodily injury. If the
8 defendant believed he was in imminent danger or death --
9 imminent danger of death or serious bodily injury, it must be
10 shown that a reasonably prudent person of ordinary firmness
11 and courage would have had the same belief.

12 In deciding whether the defendant actually was or
13 believed he was in imminent danger of death or serious bodily
14 injury, you should consider all the facts and circumstances
15 surrounding the crime, including the physical condition and
16 characteristics of the defendant and the victim. The
17 defendant does not have to show that he was actually in
18 danger. It is enough if the defendant believed he was in
19 imminent danger and a reasonably prudent person of ordinary
20 firmness and courage would have had the same belief.

21 The defendant has the right to act on appearances even
22 though the defendant's beliefs may have been mistaken. It is
23 for you to decide whether the defendant's fear of immediate --
24 of immediate danger of death or serious bodily injury was
25 reasonable and would have been felt by an ordinary person in

1 the same situation.

2 Once the right to act in self-defense arises, a defendant
3 is not required to wait until his adversary is on equal terms
4 or until he has fired or aimed his weapon in order to act.
5 Similarly, the defendant does not have to wait until his
6 assailant gets the drop on him. He has the right to act under
7 the law of self-preservation and prevent his assailant from
8 getting the drop on him.

9 I further instruct you that words accompanied by hostile
10 acts may, depending on the circumstances, establish self-
11 defense. Also I instruct you that evidence of prior
12 difficulties between the defendant and the victim may be
13 considered in deciding whether a threat existed, whether the
14 defendant had a reason to believe a threat existed and how
15 serious that threat was.

16 And you may also consider the relative sizes, ages and
17 weights of the defendant and the victim in deciding the
18 apparent or actual need for force in self-defense and the
19 amount of force needed. I further instruct you that threats
20 made by the victim may be considered in determining whether
21 the defendant actually was or believed he was in imminent
22 danger.

23 The final element of self-defense as -- is that the
24 defendant had no other probable way to avoid the danger of
25 death or serious bodily injury than to act as the defendant

1 did in this particular instance. I instruct you that the
2 defendant had no duty to retreat if by doing so the danger of
3 being killed or suffering serious bodily injury would
4 increase.

5 A person cannot be required to make an exact calculation
6 as to the degree or amount of force which may be needed to
7 avoid death or serious bodily harm. Therefore, in self-
8 defense the defendant has the right to use the force needed to
9 avoid death or serious bodily harm.

10 The force used in self-defense does not have to be
11 limited to the degree or amount of force used by the victim.
12 The defendant has the right to use so much force as appeared
13 to be necessary for complete self-protection and which a
14 person of ordinary reason and firmness would have believed to
15 be needed to prevent death or serious bodily harm. I further
16 instruct you that if the defendant is justified in defending
17 himself or others and in firing the first shot, then the
18 defendant is also justified in continuing to shoot until it is
19 apparent that the danger of death or serious bodily injury has
20 completely ended.

21 Ladies and gentlemen, there are several indictments in
22 this case. Each alleges different offenses against the
23 defendant and they are as follows. The -- They will go into
24 the jury room with you. You don't have to try to write this
25 down.

1 Indictment 2009-GS-10-6730, assault with intent to kill,
2 Indictment 67 -- Indictment 2009-GS-10-6731, murder,
3 Indictment 2009-GS-10-6732, assault with intent to kill, and
4 2009-GS-10-6733, assault with intent to kill. Each of these
5 indictments, ladies and gentlemen, charges a separate and
6 distinct offense. You must decide each indictment separately
7 on the evidence and the law applicable to it uninfluenced by
8 your decision as to any other indictment. The defendant may
9 be convicted or acquitted on any or all of the offenses
10 charged. You will be required to write a separate verdict of
11 guilty or not guilty for each indictment.

12 Ladies and gentlemen, there are two potential verdicts
13 for each indictment and, again, you don't have to write this
14 down because it will go into the jury room with you and they
15 are as follows and I will read those to you, but, again, I
16 want to emphasize there is no significance whatsoever to the
17 order in which these potential verdicts are stated. It's
18 simply that one must be stated first.

19 And as to Indictment 6730, which is assault with intent
20 to kill, the options are: We the jury by unanimous consent
21 find the defendant guilty of assault with intent to kill or
22 not guilty. Indictment 6731, we the jury by unanimous consent
23 find the defendant guilty of murder or not guilty. Indictment
24 6732, we the jury by unanimous consent find the defendant
25 guilty of assault with intent to kill or not guilty. And

1 indictment 6733, we the jury by unanimous consent find the
2 defendant guilty of assault with intent to kill or not guilty.

3 Again, ladies and gentlemen, there's absolutely no
4 significance to the order in which these possible verdicts are
5 stated. It is simply that one must be stated first.

6 Ladies and gentlemen, your verdict must be a unanimous
7 one, which means that all twelve of you must agree in order to
8 reach a verdict. Madam Forelady, when the jury has reached a
9 verdict, it is your responsibility to fill out each verdict
10 form, to sign and date the forms and also to advise -- knock
11 on the door and advise the bailiffs that the jury has reached
12 a verdict and that has to be on all of the indictments, not
13 one at a time and I say that out of just being precautionous.

14 But once the jury has reached a unanimous verdict, which
15 means that all twelve of you must agree on each of the
16 indictments, please knock on the door, advise the bailiffs
17 that you've reached a verdict, but prior to that, of course,
18 fill out the verdict form, sign and date those forms.

19 If the jury has any questions during deliberations, it
20 will be your responsibility to write out those questions and
21 again follow that same procedure. Knock on the door, advise
22 the bailiffs that the jury has a question. Ladies and
23 gentlemen, if you have any questions during deliberations,
24 please know that there will be a delay in our response and
25 it's not that we're ignoring you, there's just -- There's a

1 procedure that we must follow in answering your question, so I
2 tell you in advance that if there is a question, there will be
3 a delay because we are following that procedure. Again,
4 ladies and gentlemen, your verdict must be a unanimous one,
5 which means that all twelve of you must agree.

6 I'm going to ask that you return to your jury room, but
7 do not yet begin your deliberations. I have some matters of
8 law I need to take up with the attorneys that may require
9 further instruction or clarification of an instruction.
10 However, if there is no further instruction, we will send in
11 your notepads and the evidence and at that time we will excuse
12 the alternate and you will be allowed to begin your
13 deliberations.

14 I will tell you in advance that I know some of you have
15 some challenges with daycare and otherwise. Please know that
16 we're not going to hold you hostage at the courthouse all
17 night. You all can let me know what time you need to leave
18 and we will then allow you to disburse for the evening and
19 then come back in the morning to resume your deliberations if
20 you have not reached a verdict at that point and I know that
21 for some of you that really might be 5:30 or -- or very short
22 thereafter.

23 So I'm letting you know in advance that if that be the
24 case, you all discuss it among your twelve and you decide what
25 time it is that would be preferable for you all to head home

1 this evening and then I will excuse you at that time and give
2 you further instructions regarding the -- the recess and then
3 we'll resume in the morning at 9:30 with your deliberations.

4 Again, please leave your notepads in your seats until we
5 deal with those matters of law and once we have dealt with
6 those, we'll excuse the alternate, send in the evidence and
7 your notebooks and you'll be allowed to begin your
8 deliberations. If you would, go with the bailiffs for me,
9 please.

10 (Whereupon, the jury leaves the courtroom at 4:52 p.m.)

11 THE COURT: You may be seated. Any exceptions from the
12 State?

13 MR. VOIGT: No, Your Honor.

14 THE COURT: From the defense?

15 MR. HARRIS: None, Your Honor.

16 THE COURT: Okay. You all can start going through the
17 evidence. (To bailiff) You can go ahead and start collecting
18 the notebooks except put the alternate's on the bannister so
19 we can find out what she wants to do. (To attorneys) If you
20 all can go through the evidence for me, please, and make sure
21 it's all in place.

22 (Whereupon, counsel examines the evidence and determines
23 that all exhibits are present.)

24 THE COURT: There wasn't any ammunition, was there? Can
25 you double check for me? Were they all spent cartridges?

1 MR. HARRIS: There were some live ones.

2 THE COURT: There is no ammunition over there, was it?

3 MR. VOIGT: No, I didn't put any in.

4 THE COURT: Okay. There's nothing over there that they

5 need gloves or anything, is there?

6 MR. VOIGT: I don't think so. The gun is there. It has

7 a ---

8 THE COURT: One of the safety things in it? I just

9 wanted to make there was no ammunition because we can't send

10 both back.

11 MR. VOIGT: No, I didn't put any ammunition in.

12 THE COURT: Okay, then we're good to go. All the

13 evidence is in place?

14 MR. VOIGT: Yes.

15 MR. HARRIS: Yes, Your Honor.

16 THE COURT: Perfect. Mr. Robinson, if you could take

17 that for me and then bring the alternate out to us, please.

18 (Whereupon, there is a brief pause in the proceedings

19 while the evidence is taken to the jury at 4:56 p.m. and

20 the alternate enters the courtroom at 4:59 p.m.)

21 THE COURT: Ma'am, we want to thank you for your time and

22 your attention to this case. We know that being an alternate

23 is really a thankless job. It's so very necessary though and

24 I've watched and you've been timely, you've been attentive to

25 the proceedings. You are welcome to keep your notes if you'd

1 like or the bailiffs will destroy them for you.

2 You are welcome to discuss this case if you would like,
3 but I would ask that you not do it until Monday so that we're
4 assured that the panel has been excused. By the same token,
5 if you do not wish to discuss the case and someone should go
6 beyond your comfort level, please make us aware of it so that
7 we can take the appropriate action to protect your privacy.

8 If you need a work excuse, I think we probably could
9 still get one for you today, but if not, we'll mail that to
10 you along with your check. I hope this has been educational
11 for you.

12 JUROR: It has.

13 THE COURT: And we thank you for your time and your
14 attention.

15 JUROR: Is there any chance that I will be called in the
16 morning?

17 THE COURT: No, ma'am. We're done for the week.

18 JUROR: All right.

19 THE COURT: So you're done for the week. I'm glad you
20 mentioned that because I forgot to tell you that you're done
21 for the week.

22 JUROR: All right.

23 THE COURT: And even if they were coming back, I wouldn't
24 require you to. You've -- you've served us well this week, so
25 we appreciate it. Have a wonderful evening. If you want us

1 to have someone walk you to the garage, I know it's starting
2 to get late.

3 JUROR: I'll be all right.

4 THE COURT: Okay. Thank you, ma'am. Have a good
5 evening.

6 (Whereupon, the alternate juror leaves the courtroom.)

7 THE COURT: The record should reflect that the jury began
8 its deliberations at 4:57. Is there anything from the State
9 before we recess before we ---

10 MR. VOIGT: No, Your Honor.

11 THE COURT: --- we stand at ease or from the defense?

12 MR. HARRIS: Nothing, Your Honor.

13 THE COURT: Okay. We'll await the jury's instructions
14 regarding what time they want to go home. I know that there
15 are at least three parents that have child care issues, so
16 we'll -- we'll see what they -- what they decide they want to
17 do.

18 MR. HARRIS: May we approach the bench?

19 THE COURT: Yes, absolutely.

20 (Whereupon, there is a brief break in the proceedings
21 until a message is received from the jury at 5:00 p.m.)

22 BAILIFF: Ready for them, Judge?

23 THE COURT: Yes, sir.

24 (Whereupon, the jury enters the courtroom at 5:02 p.m.)

25 BAILIFF: The jury is all present, Your Honor.

1 THE COURT: Thank you. You may be seated. Ladies and
2 gentlemen, we received your note regarding your daycare
3 challenges and we're going to excuse you for the evening.
4 We'll resume at 9:30 in the morning for you to begin your
5 deliberations. You'll come directly to your jury room in the
6 morning and once all twelve of you assemble, the bailiffs will
7 bring in your notepads and the evidence and then at that time
8 you will be able to begin your deliberations. So I would ask
9 that everyone pay particular attention to being prompt because
10 if there's one person missing, deliberations will not be able
11 to resume.

12 During the break, it is absolutely essential that you
13 have no discussion with anyone about this case. I know it
14 might seem simple to talk about what you've heard, but that by
15 its very nature is deliberations because it requires you to
16 process what you've heard and then draw conclusions based upon
17 it and that by its very nature is deliberations.

18 So if I need to be the heavy, say, "I can't discuss it
19 because the judge has told me I can't discuss it" and that
20 will take you off the hook because it's a natural tendency for
21 people to say, oh, you're on jury duty, what are you -- You
22 know, what kind of case are you hearing? What's going on?
23 And it's a natural tendency to respond.

24 So I would ask that you pay particular attention and
25 guard yourselves against that, as well as having any exposure

1 to any media coverage. That includes anything that is in the
2 newspaper, radio, television or internet and as tempting as it
3 may be because so much information is available on the
4 internet, you are strictly instructed not to do any
5 independent research of any kind.

6 As the fact finders, you are bound by your oath to decide
7 this case based on the testimony from the sworn witnesses and
8 the other evidence that has been introduced. So please don't
9 do any independent research of any type regarding any issue or
10 matter involved in the case.

11 As you are I'm certain aware, now that you have begun the
12 stage of deliberations, it is absolutely essential that you
13 have no interaction with anyone in or about the courthouse.
14 Again, a very innocent conversation could be very easily
15 observed and misinterpreted.

16 I'm going to have a deputy walk you to the garage this
17 morn -- this evening because it's getting dark and also
18 there's just lots of people milling around the courthouse and
19 I don't want to run into any risk of you all having any
20 inadvertent contact with anyone. So once you assemble and
21 you're ready to walk down, let us know and we'll have the
22 deputy escort you down to the garage.

23 You all have a wonderful evening. We'll see you in the
24 morning at 9:30. Come directly to your jury room.

25 (Whereupon, the jury leaves the courtroom at 5:07 p.m.)

1 and the jury note is marked as Court's Exhibit Number 5.)

2 THE COURT: Any exceptions from the State?

3 MR. VOIGT: None from the State, Your Honor.

4 THE COURT: From the defense?

5 MR. HARRIS: None, Your Honor.

6 THE COURT: Y'all have a good evening. See you at 9:30.

7 MR. VOIGT: Thank you, Judge.

8 THE COURT: You're welcome. Have a good -- Y'all can

9 leave your stuff in here because they're not going to clean in

10 here while you are in here.

11 (Whereupon, there is a break in the proceedings from 5:07

12 p.m. January 26th, 2012, until 9:35 a.m. on January 27th,

13 2012. The jury begins deliberations at 9:35 a.m. and

14 there are no proceedings in the courtroom until 10:06

15 a.m.)

16 THE COURT: The jury sent a note that says the jury

17 requests to have elements of law for AWIK, murder and self-

18 defense and mutual combat in writing. It's signed by the

19 foreperson. The response that I will send to them is, "Ladies

20 and gentlemen of the jury, Our procedures do not allow for a

21 copy of the jury charge/instructions to be given to you. If

22 there is a specific instruction that you would like given

23 again or the entire instruction, please advise us and I will

24 accommodate your request immediately."

25 Is there any exception from the State?

1 MR. VOIGT: None, Your Honor.

2 THE COURT: From the defense?

3 MR. HARRIS: None, Your Honor.

4 THE COURT: Okay. I assume the next note will be ---

5 MR. HARRIS: They'll want to hear it?

6 THE COURT: Yeah. So we'll take that as it comes and

7 then I'll have the note marked as a Court's exhibit.

8 (Whereupon, the jury note is marked as Court's Exhibit

9 Number 6 and there is a break in the proceedings until

10 11:43 a.m.)

11 THE COURT: Go ahead and get the jury. You all can take

12 your seats. I have a note from the jury. "The jury would

13 like to have the instructions regarding self-defense,

14 including mutual combat and the hand of one is the hand of all

15 repeated please." So I'll re-instruct them on hand of one is

16 the hand of all, self-defense. I'll just give them the whole

17 self-defense instruction. Is there any exception from the

18 State?

19 MR. VOIGT: None from the State, Your Honor.

20 THE COURT: From the defense?

21 MR. HARRIS: None, Your Honor.

22 THE COURT: I've already instructed the bailiffs to get

23 them and I've already got the note marked as a Court's Exhibit

24 and they -- We asked them if they wanted lunch at about 11:15.

25 We told them it would take an hour to an hour and a half and

1 they said they wanted lunch, so.

2 MR. HARRIS: Okay.

3 THE COURT: We've ordered it for them, so it should get
4 here probably about 12:30, give or take.

5 MR. HARRIS: Okay.

6 (Whereupon, the jury note is marked as Court's Exhibit
7 Number 7 and the jury enters the courtroom at 11:45 a.m.)

8 BAILIFF: Your Honor, the jury is present.

9 THE COURT: Thank you. You may be seated. Good morning,
10 ladies and gentlemen. I guess we're quickly approaching
11 afternoon. I hope that you all had a pleasant and restful
12 evening.

13 I received your note. "The jury would like to have the
14 instructions regarding self-defense, including mutual combat,
15 and the hand of one is the hand of all repeated please." And
16 I'm going to accommodate that request. I apologize I've got a
17 little frog in my throat. And that re-instruction is as
18 follows:

19 If a crime is committed by two or more people who are
20 acting together in committing a crime, the act of one is the
21 act of all. A person who joins with another to commit an
22 unlawful act is criminally responsible for everything done by
23 the other person which happens as a probable or natural
24 consequence of the acts done in carrying out the common plan
25 and purpose.

1 For example, two people can be guilty of killing another
2 person when only one of them -- when only one of the two had a
3 gun, there was only one bullet and only one of the two fired
4 the shot that caused the death. If two or more people are --
5 are together, acting together assisting each other in
6 committing the offense, the act of one is the act of all as is
7 sometimes said, the hand of one is the hand of all.

8 Prior knowledge that a crime is going to be committed
9 without more is not sufficient to make a person guilty of that
10 crime. Mere knowledge that another person is going to commit
11 a crime, even if the defendant is present when the crime is
12 committed, is not sufficient to convict the defendant as a
13 principal. Guilt as a principal is shown by actual or
14 constructive presence at the scene as a result of prior
15 arrangement. Therefore, a finding of a prior arranged plan or
16 common scheme is necessary for a finding of guilt as a
17 principal.

18 The State must prove beyond a reasonable doubt by
19 competent evidence the theory of the hand of one is the hand
20 of all. A principal in a crime is one who either actually
21 commits the crime or who is present aiding, abetting or
22 assisting in committing the crime. When a person does an act
23 in the presence of and with the assistance of another, the act
24 is done by both. Where two or more are acting with a common
25 plan or intent are present at the commission of a crime, it

1 does not matter who actually commits the crime, all are
2 guilty. The hand of one is the hand of all.

3 Present at the commission of a crime means to be
4 sufficiently near to aid and abet and assist in the commission
5 of the crime. However, mere presence at the scene of a crime
6 is not sufficient to convict one as a principal on the theory
7 of aiding and abetting.

8 Intent is also a necessary element for there must have
9 been a common design or intent to commit the crime and the
10 crime must have been committed pursuant thereto with the
11 person aiding and abetting by some overt act. Intent means
12 intending the result which actually occurs, not accidentally or
13 involuntarily. Intent may be shown by acts and conduct of the
14 defendant and other circumstances from which you may naturally
15 and reasonably infer intent. The State must prove these
16 elements beyond a reasonable doubt.

17 The defendant has raised the defense of self-defense.
18 Self-defense is a complete defense and if it is established,
19 you must find the defendant not guilty. The State has the
20 burden of disproving self-defense by proof beyond a reasonable
21 doubt. If you have a reasonable doubt of the defendant's
22 guilt after considering all the evidence, including the
23 evidence of self-defense, then you must find the defendant not
24 guilty. On the other hand, if you have no reasonable doubt of
25 the defendant's guilt after considering all the evidence,

1 including the evidence of self-defense, then you must find the
2 defendant guilty. The following elements are required to
3 establish self-defense.

4 First, the defendant must be without fault in bringing on
5 the difficulty. If the defendant's conduct was the type which
6 was reasonably calculated to and did provoke a deadly assault,
7 the defendant would be at fault in bringing on the difficulty
8 and would not be entitled to an acquittal based on self-
9 defense. Self-defense is not available to a person who uses
10 language which is so contemptuous that a reasonable person
11 would expect it to bring on a physical encounter and which did
12 actually contribute to the physical encounter.

13 If the defendant voluntarily participated in mutual
14 combat for purposes other than protection, the killing of the
15 victim would not be self-defense. This is true even if during
16 the combat the defendant feared death or serious bodily
17 injury. However, if before the killing is committed the
18 defendant withdraws and tried in good faith to avoid further
19 conflict and either by word or act makes that fact known to
20 the victim, he would be without fault in bringing on the
21 difficulty.

22 For mutual combat, there must be a mutual intent and
23 willingness to fight. This intent may be shown by the acts
24 and conduct of the parties and the circumstances surrounding
25 the combat. In addition, it must be shown that both parties

1 were -- were armed with a deadly weapon.

2 The second element of self-defense is that the defendant
3 was actually in imminent danger of death or serious bodily
4 injury or that the defendant actually believed he was in
5 imminent danger of death or serious bodily injury. If the
6 defendant was actually in imminent danger, it must be shown
7 that the circumstances would have warranted a person of
8 ordinary firmness and courage to strike the fatal blow to
9 prevent death or serious bodily injury. If the defendant
10 believed he was in imminent danger of death or serious bodily
11 injury, it must be shown that a reasonably prudent person of
12 ordinary firmness and courage would have had the same belief.

13 In deciding whether the defendant actually was or
14 believed he was in imminent danger of death or serious bodily
15 injury, you should consider all the facts and circumstances
16 surrounding the crime, including the physical condition and
17 characteristics of the defendant and the victim. The
18 defendant does not have to show that he was actually in
19 danger. It is enough if the defendant believed he was in
20 imminent danger and a reasonably prudent person of ordinary
21 firmness and courage would have had the same belief.

22 The defendant has the right to act on appearances even
23 though the defendant's beliefs may have been mistaken. It is
24 for you to decide whether the defendant's fear of -- of
25 immediate danger of death or serious bodily injury was

1 reasonable and would have been felt by an ordinary person in
2 the same situation.

3 Once the right to act in self-defense arises, a defendant
4 is not required to wait until his adversary is on equal terms
5 or until he has fired or aimed his weapon in order to act.
6 Similarly, the defendant does not have to wait until his
7 assailant gets the drop on him. He has the right to act under
8 the law of self-preservation and prevent his assailant from
9 getting the drop on him.

10 Words accompanied by hostile acts may, depending on the
11 circumstances, establish self-defense. Evidence of prior
12 difficulties between the defendant and the victim may be
13 considered in deciding whether a threat existed, whether the
14 defendant had a reason to believe a threat existed and how
15 serious that threat was.

16 The relative sizes, ages and weights of the defendant and
17 the victim may be considered in deciding the apparent or
18 actual need for force in self-defense and the amount of force
19 needed. Threats made by the victim may be considered in
20 determining whether the defendant actually was or believed he
21 was in imminent danger.

22 The final element of self-defense is that the defendant
23 had no other probable way to avoid the danger of death or
24 serious bodily injury than to act as the defendant did in this
25 particular -- in this particular instance. The defendant has

1 no duty to retreat if by doing so the danger of being killed
2 or suffering serious bodily injury would increase.

3 If the defendant is justified in defending himself -- I
4 apologize, ladies and gentlemen.

5 A person cannot be required to make an exact calculation
6 as to the degree or amount of force which may be needed to
7 avoid death or serious bodily harm. Therefore, in self-
8 defense the defendant has the right to use the force needed to
9 avoid death or serious bodily harm.

10 The force used in self-defense does not have to be
11 limited to the degree or amount of force used by the victim.
12 The defendant has the right to use so much force as appeared
13 to be necessary for complete self-protection and which a
14 person of ordinary reason and firmness would have believed to
15 be needed to prevent death or serious bodily harm. If the
16 defendant is justified in defending himself or others and in
17 firing the first shot, then the defendant is also justified in
18 continuing to shoot until it is apparent that the danger of
19 death or serious bodily injury has completely ended.

20 Ladies and gentlemen, that would complete the additional
21 instruction as you requested. If there is anything further
22 that you wish to -- the Court to re-instruct in terms of the
23 law, please do not hesitate to let us know and we will
24 accommodate your request immediately.

25 We've ordered your lunch and we're hoping it will be here

1 by 12:30. Thank you very much. If you all will, go with the
2 bailiffs.

3 (Whereupon, the jury leaves the courtroom at 11:55 a.m.)

4 THE COURT: Are there any exceptions from the State?

5 MR. VOIGT: None from the State, Your Honor.

6 THE COURT: From the defense?

7 MR. HARRIS: None, Your Honor.

8 THE COURT: All right, we'll await the jury's further
9 instructions.

10 (Whereupon, there is a break in the proceedings until
11 1:57 p.m.)

12 THE COURT: The jury has reached a verdict and as soon as
13 they're down the hall we'll proceed. I will say, however,
14 before we take the verdict, I know that this has been a very
15 highly charged, emotional trial for both sides involved and I
16 do not expect that there will be outbursts or any audible
17 responses or reactions to the verdict, whatever it may be.

18 If it is, the deputies or the bailiffs will immediately
19 remove you from the courtroom, so I tell you that in advance,
20 again recognizing that it is an emotionally charged situation
21 and that emotion runs high on both sides of this case. So I
22 would ask that you all would comport yourselves appropriately
23 at the reading of the verdict and I appreciate your compliance
24 with the Court's request in advance.

25 (Whereupon, the jury enters the courtroom at 1:59 p.m.)

1 THE COURT: You may be seated. Madam Forelady, is it
2 correct the jury has reached a verdict?

3 MADAM FORELADY: Yes, ma'am.

4 THE COURT: You can give the verdict forms to the bailiff
5 for me, please.

6 MADAM FORELADY: Okay.

7 THE COURT: Thank you, ma'am. Sir, if you would, stand
8 for the publication of the verdict.

9 THE CLERK: The verdict forms in the matter of The State
10 of South Carolina versus Jerome Renaldo Campbell, defendant.
11 As to Indictment Number 2009-GS-10-6730, we the jury by
12 unanimous consent find the defendant guilty of assault with
13 intent to kill involving Frank Haigler, signed by the
14 foreperson of the jury on January 27, 2012. Ladies and
15 gentlemen of the jury, if this was your verdict, please raise
16 your right hand.

17 (Whereupon, all jurors raise their right hand.)

18 THE CLERK: Thank you. Please let the record reflect
19 that all twelve jurors raised their right hand. As to
20 Indictment Number 2009-GS-10-6731, we the jury by unanimous
21 consent find the defendant guilty of murder, signed -- signed
22 by the foreperson of the jury on January 27, 2012. Ladies and
23 gentlemen of the jury, if this was your verdict, please raise
24 your right hand.

25 (Whereupon, all jurors raise their right hand.)

1 THE CLERK: Thank you. Please let the record reflect
2 that all twelve jurors raised their right hand. As to
3 Indictment Number 2009-GS-10-6732, we the jury by unanimous
4 consent find the defendant guilty of assault with intent to
5 kill involving Anthony German, signed by the foreperson of the
6 jury on January 27, 2012. Ladies and gentlemen of the jury,
7 if this was your verdict, please raise your right hand.

8 (Whereupon, all jurors raise their right hand.)

9 THE CLERK: Thank you. Please let the record reflect
10 that all twelve jurors raised their right hand. As to
11 Indictment Number 2009-GS-10-6733, we the jury by unanimous
12 consent find the defendant guilty of assault with intent to
13 kill involving Michael Allen, signed by the foreperson of the
14 jury on January 27, 2012. Ladies and gentlemen of the jury,
15 if this was your verdict, please raise your right hand.

16 (Whereupon, all jurors raise their right hand.)

17 THE CLERK: Thank you. Please let the record reflect
18 that all twelve jurors raised their right hand.

19 THE COURT: Is there any request to poll the jury from
20 the State?

21 MR. VOIGT: None from the State, Your Honor.

22 THE COURT: From the defense?

23 MR. HARRIS: None, Your Honor.

24 THE COURT: You may take your seats. Madam Forelady,
25 ladies and gentlemen, we thank you for your time and your

1 attention to this matter. I hope that jury service has been
2 educational for you. I say it during jury qualification and
3 people often chuckle that real court is nothing like Judge
4 Judy, Judge Joe Brown or the Peoples Court and it is not and I
5 hope that you all from this experience learned how very
6 valuable you are to the system and that it could not operate
7 without individuals being willing to donate their time to us
8 because really that's what you do. Our system is the only
9 system where twelve individuals sit as fact finders and apply
10 a very complicated set of laws to those facts and render
11 verdicts.

12 You are welcome to discuss this case if you would like.
13 By the same token, if someone should persist in trying to
14 speak with you and it makes you feel uncomfortable, please
15 make us aware of it so that we can take the appropriate action
16 to protect your privacy.

17 If you need a work excuse before you leave today, you can
18 get those on the first floor of the Clerk of Court's office on
19 the Circuit Court side. Any of the deputy clerks at any of
20 those windows can give you a work excuse. Otherwise, they
21 will be mailed to you along with your checks.

22 We will hear post-trial motions and sentencing
23 immediately following this proceeding. If there is anyone
24 that wants to stay for sentencing, please make the bailiffs
25 aware of it and we'll bring you back into the courtroom and

1 seat you in the jury box for that purpose.

2 You are excused with the Court's profound thanks. If you
3 would, go with the bailiffs.

4 (Whereupon, the jury leaves the courtroom at 2:02 p.m.
5 The Court briefly leaves the bench to personally thank
6 the jurors in the hall. Several jurors return to the
7 courtroom and are seated in the jury box.)

8 THE COURT: You may be seated. Are there any post-trial
9 motions for the State?

10 MR. VOIGT: None from the State, Your Honor.

11 THE COURT: From the defense?

12 MR. HARRIS: Your Honor, I would reiterate and renew all
13 objections during the trial and all motions made during the
14 trial.

15 THE COURT: The Court would note those motions and deny
16 them based on its previous rulings. Are we ready? Do we have
17 sentencing sheets?

18 MR. VOIGT: I'm signing those as we speak, Your Honor.

19 THE COURT: Did you want to say something, Mr. Harris?

20 MR. HARRIS: No.

21 THE COURT: Okay.

22 (Whereupon, there is a brief pause in the proceedings.)

23 MR. VOIGT: Your Honor, I have a question.

24 THE COURT: Sure.

25 MR. VOIGT: And as to the AWIKs ---

1 THE COURT: Yes, sir.

2 MR. VOIGT: Are they considered violent under our law?

3 THE COURT: I don't have -- I don't think they are. I
4 think they're under the old common law and they are considered
5 misdemeanors, even though they carry ten years.

6 MR. VOIGT: And I apologize ---

7 THE COURT: But I think -- I don't think they're violent
8 or serious involving strikes.

9 MR. VOIGT: And I believe that to be true. Those boxes
10 are checked here.

11 THE COURT: And we'll double check it.

12 MR. VOIGT: And I'm going to uncheck it. I don't know
13 how it got checked.

14 THE COURT: We'll double check it and I'll initial them.

15 MR. VOIGT: Thank you, Your Honor. I appreciate it.

16 THE COURT: Yeah, it's not violent.

17 MR. VOIGT: Or serious, like ABHANS.

18 THE COURT: Yeah, yeah, they're common law misdemeanors.
19 You're welcome. Thank you. Is there anything further from
20 the State regarding sentencing?

21 MR. VOIGT: One moment, Your Honor. Your Honor, there
22 are some family members who wish to address the Court when it
23 is their turn to speak.

24 THE COURT: And if you have each of them, if they're
25 going to speak, to identify themselves for the record and if

1 they have -- and to spell their last names if -- if it's one
2 that has not been familiar during the trial and in other
3 words, if it's one the court reporter hasn't already heard.

4 MR. VOIGT: Okay, no problem.

5 THE COURT: And then also just speak loudly and clearly
6 for us so that the court reporter can take down everything
7 that is being said.

8 MR. VOIGT: Yes, ma'am.

9 THE COURT: And I've corrected those sentence sheets.
10 The only one that's violent and most serious is the murder.

11 MR. VOIGT: Thank you.

12 THE COURT: Yes, ma'am?

13 MS. MARCH: My name is Rosalyn Bobo March, last name
14 March, M-A-R-C-H. I am the victim's mother. It's been a long
15 three years. It's really ---

16 THE COURT: You're Mr. German's mother?

17 MS. MARCH: Yes, ma'am.

18 THE COURT: Yes, ma'am, I'm sorry. I didn't mean to
19 interrupt you, but I need the record to be clear. Yes, ma'am?

20 MS. MARCH: This teared my family apart. Today is my
21 birthday. This is the third year Michael hasn't been here
22 with me to celebrate my birthday, but I thank God that I am
23 here in this courtroom for justice to be done for my son.
24 Thank you.

25 THE COURT: You're welcome, ma'am. Yes, sir?

1 MR. GERMAN: My name is Anthony German. I'm the victim
2 of the brother. [sic.]
3 THE COURT: Yes, sir?
4 MR. GERMAN: It's just been like, you know, an experience
5 and, you know, throughout these years it's been a lesson to me
6 to, you know, always remember first in situations mind over
7 matter and, you know, it's just like my mom said, it's torn
8 our family apart and I'm happy to be here to see this justice.
9 THE COURT: Thank you, sir. Mr. Haigler?
10 MR. HAIGLER: Yes, ma'am.
11 THE COURT: Please state your name for the record.
12 MR. HAIGLER: My name is Frank Haigler.
13 THE COURT: Yes, sir?
14 MR. HAIGLER: I just want to say this -- this -- this is
15 just a -- a sad day today not only for the German family, but
16 also for the Campbell family. You get what I'm saying?
17 Because I went there as a peacemaker, you know what I mean?
18 THE COURT: Yes, sir.
19 MR. HAIGLER: If he'd a just took the time to hear what I
20 was saying, none of this would have happened and that's all I
21 got to say. I can't -- I can't say anymore.
22 THE COURT: Yes, sir. Anything further from the State?
23 Does anyone else wish from the family to speak?
24 MR. VOIGT: No, Your Honor, I believe that's it.
25 THE COURT: Let me ask what may seem like a very simple

1 question now that this has -- we're at the conclusion of these
2 proceedings and maybe this is a question -- Well, I guess it
3 would be - Has there ever been any indication of the other
4 people who were located in this vehicle? Have they ever been
5 identified?

6 MR. VOIGT: No, Your Honor. We had reached out to these
7 gentlemen at several points after the police closed the
8 investigation to attempt to find out who these other people
9 were. We have no indication of who they may have been.
10 There's word on the streets, but there's ---

11 THE COURT: Nothing concrete that's been able to be
12 independently corroborated?

13 MR. VOIT: That's correct.

14 THE COURT: Has your client made any indication of
15 whether he intends to offer any information to the State
16 regarding that? I know his posture may have been different
17 prior to verdict.

18 MR. HARRIS: Right.

19 THE COURT: But has he -- I mean you may not have had
20 ample time to discuss it with him at this point.

21 MR. HARRIS: I have not, Your Honor. I have not. I
22 haven't had time to talk to him about it.

23 THE COURT: If he knows. I mean I don't mean to imply
24 that he does. I just ---

25 MR. HARRIS: Right. I ---

1 THE COURT: I'm just curious to know if other folk had
2 been identified and if there was some ---

3 MR. HARRIS: We haven't had time to talk about that. We
4 discussed, obviously, during the last three years whether ---
5 You know, I've encouraged that if there was somebody else
6 that, you know, we would find out who it was because it would
7 obviously help our case, but I haven't discussed with him if
8 he -- You know, I haven't said, "Do you know somebody?" But I
9 -- I can talk to him about that. I'd need time to talk to him
10 about that.

11 THE COURT: Well, of course, the Court takes no posture
12 and has no one to reward or punish, but I would think that if
13 he knew, he'd want to disclose that.

14 MR. HARRIS: Yes, Your Honor.

15 THE COURT: I think it's certainly -- I don't want to
16 speak for the State and I don't know as how that would color
17 the situation, but certainly it would bring the entire
18 circumstance I think to closure. Again, the Court takes no
19 position regarding it, but I was curious to know whether there
20 was indication of two others shooters, that maybe those
21 individuals could be identified. Anything further from the
22 State?

23 MR. VOIGT: Nothing further from the State, Your Honor.

24 THE COURT: Anything further from the defense?

25 MR. HARRIS: Your Honor, this -- I'd like to speak on

1 behalf of him. I don't know if the family, his wife or
2 somebody, would like to speak. There's one that wants to.

3 THE COURT: Certainly. I'd be glad to hear from them and
4 again, the same procedure, if they would identify themselves
5 for the record and spell their last name if it is one that the
6 court reporter would not be familiar with.

7 MS. WASHINGTON: My name is Rose A. Washington.

8 THE COURT: Rose?

9 MS. WASHINGTON: Rose. R-O-S-E

10 THE COURT: Yes, ma'am. Washington?

11 MS. WASHINGTON: A. Washington.

12 THE COURT: Okay.

13 MS. WASHINGTON: W-A-S-H-I-N-G-T-O-N.

14 THE COURT: Yes, ma'am?

15 MS. WASHINGTON: I am an aunt of Jerome Campbell. He's
16 my sister's son and since I've known Jerome from birth to
17 where he sit now, he always been a kind, gentle person, never
18 speak an unkind word to no one. He always help me discipline
19 my children, discipline the rest of our nieces and nephews,
20 but without even raising his voice or anything like that.

21 I thank my family and friends, the German family and
22 friends, and what I'm asking for is for this Court and
23 everyone to please, you know, have leniency on my nephew
24 because both sides -- something has been taken away from both
25 families. You know, my nephew has been taken -- about to be

1 taken away from us and sentenced and so has my grand-niece has
2 been taken out of our family also. We're going to miss Jerome
3 at gatherings, we're going to miss my grand-niece together,
4 but I just want Jerome to know that I love him. I just want
5 you, Vasha, to know regardless of the situation, you'll always
6 be in my heart when I pray at night and I thank you right now,
7 in the name of Jesus I thank you. Thank you all.

8 THE COURT: Could I ask just one question before you
9 proceed? How old was the deceased? I want to make sure that
10 my notes are accurate. At the time of his death.

11 MS. MARCH: He was 20, Your Honor.

12 THE COURT: Twenty years old, correct?

13 MR. VOIGT: Twenty years old.

14 THE COURT: I wanted to make sure my notes were accurate.
15 Yes, sir. Yes, ma'am?

16 MS. RICHARDSON: Yes. This go to both families, which I
17 have never met. My name is Percile Richardson. I am the aunt
18 and one of the older aunts of Jerome Campbell. Jerome's
19 father was my nephew. He is an only child from my -- from his
20 father's side and we're just so sad that we're all here
21 together and I want this family to know that we have been
22 looking forward to meeting them and I'm sorry and our family
23 wants you to know that there's no anger or anything from us to
24 you. Okay?

25 I know perhaps you all have never met us or seen us

1 before, but I want this Court to please be lenient on Jerome.
2 He has been very good to the family and we don't know what
3 happened. Only God knows. Okay? So please, Jerome, we want
4 you to know that we love you regardless of what happened and
5 we will be here for you. Thank you very much.

6 THE COURT: You're welcome, ma'am.

7 MS. RICHARDSON: Did I spell my name for you? Percile
8 Richardson.

9 THE COURT: Percile, P-E-R-C-E-I-L.

10 MS. RICHARDSON: P-E-R-C-I-L-E, last name Richardson.

11 THE COURT: Oh, P-E-R-C-I-L-E.

12 MS. RICHARDSON: Yes.

13 THE COURT: I had it spelled wrong.

14 MS. RICHARDSON: And thank you very much.

15 THE COURT: Thank you very much, ma'am.

16 MS. CAMPBELL: I'm Sharonda Campbell. I'm the wife of
17 Jerome.

18 THE COURT: Could you spell your first name for us?

19 MS. CAMPBELL: S-H-A-R-O-N-D-A.

20 THE COURT: Thank you, ma'am.

21 MS. CAMPBELL: First, I want to say I'm -- for the family
22 I'm sorry and everything, but we are going through it today
23 and when this incident happened, my husband and I had only
24 been married for six months and I hope you guys can sleep at
25 night, but you guys know what happened that night and who done

1 all that. I hope you guys can sleep at night because now I
2 got to live with this and my husband, too. I just hope you
3 guys can sleep at night. That's all.

4 THE COURT: Thank you, ma'am. Anything further, Mr.
5 Harris?

6 MR. HARRIS: Your Honor, I don't know if my client wants
7 to say anything or not.

8 (Whereupon, Mr. Harris confers with his client briefly.)

9 MR. HARRIS: Your Honor, I'd like to speak on my client's
10 behalf about the sentencing.

11 THE COURT: Yes, sir.

12 MR. HARRIS: Your Honor, Mr. Voigt in his closing
13 argument put it best. This is a tragedy. It's tragic for
14 everybody. It's a sad day, it's been a sad three years. This
15 is not something that anybody would ever wish on their worst
16 enemies.

17 Jerome is 37 years old. He was a -- worked at a bank as
18 a loan officer, college graduate, he was a basketball player
19 in college. He has a big family support. This is a -- I -- I
20 hope I never live to see the day that I have issues with my
21 family that ever come to something like this. I mean this is
22 two families that have lost two people for a long, long time,
23 one for their life and one for a long time.

24 And I'd ask you -- I know that murder carries thirty to
25 life. I'd ask you to consider based on the fact that he has

1 no record and based on the fact that this was, you know, like
2 you said yesterday, you've never heard facts like this. I've
3 never heard facts like this. I've never seen a case like this
4 before where it just seems like things spiraled out of control
5 into a scenario that wound up with someone dead and that's
6 never, ever what anybody wants. I think that this was -- In
7 fact, if somebody tried to tell me the story again, I still
8 wouldn't believe them.

9 But I'd ask you to consider that the thirty is an
10 appropriate punishment on this. I never thought I would say
11 thirty is an appropriate punishment on anything, but I'd ask
12 you to consider the thirty years. I mean that's day for day.
13 He's going to have to do every day of it and, you know, if he
14 ever gets out, he's going to be an old man and he knows that
15 and his family knows that.

16 I think that, you know, this is something against
17 somebody that has no record whatsoever until, this other than
18 not having a license and running a business and that was
19 because he was selling something for somebody in the street,
20 on the street. They just didn't have a license.

21 THE COURT: Oh, I didn't even ask that. Does he have any
22 record? Is that the only record he has?

23 MR. HARRIS: That's the only record he's got.

24 THE COURT: Which is selling goods without a license?

25 MR. HARRIS: Yes.

1 THE COURT: Or something like that?

2 MR. HARRIS: Yes. He was fined.

3 THE COURT: Okay, so something akin to not having a
4 business license?

5 MR. HARRIS: Right. The person he was working for didn't
6 have a license. He hadn't renewed it and he was given a
7 ticket.

8 THE COURT: Okay.

9 MR. HARRIS: Your Honor, I hate this. It's the worst
10 kind of case I have as a lawyer. I don't like, you know,
11 somebody that I've believed, you know, was -- was innocent of
12 something and then is found guilty and I hate standing here
13 and asking for thirty years. It's just -- It's a -- This is a
14 low point for everybody in this room, Judge, and I -- I'd ask
15 you to have mercy on him. This is a person like Mr. Voigt
16 said had it all and in a spiral of just awful coincidences,
17 awful decisions and just personal anger, somebody ended up
18 dead. I'd ask you to consider the thirty as a sentence as
19 opposed to the life part.

20 THE COURT: Sir, is there anything you'd like to state
21 for the record on your own behalf?

22 MR. CAMPBELL: No, ma'am.

23 THE COURT: Anything further from the State?

24 MR. VOIGT: Nothing further from the State, Your Honor.

25 THE COURT: Does the State have any position on

1 sentencing?

2 MR. VOIGT: None, Your Honor.

3 (Whereupon, there is a brief pause in the proceedings.)

4 SENTENCE

5 THE COURT: Sir, if you would, stand for sentencing. I
6 think that we've all heard the facts and circumstances of this
7 case and there's no need for the Court belaboring it by making
8 any protracted comments, but I think that both Mr. Voigt and
9 Mr. Harris had summed it up by saying that this is just an
10 utter tragedy, young lives just gone and without any ability
11 really to recoup them because irregardless of what the Court
12 does today, the fact of any sentence --

13 South Carolina -- And it's been interesting to me of late
14 the way our system is perceived because most people are not
15 educated about it and they don't realize that South Carolina
16 is unlike most states in terms of our sentencing structure.
17 So whatever sentence Mr. Campbell receives today will have the
18 net effect of a life sentence irregardless because he will
19 serve it at 85% and at his age, he will be inordinately -- He
20 would have reached a fairly -- because his life expectancy, as
21 much as we don't like like to think about it, is only another
22 41 years. So as a practical matter, the net effect of
23 whatever the Court does today really at some point becomes a
24 nullity because it all has the same net effect when you look
25 at the way our system is structured.

1 However, having made that observation, sir, I find it
2 appropriate under the circumstances that on each of the
3 offenses, that being assault with intent to kill, which is
4 Indictment 2009-GS-10-6732, 2009-GS-10-6730 and 2009-GS-10-
5 6733, that you be sentenced to the State Department of
6 Corrections for a period of ten years.

7 On the offense of murder, which is Indictment 2009-GS-10-
8 6731, you are sentenced to the State Department of Corrections
9 for a period of thirty years.

10 These sentences will run concurrent with one another.
11 You'll get credit for any time that you have served. That
12 will be calculated and applied by the Department of
13 Corrections.

14 I have not heard anything regarding any addictions or
15 other things such that it would be necessary for the Court to
16 order the treatment unit. However, I would encourage you,
17 sir, and again, the Court takes no posture about this or
18 regarding this, that if you know the identity of these other
19 individuals, that you would be forthcoming and provide that
20 information to the State, at least for the benefit of the
21 closure of this family.

22 Thank you very much. Thank you, gentlemen, for a well-
23 tried case. Have a good weekend and if y'all would make sure
24 the court reporter has all of the evidence so that it can be
25 secured in the evidence locker in the event of an appeal.

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(The trial ended at 2:25 p.m.)

--- END REQUESTED TRANSCRIPT ---

1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4
5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 General Sessions for Charleston County, South Carolina, on the
12 23rd through 27th days of January, 2012.
13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.
15
16 s/Krystal J. Smith
17 Court Reporter
18
19 Florence, South Carolina
20 April 13, 2012
21
22
23
24
25

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Jerome Renaldo Coaxum

AKA:

Race: BLACK Sex: M Age: 36DOB: 07-23-1975 SS#: 247-45-0034Address: 1212 BLUE MIST CIRCLECity, State, Zip: CHARLOTTE, NC 282620000DL#: 38201554 SID#: SC01410755*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: ASSAULT WITH INTENT TO KILL

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS1006730A/W#: K342027Date of Offense: 1/16/2009S.C. Code § : 16-03-0620, 17-25-0030CDR Code #: 0768

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0620, 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0768

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Voigt, Gregory75184
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$, plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 09-GS-10-6731, 6732, 6733☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Court Reporter:

SCCA/217 (03/2011)

Presiding Judge Judge Code: 2128Sentence Date: 1/27/12

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 1, 2009 the Grand Jurors of Charleston County present upon their oath:

Assault With Intent to Kill

That in Charleston County, South Carolina, on or about January 19, 2009, the Defendant, JEROME RENALDO COAXUM aka JEROME RENALDO CAMPBELL, with malice aforethought accompanied by a present ability to complete the act, did attempt to commit an unlawful act of violent injury to Frank Haigler, to wit: the Defendant did shoot at the victim several times; in violation of the Common Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


GREGORY VOIGT
ASSISTANT SOLICITOR

GKV 20090100316

WITNESSES

Richard Burckhardt
Charleston City Police Department

AGENCY CASE NUMBER

0900512

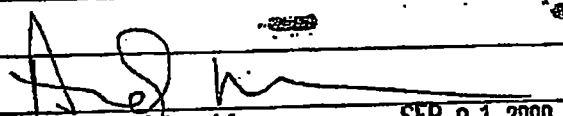
ARREST WARRANT NUMBER

K342027

DATE OF ARREST

January 16, 2009

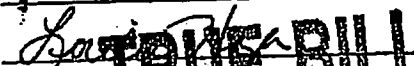
ACTION OF GRAND JURY


Foreperson of Grand Jury
Date:

SEP 01 2009

VERDICT

☒ GUILTY


Foreperson of Petit Jury
Date: 1/21/12

INDICT

DOCKET NO. 2009GS1006730

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

September Term 2009

09 0285 (01)

THE STATE

vs.

JEROME RENALDO COAXUM
aka
JEROME RENALDO CAMPBELL
DOB: 1975-07-23
B/M

Indictment for
Assault With Intent to Kill

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.
Jerome Renaldo Campbell

AKA:

Race: BLACK Sex: M Age: 36DOB: 07-23-1975 SS#: 247-45-0034Address: 1212 BLUE MIST CIRCLECity, State, Zip: CHARLOTTE, NC 282620000DL#: 38201554 SID#: SC01410755*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: MURDER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS1006731A/W#: K352813Date of Offense: 1/10/2009S.C. Code § : 16-03-0010, 0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Voigt, Gregory75784
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 19-GS-10-6730, 6732, 6733
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
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Proviso 47.9 (Public Def/Prob)	\$500	\$
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§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: KRYSTAL SMITH

SCCA/217 (03/2011)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge D.L. JeffersJudge Code: 2128Sentence Date: 1/27/12

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

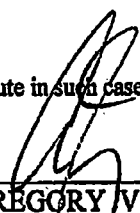
INDICTMENT

At a Court of General Sessions, convened on September 1, 2009 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about January 9, 2009, with malice aforethought, JEROME RENALDO CAMPBELL did kill and murder Michael German by means of shooting the victim, and that Michael German did die in Charleston County as a proximate result thereof on January 9, 2009; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



GREGORY VOIGT
ASSISTANT SOLICITOR

SKV20090100316

WITNESSES

TIMOTHY DASHER

Charleston City Police Department

AGENCY CASE NUMBER

0900512

ARREST WARRANT NUMBER

K352813

DATE OF ARREST

January 10, 2009

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

SEP 01 2009

VERDICT

GUILTY

TRUE BILL

1/27/12

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1006731

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2009

THE STATE

vs.

JEROME RENALDO CAMPBELL

DOB: 1975-07-23

B/M

Indictment for

Murder

STATE OF SOUTH CAROLINA

COUNTY OF
STATECharleston
VS.

Jerome Renaldo Campbell

AKA:

Race: BLACK Sex: M Age: 36

DOB: 07-23-1975 SS#: 247-45-0034

Address: 1212 BLUE MIST CIRCLE

City, State, Zip: CHARLOTTE, NC 282620000

DL#: 38201554 SID#: SC01410755

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ASSAULT WITH INTENT TO KILL

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS1006732

A/W#: K352814

Date of Offense: 1/10/2009

S.C. Code §: 16-03-0620, 17-25-0030

CDR Code #: 0768

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0620, 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0768

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Volgt, Gregory

75184
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 19-GS-10-6730, 6731, 6733
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$12

\$

\$25

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ca

\$

\$5

\$

\$3.90

\$

\$133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

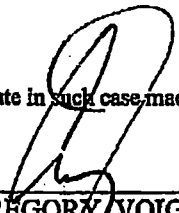
INDICTMENT

At a Court of General Sessions, convened on September 1, 2009 the Grand Jurors of Charleston County present upon their oath:

Assault With Intent to Kill

That in Charleston County, South Carolina, on or about January 9, 2009, the Defendant, JEROME RENALDO CAMPBELL, with malice aforethought accompanied by a present ability to complete the act, did attempt to commit an unlawful act of violent injury to Anthony German, to wit: the Defendant did shoot at the victim; in violation of the Common Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



GREGORY VOIGT
ASSISTANT SOLICITOR

GKV20090100316

WITNESSES

TIMOTHY DASHER

Charleston City Police Department

AGENCY CASE NUMBER

0900512

ARREST WARRANT NUMBER

K352814

DATE OF ARREST

January 10, 2009

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

SEP 01 2009

VERDICT

GUILTY

LORILEE HAYES

1/27/12

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1006732

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2009

09 0772 (02)
THE STATE

vs.

JEROME RENALDO CAMPBELL

DOB: 1975-07-23

B/M

Indictment for

Assault With Intent to Kill

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Jerome Renaldo Campbell

AKA:

Race: BLACK Sex: M Age: 36DOB: 07-23-1975 SS#: 247-45-0034Address: 1212 BLUE MIST CIRCLECity, State, Zip: CHARLOTTE, NC 282620000DL#: 38201554 SID#: SC01410755*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: ASSAULT WITH INTENT TO KILL

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS1006733A/W#: K352815Date of Offense: 1/10/2009S.C. Code § : 16-03-0620, 17-25-0030CDR Code #: 0768

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0620, 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0768

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Voigt, Gregory75150
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 19-GS-10-6730, 6731, 6732
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Obtain GED ☐
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2128Sentence Date: 1/27/12

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

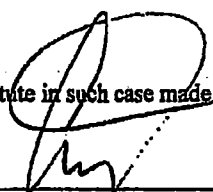
INDICTMENT

At a Court of General Sessions, convened on September 1, 2009 the Grand Jurors of Charleston County present upon their oath:

Assault With Intent to Kill

That in Charleston County, South Carolina, on or about January 9, 2009, the Defendant, JEROME RENALDO CAMPBELL, with malice aforethought accompanied by a present ability to complete the act, did attempt to commit an unlawful act of violent injury to Michael Allen, to wit: the Defendant did shoot at the victim; in violation of the Common Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



GREGORY VOIGT
ASSISTANT SOLICITOR

GKV20090100316

WITNESSES

TIMOTHY DASHER

Charleston City Police Department

AGENCY CASE NUMBER

0900512

ARREST WARRANT NUMBER

K352815

DATE OF ARREST

January 10, 2009

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

SEP 01 2009

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1006733

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2009

09 0172(03)
THE STATE

vs.

JEROME RENALDO CAMPBELL

DOB: 1975-07-23

B/M

Indictment for

Assault With Intent to Kill

ARREST WARRANT

K- 342027

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHARLESTON

THE STATE
against

JEROME RENALDO COAXUM

Address: 1212 BLUE HILL CIRCLE
CHARLOTTE, NC 28262

Phone: 704/532-2707 SSN: 247-45-0034

Sex: M Race: B Height: 6'4 Weight: 200

DL State: DLP

DOB: 7/23/1975 Agency ORI#: CPD

Prosecuting Agency: BURKHARDT

Prosecuting Officer: ASSAULT WITH INTENT TO KILL

Offense: ASSAULT WITH INTENT TO KILL

Offense Code: COMMON LAW

Code/Ordinance Sec: COMMON LAW

This Warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Jerome Coaxum
on 1-26-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
CHARLESTON

AFFIDAVIT

INV. BURKHARDT

Personally appeared before me the affiant INV. BURKHARDT who
being duly sworn deposes and says that defendant JEROME RENALDO COAXUM
did within this county and state on JANUARY 9, 2009 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of CHARLESTON)

DESCRIPTION OF OFFENSE: ASSAULT WITH INTENT TO KILL
COMMON LAW

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

CHARLESTON

Affiant's Address 180 LOCKWOOD BLVD.

CHARLESTON, SC 29403

Affiant's Telephone (843) 577-7434

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on JANUARY 9, 2009 defendant JEROME RENALDO COAXUM

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of CHARLESTON) as set forth below:

DESCRIPTION OF OFFENSE:

ASSAULT WITH INTENT TO KILL
COMMON LAW

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
on JANUARY 15, 2009

Signature of Issuing Judge
Judge Code: 5627/SMH

Judge's Address 1720 SAM RITTENBERG BLVD, UNIT 11

CHARLESTON, SC 29407

Judge's Telephone (843) 766-6531

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

AFFIDAVIT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Personally appeared before me, a magistrate of this county one
, who first being duly sworn deposes and says that (Jerome Renaldo Coaxum) Did within
this county and state on the (January 9th, 2009) violate the criminal laws of the State of
South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

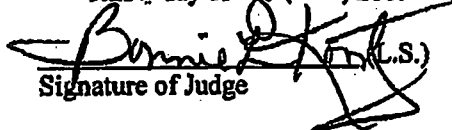
Assault with intent to kill
Common Law

The affiant states there is probable cause to believe that the defendant named did commit
the crime set forth and that such probable cause is based on the following facts:

That on 1/9/09, at approx. 2240 hrs, while at 1840 Carriage Ln. near apt. 103-D which is
located within the county and city of Charleston, SC, the above named defendant along
with several other unidentified co defendants did knowingly, willingly, and unlawfully
violate SC. Code of laws AWIK in the following manner. The defendant along with
several other unidentified co-defendants acted in concert by engaging the victim in a
verbal and physical altercation that escalated when the victim, Frank Haigler, attempted
to flee the area on foot and as Haigler turned to run, he was shot at several times by the
defendant and unidentified co-defendants; Frank Haigler was not struck by the gunfire.
The above is true and believable based on the incident occurring as documented by CPD.
The furthered investigation of the incident by CPD investigators, and the positive
identification of the defendant by Frank Haigler who knows the defendant by name and
sight, and who further placed the defendant at the scene at the time of the shooting.

Sworn to and subscribed before me

This 15 day of Jan, 2009


Signature of Judge (L.S.)

Complaint # 0900512



Affiant

Charleston Police Department
180 Lockwood Dr.
Charleston, SC 29403
(843) 577-7434

ARREST WARRANT

K- 352813

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

CHARLESTON

THE STATE
againstJEROME RENALDO CAMPBELL *AKA*

Address: 1212 BLUE MIST CIRCLE

CHARLOTTE, NC 28262

Phone: 704-532-2707 SSN: 247-45-0034

Sex: Male Race: Height: 6'0" Weight: 200

DL State: NC License #: 38201554

DOB: 07-23-1975 Agency ORI#: _____

Prosecuting Agency: CPD

Prosecuting Officer: DASHER

Offense: MURDER

Offense Code: _____

Code/Ordinance Sec: 16-3-10

This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law._____
Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant _____
on __________
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)

☒ County/ ☐ Municipality of)

CHARLESTON)

Personally appeared before me the affiant OFC R OWEN who
being duly sworn deposes and says that defendant JEROME RENALDO CAMPBELL *AKA COX*
did within this county and state on 01-09-2009 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☐ Municipality of CHARLESTON)
In the following particulars:

DESCRIPTION OF OFFENSE:

MURDER

16-3-10

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA)

☒ County/ ☐ Municipality of)

CHARLESTON)

Affiant's Address: 180 LOCKWOOD DRIVE

CHARLESTON, SC 29403

Affiant's Telephone: 843-577-7434

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 01-09-2009 defendant JEROME RENALDO CAMPBELL *AKA COX*
did violate the criminal laws of the State of South Carolina (or ordinance of☐ County/ ☐ Municipality of CHARLESTON) as set forth below:
DESCRIPTION OF OFFENSE:

MURDER

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.Sworn to and subscribed before me
on January 10, 2009_____
Signature of Issuing Judge (L.S.)

Judge Code: 5749(PBB/rbs)

ORIGINAL

Judge's Address: 3841 LEBDS AVENUE

N. CHARLESTON, SC 29405

Judge's Telephone: 843-529-7482

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

by _____
 10 2009
 Type and Amount: _____
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defense Attorney: _____
 Decision: _____

DISPOSITION before
 Judge _____
 on _____
 by _____
 (Indicate jury trial, bench trial, plea, nol. pros., etc.)
 Disposition: _____
 Sentence: _____

JURORS

CHECKLIST

JM. CRT. CASE # 203-1
 W CASE # 172
 REPORT GROUP 0116
 BE CODE

WITNESSES

Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____

NOTICE TO REPORT

Name: _____
 Address: _____
 Telephone: _____

YOU MUST REPORT FOR ARRAIGNMENT OR
 PLEA ON THE CHARGE HEREIN TO THE
 COURT OF GENERAL SESSIONS LOCATED IN
 THE CHARLESTON COUNTY JUDICIAL CENTER
 100 BROAD STREET, CHARLESTON, SC 29401
 ON FEB 06 2009 IF YOU DO NOT
 REPORT, AN ARREST WARRANT WILL BE ISSUED
 FOR YOUR ARREST

AFFIDAVIT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Personally appeared before me, a magistrate of this county one **ROGER OWEN**, who first being duly sworn deposes and says that (Jerome Renaldo Coaxum) Did within this county and state on the (January 9th, 2009) violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

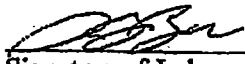
Murder 16-3-10

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

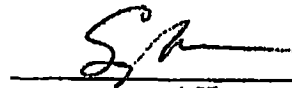
That on 1/9/09, at approx. 2250 hrs, while at 1141 Old Towne Rd. which is located within the county and city of Charleston, SC, the above named defendant along with several other unidentified co defendants did knowingly, willingly, and unlawfully violate SC. Code of laws 16-3-10/Murder in the following manner. The defendant along with several other unidentified co-defendants acted in concert by traveling to the above location in a white in color, Chevrolet, Impalla W/ North Carolina tags and while at that the location, the defendant and codefendants did shoot at the victim, Michael German and did strike the victim in the head region causing the victim to expire at the scene from his wounds.

The above is true and believable based on the incident occurring as documented by CPD. The furthered investigation of the incident by CPD investigators, and the positive identification of the defendant by additional victims at the scene who know the defendant by name and sight and who further placed the defendant at the scene in the above described vehicle at the time of the shooting.

Sworn to and subscribed before me
This day of **JAN. 20 2009**

 (L.S.)
Signature of Judge

Complaint # 0900512


Affiant
Charleston Police Department
180 Lockwood Dr.
Charleston, SC 29403
(843) 577-7434

ARREST WARRANT

K- 352814

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

CHARLESTON

THE STATE

against

JEROME RENALDO CAMPBELL AKA

Address: 1212 BLUE MIST CIRCLE CO1424

CHARLOTTE, NC 28262

Phone: 704-532-2707 SSN: 247-45-0034

Sex: M Race: H Height: 60 Weight: 200

DL State: NC L#: 38201554

DOB: 07-23-1973 Agency ORI#:

Prosecuting Agency: CPD

Prosecuting Officer: DASHER

Offense: AWIK

Offense Code:

Code/Ordinance Sec: COMMON LAW

This Warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)

☒ County/ ☐ Municipality of)

CHARLESTON)

Personally appeared before me the affiant OFC R OWEN who being duly sworn deposes and says that defendant JEROME RENALDO CAMPBELL AKA CO1424 did within this county and state on 01-09-2009 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of CHARLESTON) In the following particulars:

DESCRIPTION OF OFFENSE:

AFFIDAVIT

AWIK
COMMON LAW

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of)

CHARLESTON)

Affiant's Address 180 LOCKWOOD DRIVE
CHARLESTON, SC 29403

Affiant's Telephone 843-577-7434

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 01-09-2009 defendant JEROME RENALDO CAMPBELL AKA CO1424 did violate the criminal laws of the State of South Carolina (or ordinance of CHARLESTON) as set forth below:

☐ County/ ☒ Municipality of CHARLESTON)
DESCRIPTION OF OFFENSE:

AWIK

COMMON LAW

Having found probable cause and the above stated having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
on January 10, 2009)

Signature of Issuing Judge

Judge Code: 5749(PBB/rbs)

ORIGINAL

Judge's Address 3841 LEEDS AVENUE

N. CHARLESTON, SC 29403

Judge's Telephone 843-529-7482

Issuing Court: ☐ Magistrate ☒ Municipal ☐ CircuitForm Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge: _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge: _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

NOTICE TO REPORT

YOU MUST REPORT FOR ARRAIGNMENT OR
 PLEA ON THE CHARGE HEREIN TO THE
 COURT OF GENERAL SESSIONS LOCATED IN
 THE CHARLESTON COUNTY JUDICIAL CENTER,
 100 BROAD STREET, CHARLESTON, SC 29401
 ON **FEB 06 2000** IF YOU DO NOT
 REPORT, AN ARREST WARRANT WILL BE ISSUED
 FOR YOUR ARREST

JM CRT CASE #

W CASE #

SPORT GROUP

SF CODE

CHECKLIST

JURY

JURY

JURY

JURY

JURY

JURY

JURY

JURY

JURY

JURY

JURY

JURY

JURY

AFFIDAVIT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ROGER OWEN

Personally appeared before me, a magistrate of this county one *Not Campbell*, who first being duly sworn deposes and says that (Jerome Renaldo Coaxum) Did within this county and state on the (January 9th, 2009) violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

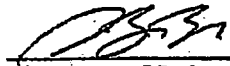
**Assault with intent to Kill
Common Law**

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

That on 1/9/09, at approx. 2250 hrs, while at 1141 Old Towne Rd. which is located within the county and city of Charleston, SC, the above named defendant along with several other unidentified co defendants did knowingly, willingly, and unlawfully violate SC. Code of laws AWIK in the following manner. The defendant along with several other unidentified co-defendants acted in concert by traveling to the above location in a white in color, Chevrolet, Impalla W/ North Carolina tags and while at that the location, the defendant and codefendants did shoot at the victim, Anthony German. The victim, German was not struck by the gunfire.

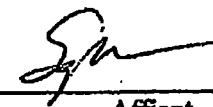
The above is true and believable based on the incident occurring as documented by CPD. The furthered investigation of the incident by CPD investigators, and the positive identification of the defendant by additional victims at the scene who know the defendant by name and sight and who further placed the defendant at the scene in the above described vehicle at the time of the shooting.

Sworn to and subscribed before me
This day of **JAN 10 2009**



Signature of Judge (L.S.)

Complaint # 0900512



Affiant
Charleston Police Department
180 Lockwood Dr.
Charleston, SC 29403
(843) 577-7434

ARREST WARRANT

K- 352815

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

CHARLESTON

THE STATE

against

JEROME RENALDO CAMPBELL *AKA*Address: *COPIED* ✓ 1212 BLUE MIST CIRCLE

CHARLOTTE, NC 28262

Phone: 704-532-2707 SSN: 247-45-0034

Sex: Male: Height: 604 Weight: 200

DL State: NCL# 38201554

DOB: 07-23-1975 Agency ORI#

Prosecuting Agency: CPD

Prosecuting Officer: DASHER

Offense: AWIK

Offense Code:

Code/Ordinance Sec: COMMON LAW

This Warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

CHARLESTON

Personally appeared before me the affiant OFC R OWEN who being duly sworn deposes and says that defendant JEROME RENALDO CAMPBELL *AKA* COPIED did within this county and state on 01-09-2009 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☐ Municipality of CHARLESTON)

In the following particulars:

DESCRIPTION OF OFFENSE:

AFFIDAVIT

AWIK

COMMON LAW

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

CHARLESTON

Affiant's Address: 180 LOCKWOOD DRIVE

CHARLESTON, SC 29403

Affiant's Telephone: 843-577-7434

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 01-09-2009 defendant JEROME RENALDO CAMPBELL *AKA* COPIED did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of CHARLESTON) as set forth below:

DESCRIPTION OF OFFENSE:

AWIK

COMMON LAW

Having found probable cause and the above being sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on January 10, 2009

Signature of Issuing Judge

Judge Code:

5749(PBB/rbs)

ORIGINAL

Judge's Address: 3841 LEEDS AVENUE

N. CHARLESTON, SC 29405

Judge's Telephone:

Issuing Court:

843-529-7482

X

Municipal

Circuit

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

set by

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

NOTICE TO REPORT

YOU MUST REPORT FOR ARRAIGNMENT OR
PLEA ON THE CHARGE HEREIN TO THE
COURT OF GENERAL SESSIONS LOCATED IN
THE CHARLESTON COUNTY JUDICIAL CENTER,
1000 BROAD STREET, CHARLESTON, SC 29401
ON **FEB 06 2009** IF YOU DO NOT
REPORT, AN ARREST WARRANT WILL BE ISSUED
FOR YOUR ARREST

2009

count: _____

/ Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

JM CRT. CASE # **2009-01-10**

W CASE # **0708**

PORT GROUP **1790**

SI CODE **1790**

AFFIDAVIT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ROGER OWEN

Personally appeared before me, a magistrate of this county one *Ala Campbell*, who first being duly sworn deposes and says that (Jerome Renaldo Coaxum) Did within this county and state on the (January 9th, 2009) violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

Assault with intent to Kill

Common Law

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

That on 1/9/09, at approx. 2250 hrs, while at 1141 Old Towne Rd. which is located within the county and city of Charleston, SC, the above named defendant along with several other unidentified co defendants did knowingly, willingly, and unlawfully violate SC. Code of laws AWIK in the following manner. The defendant along with several other unidentified co-defendants acted in concert by traveling to the above location in a white in color, Chevrolet, Impalla W/ North Carolina tags and while at that the location, the defendant and codefendants did shoot at the victim, Michael Allen The victim, Allen was not struck by the gunfire.

The above is true and believable based on the incident occurring as documented by CPD. The furthered investigation of the incident by CPD investigators, and the positive identification of the defendant by additional victims at the scene who know the defendant by name and sight and who further placed the defendant at the scene in the above described vehicle at the time of the shooting.

Sworn to and subscribed before me

This day of

[Signature] JAN 10 2009
(L.S.)

Signature of Judge

Complaint # 0900512

[Signature]

Affiant

Charleston Police Department
180 Lockwood Dr.
Charleston, SC 29403
(843) 577-7434

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2012-208426

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

JEROME RENALDO CAMPBELL,
a/k/a Jerome Coaxum,

Appellant.

**INITIAL BRIEF OF RESPONDENT AND
DESIGNATION OF MATTER**

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Attorney General

JOHN W. McINTOSH
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ATTORNEYS FOR RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Did the lower court abuse its discretion by allowing the State to challenge and to remove an impartial juror without cause during the second day of trial?
- II. Did the lower court impair Appellant's right to a fair jury selection process by giving the State a *de facto* sixth peremptory challenge during the second day of trial?

RESPONDENT'S STATEMENT OF THE CASE

The Appellant, Jerome Renaldo Campbell, *aka* Jerome Renaldo Coaxum, was indicted at the September 2009 term of the Court of General Sessions for Charleston County for assault with intent to kill (Frank Haigler) (2009-GS-10-6730); murder (Michael German) (2009-GS-10-6731); assault with intent to kill (Anthony German) (2009-GS-10-6732); and assault with intent to kill (Michael Allen) (2009-GS-10-6733). The charges arose from an incident on January 9, 2009.

The Appellant was represented by William Stephen Harris and Jason Todd Mikell. The prosecution was handled by Assistant Solicitor Gregory Voigt and Elizabeth B. Riddle of the Ninth Circuit Solicitor's Office. On January 23, 2012, the matter was called to trial before a jury and the Honorable Deadra Jefferson, Presiding Judge. On January 27, 2012, the Appellant was found guilty of all four indictments. Tr. 782-783. He was sentenced by the Judge Jefferson to concurrent terms of imprisonment of thirty (30) years on murder, and ten (10) years on each of the assault with intent to kill verdicts. Tr. p. 797, l. 5 - p. 798, l. 21.

ARGUMENT

- I. The trial judge did not abuse its discretion in removing juror Givens prior to any deliberations with an alternate out of an abundance of caution where the removed juror was seen conversing with a member of the Appellant's family, where the removed juror had been instructed prior to the lunch break to not converse with anyone, where the removed juror initially denied the existence of any contact, where a video shows the removed juror grabbing and pulling the family member to her side and where there was an uncontradicted claim that a family member of the Appellant was overheard stating that the juror was "on their side" after the viewed conversation. Discretion, based upon the judge's particular concern that there would be a perception that any verdict was not fair or impartial, allowed the Court to act to remove the juror, even though the court did not conclude the juror's non-disclosure was intentional.

It has been stated that a criminal defendant does not have a right to be tried by a particular juror, but only to have fair and impartial jurors decide his fate. See State v. Rayfield, 369 S.C. 106, 113, 631 S.E.2d 244, 248 (2006). A trial judge should have the reasonable discretion to replace a juror with an alternate juror "out of an abundance of caution" to preserve the appearance of the fairness of a trial after evidence is presented concerning comments made after the juror is viewed conversing with a member of the criminal defendant's family¹ after being instructed "do not have any contact with anyone in or about the courthouse"² by member of the crime victim's family who overhears the defendant's family member state out loud after speaking with the juror "I have them on my side."³ Discretion should allow under these discrete circumstances the cautionary removal of the same juror when that the juror initially failed to

¹ Tr.p. 41-42, Court Exhibit 2 (surveillance video of courthouse snack bar), Court Exhibit 3 (statement of Trenell German); Court Exhibit 4 (statement of Tiffany Peacock).

²Tr.p. 40, l. 17-19.

³ Court Exhibit 4.

respond to a general inquiry concerning the contact between jurors and others during the lunch recess about this hidden contact ⁴, even after the judge particularized to the jury that that the improper contact occurred in the snack bar with members of the defendants's family.⁵ Although the trial judge found that the juror's partiality had not been shown nor that her misleading non-disclosure was deliberate, the trial court concluded that she was constrained to remove the juror to avoid the perception and avoid any question regarding the partiality of the verdict. Tr.p. 180-182. The trial court's decision to do replace the juror with an alternate, under these circumstances should not mandate a new trial. See State v. Simmons, 599 S.E.2d 448 (2004)(trial court did not abuse its discretion by dismissing a juror after a murder trial had begun, where juror admitted that he had unauthorized contact with his wife about the personal effect of a guilty verdict would have on them, and the trial judge had admonished the jury not to discuss the case with anyone).

Further any error was harmless where the alternate was present throughout the proceeding and the Appellant had not shown he was prejudiced by the substitution prior to any deliberations. State v. Williams, 469 S.E.2d 49 (1996) (defendant was not prejudiced from seating an alternate juror after juror was dismissed). See Ballentine v. State, 390 S.E.2d 887 (Ga. App. 1990) (replacement of regular juror with alternate during deliberations , due to innocent error as to who was regular juror and who was alternate, was harmless error , where correct number of jurors deliberated, extra juror had no influence upon jurors decision, and alternate juror was drawn from same source, in same manner, had same qualifications as other jurors , and listened to same evidence and charge of court); Barker v. State, 487 S.E.2d 494 (Ga. App. 1997) (no harmful

⁴ Tr.p. 47, l. 15- p. 48, l. 21.

⁵ Tr.p. 49, l. 4-17, p. 49, l. 18-, p. 50, l. 15.

error in court replacing juror with alternate where court found that juror's conduct amounted to immaterial irregularity," if any , and court would thus have been entitled to retain juror, while it was claimed that investigator stated to juror "we got one ," and that juror repeated the statement and shook hands with investigator, trial court conducted inquiry , and determined that only greetings were exchanged, but excused juror out of an abundance of caution and seated alternate); Lee v. State, 11 S.W. 3d 553 (Ark. 2000)(a defendant must show prejudice when the trial court removes a juror and seats an alternate in the juror's place); Thornberg v. State, 985 P. 2d 1234 (Okla. Crim App. 1999)(removal of juror on less than clear and convincing evidence of misconduct did not prejudice murder defendant and did not require reversal, where removed juror was replaced by alternate who had been passed upon by both the state and the defense); State v. Pettigrew, 860 P. 2d 777 (N.M. App. 1993)(defendant's were not prejudiced by court's excusal of juror following unauthorized contact with public defender intern and replaced with alternate chosen in same manner as excused jurors and defendant had no right to a particular juror on the panel).

The Appellant contends that he is entitled to a new trial due to the qualified juror being replaced by a qualified alternate. He contends because there was no showing that removed juror Robin Givens (juror #70) intentionally concealed information about the encounter with the defendant's family at the snack bar, no inference of partiality was shown and it was error to remove her, citing State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001) and S.C. Code Ann., § 14-7-1020 (1976). He contends that when Judge Jefferson concluded that juror Givens did not intentionally conceal any information, that the court inquiry should have ended at that point and she should have remained on the jury, citing State v. Guillebreaux, 362 S.C. 270, 607 S.E.2d 99

(S.C. Ct. App. 2004). He further contends that even if juror Givens concealed information, that the court erred in allowing the state to challenge Givens because the information concealed would not have been a material factor for a peremptory challenge or support a challenge for cause, citing State v. Stone, 359 S.C. 442, 567 S.E.2d 244 (2002) ("scant acquaintance" insufficient to remove the juror where it would not support a challenge for cause nor a material factor in the state's exercise of a peremptory challenge). He claims that the allegedly similar "scant acquaintance" would not be a material factor in the state's exercise of a peremptory challenge or cause for exclusion had it been revealed. He argues that because the state had exhausted all its peremptory challenges before juror Givens was called, he was not prevented from the intelligent exercise of the strike.

As shown more fully below, the Appellant's assessment is misplaced. The salient factors - recognized by the trial judge - was that juror Givens did not follow the instructions of the court to avoid contact. To the contrary, she was shown actually pulling the family member towards her after juror Givens had initiated the contact with a wave. Further, the juror failed to reveal the existence of the contact after it was learned by a complaint from a member of the victim's family that such improper contact had in fact occurred. It was only after the snack bar surveillance video revealed support for the victim's complaints and a second - more direct - inquiry that juror Givens admitted that there was contact. Although the trial court found that juror Givens' interaction was innocent and that juror Givens had no intention to mislead the court during the original voir dire because the family names were not revealed in her instruction, it is clear that she failed to respond to inquiry after the contact was revealed to the state and the court. While the trial court stated that it was innocent contact by the juror - albeit in derogation of the almost

contemporaneous cautionary instructions by the court - Judge Jefferson recognized that while it was not shown that the case was discussed between them - perception is often the reality and that to preserve the integrity of a verdict she was removed. Where statements were made after the contact by the person that "I have them on our side," discretion was not abused in the removal.

STANDARD OF REVIEW - Abuse of Discretion.

"[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." Palacio v. State, 333 S.C. 506, 511 S.E.2d 62, 68 (1999). " '[I]n order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature.' " State v. Bryant, 354 S.C. 390, 581 S.E.2d 157, 160 (2003)[quoting State v. Cameron, 311 S.C. 204, 428 S.E.2d 10, 12(Ct.App. 1993)].

A decision on whether to dismiss a juror and replace her with an alternate is within the sound discretion of the trial judge, and such decision will not be reversed on appeal absent an abuse of discretion. State v. Smith, 338 S.C. 66, 525 S.E.2d 263, 265 (Ct. App. 1999). More specifically, "[I]t is within the discretion of the trial court to determine whether bias results from a juror's reception of outside information concerning the case being tried." Washington v. Whitaker, 317 S.C. 108, 451 S.E.2d 894, 900 (1994); see State v. Ivey, 331 S.C. 118, 502 S.E.2d 92, 94 (1998)[noting a juror's competence is within the trial judge's discretion and is not reversible on appeal unless wholly unsupported by the evidence]; see also State v. Loftis, 232 S.C. 35, 100 S.E.2d 671, 675 (1957)[declining to interfere with trial judge's discretion in matter concerning jury, because trial judge has the opportunity to consider credibility of jurors].

"To protect both parties' right to an impartial jury, the trial judge must ask potential jurors whether they are aware of any bias or prejudice against a party." State v. Woods, 345 S.C. 583,

550 S.E.2d 282, 284 (2001).⁶ "Determining whether a juror's failure to respond to a voir dire question amounts to intentional concealment is a 'fact intensive determination that must be made on a case-by-case basis.' " State v. Guillebeaux, 362 S.C. 270, 607 S.E.2d 99,101-02 (Ct. App. 2004) quoting State v. Sparkman, 358 S.C. 491, 596 S.E.2d 375, 377 (2004)]. "Intentional concealment occurs 'when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable.' " Id. "Concealment is considered unintentional where the voir dire question posed is ambiguous or incomprehensible to the average juror or where 'the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances.' " Id.

The goal of the corrective measures is to insure the defendant's right to a fair trial has not been compromised. State v. Stone, 290 S.C. 380, 382, 350 S.E.2d 517, 518 (1986). Cautionary instructions or substitution of alternate jurors may cure the prejudice caused by the publicity. United States v. Hankish, 502 F.2d 71 (4th Cir.1974). The determination of what curative measures are appropriate in a given case rests in the sound discretion of the trial judge. He should exhaust other methods to cure the prejudice before aborting a trial. Id. at 77.

⁶"When a juror conceals information inquired into during voir dire, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." Id. "Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn." Id.

How the Juror Exclusion Issue was Raised.

A. *The General Voir Dire*

On January 23, 2012, Judge Jefferson made a general voir dire of the potential jury panel.

Tr. 17-27. Concerning the particular parties in this criminal action, Judge Jefferson inquired as follows:

Is there any member of the panel related by blood or marriage to Jerome Renaldo Campbell, Michael Allen, Anthony German, Frank Haigler, or anyone who is related to or a member of - - or have any connection with Michael German? If so, please stand at this time?

(Whereupon, no one stands.)

The Court: Does any member of the panel have a close - - close personal or social relationship with Jerome Renaldo Campbell, Michael Allen, Anthony German, Frank Haigler or anyone who is related to Michael German? If so, please stand at this time.

(Whereupon no one stands.)

The Court: The following are a list of potential witnesses in this case. I would ask that you listen very carefully. Jerome Renaldo Campbell, Charise Coaxum, Christopher Robinson, Aaron Burnham, Sandra Campbell, Jordan Richardson, John Tisdale, Mary Phillips, Anita Moore, Mike Sherman, Richard Wiersman - - Wiersma, W-I-E-R-S-M-A, Richard Burckhardt, Sergeant Scott Ray, Rene Charles, all of the Charleston Police Department, Ryan Kelly, Anthony German, Michael Allen, Timothy McCarthy, James Tawney, Frank Haigler, Kenneth Whitler, John Roberts, all of the South Carolina Law Enforcement Division, Erin Presnell, Medical University of South Carolina, Joshua Briar-Ridgeway, and Joy Glover.

Is there any member of the panel related by blood or

marriage to any of the people that I have just listed or does anyone have a close personal or social relationship with any of these individuals? If so, please stand at this time.

(Whereupon no one stands.)

Tr. p. 21, l. 8 - p. 22, l. 11. During the voir dire, concerning family members in law enforcement, potential juror Robin Givens (70) indicated she had a cousin who was with the North Charleston Police Department. Tr. p. 25, ll. 10-16. Potential juror Erica Gadsden (63) indicated that she had a cousin in the Charleston Police Department. Tr. p. 25, l. 18 - p. 26, l. 1.⁷

B. The Jury Selection

The jury was selected in the following manner:

Name	State	Defense	Seated
Kelly Grobmeyer (82)	1	-	-
Keith Culbreath (42)	-	-	1
Danielle Bowles (14)	2	-	-
Lorilee Hoyle (107)	-	-	2
Alicia Brown (16)	-	-	3
Jessica Walters (275)	-	1	-
Cynthia Wilcher (286)	3	-	-
*Erica Gadsden (63)	-	-	4
Alex Pearson (193)	-	-	5
Henry Cheves (33)	-	-	6
Paul Porter (205)	-	-	7
Helen Spann (25)	-	-	8
Glenda Elayda (52)	-	2	-
Christina Janke (115)	4	-	-
Stacy Stewart (255)	-	-	9
Matthew Sullivan (259)	-	-	10
William Kufner (131)	5	-	-
Cathy Thomas (262)	-	3	-
*Robin Givens (70)	-	-	11

⁷ During the voir dire, Judge Jefferson did not ask the potential jurors concerning whether any of the jurors were acquainted with Jerome Campbell (Coaxum)'s family members. In addition, the appellant's family members were not specifically identified by the court. .

Julie Lowman (143)	-	-	12
Laura Patrick (187)	-	-	1A
Laura Owings (184)	-	1	-
William Latimer (132)	-	-	2A

Tr. p. 28, l. 1 - p. 35, l. 24. Thus, prior to the selection of Juror Givens, the State had already exhausted all five of its peremptory challenges.

C. The Lunch Recess and Cautionary Instructions.

Judge Jefferson then advised the jury panel that they were breaking to discuss scheduling with counsel. In particular, she advised the selected panel concerning the potential lunch break:

During this break, please do not discuss the case among yourselves. Please don't speculate about what you think it may or could be about...

Tr. p. 36, ll. 22-25.

After a brief break, the jury was returned and sworn. Tr. 38-39. Judge Jefferson gave additional and more specific instructions concerning the lunch break discussions. Tr. 39-41. In particular, she instructed:

During the break, **please do not discuss the case among yourselves or with anyone else.** Please don't speculate about what you think it may or could be about. Please don't do any independent research. That includes anything that could be found on the internet or any other alternate source. As the fact finders in this case, you are bound to decide this case according to the evidence that you hear from the lips of the sworn witnesses and the other evidence that will be introduced.

Also, please do not have any contact with anyone in or about the courthouse. There are a lot of witnesses in this case and again, we would not want an innocent conversation to be observed and misinterpreted. ...

Tr. p. 40, ll. 3-19 (emphasis added).

D. *The Initial Motion Concerning Lunch Break Communications.*

Subsequently after the lunch break, the court reconvened. At that time, Assistant Solicitor Voigt advised Judge Jefferson that members of the victim's family had reported to him that while they were in the snack bar they saw two members of the jury conversing with a family member or friend of the Campbell group (defendant's).⁸ It was reported that one of the Campbell group was overheard to say after the conversation with the jurors that "they're on our side." Tr. p. 41, l. 25 - p. 26, l. 6.

When Judge Jefferson questioned whether they were actually jurors in this case, Solicitor Voigt reported that they had jury stickers on and he suggested it was Erica Gadsden, juror 63, in a yellow shirt and an older woman wearing a dark jacket which fit the description of Ms. Givens (juror 70). Tr. p. 42, ll. 16-25. Solicitor Voigt also proffered that the family member who was identified as making the statement ["on our side"] was present in the court and could be identified. Tr. p. 43, ll. 1-4.

Defense counsel then also questioned whether it was actually a juror in the present case.

⁸Subsequently, a surveillance video from the courthouse snack bar was presented during a hearing on the written motion. Court Exhibit # 2 [in possession of the Court]. The silent video reveals what subsequently was determined to be juror Erica Gadsden (Juror 63) in a bright yellow shirt with juror Robin Givens in a red coat (Juror 70) entering the snack bar area at on the video. [12:26:30]. They are viewed sitting down and conversing while eating. A group of four females subsequently enters the snack bar area. Juror Givens waves at group at 1:19:52. One female walks over and juror Givens reaches out and grabs her hand and pulls the female toward her at 1:20:00. This female remains in apparent conversation at the table where Givens and Gadsden are seated while three others briefly move away. This person remains in conversation until 1:20 :36 when she moves away toward her three remaining group members. The female she spoke with in the group goes back toward the door and juror Givens gets up preparing to leave and has another brief conversation with the same female at 1:21:10. The person then leaves while the remaining three members remain [with others who later share pleasantries and replace the departed jurors at the table]. Juror Gadsden leaves, followed by juror Givens at 1:21:25. **Court Exhibit #2.**

Tr. 43-44.

Judge Jefferson stated she would do a voir dire. She also noted how people may perceive matters differently in matters of passing conversation. Tr. 44-46. Judge Jefferson stated that she would voir dire the jury to make sure that they followed her instructions without objection. Tr. p. 46, ll. 9-16.

The Initial Voir Dires Concerning the Contact.

The jury panel was then presented to the court. During her colloquy, she asked the following question:

Before we begin that process of opening instruction and opening argument, I gave the jury strict instructions that they were not to have any contact with anyone in or about the courthouse who did not have a juror sticker on because, again, very innocent conversations could be very easily misinterpreted and misconstrued. I need to ask you all did any of you during the lunch and recess have any contact with anyone in or about the courthouse who did not have a juror sticker on? If so, if you did, I need you to raise your right hand for me.

(Whereupon, one juror raises her right hand.)

Tr. p. 47, ll. 15-17. Juror Stewart indicated that she was having lunch outside the courthouse and she spoke to a gentleman, but not about the case. Tr. p. 48, ll. 1-13. No response was made by either juror Givens or juror Gadsden.

Judge Jefferson then made further inquiry of the jury:

The Court: Okay. Is there anyone else who had any contact with anyone in or about the courthouse, either in the snack bar or any other parts of the building that did not have a juror sticker on and you had any interaction with them?

(Whereupon, there is no further response from any of the jury members.).

Tr. p. 48, ll. 14-21.

Judge Jefferson then re-iterated her earlier instructions about the importance of avoiding innocent conversations which may be misinterpreted, particularly noting that the gallery was full of members from the victim's and defendant's families. She continued:

I need for you all to be aware that reports have been made to the Court that conversations took place in the snack bar otherwise with members of - - with differing parts of members of the family and that there was a perception that the jury might be inclined or already predisposed regarding this case.

Again, I don't have any independent information that that is accurate. However, I will reinforce that even an innocent conversation can be easily misinterpreted.

Emotions run very high during a trial. As you are well aware, the allegations in this case are significant and perception becomes reality. so I would ask that you very stringently follow my instructions and have no conversation with anyone in or about the courthouse who does not have a blue juror sticker on....

Tr. p. 49, ll. 4-17. (Emphasis added). See also, Tr. p. 49, l. 18 - p. 50, l. 15. No exceptions to the instructions were raised by the State on defense. Tr. p. 50, ll. 16-18.

Judge Jefferson then continued her instructions on the case. Tr. 50-59. Included within the instructions was another admonishment to not discuss the case with anyone or consider matters outside of the courtroom.. Tr. p. 53, ll. 2-22.

E. The Trial.

During the trial, juror 205 wrote a note claiming that he "knows the brothers." Tr. p. 106, l. 23 - p. 107, l. 2. After further extended inquiry with the juror, it was unclear whether the Campbell brothers he knew in James Island years before were related to the Appellant. Tr. 107-

114. The trial judge concluded that the particular juror could be fair and impartial and he remained on the jury. Tr. 115-16.

F. The Written Motion to Exclude Jurors and Hearing.

On January 24, 2012, the prosecution made a written motion to exclude two jurors. [State's Motion to Exclude Jurors] ROA. The focus of the State's motion again concerned jurors 63 (Gadsden) and juror 70 (Givens). In particular, the motion declared:

3. The State is in possession of video from the Snack Bar taken during the Court's lunch break. The video (attached hereto as Attachment #1)⁹ clearly shows members of the defendant's family enter the Snack Bar. One family member, identified as defendant's sister, engages Jurors numbers 63 and 70 in conversation and goes as far as giving Juror number 70 a hug. Later, another of the defendant's family appears to have given the jurors a short greeting.
4. The actions captured by the Snack Bar video belie the answers given by these jurors to the Court's clear questions regarding potential improper contact during the lunch break. More troubling than the contact is the jurors' lack of candor towards the court. The jurors' mendacity undermines any faith that these jurors can fulfill their oath fairly.
5. Had the State known of any familiarity, however, slight, between these jurors and a member of the defendant's family, the State would have exercised its peremptory challenges on these jurors.

State's Motion, p. 1-2. ROA __. (Emphasis added). The State supplemented the motion with Court Exhibit 3 (Statement of Trenell German)¹⁰ and Court Exhibit 4 (Statement of Tiffany

⁹Court Exhibit #2 described *infra*, at fn. 2.

¹⁰In Trenell German's January 23, 2012 statement he declared:

Peacock)¹¹. Tr. 154. At the motion hearing, the prosecutor asserted that during the inquiry the day before neither juror raised their hands upon the trial judge's inquiry. Assistant Solicitor Voigt stated that he saw juror Gadsden look into the audience on the inquiry. Tr. p. 156, ll. 2-17. Judge Jefferson commented that in her view she was avoiding her eyes and looked toward the bailiffs. Tr. p. 156, ll. 18-23.

Counsel for the State asserted that in the earlier voir dire, the court gave the jurors the

I witnessed Candance Ladson speaking with the juror with the yellow shirt on, heavy set female looks like to be about 24, African America, they talked for about two minutes.

Q. How do you know they were jurors?

A. As Jurors were coming out in the courtroom first time she had on blue/white juror sticker.

Q. How do you know Ms. Ladson?

A. She the mother of my sister in law and sister of Jerome Campbell

Q. Where did the conversation take place?

A. Courtroom snack bar.

Q. Describe the juror in question the best you can.

A. She's an African American female on the heavy side she has on a yellow shirt (bright). She had diamond heart earring in her ears. She has pink nail polish (on nails). She looks to be 24.

Court Exhibit 3. ROA. _.

¹¹In Tiffany Peacock's January 23, 2012 statement she declared:

I did on 1-23-2012 observe two of the jury members. The conversation appeared to last approx. 2 -4 min. , and it appeared that the jurors and the family of the defendant knew each other. During the conclusion of the conversation I observed a black female with a brown jacket and pants casual sweat suit making the statement "I have them on our side." I proceeded to ask Trenelle "I thought we could not have contact with the jury." She stated that she thought the same and that she would speak with Mrs. Porcel. The two jury members that I observed were both black females, one heavier set with a yellow screen print type shirt. The other had long wavy hair and a heavy jacket that was dark in color. This conversation took place in the court house snack bar approx. 1:20 PM on 1-23-2012.

Court Exhibit 4. ROA. _.

opportunity for an innocent explanation and now the conversation is shown on the video from the snack bar. Tr. p. 157, ll. 9-18. The State contended that there was deliberate misleading of the court and asked that the jurors be removed. Tr. 157-58.

The defense asserted that he also viewed the juror during the questioning and the person in the video (a cousin, not his sister) was not in the courtroom after lunch as earlier asserted by the State. Tr. 158-59. The defense stated that there was no audio in the video so the conversation is not revealed and suggested it could have been innocent or that they did not know the person was on the jury. Tr. 160. The defense expressed a concern about a mistrial if both jurors are removed due to the earlier concern by juror Porter about the "Campbell brothers", potentially leaving eleven (11) jurors. Tr. 160-61.

The defense stated that juror 70 (Givens) on the video was the only person talking with a relative and the video did not show the juror badge on her, although it shows it on juror Gadsden. Tr. 161. The defense stated: "If Your Honor is going to excuse on that you excuse Ms. Givens based on that you can see somebody talking to her, but we don't know what the conversation entails." Tr. p. 161, ll. 14-17.

Judge Jefferson stated she had viewed the video several times. She stated that some alleged members of the defendant's family walk into the snack bar and made contact with a juror seated at a round table. Tr. p. 161, ll. 18-25. The person is seated with her back to the camera and identified as interacting, but she did not see a hugging.¹² Judge Jefferson described the other juror in the yellow shirt as quiet and exits. **From the video, Judge Jefferson stated it was**

¹² The video, in fact, reveals the juror reaching out while remaining seated, grabbing a female's outstretched hand and pulling her towards her. Court Exhibit #2, 1:20:00.

difficult, but notes that there was clearly interaction between a juror and a member of the defendant's family that was prohibited in her instructions. Tr. p. 163, ll. 3-9. Judge Jefferson noted that the names German, Coaxum and Campbell were used in the voir dire, but it was possible that they would not have been recognized. However, she noted it was troubling that this contact was not disclosed in the intervening voir dire. Tr. 164.

a. The Givens Voir Dire

Judge Jefferson first voir dired juror Givens. Tr. 168-173. Juror Givens declared she had lunch at the snack bar with juror 63 (Juror Gadsden). Tr. 168-69. She confirmed that while having lunch a girl from James Island came up to her. She stated she knew her through a friend and that they had "hung out together a few times", like going to birthday parties. Tr. p. 169, ll. 7-20. Juror Givens stated she had seen the girl last year in June or July, but not since until yesterday. Tr. p. 169, l. 21 - p. 162, l. 1. She did not consider the girl a close friend, did not talk to her on the telephone, but recalled she was named after a champagne or wine. She said that they hailed each other in the snack bar and was surprised to see her. Tr. 170. She did not think she was involved in the case and asserted that she did not have a discussion about the case. Tr. 170-71. She said that they just talked about the friend they had in common and about the girl's grandmother she had moved in with. Tr. 171.

Juror Givens again stated she did not have a discussion about the case and that the girl was not to her knowledge related to the defendant. Tr. 171. Juror Givens stated that she recalled the instructions not to speak with anyone, but admitted that she forgot it when she saw someone from the neighborhood. Tr. p. 172, ll. 4-16. She opined that she could still be fair and impartial and decide the case on the evidence. Tr. 171-72.

The State urged, in reliance on its written motion to remove contending that Juror Givens had misled the court yesterday in her failure to answer the court's questions about the contact. He stated that due to the omission, she was not entitled to any presumption of impartiality. Tr. p. 174, ll. 12-18.

The defense asserted it was not an intentional omission on her part. He asserted it was cleared up when asked if she was in the snack bar and spoke with someone. Tr. 175. He noted her statements about impartiality and that it was a passing acquaintance. Tr. 174-75.

b. The Gadsden Voir Dire

Judge Jefferson next voir dired juror Gadsden (63). Although she initially denied having lunch with Ms. Givens at the snack bar, she then confirmed she had lunch with her, but did not know her name. Tr. 176. She confirmed that someone came up to juror Givens and juror Gadsden asked her if she knew the person from someplace and the girl responded no. Tr. 176-77. Gadsden claimed she did not have further contact with anyone other than Givens. Gadsden had no reason why she did not respond yesterday about having interaction with anyone in the courthouse other than a juror. Tr. 177. She denied knowing anyone who was a family member of Michael German or Campbell. Tr. 177-78. She opined that she could be fair and render a verdict based on the evidence. Tr. 178.

After the inquiry with Gadsden, the State withdrew its motion to remove her. Tr. p. 179, ll. 8-12.

c. The Court's Decision to Remove Juror Givens

Judge Jefferson announced her intent to view the video again. She noted the juror's flat affect. Tr. p. 179, ll. 15-21. Judge Jefferson then stated:

Now I really don't have any concerns about Miss Givens' impartiality. She's indicated she can be fair and impartial and she can render a fair and impartial decision. But I am troubled I guess and I use that word very lightly because I'm not really not troubled by the fact that she didn't disclose when I asked the question because she's a typical juror. They just don't - - The things we think are important they don't think are important and I really don't think she had any intention to mislead the Court and there would have been no reason for her to have disclosed the individuals in voir dire because they weren't in the courtroom and their names specifically were not mentioned and in addition to that, she indicated I really don't even know this person's name. I just know she has the name of a wine or champagne or something.

I do think that the interaction was innocent. I really don't think it amounts to anything, but out of an abundance of caution I'm going to excuse her just because I don't want there to be any perception that whatever verdict is rendered that it was not fair and impartial. But I really think that anything she did was innocent. I don't even think she really knows the woman. I think it's one of those things because you can tell on the video the lady is very shocked that she sees her. She's like - - It's almost like, oh, that's you, I haven't seen you in a long time. There is no indication that they discussed anything about this case.

I have no reason to question that she would mislead the Court about it, but perception as I've indicated is often reality for people and I'm going to dismiss her just out of

Tr. p. 180, l. 3 - p. 181, l. 5 (emphasis added).

Judge Jefferson brought in Juror Givens to address her removal from the jury with her.

Tr. p. 181, l. 20 - p. 182, l. 19. She stated to her:

The Court: Miss Givens, out of an abundance of caution, I do not believe you have misled the Court in any way. I believe you have been candid and I believe the person you interacted with in the snack bar was an innocent interaction with somebody you hadn't seen in a while. But out of an abundance of caution, I'm going to excuse you as a juror in this case so that there can never be any question regarding

the impartiality of the verdict. We appreciate your candor and your time.

Tr. p. 181, l. 20 - p. 182, l. 3 (emphasis added).¹³ The defense noted its objection. Tr. p. 183, ll.

9-12. The trial judge replaced juror Givens with an alternate, juror Latimer. Tr. 185-86.¹⁴

ANALYSIS

The Appellant primarily relies upon three cases State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001), State v. Guillebreaux, 362 S.C. 270, 607 S.E.2d 99 (S.C. Ct. App. 2004) and State v. Stone, 359 S.C. 442, 567 S.E.2d 244 (2002) to support his argument for a new trial.¹⁵

¹³It is interesting to note that juror Givens was perceived as being happy to be removed as a juror and being ready to go. See Tr.p. 182, l. 5-19.

¹⁴ The defense renewed its prior motions and objections in a summary fashion after the State had rested. Tr.p. 638, l. 7-8. It was denied. A similar general motion was after rebuttal. Tr.p. 652. The Court denied the motions. Tr. P. 652, l. 21-22. After the guilty verdict, the trial court heard post-trial motions. Tr.p. 784-785. Counsel only made a general motion, asserting that he would reiterate and renew all objections during the trial and all motions made during the trial. The trial judge stated that it would note all motions and deny based on its previous ruling. TR.p. 785, l. 8-17. No specific mention was made by counsel or the court concerning the replacement of an alternate. Id.

¹⁵ Jurors should be admonished not to discuss the case with anyone, including each other, prior to submission of the case. State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994); Gallman v. State, 307 S.C. 273, 276, 414 S.E.2d 780, 782 (1992). "The rule is well settled that jurors should not, prior to the submission of the case to them, converse with outsiders or among themselves on any subject connected with the trial, or form or express any opinion thereabout; and that the jurors should be so admonished when they are permitted to separate during the trial." State v. Parker, 255 S.C. 359, 361, 179 S.E.2d 31, 32 (1971).

Any unauthorized communication, contact, or tampering directly or indirectly, made by a nonjuror with a juror during a trial about the matter pending before the jury is generally deemed presumptively prejudicial, if not made in accordance with rules of court and the instructions and directions of the court made during the trial, with full knowledge of all the parties. The presumption is not conclusive, but the burden rests heavily upon the nonmovant to establish, after notice to and hearing, that such contact with the juror was harmless. Prejudice may be shown by evidence that an extrinsic factual matter may taint the jury's deliberations. Essentially, an impermissible "outside influence" is an unauthorized communication or overt act by a third party which creates an extraneous influence on the jury.

However, a closer reading of these cases does not support the relief that he seeks in contrast with the unique facts in this proceeding.

In State v. Stone, the Court determined that the trial judge had abused its discretion in removing a juror.¹⁶ In particular, at sentencing, the state called the defendant's aunt as a witness. When she was placed on the witness stand, Juror Thompson indicated to the court that she knew the aunt. Although the aunt had been announced as a witness at the start of voir dire, Thompson later claimed did not know her name. Thompson had lived down the street from the aunt five or six years earlier, and they were casual acquaintances only. Thompson indicated her acquaintance would not affect her ability to be fair and impartial. The Supreme Court concluded that it is patent here that Juror Thompson's failure to disclose her acquaintance with Perry [during the opening voir dire] was innocent. Moreover, the Court concluded that "her scant acquaintance would neither have supported a challenge for cause nor would it have been a material factor in the state's exercise of its peremptory challenges. Thompson clearly indicated her former acquaintance with a witness whose name she did not even know, would not have affected her in

¹⁶ In Stone, the Court relied upon State v. Woods, 345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001), wherein the Court had stated:

When a juror conceals information inquired into during voir dire, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986). Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn. State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Cl.App.1991).

any way.” Stone, supra.¹⁷ The Court held the trial court abused its discretion in removing her. However, a closer reading of the case reveals that the new sentencing proceeding was not granted based upon this alleged error. The Court, unlike its response to the issues related to the failed to instruct on certain mitigating circumstances and the failure to give a parole ineligibility charge did not include any similar language that “required reversal.”¹⁸ The harmless error issue was not addressed or whether it warranted a new trial standing alone.

The Appellant also relies on State v. Woods, supra. Importantly, in Woods, the Court defined that “intentional concealment occurs when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror’s failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror’s failure to respond is reasonable under the circumstances. Necessarily, whether a juror’s failure to respond is intentional is a fact intensive determination which must be made on a case by case basis.” In Woods, the court found that the juror’s failure to reveal the prior relationship with the solicitor’s office during the opening voir dire was intentional concealment and would have impacted on the use of the peremptory challenges. Here, there is no concealment, intentional or

¹⁷Here, the issue was not about the failure to reveal a scant acquaintance” with the family member during the initial voir dire, but the failure to acknowledge the existence of the contact in the snack bar and the direct violation in the contact with the person and impression it made on the observers and participants in the contact.

¹⁸ The failure to specify that the juror issue “required reversal” is a difference with a distinction. The Court was not required to address the issue concerning prejudice and harmless error concerning the removal. The absence of this language is telling of the limitation in the holding.

otherwise, of information by a juror on the initial voir dire as determined by Judge Jefferson. Thus, the language from Stone regarding whether the information would have been a material factor in the use of a peremptory challenge is inapplicable to this case.

Here, it was not about the failure to reveal on voir dire that supported juror Givens removal, but her failure to follow the instructions, have the contact with a third party and then failure to reveal it in a response in the court.

In State v. Guilibreaux, the Appellant also seeks support. Therein, the Court of Appeals, through Judge, now Justice Beatty, concluded a juror's failure during voir dire to disclose an alleged social relationship with State witness, who was the confidential informant who purchased crack from defendant, was not intentional. The court of appeals found that the juror's knowledge of who the confidential informant was and a rare exchange of greetings with him in her community did not constitute social relationship. The court found that the juror answered questions posed to her honestly, her failure to reveal her knowledge of confidential informant was reasonable response to question posed. In seeking a new trial based upon the juror's retention and alleged failure to disclosed the unfounded social relationship with the witness, the court concluded that a new trial was not warranted. As the Court stated: "[A]s we find no intentional concealment on Juror's part, we need not further determine whether the information would have been a material factor in the exercise of Guillebeaux's peremptory strikes. [State v. Sparkman, 358 S.C. at 497, 596 S.E.2d at 377-78. Based on this evidence, we find the trial judge did not abuse his discretion in denying the motion for a new trial."

In Smith v. State, 375 S.C. 507, 654 S.E.2d 523 (2007), the Court cited Guilibreaux addressed whether a juror had intentionally concealed a prior relationship with the defendant.

The Court found that the juror did not intentionally conceal the existence of his prior relationship with defendant during voir dire. The defendant claimed after the trial that he learned that they had been incarcerated together prior to defendant's murder trial at the detention center and did not recognize the juror due to a change in his appearance by his head being shaved and that he knew him only by a nickname "Rum Gully." He claimed without documentation that he had altercations with him in prison. The Court found that the defendant failed to establish that he suffered a per se violation of his due process right to a fair and impartial jury. It concluded that it was reasonable for juror to remain silent when asked during voir dire whether any member of the jury pool was "related by blood or marriage or a close personal friend of [defendant]." The juror testified that he and defendant were not close friends, juror also testified that he did not have any bias or prejudice against defendant, and he and the other members of the jury held the State to its burden of proof before finding defendant guilty of the two murder charges.

Unlike these cases, there was intentional concealment, although not during the initial voir dire. The Appellant asserts that this failure to show intentional concealment during the initial voir dire provides sanctuary and a requirement to have retained juror Givens despite her failure to acknowledge during the later voir dire the existence of the snack bar contact, the failure to follow the no contact instructions. Simply put the setting in this case is different than the settings in Guillibreaux and Stone. He ignores that juror Givens did intentionally conceal her out of court contact with the person in the snack bar when expressly asked the following questions by Judge Jefferson:

Before we begin that process of opening instruction and opening argument, I gave the jury strict instructions that they were not to have any contact with anyone in or about

the courthouse who did not have a juror sticker on because, again, very innocent conversations could be very easily misinterpreted and misconstrued. I need to ask you all did any of you during the lunch and recess have any contact with anyone in or about the courthouse who did not have a juror sticker on? If so, if you did, I need you to raise your right hand for me.

Tr. p. 47, ll. 15-17. Juror Givens did not respond to this clear inquiry.

Judge Jefferson then made further inquiry of the jury:

The Court: Okay. Is there anyone else who had any contact with anyone in or about the courthouse, either in the snack bar or any other parts of the building that did not have a juror sticker on and you had any interaction with them?

(Whereupon, there is no further response from any of the jury members.).

Tr. p. 48, ll. 14-21. Juror Givens did not respond to this clearer response!

Judge Jefferson continued:

I need for you all to be aware that reports have been made to the Court that conversations took place in the snack bar otherwise with members of -- with differing parts of members of the family and that there was a perception that the jury might be inclined or already predisposed regarding this case. Again, I don't have any independent information that that is accurate. However, I will reinforce that even an innocent conversation can be easily misinterpreted.

Emotions run very high during a trial. As you are well aware, the allegations in this case are significant and perception becomes reality. so I would ask that you very stringently follow my instructions and have no conversation with anyone in or about the courthouse who does not have a blue juror sticker on....

Tr. p. 49, ll. 4-17. (Emphasis added). See also, Tr. p. 49, l. 18 - p. 50, l. 15. Again, no response about the proven contact by Juror Givens. This can only be concluded as "intentional

concealment.” This is more than merely whether the removed juror had a relationship with the defendant’s family.

“Determining whether a juror’s failure to respond to a voir dire question amounts to intentional concealment is a ‘fact intensive determination that must be made on a case-by-case basis.’ ” State v. Guillebeaux, 362 S.C. 270, 274, 607 S.E.2d 99, 101-02 (Ct.App.2004)(quoting State v. Sparkman, 358 S.C. 491, 496, 596 S.E.2d 375, 377 (2004)). Here, the questions put to juror Givens and the other jurors by the trial judge were reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror’s failure to respond is unreasonable.’ ” *Id.* These inquiries were not “ambiguous or incomprehensible to the average juror” shortly after the lunch recess and therefore it was not reasonable for Juror Givens to fail to respond.

The snack bar video of January 23 shows the basis of the intentional concealment by Juror Givens. Court Exhibit #2. The video shows juror Erica Gadsden (Juror 63) in a bright yellow shirt and juror Robin Givens in a red coat entering the snack bar area at 12:26:30. They are viewed sitting down and conversing with each other while eating. Shortly thereafter, four females enter the snack bar area at around 1:19. Juror Givens initially waves at group at 1:19:52. One female walks over toward the table where Givens and Gadsden are sitting and juror Givens reaches out, grabs her hand and then pulls the female towards her at 1:20:00. This female remains in apparent close contact conversation at the table where Givens and Gadsden are seated while three others briefly move away. This person remains in conversation at the table until 1:20:36 when she moves away toward her three remaining group members standing at the end of the snack bar counter. The female Givens spoke with in the group goes back toward the door and

juror Givens gets up preparing to leave and has another brief conversation with the same female at 1:21:10. The person then leaves while the remaining three members remain [with others who later share pleasantries and replace the departed jurors at the table]. Juror Gadsden leaves, followed by juror Givens at 1:21:25. Court Exhibit #2. This information cannot be disputed.

Was there an instruction to not have contact or discussions with anyone? Yes. Did the juror have improper discussions with such a person shortly after the instructions? Yes. Did she reveal the contact after the first inquiries were made after lunch? No. Was this improper contact with a family member of the defendant? Yes.

Appellant applies the wrong standard when he asserts that removal of a juror is only supported when the removed juror intentionally concealed information which would have supported a challenge for cause or a would have been a material factor in the party's use of peremptory challenges, because it does not address all setting that could lead to the need to remove a juror. See Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986) (affirming denial of motion for new trial based on after-discovered evidence where jurors' relationship with doctor's attorney was not a basis for disqualification). See also State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001) (post-verdict motion for new trial should have been granted where juror intentionally concealed prior association with solicitor's office, which denied defendant effective use of peremptory challenges); State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998) (affirming denial of new trial motion based on after discovered evidence based on information that juror attended pro-death penalty rally, where information was not intentionally concealed); State v. Gulledege, 277 S.C. 368, 287 S.E.2d 488 (1982) (pre-verdict mistrial should have been granted for juror's failure to disclose relationship with police officer, where

information would have supported a challenge for cause or would have been a material factor in the exercise of a peremptory strike); State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct. App. 1991) (post-verdict mistrial motion properly denied because no evidence party would have struck juror, and juror's failure to disclose distant relationship with witness was not intentional).

The state agrees Juror Givens concealment during the pre-selection voir dire did not appear to be intentional. However, her failure to respond about the contact after the snack bar incident during the subsequent voir dire is much more troubling. Absent the revelations on the surveillance video, juror Gadsden was the only juror specifically identified, not juror Givens. The video also revealed that it was juror Givens who initially waved and then pulled the defendant's family member towards herself and then engaged in the "close contact" conversation. While the video is silent, it remains uncontradicted that family member orally expressed a comment that "I have them on my side." Court Exhibit #4. The focus of the Appellant is on the initial voir dire before jury selection. However, the critical mistake is juror Givens failure to reveal the unauthorized contact in the snack bar after being instructed to not have the contact and the effect the contact had on others - to both the defendant's family - "I have them on my side." and the victim's family upon seeing and hearing it and then reporting it.

Contrary to the assertions of the Appellant, it is more than the mere fact that juror Givens did not reveal a "scant acquaintance" with a member of the defendant's family during the pretrial voir dire. Instead, this was a wholly different scenario where the juror was perceived after the unauthorized contact as being turned to the defendant's side and then intentionally failed to reveal that there was any contact when the jury was specifically asked. In addition, when the juror physically pulled the family over for close contact conversation, an appearance of

impropriety cannot be disabused, particularly when she failed to reveal it during the post-lunch voir dire. Contrary to Appellant's claims, juror Givens had to be removed to maintain integrity to any verdict after the video surveillance was revealed. In fact, counsel for the Appellant, prior to the voir dire of Givens noted that she was the only person talking with the family member (whom he identified as a cousin - not a sister) and if you excuse on that, you only excuse Givens, not Gadsden. Tr.p. 161, ll. 14-17.

Despite Appellant's contentions, Thompson and the other cases cited above instead provide the standard for the granting of the extreme measures of a mistrial or a new trial, when juror concealment of relevant information is discovered. State v. Kelly, 331 S.C. 132, 146, 502 S.E.2d 99, 106 (1998) (quoting Thompson as the standard for a new trial due to retaining as juror, not as the standard for removal of a juror). Thompson and the other cases mandate when a trial court has to address the problem of newly discovered juror information with new trial or mistrial.

However, trial courts may still as a matter of discretion remove jurors for alternates in lesser circumstances than those which require mistrial as defined by Thompson and its progeny. This standard is discussed below.

"The general rule in this State is that the conduct of a criminal trial is left largely to the sound discretion of the presiding judge and [an appellate court] will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way". State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982). Along these lines, the typical appellate standard of review for the discretionary pre-deliberation removal of a juror and replacement with an alternate, is whether or not the trial court's decision was so unreasonable as to be an abuse of

discretion resulting in actual prejudice. State v. Rogers, 263 S.C. 373, 210 S.E.2d 604 (1974); State v. Williams, 321 S.C. 455, 469 S.E.2d 52 (1996). In this case, Appellant can show no prejudice from the seating of Alternate, nor can he show that the trial court's decision to excuse Givens was so unreasonable as to amount to an abuse of discretion.

This case is similar to State v. Williams, 321 S.C. 455, 469 S.E.2d 52 (1996). During trial in Williams, a juror spoke to a minister seated at counsel table. The juror testified he had worked with the minister and had heard him preach. The minister was seated at counsel table because he had assisted the defense in contacting witnesses. The trial court excused the juror and replaced him with an alternate to prevent any problems. The Court rejected the defendant's claim that the excusal violated Batson v. Kentucky, 476 U.S. 79 (1986), and Georgia v. McCollum, 505 U.S. 42 (1992), by first noting that the issues were not preserved. However, the Court went on to hold that there was no reversible error, because (1) there is no right to be tried by a jury composed of particular individuals, (2) the alternate juror had been approved by both sides at the inception of trial, and (3) there was no showing of any prejudice from the seating of the alternate juror. Williams, 321 S.C. at 459-60, 469 S.E.2d at 52.

The same result is warranted here as is warranted in Williams. Appellant has no right to be tried by a particular juror, and the alternate juror in this case was approved by both sides. Appellant has identified no sustainable reason why he was prejudiced by the seating of the Alternate. Here, the party aggrieved by the Juror Givens' belated revelations about her contact at the snack bar and disobedience with the trial court's no contact admonishment was the court and the state, not the defense.

The Removal of the Juror Based Upon the Lunch Room Contact Did Not Equate With An Additional Peremptory Challenge.

In his second argument, Initial Brief of Appellant, pages 10-15, Appellant attempts to show prejudice by contending that the effect of the judge's decision was to give the state an extra peremptory strike. This is incorrect. He asserts that the trial court found that because there was no cause to remove juror Givens. However, the trial court's decision, that a juror's improper contact, failure to follow her instructions and acquaintance with a relative of Appellant warrants excusal, is not so unreasonable as to be an abuse of discretion. The trial court acknowledged that it was removing the juror "out of an abundance of caution" to preserve the integrity of the verdict, not to award the state an additional peremptory challenge. Contrary to the characterization by the Appellant, the State was not provided an additional peremptory challenge as a matter of state law or by the action of the trial judge. This action occurred solely because of the post-selection contact between juror Givens and a member of the Appellant's family.

This Peremptory Challenge Issue Is Not Preserved For Appeal.

Nevertheless, this peremptory challenge claim is not preserved for review. At no time did the Petitioner claim that the state was given a de facto additional peremptory challenge. See Tr.p. 44-46, 158-161.174-175. 638, 652, 784-785. As such, this specific claim is not preserved. State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000) (party may not argue one ground for objection at trial and a different ground on appeal); See State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996) (Eighth Amendment challenge to parole eligibility not preserved because no constitutional basis was raised at trial); State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996) (Batson issue regarding dismissal of juror during trial not preserved where it was not raised at

trial).

Parties are entitled to truthful and accurate information during voir dire so that they may intelligently make peremptory challenges; there is no question that the state did not have this information at selection about the contact in the lunch room and the overheard comments that "I have them on our side" by a family member after the contact because it did not exist until after the selection. See, e.g. State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998). Further, the failure of the juror to accurately respond after the initial inquiries about the contact brings her partiality into reasonable question where the defendant's family is overheard making the "on our side" comments and then followed by the non-disclosure. Although it certainly appears that the relationship was likely minimal based upon juror Givens eventual testimony, the state pointed out its concern about a juror who violated the court's instructions not to speak with people not wearing juror badges. State's Motion, p. 1-2. ROA __, Tr.p. 41-43, 157-158. Like the judge in Williams, where the relationship between the juror and the minister was admittedly more defined than the present case, yet still very casual, the trial court in this case was not unreasonable in deciding to avoid any possible appearance or existence of unfairness by seating the alternate.

The reliance by Appellant on the decision in U.S. v. Harbin, 250 F.3d 532 (7th Cir. 2001) is misplaced on the peremptory challenge issue. In Harbin, the Seventh Circuit reversed a decision by the district court allowing the government to use, in the middle of trial, a statutory peremptory challenge it had foregone during voir dire, when new information about a juror came to light. Id. at 538-39. The defendants had exhausted their strikes during voir dire but were unaware that they might be able to save them and use them during the trial. Id. at 538, 541. The Seventh Circuit held that the district court's decision was erroneous because "[t]he prosecution

was unilaterally granted control over the composition of the jury during the trial stage ... [and the] jury selection process ... failed to minimally inform [defendants] of the procedures that ultimately were followed." Id. at 541 - 42.

The current case is nothing like the situation in Harbin. Here, each side received the statutory number of peremptory challenges. Both sides also knew full well that they were prohibited from using any of their challenges in a racially discriminatory manner nor had the ability to save strikes to use during the trial. All parties to the case were subject to the same requirements, and the jury selection process was not weighted in either the State or Campbell's favor beyond the statutory limits for peremptory challenges. At no point did the state claim any entitlement to an additional strike. To the contrary, they were arguing prior to the voir dire the standard set out by the Court in Woods and Stone due to the improper contact, lack of candor with the court. State Motion, p. 2. He argued that the mendacity undermined that they could fulfill their duty. The Appellant seeks to parse the information and ignore that the motion was additionally based upon the overheard comment that "I have them on my side." Under Stone, Woods, etc., had any prosecutor (or defense counsel) been aware that after contact with a family member by a juror that the juror was reported to be "on my side" that a peremptory challenge would have been used, thus satisfying the materiality component Stone and Woods to have required their removal and a new trial.

SUMMARY

Under these circumstances, the proper way to maintain integrity with the jury selections

was to replace the juror with a qualified alternate.¹⁹ This was reasonable discretion on the judge's part .

A New Trial Is Not Warranted by Harmless Error.

As stated above, Stone itself does not mandate reversal and the grant of a new trial should this Court find that the trial judge abused its discretion. Assuming Appellant is correct in his assertion that the record does not reflect by clear and convincing evidence that Juror Givens violated the rule of sequestration by the conversation with the defendant's family and the failure to acknowledge it upon voir dire after the lunch break, Appellant's argument that this error requires reversal is less convincing. Although Juror Givens may have been improperly removed, she was replaced by an alternate juror who had been passed upon by both the State and defense. Appellant has shown no prejudice from having his case decided by alternate Juror Latimer rather than Juror Givens and this Court should decline to find any. Reversal and a new trial is not warranted.

Although juror Givens claimed only a casual relationship with a family member who she "hung out together a few times, " but claimed not to see in around a year and spoke only about a common friend, she claimed she could remain fair and impartial. There is no right to have a juror with a casual connection with the defendant's family to sit as a juror. However, when the removal occurred "out of an abundance of caution, " jury deliberations had not begun. In fact,

¹⁹ The Appellant tries to make the peremptory challenge issue to be supported because it withdrew its motion to remove juror Gadsden after the voir dire of juror Givens and Gadsden. However, the difference in their settings was clear after the testimony revealed the communication was virtually only with Givens, not Gadsden. Although Gadsden did not reveal the brief encounter she had, by the testimony she was an uninvolved bystander to the actions of juror Givens.

only a few witnesses [4] had even testified during the first day. The alternate was qualified in the same manner as juror Givens and was subject to peremptory challenges by both the state and defense with one strike remaining by each. Tr.p. 34-35. The alternate was present throughout the first day of the evidence.

Any error was harmless where the alternate was present throughout the proceeding and the Appellant had not shown he was prejudiced by the substitution prior to any deliberations. State v. Williams, 469 S.E.2d 49 (1996) (defendant was not prejudiced from seating an alternate juror after juror was dismissed).²⁰ Accord Ballentine v. State, supra.; Barker v. State, 487 S.E.2d 494 (Ga. App. 1997) (no harmful error in court replacing juror with alternate where court found that juror's conduct amounted to immaterial irregularity," if any , and court would thus have been entitled to retain juror, while it was claimed that investigator stated to juror "we got one ," and that juror repeated the statement and shook hands with investigator, trial court conducted inquiry , and determined that only greetings were exchanged, but excused juror out of an abundance of caution and seated alternate); Lee v. State, 11 S.W. 3d 553 (Ark. 2000)(a defendant must show prejudice when the trial court removes a juror and seats an alternate in the juror's place); Thornberg v. State, 985 P. 2d 1234 (Okla. Crim App. 1999)(removal of juror on less than clear

²⁰ As the Court stated in Williams,

In any event, in State v. McDaniel, 275 S.C. 222, 268 S.E.2d 585 (1980), this Court held there is no right to be tried by a jury composed of particular individuals. In McDaniel, an alternate was seated after a juror was dismissed for making improper gestures. The McDaniel court noted the alternate juror had been approved by both sides at the inception of the trial, and there was no showing in what manner the seating of the alternate prejudiced him. As in McDaniel, we discern no prejudice to Williams from the seating of the alternate juror here.

and convincing evidence of misconduct did not prejudice murder defendant and did not require reversal, where removed juror was replaced by alternate who had been passed upon by both the state and the defense); State v. Pettigrew, 860 P. 2d 777 (N.M. App. 1993)(defendant's were not prejudiced by court's excusal of juror following unauthorized contact with public defender intern and replaced with alternate chosen in same manner as excused jurors and defendant had no right to a particular juror on the panel).

CONCLUSION

For all the foregoing reasons, the appeal should be dismissed and judgment of conviction affirmed.

Respectfully submitted,

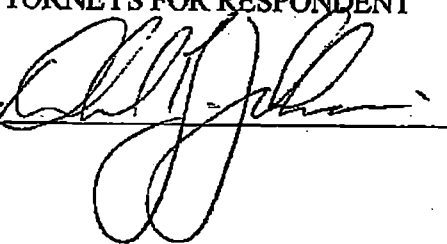
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By: 

Columbia, South Carolina
December 27, 2012

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2012-208426

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

JEROME RENALDO CAMPBELL,

Appellant.

**DESIGNATION OF MATTER
TO BE INCLUDED IN RECORD ON APPEAL**

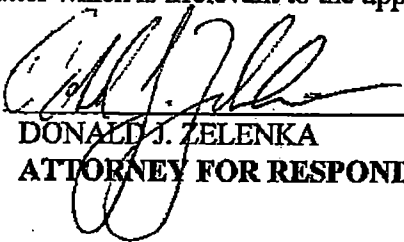
The Respondents propose the following additions to be included in the Record on Appeal:
EXHIBITS

1. Court Exhibit 2 - Video of Snack Bar.
2. Court Exhibit 3 - Court Exhibit 3 (affidavit of Trenell German)
3. Court Exhibit 4 (affidavit of Tiffany Peacock)

MOTIONS

1. State's Motion to Exclude Jurors - January 24, 2012.

I certify that this Designation contains no matter which is irrelevant to the appeal.


DONALD J. ZELENKA
ATTORNEY FOR RESPONDENT

December 27, 2012.

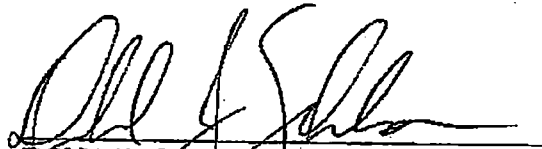
CERTIFICATE OF SERVICE

I, Donald J. Zelenka, Hereby certify that I have served the **Initial Brief of Respondent** and **Designation of Matter** in the foregoing action by depositing copies in the United States mail, postage prepaid, to the following:

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This 27th day of December, 2012.


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Deadra L. Jefferson, Circuit Court Judge

Case No. 09-GS-10-6730
Case Tracking Number: 2012208426

State of South Carolina,..... Respondent,

v.

Jerome Campbell
a/k/a Jerome Coaxum, ... Appellant,

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SC Court of Appeals

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ARGUMENTS

I. Appellant preserved for appeal whether Juror Givens was improperly removed.

“Error preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review.” State v. Brannon, 388 S.C. 498, 502, 697 S.E.2d 593, 595 (2010). In Brannon, the state argued that the court of appeals violated error preservation rules by using a seizure analysis to determine whether an arrest was being made where the Appellant never used the terms “seizure” or “Fourth Amendment” in his directed verdict motion. The Supreme Court disagreed and held that “a litigant is only required to fairly raise the issue to the trial court, thereby giving it an opportunity to rule on the issue.” Id. at 502, 596 (citation omitted).

Here, Appellant argued that no cause existed to excuse Juror Givens. Appellant argued that the jurors and the defendant’s family had not seen each other prior to the break, that the video did not reflect that Juror Givens and the person in the snack bar knew each other very well, and that the interaction was innocent. [R. p. 158, line 10 – p. 161, line 17] Appellant further argued that any omission to disclose was innocent, that the juror disclosed her conversation in the snack bar when asked the second time, that Juror Givens did not try to mislead or deceive the court, that she did not even know the name of the person in the snack bar, and that Juror Givens could be fair and impartial. [R. p. 174, line 20 – p. 175, line 16] Finally, Appellant attempted to reiterate his objection on this issue, but the court noted the objection without additional argument:

MR. HARRIS: Your Honor?

THE COURT: Mm-hmm.

MR. HARRIS: For the record, can I just – I mean object to the –

THE COURT: You've noted your exception.

MR. HARRIS: Okay.

THE COURT: Yeah.

MR. HARRIS: I just wanted to note my exception for the record.

THE COURT: You've already noted your exception for the record when you made your argument.

MR. HARRIS: Thank you.

THE COURT: You're welcome.

[R. p. 183, lines 2 – 14] A removal of a jury without cause at the request of a party is a *de facto* peremptory strike, and Appellant argued there was no cause for removal of Juror Givens. Accordingly, the issue is sufficiently preserved for this court's review.

II. This Court should not substitute its judgment for the trial court's judgment regarding whether there was cause to remove Juror Givens.

The State argues extensively in its brief that the trial judge had cause to remove Juror Givens. However, the trial judge did not remove Juror Givens for cause. The trial judge removed the juror in "an abundance of caution." [Trial Transcript Vol. II, p. 179, line 15 – p. 182, line 3; p. 34, line 6]

"The trial judge is in the best position to determine the credibility of the jurors; therefore, this Court should grant [the trial judge] broad deference on this issue." State v. Kelly, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998); *see also* State v. Harris, 340 S.C. 59, 530 S.E.2d 626 (2000) (holding the trial judge is in the best position to determine the credibility of the jurors). Here, the trial judge, despite hearing the reports of the victim's family members and evaluating the demeanor and credibility of Juror Givens, expressly

found that any concealment was innocent. This Court should not go behind the trial judge's deference and now find that the juror intentionally concealed anything.

Respondent claims that "Appellant applies the wrong standard when he asserts that removal of a juror is only supported when the removed juror intentionally concealed information which would have supported a challenge for cause or a would have been a material factor in the party's use of peremptory challenges, because it does not address all setting that could lead to the need to remove a juror." However, this standard is the precise standard applied by this Court in State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001) and State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002). Respondent's assertions are an attempt to excuse the fact that the State did not request any pre-trial *voir dire* that would have disclosed the "scant acquaintance" between Juror Givens and the person in the snack bar.

The record clearly shows that the trial judge's sole reason for removing Juror Givens was "in an abundance of caution." For sound policy reasons, this Court should not allow an "abundance of caution" to serve as a valid reason for a trial judge to remove a juror. To do so would essentially give trial judges unfettered decision-making in the jury selection process and would take part of this process out of the hands of the parties, which is where it belongs. As discussed at length in Appellant's Initial Brief, the judge gave preference and control to the prosecution in violation of the concepts discussed in Harbin. Even if the judge did not label the removal as a peremptory strike at trial, a peremptory strike (a strike at the request of one party without cause) is precisely what it was. Following this Court's precedent in Stone, it is clear that the trial judge erred in removing the juror.

III. This Court should not apply harmless error analysis regarding Appellant's fundamental and substantial right to a fair jury selection that was jeopardized when the lower court gave the state a *de facto* sixth peremptory challenge during the second day of trial.

Respondent urges this Court to apply a harmless error analysis to affirm the trial court. However, this Court should not apply a harmless error analysis. South Carolina has never addressed the issue of whether automatic reversal is required in a case where a judge strikes a juror without cause. However, the Seventh Circuit discussed this issue at length in U.S. v. Harbin, 250 F.3d 532 (7th Cir. 2001), which was argued throughout Section 2 of Appellant's Initial Brief. Notably, the Harbin Court applied a standard where reversal is warranted if the error affects a "substantial right." Also, in Harbin, the trial court's actions did not allow the State to exceed its total number of peremptory strikes, where here the trial court allowed the State to remove a juror mid-trial, without cause, thereby exceeding the statutorily-allowed number of peremptory strikes.

None of the cases cited by Respondent involve the removal of a juror, mid-trial, without cause. For example, the State cites to State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996) for the proposition that a harmless error analysis should be applied. In Williams, at the conclusion of the second day of trial, a juror approached counsel table and shook hands with a man sitting with the defendant. The man was a pastor at the defendant's church, and he had assisted defense counsel in contacting witnesses. During an *in camera* hearing, the juror testified he had previously worked with the pastor and had gone to hear him preach on occasion. The trial court, finding that a problem may have arisen by virtue of the pastor's being seated at counsel table, relieved the juror and replaced him with the alternate.

Here, unlike Williams, the trial court found no problems with the challenged juror. The trial judge had no concerns about Juror Givens' impartiality, found that the snack bar interaction was innocent, and was not troubled by the fact that Juror Givens did not disclose the snack bar interaction at the first opportunity.¹ [R. p. 179, line 15 – p. 182, line 3] The trial judge only removed the juror in “an abundance of caution.” Further, the Court in Williams found that the challenge as to the removal of the juror for cause was not preserved and did not address the defendant's argument. The Court only focused on whether there was a problem with the alternate. Here and in Harbin, unlike Williams, the juror was removed without cause.

Respondent also cites to State v. Simmons, 360 S.C. 33, 599 S.E.2d 448 (2004). In Simmons, Juror C discussed the case with his wife, including the personal effect of a possible verdict, despite the trial judge's express admonition not to do so. The Supreme Court held that “the trial judge acted within his discretion in excusing Juror C for the juror's unauthorized communication with his wife.” Id., S.E.2d at 452. Here, unlike Simmons, the verdict would have no personal effect on the juror, and the trial judge did not remove the juror based upon her conversation.

On appeal, the trial court's disqualification of a prospective juror will not be disturbed where there is a reasonable basis from which the trial court could have concluded that the juror would not have been able to faithfully discharge his or her responsibilities as a juror under the law. See State v. Green, 392 S.E.2d 157, 301 S.C. 347 (S.C. 1990); State v. Gaskins, 284 S.C. 105, 326 S.E.2d 132 (1985); State v. Linder, 276 S.C. 304, 278 S.E.2d 335 (1981). Here, because the judge expressly found

¹ Notably, without being prompted, during the second *voir dire* concerning this issue, Juror Givens disclosed her snack bar interaction without hesitation. [R. p. 168, line 7 – p. 169, line 3]

that no reason existed to believe the juror would not have been able to faithfully discharge her responsibilities as a juror under the law, and this Court should reverse and remand for a new trial.

A harmless error analysis in this circumstance would rarely prove fruitful in that there is great difficulty in the aggrieved party to show prejudice. Here, the State was allowed five strikes by statute, and the defense was allowed ten strikes by statute. Granting the State's request to remove the juror, despite the trial judge's express findings that there was no cause to do so, allowed Respondent to alter the composition of the jury with information it learned mid-trial. There is fundamental unfairness here, and no requirement should be imposed on Appellant to show prejudice. See State v. Short, 327 S.C. 329, 489 S.E.2d 209 (Ct.App. 1997) (holding the erroneous denial of a criminal defendant's right of peremptory challenge requires automatic reversal where a juror whom the defendant should have been able to strike is a member of a convicting jury).

IV. Because the trial court expressly found no issue with Juror Givens' competence to serve as a juror, the State received an extra peremptory challenge.

"A juror's competence is within the trial judge's discretion and is not reviewable on appeal unless wholly unsupported by the evidence." State v. Simpson, 325 S.C. 37, 41, 479 S.E.2d 57, 59 (1996). Here, the trial judge expressly found no issues with the juror's competence. She removed the juror "in an abundance of caution."

Juror Givens and Juror Gadsden both failed to disclose their snack bar encounter after the lunch break. The State went further to challenge Juror Gadsden's demeanor when the mid-trial *voir dire* concerning the lunch break took place. [Trial Transcript, p.

156, line 24 – p. 157, line 7] Regardless, the State withdrew its motion regarding Juror Gadsden.

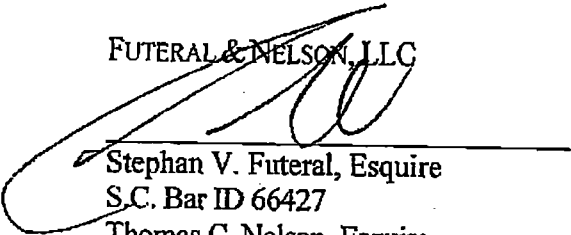
It is clear that that State desired to remove Juror Givens as a result of her “scant acquaintance” with the person in the snack bar. This “scant acquaintance” does not amount to a strike for cause, and the judge expressly declined to remove Juror Givens for cause. Accordingly, the result was to allow the State to strike a juror based upon a bias that it “perceived,” and the State received a sixth peremptory strike.

CONCLUSION

The lower court erred by allowing the State to challenge and to remove a juror during the second day of trial despite the lower court’s express finding that there was no cause to remove the juror. By allowing the State to challenge and to remove an impartial juror on the second day of trial without cause, the lower court gave the State a *de facto* sixth peremptory challenge thereby skewing the jury selection process in the State’s favor and adversely impacting the ability of the peremptory challenge process to fulfill its function as a means of ensuring an impartial jury and a fair trial. Appellant is entitled to a jury process that does not give the State one-sided control over the jury’s makeup during trial by allowing the State to remove an impartial juror without cause. Accordingly, this Court should reverse and remand this case for a new trial.

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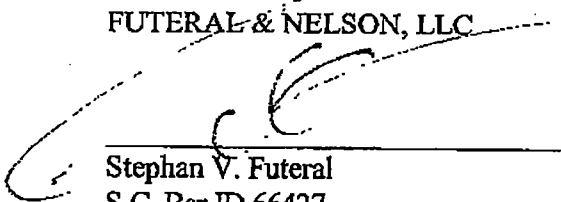
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**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

JEROME RENALDO CAMPBELL,
a/k/a Jerome Coaxum,

Appellant.

Appellate Case No. 2012-208426

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

- I. Did the lower court abuse its discretion by allowing the State to challenge and to remove an impartial juror without cause during the second day of trial?
- II. Did the lower court impair Appellant's right to a fair jury selection process by giving the State a *de facto* sixth peremptory challenge during the second day of trial?

RESPONDENT'S STATEMENT OF THE CASE

The Appellant, Jerome Renaldo Campbell, *aka* Jerome Renaldo Coaxum, was indicted at the September 2009 term of the Court of General Sessions for Charleston County for assault with intent to kill (Frank Haigler) (2009-GS-10-6730); murder (Michael German) (2009-GS-10-6731); assault with intent to kill (Anthony German) (2009-GS-10-6732); and assault with intent to kill (Michael Allen) (2009-GS-10-6733). The charges arose from an incident on January 9, 2009.

The Appellant was represented by William Stephen Harris and Jason Todd Mikell. The prosecution was handled by Assistant Solicitor Gregory Voigt and Elizabeth B. Riddle of the Ninth Circuit Solicitor's Office. On January 23, 2012, the matter was called to trial before a jury and the Honorable Deadra Jefferson, Presiding Judge. On January 27, 2012, the Appellant was found guilty of all four indictments. R.p. 81-82. He was sentenced by the Judge Jefferson to concurrent terms of imprisonment of thirty (30) years on murder, and ten (10) years on each of the assault with intent to kill verdicts. R.p. 85, l. 5 - p. 86, l. 21.

ARGUMENT

- I. **The trial judge did not abuse its discretion in removing juror Givens prior to any deliberations with an alternate out of an abundance of caution where the removed juror was seen conversing with a member of the Appellant's family, where the removed juror had been instructed prior to the lunch break to not converse with anyone, where the removed juror initially denied the existence of any contact, where a video shows the removed juror grabbing and pulling the family member to her side and where there was an uncontradicted claim that a family member of the Appellant was overheard stating that the juror was "on their side" after the viewed conversation. Discretion, based upon the judge's particular concern that there would be a perception that any verdict was not fair or impartial, allowed the Court to act to remove the juror, even though the court did not conclude the juror's non-disclosure was intentional.**

It has been stated that a criminal defendant does not have a right to be tried by a particular juror, but only to have fair and impartial jurors decide his fate. See State v. Rayfield, 369 S.C. 106, 113, 631 S.E.2d 244, 248 (2006). A trial judge should have the reasonable discretion to replace a juror with an alternate juror "out of an abundance of caution" to preserve the appearance of the fairness of a trial after evidence is presented concerning comments made after the juror is viewed conversing with a member of the criminal defendant's family¹ after being instructed "do not have any contact with anyone in or about the courthouse"² by member of the crime victim's family who overhears the defendant's family member state out loud after speaking with the juror "I have them on my side."³ Discretion should allow under these discrete circumstances the cautionary removal of the same juror when that the juror initially failed to

¹ R.p. 27-28, Court Exhibit 2 (surveillance video of courthouse snack bar), Court Exhibit 3 (statement of Trenell German); Court Exhibit 4 (statement of Tiffany Peacock). R.p. 88-91.

² R.p. 26, l. 17-19.

³ Court Exhibit 4.

respond to a general inquiry concerning the contact between jurors and others during the lunch recess about this hidden contact,⁴ even after the judge particularized to the jury that the improper contact occurred in the snack bar with members of the defendants's family.⁵ Although the trial judge found that the juror's partiality had not been shown nor that her misleading non-disclosure was deliberate, the trial court concluded that she was constrained to remove the juror to avoid the perception and avoid any question regarding the partiality of the verdict. R.p. 72-74. The trial court's decision to do replace the juror with an alternate, under these circumstances should not mandate a new trial. See State v. Simmons, 599 S.E.2d 448 (2004)(trial court did not abuse its discretion by dismissing a juror after a murder trial had begun, where juror admitted that he had unauthorized contact with his wife about the personal effect of a guilty verdict would have on them, and the trial judge had admonished the jury not to discuss the case with anyone).

Further any error was harmless where the alternate was present throughout the proceeding and the Appellant had not shown he was prejudiced by the substitution prior to any deliberations. State v. Williams, 469 S.E.2d 49 (1996) (defendant was not prejudiced from seating an alternate juror after juror was dismissed). See Ballentine v. State, 390 S.E.2d 887 (Ga. App. 1990) (replacement of regular juror with alternate during deliberations, due to innocent error as to who was regular juror and who was alternate, was harmless error, where correct number of jurors deliberated, extra juror had no influence upon jurors decision, and alternate juror was drawn from same source, in same manner, had same qualifications as other jurors, and listened to same evidence and charge of court); Barker v. State, 487 S.E.2d 494 (Ga. App. 1997) (no harmful

⁴ R.p. 33, l. 15- p. 34, l. 21.

⁵ R.p. 35, l. 4-17, p. 35, l. 18-, p. 36, l. 15.

error in court replacing juror with alternate where court found that juror's conduct amounted to immaterial irregularity," if any , and court would thus have been entitled to retain juror, while it was claimed that investigator stated to juror "we got one," and that juror repeated the statement and shook hands with investigator, trial court conducted inquiry, and determined that only greetings were exchanged, but excused juror out of an abundance of caution and seated alternate); Lee v. State, 11 S.W. 3d 553 (Ark. 2000)(a defendant must show prejudice when the trial court removes a juror and seats an alternate in the juror's place); Thornberg v. State, 985 P. 2d 1234 (Okla. Crim App. 1999)(removal of juror on less than clear and convincing evidence of misconduct did not prejudice murder defendant and did not require reversal, where removed juror was replaced by alternate who had been passed upon by both the state and the defense); State v. Pettigrew, 860 P. 2d 777 (N.M. App. 1993)(defendant's were not prejudiced by court's excusal of juror following unauthorized contact with public defender intern and replaced with alternate chosen in same manner as excused jurors and defendant had no right to a particular juror on the panel).

The Appellant contends that he is entitled to a new trial due to the qualified juror being replaced by a qualified alternate. He contends because there was no showing that removed juror Robin Givens (juror #70) intentionally concealed information about the encounter with the defendant's family at the snack bar, no inference of partiality was shown and it was error to remove her, citing State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001) and S.C. Code Ann., § 14-7-1020 (1976). He contends that when Judge Jefferson concluded that juror Givens did not intentionally conceal any information, that the court inquiry should have ended at that point and she should have remained on the jury, citing State v. Guillebreaux, 362 S.C. 270, 607 S.E.2d 99

(S.C. Ct. App. 2004). He further contends that even if juror Givens concealed information, that the court erred in allowing the state to challenge Givens because the information concealed would not have been a material factor for a peremptory challenge or support a challenge for cause, citing State v. Stone, 359 S.C. 442, 567 S.E.2d 244 (2002) (“scant acquaintance” insufficient to remove the juror where it would not support a challenge for cause nor a material factor in the state’s exercise of a peremptory challenge). He claims that the allegedly similar “scant acquaintance” would not be a material factor in the state’s exercise of a peremptory challenge or cause for exclusion had it been revealed. He argues that because the state had exhausted all its peremptory challenges before juror Givens was called, he was not prevented from the intelligent exercise of the strike.

As shown more fully below, the Appellant’s assessment is misplaced. The salient factor - recognized by the trial judge - was that juror Givens did not follow the instructions of the court to avoid contact. To the contrary, she was shown actually pulling the family member towards her after juror Givens had initiated the contact with a wave. Further, the juror failed to reveal the existence of her contact after it was learned by a complaint from a member of the victim’s family that such improper contact had in fact occurred. It was only after the snack bar surveillance video revealed support for the victim’s complaints and a second - more direct - inquiry that juror Givens admitted that there was contact. Although the trial court found that juror Givens’ interaction was innocent and that juror Givens had no intention to mislead the court during the original voir dire because the family names were not revealed in her instruction, it is clear that she failed to respond to inquiry after the contact was revealed to the state and the court. While the trial court stated that it was innocent contact by the juror - albeit in derogation of the almost

contemporaneous cautionary instructions by the court - Judge Jefferson recognized that while it was not shown that the case was discussed between them - perception is often the reality and that to preserve the integrity of a verdict she was removed. Where statements were made after the contact by the person that "I have them on our side," discretion was not abused in the removal.

STANDARD OF REVIEW - Abuse of Discretion.

"[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." Palacio v. State, 333 S.C. 506, 511 S.E.2d 62, 68 (1999).

"[I]n order to fully safeguard this protection, it is required that the jury render its verdict free from outside influences of whatever kind and nature." State v. Bryant, 354 S.C. 390, 581 S.E.2d 157, 160 (2003)[quoting State v. Cameron, 311 S.C. 204, 428 S.E.2d 10, 12(Ct.App. 1993)].

A decision on whether to dismiss a juror and replace her with an alternate is within the sound discretion of the trial judge, and such decision will not be reversed on appeal absent an abuse of discretion. State v. Smith, 338 S.C. 66, 525 S.E.2d 263, 265 (Ct. App. 1999). More specifically, "[I]t is within the discretion of the trial court to determine whether bias results from a juror's reception of outside information concerning the case being tried." Washington v. Whitaker, 317 S.C. 108, 451 S.E.2d 894, 900 (1994); see State v. Ivey, 331 S.C. 118, 502 S.E.2d 92, 94 (1998)[noting a juror's competence is within the trial judge's discretion and is not reversible on appeal unless wholly unsupported by the evidence]; see also State v. Loftis, 232 S.C. 35, 100 S.E.2d 671, 675 (1957)[declining to interfere with trial judge's discretion in matter concerning jury, because trial judge has the opportunity to consider credibility of jurors].

"To protect both parties' right to an impartial jury, the trial judge must ask potential jurors whether they are aware of any bias or prejudice against a party." State v. Woods, 345 S.C. 583,

550 S.E.2d 282, 284 (2001).⁶ “Determining whether a juror’s failure to respond to a voir dire question amounts to intentional concealment is a ‘fact intensive determination that must be made on a case-by-case basis.’ ” State v. Guillebeaux, 362 S.C. 270, 607 S.E.2d 99,101-02 (Ct. App. 2004) quoting State v. Sparkman, 358 S.C. 491, 596 S.E.2d 375, 377 (2004)]. “Intentional concealment occurs ‘when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror’s failure to respond is unreasonable.’ ” Id. “Concealment is considered unintentional where the voir dire question posed is ambiguous or incomprehensible to the average juror or where ‘the subject of the inquiry is insignificant or so far removed in time that the juror’s failure to respond is reasonable under the circumstances.’ ” Id.

The goal of the corrective measures is to insure the defendant’s right to a fair trial has not been compromised. State v. Stone, 290 S.C. 380, 382, 350 S.E.2d 517, 518 (1986). Cautionary instructions or substitution of alternate jurors may cure the prejudice caused by the publicity. United States v. Hankish, 502 F.2d 71 (4th Cir.1974). The determination of what curative measures are appropriate in a given case rests in the sound discretion of the trial judge. He should exhaust other methods to cure the prejudice before aborting a trial. Id. at 77.

⁶“When a juror conceals information inquired into during voir dire, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party’s peremptory challenges.” Id. “Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn.” Id.

How the Juror Exclusion Issue was Raised.

A. The General Voir Dire

On January 23, 2012, Judge Jefferson made a general voir dire of the potential jury panel.

R. 3-13. Concerning the particular parties in this criminal action, Judge Jefferson inquired as follows:

Is there any member of the panel related by blood or marriage to Jerome Renaldo Campbell, Michael Allen, Anthony German, Frank Haigler, or anyone who is related to or a member of - - or have any connection with Michael German? If so, please stand at this time?

(Whereupon, no one stands.)

The Court: Does any member of the panel have a close - - close personal or social relationship with Jerome Renaldo Campbell, Michael Allen, Anthony German, Frank Haigler or anyone who is related to Michael German? If so, please stand at this time.

(Whereupon no one stands.)

The Court: The following are a list of potential witnesses in this case. I would ask that you listen very carefully. Jerome Renaldo Campbell, Charise Coaxum, Christopher Robinson, Aaron Burnham, Sandra Campbell, Jordan Richardson, John Tisdale, Mary Phillips, Anita Moore, Mike Sherman, Richard Wiersman - - Wiersma, W-I-E-R-S-M-A, Richard Burckhardt, Sergeant Scott Ray, Rene Charles, all of the Charleston Police Department, Ryan Kelly, Anthony German, Michael Allen, Timothy McCarthy, James Tawney, Frank Haigler, Kenneth Whitler, John Roberts, all of the South Carolina Law Enforcement Division, Erin Presnell, Medical University of South Carolina, Joshua Briar-Ridgeway, and Joy Glover.

Is there any member of the panel related by blood or

marriage to any of the people that I have just listed or does anyone have a close personal or social relationship with any of these individuals? If so, please stand at this time.

(Whereupon no one stands.)

R. p. 7, l. 8 - p. 8, l. 11. During the voir dire, concerning family members in law enforcement, potential juror Robin Givens (70) indicated she had a cousin who was with the North Charleston Police Department. R. p. 11, ll. 10-16. Potential juror Erica Gadsden (63) indicated that she had a cousin in the Charleston Police Department. R. p. 11, l. 18 - p. 12, l. 1.⁷

B. The Jury Selection

The jury was selected in the following manner:

Name	State	Defense	Seated
Kelly Grobmeyer (82)	1	-	-
Keith Culbreath (42)	-	-	1
Danielle Bowles (14)	2	-	-
Lorilee Hoyle (107)	-	-	2
Alicia Brown (16)	-	-	3
Jessica Walters (275)	-	1	-
Cynthia Wilcher (286)	3	-	-
*Erica Gadsden (63)	-	-	4
Alex Pearson (193)	-	-	5
Henry Cheves (33)	-	-	6
Paul Porter (205)	-	-	7
Helen Spann (25)	-	-	8
Glenda Elayda (52)	-	2	-
Christina Janke (115)	4	-	-
Stacy Stewart (255)	-	-	9
Matthew Sullivan (259)	-	-	10
William Kufner (131)	5	-	-
Cathy Thomas (262)	-	3	-
*Robin Givens (70)	-	-	11

⁷ During the voir dire, Judge Jefferson did not ask the potential jurors concerning whether any of the jurors were acquainted with Jerome Campbell (Coaxum)'s family members. In addition, the appellant's family members were not specifically identified by the court.

Julie Lowman (143)	-	-	12
Laura Patrick (187)	-	-	1A
Laura Owings (184)	-	1	-
William Latimer (132)	-	-	2A

R. p. 14, l. 1 - p. 21, l. 24. Thus, prior to the selection of Juror Givens, the State had already exhausted all five of its peremptory challenges.

C. The Lunch Recess and Cautionary Instructions.

Judge Jefferson then advised the jury panel that they were breaking to discuss scheduling with counsel. In particular, she advised the selected panel concerning the potential lunch break:

During this break, please do not discuss the case among yourselves. Please don't speculate about what you think it may or could be about...

R. p. 22, ll. 22-25.

After a brief break, the jury was returned and sworn. R. 24-25. Judge Jefferson gave additional and more specific instructions concerning the lunch break discussions. R. 25-27. In particular, she instructed:

During the break, **please do not discuss the case among yourselves or with anyone else.** Please don't speculate about what you think it may or could be about. Please don't do any independent research. That includes anything that could be found on the internet or any other alternate source. As the fact finders in this case, you are bound to decide this case according to the evidence that you hear from the lips of the sworn witnesses and the other evidence that will be introduced.

Also, please do not have any contact with anyone in or about the courthouse. There are a lot of witnesses in this case and again, we would not want an innocent conversation to be observed and misinterpreted. ...

R. p. 26, ll. 3-19 (emphasis added).

D. The Initial Motion Concerning Lunch Break Communications.

Subsequently after the lunch break, the court reconvened. At that time, Assistant Solicitor Voigt advised Judge Jefferson that members of the victim's family had reported to him that while they were in the snack bar they saw two members of the jury conversing with a family member or friend of the Campbell group (defendant's).⁸ It was reported that one of the Campbell group was overheard to say after the conversation with the jurors that "they're on our side." R. p. 27, l. 25 - p. 28, l. 6.

When Judge Jefferson questioned whether they were actually jurors in this case, Solicitor Voigt reported that they had jury stickers on and he suggested it was Erica Gadsden, juror 63, in a yellow shirt and an older woman wearing a dark jacket which fit the description of Ms. Givens (juror 70). R. p. 28, ll. 16-25. Solicitor Voigt also proffered that the family member who was identified as making the statement ["on our side"] was present in the court and could be identified. R. p. 29, ll. 1-4.

Defense counsel then also questioned whether it was actually a juror in the present case.

⁸Subsequently, a surveillance video from the courthouse snack bar was presented during a hearing on the written motion. Court Exhibit # 2 [in possession of the Court]. The silent video reveals what subsequently was determined to be juror Erica Gadsden (Juror 63) in a bright yellow shirt with juror Robin Givens in a red coat (Juror 70) entering the snack bar area at on the video. [12:26:30]. They are viewed sitting down and conversing while eating. A group of four females subsequently enters the snack bar area. Juror Givens waves at group at 1:19:52. One female walks over and juror Givens reaches out and grabs her hand and pulls the female toward her at 1:20:00. This female remains in apparent conversation at the table where Givens and Gadsden are seated while three others briefly move away. This person remains in conversation until 1:20 :36 when she moves away toward her three remaining group members. The female she spoke with in the group goes back toward the door and juror Givens gets up preparing to leave and has another brief conversation with the same female at 1:21:10. The person then leaves while the remaining three members remain [with others who later share pleasantries and replace the departed jurors at the table]. Juror Gadsden leaves, followed by juror Givens at 1:21:25. **Court Exhibit #2.**

R. 29-30.

Judge Jefferson stated she would do a voir dire. She also noted how people may perceive matters differently in matters of passing conversation. R. 30-32. Judge Jefferson stated that she would voir dire the jury to make sure that they followed her instructions without objection. R. p. 32, ll. 9-16.

The Initial Voir Dires Concerning the Contact.

The jury panel was then presented to the court. During her colloquy, she asked the following question:

Before we begin that process of opening instruction and opening argument, I gave the jury strict instructions that they were not to have any contact with anyone in or about the courthouse who did not have a juror sticker on because, again, very innocent conversations could be very easily misinterpreted and misconstrued. I need to ask you all did any of you during the lunch and recess have any contact with anyone in or about the courthouse who did not have a juror sticker on? If so, if you did, I need you to raise your right hand for me.

(Whereupon, one juror raises her right hand.)

R. p. 33, ll. 15-17. Juror Stewart indicated that she was having lunch outside the courthouse and she spoke to a gentleman, but not about the case. R. p. 34, ll. 1-13. No response was made by either juror Givens or juror Gadsden.

Judge Jefferson then made further inquiry of the jury:

The Court: Okay. Is there anyone else who had any contact with anyone in or about the courthouse, either in the snack bar or any other parts of the building that did not have a juror sticker on and you had any interaction with them?

(Whereupon, there is no further response from any of the jury members.).

R. p. 34, ll. 14-21.

Judge Jefferson then re-iterated her earlier instructions about the importance of avoiding innocent conversations which may be misinterpreted, particularly noting that the gallery was full of members from the victim's and defendant's families. She continued:

I need for you all to be aware that reports have been made to the Court that conversations took place in the snack bar otherwise with members of - - with differing parts of members of the family and that there was a perception that the jury might be inclined or already predisposed regarding this case.
Again, I don't have any independent information that that is accurate. However, I will reinforce that even an innocent conversation can be easily misinterpreted.

Emotions run very high during a trial. As you are well aware, the allegations in this case are significant and perception becomes reality. so I would ask that you very stringently follow my instructions and have no conversation with anyone in or about the courthouse who does not have a blue juror sticker on....

R. p. 35, ll. 4-17. (Emphasis added). See also, R. p. 35, l. 18 - p. 36, l. 15. No exceptions to the instructions were raised by the State on defense. R. p. 36, ll. 16-18.

Judge Jefferson then continued her instructions on the case. R.p. 36-39; Tr. 50-59.

Included within the instructions was another admonishment to not discuss the case with anyone or consider matters outside of the courtroom. R. p. 39, ll. 2-22.

E. The Trial.

During the trial, juror 205 wrote a note claiming that he "knows the brothers." Tr. p. 106, l. 23 - p. 107, l. 2. After further extended inquiry with the juror, it was unclear whether the Campbell brothers he knew in James Island years before were related to the Appellant. Tr. 107-

114. The trial judge concluded that the particular juror could be fair and impartial and he remained on the jury. Tr. 115-16.

F. The Written Motion to Exclude Jurors and Hearing.

On January 24, 2012, the prosecution made a written motion to exclude two jurors. [State's Motion to Exclude Jurors]. R.p. 1. The focus of the State's motion again concerned jurors 63 (Gadsden) and juror 70 (Givens). In particular, the motion declared:

3. The State is in possession of video from the Snack Bar taken during the Court's lunch break. The video (attached hereto as Attachment #1)⁹ clearly shows members of the defendant's family enter the Snack Bar. **One family member, identified as defendant's sister, engages Jurors numbers 63 and 70 in conversation and goes as far as giving Juror number 70 a hug. Later, another of the defendant's family appears to have given the jurors a short greeting.**
4. The actions captured by the Snack Bar video belie the answers given by these jurors to the Court's clear questions regarding potential improper contact during the lunch break. More troubling than the contact is the jurors' lack of candor towards the court. The jurors' mendacity undermines any faith that these jurors can fulfill their oath fairly.
5. Had the State known of any familiarity, however, slight, between these jurors and a member of the defendant's family, the State would have exercised its peremptory challenges on these jurors.

State's Motion, p. 1-2. ROA 1-2. (Emphasis added). The State supplemented the motion with Court Exhibit 3 (Statement of Trenell German)¹⁰ and Court Exhibit 4 (Statement of Tiffany

⁹Court Exhibit #2 described *infra*, at fn. 2.

¹⁰In Trenell German's January 23, 2012 statement he declared:

Peacock).¹¹ R.pp. 46, 88-91; Tr. 154. At the motion hearing, the prosecutor asserted that during the inquiry the day before neither juror raised their hands upon the trial judge's inquiry.

Assistant Solicitor Voigt stated that he saw juror Gadsden look into the audience on the inquiry.

R.p. 48, ll. 2-17. Judge Jefferson commented that in her view she was avoiding her eyes and looked toward the bailiffs. R.p. 48, ll. 18-23.

Counsel for the State asserted that in the earlier voir dire, the court gave the jurors the

I witness Candance Ladson speaking with the juror with the yellow shirt on, heavy set female looks like to be about 24, African America, they talked for about two minutes.

Q. How do you know they were jurors?

A. As Jurors were coming out in the courtroom first time she had on blue/white juror sticker.

Q. How do you know Ms. Ladson?

A. She the mother of my sister in law and sister of Jerome Campbell

Q. Where did the conversation take place?

A. Courtroom snack bar.

Q. Describe the juror in question the best you can.

A. She's an African American female on the heavy side she has on a yellow shirt (bright). She had diamond heart earring in her ears. She has pink nail polish (on nails). She looks to be 24.

Court Exhibit 3. ROA 88-89.

¹¹In Tiffany Peacock's January 23, 2012 statement she declared:

I did on 1-23-2012 observe two of the jury members. The conversation appeared to last approx. 2 -4 min. , and it appeared that the jurors and the family of the defendant knew each other. During the conclusion of the conversation I observed a black female with a brown jacket and pants casual sweat suit making the statement "I have them on our side." I proceeded to ask Trenelle "I thought we could not have contact with the jury." She stated that she thought the same and that she would speak with Mrs. Porcel. The two jury members that I observed were both black females, one heavier set with a yellow screen print type shirt. The other had long wavy hair and a heavy jacket that was dark in color. This conversation took place in the court house snack bar approx. 1:20 PM on 1-23-2012.

Court Exhibit 4. ROA 90-91.

opportunity for an innocent explanation and now the conversation is shown on the video from the snack bar. R. p. 49, ll. 9-18. The State contended that there was deliberate misleading of the court and asked that the jurors be removed. R. 49-50.

The defense asserted that he also viewed the juror during the questioning and the person in the video (a cousin, not his sister) was not in the courtroom after lunch as earlier asserted by the State. R. 50-51. The defense stated that there was no audio in the video so the conversation is not revealed and suggested it could have been innocent or that they did not know the person was on the jury. R. 52. The defense expressed a concern about a mistrial if both jurors are removed due to the earlier concern by juror Porter about the "Campbell brothers", potentially leaving eleven (11) jurors. R. 52-53.

The defense stated that juror 70 (Givens) on the video was the only person talking with a relative and the video did not show the juror badge on her, although it shows it on juror Gadsden. R. 53. The defense stated: "If Your Honor is going to excuse on that you excuse Ms. Givens based on that you can see somebody talking to her, but we don't know what the conversation entails." R. p. 53, ll. 14-17.

Judge Jefferson stated she had viewed the video several times. She stated that some alleged members of the defendant's family walk into the snack bar and made contact with a juror seated at a round table. R. p. 53, ll. 18-25. The person is seated with her back to the camera and identified as interacting, but she did not see a hugging.¹² Judge Jefferson described the other juror in the yellow shirt as quiet and exits. **From the video, Judge Jefferson stated it was difficult,**

¹² The video, in fact, reveals the juror reaching out while remaining seated, grabbing a female's outstretched hand and pulling her towards her. Court Exhibit #2, 1:20:00.

but notes that there was clearly interaction between a juror and a member of the defendant's family that was prohibited in her instructions. R. p. 55, ll. 3-9. Judge Jefferson noted that the names German, Coaxum, and Campbell were used in the voir dire, but it was possible that they would not have been recognized. However, she noted it was troubling that this contact was not disclosed in the intervening voir dire. R. 56.

a. The Givens Voir Dire

Judge Jefferson first voir dired juror Givens. R. 60-65. Juror Givens declared she had lunch at the snack bar with juror 63 (Juror Gadsden). R. 60-61. She confirmed that while having lunch a girl from James Island came up to her. She stated she knew her through a friend and that they had "hung out together a few times," like going to birthday parties. R. p. 61, ll. 7-20. Juror Givens stated she had seen the girl last year in June or July, but not since until yesterday. R. p. 61, l. 21 - p. 62, l. 1. She did not consider the girl a close friend and did not talk to her on the telephone, but recalled she was named after a champagne or wine. She said that they hailed each other in the snack bar and was surprised to see her. R. 62. She did not think she was involved in the case and asserted that she did not have a discussion about the case. R. 62-63. She said that they just talked about the friend they had in common and about the girl's grandmother she had moved in with. R. 63.

Juror Givens again stated she did not have a discussion about the case and that the girl was not to her knowledge related to the defendant. R. 63. Juror Givens stated that she recalled the instructions not to speak with anyone, but admitted that she forgot it when she saw someone from the neighborhood. R. p. 64, ll. 4-16. She opined that she could still be fair and impartial and decide the case on the evidence. R. 63-64.

The State urged the court, in reliance on its written motion, to remove contending that Juror Givens had misled the court yesterday in her failure to answer the court's questions about the contact. He stated that due to the omission, she was not entitled to any presumption of impartiality. R. p. 66, ll. 12-18.

The defense asserted it was not an intentional omission on her part. He asserted it was cleared up when asked if she was in the snack bar and spoke with someone. R. 67. He noted her statements about impartiality and that it was a passing acquaintance. R. 66-67.

b. The Gadsden Voir Dire

Judge Jefferson next voir dired juror Gadsden (63). Although she initially denied having lunch with Ms. Givens at the snack bar, she then confirmed she had lunch with her, but did not know her name. R. 68. She confirmed that someone came up to juror Givens and juror Gadsden asked her if she knew the person from someplace and the girl responded no. R. 68-69. Gadsden claimed she did not have further contact with anyone other than Givens. Gadsden had no reason why she did not respond yesterday about having interaction with anyone in the courthouse other than a juror. R. 69. She denied knowing anyone who was a family member of Michael German or Campbell. R. 69-70. She opined that she could be fair and render a verdict based on the evidence. R. 70.

After the inquiry with Gadsden, the State withdrew its motion to remove her. R. p. 71, ll. 8-12.

c. The Court's Decision to Remove Juror Givens

Judge Jefferson announced her intent to view the video again. She noted the juror's flat affect. R. p. 71, ll. 15-21. Judge Jefferson then stated:

Now I really don't have any concerns about Miss Givens' impartiality. She's indicated she can be fair and impartial and she can render a fair and impartial decision. But I am troubled I guess and I use that word very lightly because I'm not really not troubled by the fact that she didn't disclose when I asked the question because she's a typical juror. They just don't - - The things we think are important they don't think are important and I really don't think she had any intention to mislead the Court and there would have been no reason for her to have disclosed the individuals in voir dire because they weren't in the courtroom and their names specifically were not mentioned and in addition to that, she indicated I really don't even know this person's name. I just know she has the name of a wine or champagne or something.

I do think that the interaction was innocent. **I really don't think it amounts to anything, but out of an abundance of caution I'm going to excuse her just because I don't want there to be any perception that whatever verdict is rendered that it was not fair and impartial.** But I really think that anything she did was innocent. I don't even think she really knows the woman. I think it's one of those things because you can tell on the video the lady is very shocked that she sees her. She's like - - It's almost like, oh, that's you, I haven't seen you in a long time. There is no indication that they discussed anything about this case.

I have no reason to question that she would mislead the Court about it, but perception as I've indicated is often reality for people and I'm going to dismiss her just out of

R. p. 72, l. 3 - p. 73, l. 5 (emphasis added).

Judge Jefferson brought in Juror Givens to address her removal from the jury with her.

R. p. 73, l. 20 - p. 74, l. 19. She stated to her:

The Court: Miss Givens, **out of an abundance of caution**, I do not believe you have misled the Court in any way. I believe you have been candid and I believe the person you interacted with in the snack bar was an innocent interaction with somebody you hadn't seen in a while. **But out of an abundance of caution, I'm going to excuse you as a juror in this case so that there can never be any question regarding**

the impartiality of the verdict. We appreciate your candor and your time.

R. p. 73, l. 20 - p. 74, l. 3 (emphasis added).¹³ The defense noted its objection. R. p. 75, ll. 9-12.

The trial judge replaced juror Givens with an alternate, juror Latimer. R. 77-78.¹⁴

ANALYSIS

The Appellant primarily relies upon three cases State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001), State v. Guillebreaux, 362 S.C. 270, 607 S.E.2d 99 (S.C. Ct. App. 2004) and State v. Stone, 359 S.C. 442, 567 S.E.2d 244 (2002) to support his argument for a new trial.¹⁵

¹³It is interesting to note that juror Givens was perceived as being happy to be removed as a juror and being ready to go. See R.p. 74, ll. 5-19.

¹⁴ The defense renewed its prior motions and objections in a summary fashion after the State had rested. R.p. 79, ll. 7-8. It was denied. A similar general motion was after rebuttal. Tr.p. 652. The Court denied the motions. R. p. 80, ll. 21-22. After the guilty verdict, the trial court heard post-trial motions. R.p. 83-84. Counsel only made a general motion, asserting that he would reiterate and renew all objections during the trial and all motions made during the trial. The trial judge stated that it would note all motions and deny based on its previous ruling. R.p. 84, ll. 8-17. No specific mention was made by counsel or the court concerning the replacement of an alternate. Id.

¹⁵ Jurors should be admonished not to discuss the case with anyone, including each other, prior to submission of the case. State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994); Gallman v. State, 307 S.C. 273, 276, 414 S.E.2d 780, 782 (1992). "The rule is well settled that jurors should not, prior to the submission of the case to them, converse with outsiders or among themselves on any subject connected with the trial, or form or express any opinion thereabout; and that the jurors should be so admonished when they are permitted to separate during the trial." State v. Parker, 255 S.C. 359, 361, 179 S.E.2d 31, 32 (1971).

Any unauthorized communication, contact, or tampering directly or indirectly, made by a nonjuror with a juror during a trial about the matter pending before the jury is generally deemed presumptively prejudicial, if not made in accordance with rules of court and the instructions and directions of the court made during the trial, with full knowledge of all the parties. The presumption is not conclusive, but the burden rests heavily upon the nonmovant to establish, after notice to and hearing, that such contact with the juror was harmless. Prejudice may be shown by evidence that an extrinsic factual matter may taint the jury's deliberations. Essentially, an impermissible "outside influence" is an unauthorized communication or overt act by a third party which creates an extraneous influence on the jury.

However, a closer reading of these cases does not support the relief that he seeks in contrast with the unique facts in this proceeding.

In State v. Stone, the Court determined that the trial judge had abused its discretion in removing a juror.¹⁶ In particular, at sentencing, the state called the defendant's aunt as a witness. When she was placed on the witness stand, Juror Thompson indicated to the court that she knew the aunt. Although the aunt had been announced as a witness at the start of voir dire, Thompson later claimed did not know her name. Thompson had lived down the street from the aunt five or six years earlier, and they were casual acquaintances only. Thompson indicated her acquaintance would not affect her ability to be fair and impartial. The Supreme Court concluded that it is patent here that Juror Thompson's failure to disclose her acquaintance with Perry [during the opening voir dire] was innocent. Moreover, the Court concluded that "her scant acquaintance would neither have supported a challenge for cause nor would it have been a material factor in the state's exercise of its peremptory challenges. Thompson clearly indicated her former acquaintance with a witness whose name she did not even know, would not have affected her in

¹⁶ In Stone, the Court relied upon State v. Woods, 345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001), wherein the Court had stated:

When a juror conceals information inquired into during voir dire, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986). Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn. State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct.App.1991).

any way.” Stone, supra.¹⁷ The Court held the trial court abused its discretion in removing her. However, a closer reading of the case reveals that the new sentencing proceeding was not granted based upon this alleged error. The Court, unlike its response to the issues related to the failed to instruct on certain mitigating circumstances and the failure to give a parole ineligibility charge did not include any similar language that “required reversal.”¹⁸ The harmless error issue was not addressed or whether it warranted a new trial standing alone.

The Appellant also relies on State v. Woods, supra. Importantly, in Woods, the Court defined that “intentional concealment occurs when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances. Necessarily, whether a juror's failure to respond is intentional is a fact intensive determination which must be made on a case by case basis.” In Woods, the court found that the juror's failure to reveal the prior relationship with the solicitor's office during the opening voir dire was intentional concealment and would have impacted on the use of the peremptory challenges. Here, there is no concealment, intentional or

¹⁷Here, the issue was not about the failure to reveal a scant acquaintance” with the family member during the initial voir dire, but the failure to acknowledge the existence of the contact in the snack bar and the direct violation in the contact with the person and impression it made on the observers and participants in the contact.

¹⁸ The failure to specify that the juror issue “required reversal” is a difference with a distinction. The Court was not required to address the issue concerning prejudice and harmless error concerning the removal. The absence of this language is telling of the limitation in the holding.

otherwise, of information by a juror on the initial voir dire as determined by Judge Jefferson. Thus, the language from Stone regarding whether the information would have been a material factor in the use of a peremptory challenge is inapplicable to this case.

Here, it was not about the failure to reveal on voir dire that supported juror Givens removal, but her failure to follow the instructions, have the contact with a third party and then failure to reveal it in a response in the court.

In State v. Guillibreux, the Appellant also seeks support. Therein, the Court of Appeals, through Judge, now Justice, Beatty, concluded a juror's failure during voir dire to disclose an alleged social relationship with State witness, who was the confidential informant who purchased crack from defendant, was not intentional. The Court of Appeals found that the juror's knowledge of who the confidential informant was and a rare exchange of greetings with him in her community did not constitute social relationship. The court found that the juror answered questions posed to her honestly, her failure to reveal her knowledge of confidential informant was reasonable response to question posed. In seeking a new trial based upon the juror's retention and alleged failure to disclosed the unfounded social relationship with the witness, the court concluded that a new trial was not warranted. As the Court stated: "[A]s we find no intentional concealment on Juror's part, we need not further determine whether the information would have been a material factor in the exercise of Guillebeaux's peremptory strikes. [State v.] Sparkman, 358 S.C. at 497, 596 S.E.2d at 377-78. Based on this evidence, we find the trial judge did not abuse his discretion in denying the motion for a new trial."

In Smith v. State, 375 S.C. 507, 654 S.E.2d 523 (2007), the Court cited Guillibreux addressed whether a juror had intentionally concealed a prior relationship with the defendant.

The Court found that the juror did not intentionally conceal the existence of his prior relationship with defendant during voir dire. The defendant claimed after the trial that he learned that they had been incarcerated together prior to defendant's murder trial at the detention center and did not recognize the juror due to a change in his appearance by his head being shaved and that he knew him only by a nickname "Rum Gully." He claimed without documentation that he had altercations with him in prison. The Court found that the defendant failed to establish that he suffered a per se violation of his due process right to a fair and impartial jury. It concluded that it was reasonable for juror to remain silent when asked during voir dire whether any member of the jury pool was "related by blood or marriage or a close personal friend of [defendant]." The juror testified that he and defendant were not close friends, juror also testified that he did not have any bias or prejudice against defendant, and he and the other members of the jury held the State to its burden of proof before finding defendant guilty of the two murder charges.

Unlike these cases, there was intentional concealment, although not during the initial voir dire. The Appellant asserts that this failure to show intentional concealment during the initial voir dire provides sanctuary and a requirement to have retained juror Givens despite her failure to acknowledge during the later voir dices the existence of the snack bar contact, the failure to follow the no contact instructions. Simply put the setting in this case is different than the settings in Guillibreaux and Stone. He ignores that juror Givens did intentionally conceal her out of court contact with the person in the snack bar when expressly asked the following questions by Judge Jefferson:

Before we begin that process of opening instruction and opening argument, I gave the jury strict instructions that they were not to have any contact with anyone in or about

the courthouse who did not have a juror sticker on because, again, very innocent conversations could be very easily misinterpreted and misconstrued. I need to ask you all did any of you during the lunch and recess have any contact with anyone in or about the courthouse who did not have a juror sticker on? If so, if you did, I need you to raise your right hand for me.

R. p. 33, ll. 15-17. Juror Givens did not respond to this clear inquiry.

Judge Jefferson then made further inquiry of the jury:

The Court: Okay. Is there anyone else who had any contact with anyone in or about the courthouse, either in the snack bar or any other parts of the building that did not have a juror sticker on and you had any interaction with them?

(Whereupon, there is no further response from any of the jury members.).

R. p. 34, ll. 14-21. Juror Givens did not respond to this clearer response!

Judge Jefferson continued:

I need for you all to be aware that reports have been made to the Court that conversations took place in the snack bar otherwise with members of - - with differing parts of members of the family and that there was a perception that the jury might be inclined or already predisposed regarding this case.
Again, I don't have any independent information that that is accurate. However, I will reinforce that even an innocent conversation can be easily misinterpreted.

Emotions run very high during a trial. As you are well aware, the allegations in this case are significant and perception becomes reality. so I would ask that you very stringently follow my instructions and have no conversation with anyone in or about the courthouse who does not have a blue juror sticker on....

R. p. 35, ll. 4-17. (Emphasis added). See also, R. p. 35, l. 18 - p. 36, l. 15. Again, no response about the proven contact by Juror Givens. This can only be concluded as "intentional

concealment.” This is more than merely whether the removed juror had a relationship with the defendant’s family.

“Determining whether a juror’s failure to respond to a voir dire question amounts to intentional concealment is a ‘fact intensive determination that must be made on a case-by-case basis.’ ” State v. Guillebeaux, 362 S.C. 270, 274, 607 S.E.2d 99, 101-02 (Ct.App.2004)(quoting State v. Sparkman, 358 S.C. 491, 496, 596 S.E.2d 375, 377 (2004)). Here, the questions put to juror Givens and the other jurors by the trial judge were reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror’s failure to respond is unreasonable.’ ” *Id.* These inquiries were not “ambiguous or incomprehensible to the average juror” shortly after the lunch recess and therefore it was not reasonable for Juror Givens to fail to respond.

The snack bar video of January 23 shows the basis of the intentional concealment by Juror Givens. Court Exhibit #2. The video shows juror Erica Gadsden (Juror 63) in a bright yellow shirt and juror Robin Givens in a red coat entering the snack bar area at 12:26:30. They are viewed sitting down and conversing with each other while eating. Shortly thereafter, four females enter the snack bar area at around 1:19. Juror Givens initially waves at group at 1:19:52. One female walks over toward the table where Givens and Gadsden are sitting and juror Givens reaches out, grabs her hand and then pulls the female towards her at 1:20:00. This female remains in apparent close contact conversation at the table where Givens and Gadsden are seated while three others briefly move away. This person remains in conversation at the table until 1:20:36 when she moves away toward her three remaining group members standing at the end of the snack bar counter. The female Givens spoke with in the group goes back toward the door and

juror Givens gets up preparing to leave and has another brief conversation with the same female at 1:21:10. The person then leaves while the remaining three members remain [with others who later share pleasantries and replace the departed jurors at the table]. Juror Gadsden leaves, followed by juror Givens at 1:21:25. Court Exhibit #2. This information cannot be disputed.

Was there an instruction to not have contact or discussions with anyone? Yes. Did the juror have improper discussions with such a person shortly after the instructions? Yes. Did she reveal the contact after the first inquiries were made after lunch? No. Was this improper contact with a family member of the defendant? Yes.

Appellant applies the wrong standard when he asserts that removal of a juror is only supported when the removed juror intentionally concealed information which would have supported a challenge for cause or a would have been a material factor in the party's use of peremptory challenges, because it does not address all setting that could lead to the need to remove a juror. See Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986) (affirming denial of motion for new trial based on after-discovered evidence where jurors' relationship with doctor's attorney was not a basis for disqualification). See also State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001) (post-verdict motion for new trial should have been granted where juror intentionally concealed prior association with solicitor's office, which denied defendant effective use of peremptory challenges); State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998) (affirming denial of new trial motion based on after discovered evidence based on information that juror attended pro-death penalty rally, where information was not intentionally concealed); State v. Gulledge, 277 S.C. 368, 287 S.E.2d 488 (1982) (pre-verdict mistrial should have been granted for juror's failure to disclose relationship with police officer, where

information would have supported a challenge for cause or would have been a material factor in the exercise of a peremptory strike); State v. Savage, 306 S.C. 5, 409 S.E.2d 809 (Ct. App. 1991) (post-verdict mistrial motion properly denied because no evidence party would have struck juror, and juror's failure to disclose distant relationship with witness was not intentional).

The state agrees Juror Givens concealment during the pre-selection voir dire did not appear to be intentional. However, her failure to respond about the contact after the snack bar incident during the subsequent voir dire is much more troubling. Absent the revelations on the surveillance video, juror Gadsden was the only juror specifically identified, not juror Givens. The video also revealed that it was juror Givens who initially waved and then pulled the defendant's family member towards herself and then engaged in the "close contact" conversation. While the video is silent, it remains uncontradicted that family member orally expressed a comment that "I have them on my side." Court Exhibit #4. R.p. 90. The focus of the Appellant is on the initial voir dire before jury selection. However, the critical mistake is juror Givens failure to reveal the unauthorized contact in the snack bar after being instructed to not have the contact and the effect the contact had on others - to both the defendant's family - "I have them on my side." and the victim's family upon seeing and hearing it and then reporting it.

Contrary to the assertions of the Appellant, it is more than the mere fact that juror Givens did not reveal a "scant acquaintance" with a member of the defendant's family during the pretrial voir dire. Instead, this was a wholly different scenario where the juror was perceived after the unauthorized contact as being turned to the defendant's side and then intentionally failed to reveal that there was any contact when the jury was specifically asked. In addition, when the juror physically pulled the family over for close contact conversation, an appearance of

impropriety cannot be disabused, particularly when she failed to reveal it during the post-lunch voir dres. Contrary to Appellant's claims, juror Givens had to be removed to maintain integrity to any verdict after the video surveillance was revealed. In fact, counsel for the Appellant, prior to the voir dire of Givens noted that she was the only person talking with the family member (whom he identified as a cousin - not a sister) and if you excuse on that, you only excuse Givens, not Gadsden. R.p. 53, ll. 14-17.

Despite Appellant's contentions, Thompson and the other cases cited above instead provide the standard for the granting of the extreme measures of a mistrial or a new trial, when juror concealment of relevant information is discovered. State v. Kelly, 331 S.C. 132, 146, 502 S.E.2d 99, 106 (1998) (quoting Thompson as the standard for a new trial due to retaining as juror, not as the standard for removal of a juror). Thompson and the other cases mandate when a trial court has to address the problem of newly discovered juror information with new trial or mistrial.

However, trial courts may still as a matter of discretion remove jurors for alternates in lesser circumstances than those which require mistrial as defined by Thompson and its progeny. This standard is discussed below.

"The general rule in this State is that the conduct of a criminal trial is left largely to the sound discretion of the presiding judge and [an appellate court] will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way". State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982). Along these lines, the typical appellate standard of review for the discretionary pre-deliberation removal of a juror and replacement with an alternate, is whether or not the trial court's decision was so unreasonable as to be an abuse of

discretion resulting in actual prejudice. State v. Rogers, 263 S.C. 373, 210 S.E.2d 604 (1974); State v. Williams, 321 S.C. 455, 469 S.E.2d 52 (1996). In this case, Appellant can show no prejudice from the seating of Alternate, nor can he show that the trial court's decision to excuse Givens was so unreasonable as to amount to an abuse of discretion.

This case is similar to State v. Williams, 321 S.C. 455, 469 S.E.2d 52 (1996). During trial in Williams, a juror spoke to a minister seated at counsel table. The juror testified he had worked with the minister and had heard him preach. The minister was seated at counsel table because he had assisted the defense in contacting witnesses. The trial court excused the juror and replaced him with an alternate to prevent any problems. The Court rejected the defendant's claim that the excusal violated Batson v. Kentucky, 476 U.S. 79 (1986), and Georgia v. McCollum, 505 U.S. 42 (1992), by first noting that the issues were not preserved. However, the Court went on to hold that there was no reversible error, because (1) there is no right to be tried by a jury composed of particular individuals, (2) the alternate juror had been approved by both sides at the inception of trial, and (3) there was no showing of any prejudice from the seating of the alternate juror. Williams, 321 S.C. at 459-60, 469 S.E.2d at 52.

The same result is warranted here as is warranted in Williams. Appellant has no right to be tried by a particular juror, and the alternate juror in this case was approved by both sides. Appellant has identified no sustainable reason why he was prejudiced by the seating of the Alternate. Here, the party aggrieved by the Juror Givens' belated revelations about her contact at the snack bar and disobedience with the trial court's no contact admonishment was the court and the state, not the defense.

The Removal of the Juror Based Upon the Lunch Room Contact Did Not Equate With An Additional Peremptory Challenge.

In his second argument, Initial Brief of Appellant, pages 10-15, Appellant attempts to show prejudice by contending that the effect of the judge's decision was to give the state an extra peremptory strike. This is incorrect. He asserts that the trial court found that because there was no cause to remove juror Givens. However, the trial court's decision, that a juror's improper contact, failure to follow her instructions and acquaintance with a relative of Appellant warrants excusal, is not so unreasonable as to be an abuse of discretion. The trial court acknowledged that it was removing the juror "out of an abundance of caution" to preserve the integrity of the verdict, not to award the state an additional peremptory challenge. Contrary to the characterization by the Appellant, the State was not provided an additional peremptory challenge as a matter of state law or by the action of the trial judge. This action occurred solely because of the post-selection contact between juror Givens and a member of the Appellant's family.

This Peremptory Challenge Issue Is Not Preserved For Appeal .

Nevertheless, this peremptory challenge claim is not preserved for review. At no time did the Petitioner claim that the state was given a de facto additional peremptory challenge. See R.p. 30-32, 50-53, 66-67, 79, 80, 83-84. As such, this specific claim is not preserved. State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000) (party may not argue one ground for objection at trial and a different ground on appeal); See State v. McWee, 322 S.C. 387, 472 S.E.2d 235 (1996) (Eighth Amendment challenge to parole eligibility not preserved because no constitutional basis was raised at trial); State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996) (Batson issue regarding dismissal of juror during trial not preserved where it was not raised at trial).

Parties are entitled to truthful and accurate information during voir dire so that they may intelligently make peremptory challenges; there is no question that the state did not have this information at selection about the contact in the lunch room and the overheard comments that “I have them on our side” by a family member after the contact because it did not exist until after the selection. See, e.g. State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998). Further, the failure of the juror to accurately respond after the initial inquiries about the contact brings her partiality into reasonable question where the defendant’s family is overheard making the “on our side” comments and then followed by the non-disclosure. Although it certainly appears that the relationship was likely minimal based upon juror Givens eventual testimony, the state pointed out its concern about a juror who violated the court’s instructions not to speak with people not wearing juror badges . State’s Motion, p. 1-2. ROA 1-2. R.p. 27-29, 49-50. Like the judge in Williams, where the relationship between the juror and the minister was admittedly more defined than the present case, yet still very casual, the trial court in this case was not unreasonable in deciding to avoid any possible appearance or existence of unfairness by seating the alternate.

The reliance by Appellant on the decision in U.S. v. Harbin, 250 F.3d 532 (7th Cir. 2001) is misplaced on the peremptory challenge issue. In Harbin, the Seventh Circuit reversed a decision by the district court allowing the government to use, in the middle of trial, a statutory peremptory challenge it had foregone during voir dire, when new information about a juror came to light. Id. at 538–39. The defendants had exhausted their strikes during voir dire but were unaware that they might be able to save them and use them during the trial. Id. at 538, 541. The Seventh Circuit held that the district court's decision was erroneous because “[t]he prosecution was unilaterally granted control over the composition of the jury during the trial stage ... [and

the] jury selection process ... failed to minimally inform [defendants] of the procedures that ultimately were followed.” Id. at 541 - 42.

The current case is nothing like the situation in Harbin. Here, each side received the statutory number of peremptory challenges. Both sides also knew full well that they were prohibited from using any of their challenges in a racially discriminatory manner nor had the ability to save strikes to use during the trial. All parties to the case were subject to the same requirements, and the jury selection process was not weighted in either the State or Campbell’s favor beyond the statutory limits for peremptory challenges. At no point did the State claim any entitlement to an additional strike. To the contrary, they were arguing prior to the voir dire the standard set out by the Court in Woods and Stone due to the improper contact, lack of candor with the court. State Motion, p. 2. He argued that the mendacity undermined that they could fulfill their duty. The Appellant seeks to parse the information and ignore that the motion was additionally based upon the overheard comment that “I have them on my side.” Under Stone, Woods, etc., had any prosecutor (or defense counsel) been aware that after contact with a family member by a juror that the juror was reported to be “on my side” that a peremptory challenge would have been used, thus satisfying the materiality component Stone and Woods to have required their removal and a new trial.

SUMMARY

Under these circumstances, the proper way to maintain integrity with the jury selections was to replace the juror with a qualified alternate.¹⁹ This was reasonable discretion on the judge’s

¹⁹ The Appellant tries to make the peremptory challenge issue to be supported because it withdrew its motion to remove juror Gadsden after the voir dire of juror Givens and Gadsden. However, the difference in their settings was clear after the testimony revealed the

part .

A New Trial Is Not Warranted by Harmless Error.

As stated above, Stone itself does not mandate reversal and the grant of a new trial should this Court find that the trial judge abused its discretion. Assuming Appellant is correct in his assertion that the record does not reflect by clear and convincing evidence that Juror Givens violated the rule of sequestration by the conversation with the defendant's family and the failure to acknowledge it upon voir dire after the lunch break, Appellant's argument that this error requires reversal is less convincing. Although Juror Givens may have been improperly removed, she was replaced by an alternate juror who had been passed upon by both the State and defense. Appellant has shown no prejudice from having his case decided by alternate Juror Latimer rather than Juror Givens and this Court should decline to find any. Reversal and a new trial is not warranted.

Although juror Givens claimed only a casual relationship with a family member who she "hung out together a few times, " but claimed not to see in around a year and spoke only about a common friend, she claimed she could remain fair and impartial. There is no right to have a juror with a casual connection with the defendant's family to sit as a juror. However, when the removal occurred "out of an abundance of caution, " jury deliberations had not begun. In fact, only a few witnesses [4] had even testified during the first day. The alternate was qualified in the same manner as juror Givens and was subject to peremptory challenges by both the state and defense with one strike remaining by each. R.p. 20-21. The alternate was present throughout the

communication was virtually only with Givens, not Gadsden. Although Gadsden did not reveal the brief encounter she had, by the testimony she was an uninvolved bystander to the actions of juror Givens.

first day of the evidence.

Any error was harmless where the alternate was present throughout the proceeding and the Appellant had not shown he was prejudiced by the substitution prior to any deliberations. State v. Williams, 469 S.E.2d 49 (1996) (defendant was not prejudiced from seating an alternate juror after juror was dismissed).²⁰ Accord Ballentine v. State, supra.; Barker v. State, 487 S.E.2d 494 (Ga. App. 1997) (no harmful error in court replacing juror with alternate where court found that juror's conduct amounted to immaterial irregularity," if any , and court would thus have been entitled to retain juror, while it was claimed that investigator stated to juror "we got one ," and that juror repeated the statement and shook hands with investigator, trial court conducted inquiry , and determined that only greetings were exchanged, but excused juror out of an abundance of caution and seated alternate); Lee v. State, 11 S.W. 3d 553 (Ark. 2000)(a defendant must show prejudice when the trial court removes a juror and seats an alternate in the juror's place); Thornberg v. State, 985 P. 2d 1234 (Okla. Crim App. 1999)(removal of juror on less than clear and convincing evidence of misconduct did not prejudice murder defendant and did not require reversal, where removed juror was replaced by alternate who had been passed upon by both the state and the defense); State v. Pettigrew, 860 P. 2d 777 (N.M. App. 1993)(defendant's were not

²⁰ As the Court stated in Williams,

In any event, in State v. McDaniel, 275 S.C. 222, 268 S.E.2d 585 (1980), this Court held there is no right to be tried by a jury composed of particular individuals. In McDaniel, an alternate was seated after a juror was dismissed for making improper gestures. The McDaniel court noted the alternate juror had been approved by both sides at the inception of the trial, and there was no showing in what manner the seating of the alternate prejudiced him. As in McDaniel, we discern no prejudice to Williams from the seating of the alternate juror here.

prejudiced by court's excusal of juror following unauthorized contact with public defender intern and replaced with alternate chosen in same manner as excused jurors and defendant had no right to a particular juror on the panel).

CONCLUSION

For all the foregoing reasons, the appeal should be dismissed and judgment of conviction affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

By: 

Columbia, South Carolina
March 6, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2012-208426

THE STATE OF SOUTH CAROLINA,

Respondent,

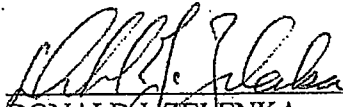
v.

JEROME RENALDO CAMPBELL,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled “Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.”


DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

March 6, 2013

CERTIFICATE OF SERVICE

I, Donald J. Zelenka, hereby certify that I have served the *Final Brief of Respondent* in the foregoing action by depositing copies in the United States Mail to:

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This 6th day of March, 2013.



DONALD J. ZELENA
Senior Assistant Deputy Attorney General

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Deadra L. Jefferson, Circuit Court Judge

Case No. 09-GS-10-6730
Case Tracking Number: 2012208426

State of South Carolina, ...Respondent,

v.

Jerome Campbell
a/k/a Jerome Coaxum, ...Appellant,

RECORD ON APPEAL

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FILED
STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) 2012 JAN 24 AM 9:54

JULIE J. ARMSTRONG

CLERK OF COURT

Case Numbers: 2009-GS-10-06730-33

STATE OF SOUTH CAROLINA)

v.)

STATE'S MOTION TO EXCLUDE JURORS

JEROME CAMPBELL,
aka Defendant.
Jerome Connor

NOW INTO COURT comes the State of South Carolina who hereby moves to exclude two jurors in the trial of the above captioned matter for the following reasons, to wit:

1. On January 23, 2012, the first day of trial in this matter, the State informed the Court that at the lunch break members of the victim's family witnessed a conversation in the Courthouse Snack Bar between members of the defendant's family and two jurors, identified as Juror number 63, Erica Gadsden, and believed to be Juror number 70, Robin Givens.¹

2. The Court brought the entire jury panel into the courtroom and asked if any jurors had violated the court's previous instruction to not speak to any persons who were not wearing juror badges. One juror raised her hand to say that she had spoken to a man at a sandwich shop, but the conversation did not involve her jury service. No other juror raised his or her hand, although Juror number 63 was observed to look in the direction of the defendant's family in the courtroom by the undersigned.

3. The State is in possession of video from the Snack Bar taken during the Court's lunch break. The video (attached hereto as Attachment #1) clearly shows members of the defendant's

¹ This person is clearly a juror, the State is unsure of her name and number.

family enter the Snack Bar. One family member, identified as defendant's sister, engages Jurors numbers 63 and 70 in conversation and goes as far as giving Juror number 70 a hug. Later, another of the defendant's family appears to have given the jurors a short greeting.

4. The actions captured by the Snack Bar video belie the answers given by these jurors to the Court's clear questions regarding potential improper contact during the lunch break. More troubling than the contact is the jurors' lack of candor towards the court. The jurors' mendacity undermines any faith that these jurors can fulfill their oath fairly.

5. Had the State known of any familiarity, however slight, between these jurors and a member of the defendant's family, the State would have exercised its peremptory challenges on these jurors

WHEREFORE, the State moves that, after due proceedings had, that Jurors numbers 63 and 70 be excluded and release from jury service in this trial and that the alternates be placed in their stead.

FILED

2012 JAN 24 AM 9:54

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

Respectfully submitted,

Scarlett A. Wilson
Solicitor, Ninth Judicial Circuit

By: _____

Gregory K. Voigt
Assistant Solicitor

1 THE COURT: Okay.

2 MR. VOIGT: Thank you, Your Honor, and one of those
3 indictments is A/K/A Coaxum. I think I'm going to refer to
4 him consistently as Mr. Campbell. He has previously gone by
5 Coaxum.

6 THE COURT: Jerome Renaldo Coaxum. I don't think I to
7 need to say that.

8 MR. VOIGT: No. I just wanted to let you know I'm going
9 refer to him ---

10 THE COURT: But he goes by Jerome Renaldo Campbell for
11 our purposes?

12 MR. VOIGT: Yes, Your Honor, Jerome Renaldo Campbell.

13 (Whereupon, the bench conference ends and there is a
14 brief pause in the proceedings while the jury panel
15 enters the courtroom and counsel returned to their
16 tables.)

17 THE COURT: Could counsel approach for me, please?

18 (Whereupon, a bench conference is held off the record in
19 the presence of the jury panel, but out of the hearing of
20 the jury panel.)

21 THE COURT: Ladies and gentlemen, we are going to select
22 a jury for the case of the State of South Carolina versus
23 Jerome Renaldo Campbell. Before we begin that process --
24 Well, as part of that process we're going to go through
25 something that is called voir dire, which is simply a legal

1 term meaning that I am going to ask you some questions so that
2 the attorneys can more effectively exercise their preemptory
3 challenges in jury selection. If a question applies to you,
4 please stand and in a loud and clear voice give us your name
5 and your juror number and an answer to the question if
6 applicable and remain standing until the Court has completed
7 questioning you.

8 And we are going to select a jury for the following
9 indictments. 2009-GS-10-6730, which is an indictment for
10 assault with intent to kill and that indictment alleges as
11 follows: That in Charleston County, South Carolina, on or
12 about January 19th, [sic.] 2009, the defendant, Jerome Renaldo
13 Campbell, with malice aforethought accompanied by a present
14 ability to complete the act did attempt to commit an unlawful
15 act of violent injury to Frank Haigler, to wit: the defendant
16 did shoot at the victim several times alleging a violation of
17 the common law of South Carolina.

18 And indictment 2009-GS-10-6731, an indictment for murder
19 and that indictment alleges that in Charleston County on or
20 about January 9th, 2009, with malice aforethought Jerome
21 Renaldo Campbell did kill and murder Michael German by means
22 of shooting the victim and that Michael German did die in
23 Charleston County as a proximate result thereof on January 9th,
24 2009, alleging a violation of Code Section 16-3-10 of the
25 South Carolina Code of Laws as amended.

1 And indictment 2009-GS-10-6732, an indictment for assault
2 with intent to kill and that indictment alleges that in
3 Charleston County, South Carolina, on or about January 9th,
4 2009, the defendant, Jerome Renaldo Campbell, with malice
5 aforethought accompanied by a present ability to complete the
6 act did attempt to commit an unlawful act of violent injury to
7 Anthony German, to wit: the defendant did shoot at the victim
8 alleging a violation of the common law of South Carolina.

9 And indictment 2009-GS-10-6733, an indictment for assault
10 with intent to kill and that indictment alleges that in
11 Charleston County, South Carolina, on or about January 9th,
12 2009, the defendant, Jerome Renaldo Campbell, with malice
13 aforethought accompanied by a present ability to complete the
14 act did -- did attempt to commit an unlawful act of violent
15 injury to Michael Allen, to wit: the defendant did shoot at
16 the victim alleging a violation of the common law of South
17 Carolina and alleging all of these actions to be against the
18 peace and dignity of this state.

19 Before we begin the process of voir dire, I'm going to
20 ask counsel for the State to introduce himself, anyone who
21 will be assisting him in the trial of this case and also the
22 names of the members of his office -- of the lawyers in his
23 office and I'm going to ask counsel for the defense to provide
24 us with the same information and also have his client stand
25 and face the panel. You may proceed.

1 MR. VOIGT: Thank you very much, Your Honor.

2 THE COURT: You're welcome.

3 MR. VOIGT: My name is Greg Voigt. I'm the Assistant
4 Solicitor here in Charleston County. Assisting me today will
5 be Elizabeth Riddle. You may also see Joanne Gould, who is a
6 paralegal in our office. In and out of the courtroom you may
7 see my investigator, Ryan Kelly.

8 Some of the attorneys in our office include: the
9 Solicitor, Scarlett Wilson; the chief deputy, Bruce DuRant;
10 Spencer Compton; Stephanie Linder; Rutledge DuRant; Michael
11 Nelson; Culver Kidd; Chad Simpson; Amy Harrell; Julie
12 Cardillo; Jennifer Shealy; Shannon Elliott; Natasha Chisholm;
13 Timmy Finch; Marian Askins; Meg Haley; Jim Stack; Lindsey
14 McClain; Tyler Whitaker; Adam Young; Jessica Baldwin; Jennifer
15 McCoy; Debbie Herring-Lash; Elizabeth Gordon; Burns Wetmore;
16 and Jennifer Kinzeler. I think I got them all.

17 THE COURT: Mr. Harris?

18 MR. HARRIS: I am Stephen Harris and I'm with the law
19 firm Harris & Huge consisting of myself and my partner, Ted
20 Huge. Jason Mikell will be as co-counsel on this case. He'll
21 introduce himself in a moment and Jerome Campbell is my
22 client. Other people that would be working on this case would
23 be Avery Kepple (sp.), Jessie Cabot (sp.) and Crystal
24 Robinson.

25 MR. MIKELL: My name is Jason Mikell. I'm a solo

1 practitioner from Mount Pleasant, South Carolina. My
2 paralegal is named Sonya Blessing (sp.).

3 THE COURT: Thank you. Again, ladies and gentlemen, if a
4 question applies to you, please stand and in a loud and clear
5 voice tell us your name, your juror number, and an answer to
6 the question if applicable and remain standing until the Court
7 has completed questioning you.

8 Is there any member of the panel related by blood or
9 marriage to Jerome Renaldo Campbell, Michael Allen, Anthony
10 German, Frank Haigler, or anyone who is related to or a member
11 of -- or have any connection with Michael German? If so,
12 please stand at this time?

13 (Whereupon, no one stands.)

14 THE COURT: Does any member of the panel have a close --
15 close personal or social relationship with Jerome Renaldo
16 Campbell, Michael Allen, Anthony German, Frank Haigler or
17 anyone who is related to Michael German? If so, please stand
18 at this time.

19 (Whereupon, no one stands.)

20 THE COURT: The following are a list of potential
21 witnesses in this case. I would ask that you listen very
22 carefully. Jerome Renaldo Campbell, Charise Coaxum,
23 Christopher Robinson, Aaron Burnham, Sandra Campbell, Jordan
24 Richardson, John Tisdale, Mary Phillips, Anita Moore, Mike
25 Sherman, Richard Wiersman -- Wiersma, W-I-E-R-S-M-A, Richard

1 Burckhardt, Sergeant Scott Ray, Rene Charles, all of the
2 Charleston Police Department, Ryan Kelly, Anthony German,
3 Michael Allen, Timothy McCarthy, James Tawney, Frank Haigler,
4 Kenneth Whitler, John Roberts, all of the South Carolina Law
5 Enforcement Division, Erin Presnell, Medical University of
6 South Carolina, Joshua Briar-Ridgeway, and Joy Glover.

7 Is there any member of the panel related by blood or
8 marriage to any of the people that I have just listed or does
9 anyone have a close personal or social relationship with any
10 of these individuals? If so, please stand at this time.

11 (Whereupon, no one stands.)

12 THE COURT: Has any member of the panel ever been
13 represented by any of the attorneys involved in this case or
14 anyone with whom they practice law? If so, please stand at
15 this time.

16 (Whereupon, no one stands.)

17 THE COURT: Is there any member of the panel related by
18 blood or marriage to or have a close personal or social
19 relationship with any of the attorneys involved in this case
20 or anyone with whom they practice law? If so, please stand at
21 this time.

22 (Whereupon, no one stands.)

23 THE COURT: Is there any member of the panel related by
24 blood or marriage to or have a close personal or social
25 relationship with anyone who is employed in the Solicitor's

1 Office or anyone who is employed in the offices of Mr. Harris
2 or Mr. Mikell? If so, please stand at this time.
3 (Whereupon, one panel member stands.)
4 THE COURT: Yes, sir. Tell me your name and your juror
5 number.
6 JUROR RICHARDSON: Joseph Richardson, 215.
7 THE COURT: And who are you related to, sir?
8 JUROR RICHARDSON: Tasha Lafayette.
9 THE COURT: And where is she employed?
10 JUROR RICHARDSON: The Solicitor's Office.
11 THE COURT: And in what capacity? Do you know?
12 JUROR RICHARDSON: I do not.
13 THE COURT: Okay. Sir, as a result of this experience,
14 do you feel that you can remain fair and impartial and render
15 a fair and impartial decision in this case based solely on the
16 evidence as it will be presented and on the law as the Court
17 will instruct?
18 JUROR RICHARDSON: I do not.
19 THE COURT: Okay. Sir, you will be excused from the
20 trial of this case only. You may take your seat.
21 Has any member of the panel formed or expressed an
22 opinion about any issue or matter involved in this case? If
23 so, please stand at this time.
24 (Whereupon, no one stands.)
25 THE COURT: Is there any member of the panel aware of any

1 bias or prejudice toward either the State or the defense in
2 this case? If so, please stand at this time.

3 (Whereupon, no one stands.)

4 THE COURT: Is there any member of the panel who was a
5 member of the grand jury which issued the indictments in this
6 case? If so, please stand at this time.

7 (Whereupon, no one stands.)

8 THE COURT: Is there any member of the panel who is a
9 member of or contributor to any group which has as its primary
10 concern the promotion of law enforcement or victim's rights?
11 These groups would include but are not limited to Mothers
12 Against Drunk Driving, Students Against Drunk Driving,
13 Citizens Against Violent Crime, People Against Rape, Citizens
14 Advocating a Return to Decency in Ethics, Parents in Power to
15 Save Teens, or any other type community watch organization or
16 the Fully Informed Juror Organization. If so, please stand at
17 this time.

18 (Whereupon, no one stands.)

19 THE COURT: Is there any member of the panel who has a
20 family member who is employed with -- in any capacity with law
21 enforcement? If so, please stand at this time.

22 (Whereupon, several panel members stand.)

23 THE COURT: Yes, sir? Tell me your name and your juror
24 number.

25 JUROR JORDAN: Silvester Jordan, 122.

1 THE COURT: And which family member is it?

2 JUROR JORDAN: I have two cousins working for Charleston

3 City Police Department.

4 THE COURT: If you would, remain standing. Yes, ma'am?

5 JUROR PATTERSON: I have a cousin. I'm Juror 188. She's

6 a lawyer. Tiffany Spain (sp.) and she's a judge.

7 THE COURT: Okay, what is your name, ma'am?

8 JUROR PATTERSON: Roberta Patterson.

9 THE COURT: Okay and behind you, yes, ma'am?

10 JUROR GIVENS: I have a first cousin that's a state

11 trooper in North Charleston Police Department. Her name is

12 Charlene Gadsden.

13 THE COURT: And your name, ma'am?

14 JUROR GIVENS: Robin Givens.

15 THE COURT: And your juror number?

16 JUROR GIVENS: 70.

17 THE COURT: And yes, ma'am?

18 JUROR GADSDEN: My name is Erica Gadsden and I have a

19 cousin in the police department, Charleston Police Department,

20 Charleston police.

21 THE COURT: Charleston Police Department?

22 JUROR GADSDEN: Uh-huh.

23 THE COURT: And your name and your juror number?

24 JUROR GADSDEN: 63, Erica.

25 THE COURT: Erica?

1 JUROR GADSDEN: Gadsden.

2 THE COURT: Okay, thank you. Yes, sir?

3 JUROR SULLIVAN: I have a brother who in the Secret
4 Service.

5 THE COURT: And your name and juror number?

6 JUROR SULLIVAN: Matt Sullivan, number 259.

7 THE COURT: And I need everyone to remain standing who --
8 Thank you. As a result -- Yes, sir?

9 JUROR PORTER: Paul Porter, 205. I got a niece and
10 nephew working Charleston Police.

11 THE COURT: City or county?

12 JUROR PORTER: City.

13 THE COURT: As a result of these experiences, do you all
14 feel that you can remain fair and impartial and render a fair
15 and impartial decision in this case based solely on the
16 evidence as it will be presented and on the law as the Court
17 will instruct? If your answer is yes, please take your seat.

18 (Whereupon, all those standing are seated and then one
19 person stands again.)

20 THE COURT: Let the record reflect -- If you're -- Are
21 you standing up because you're telling me you can't be
22 impartial or did you -- Are you ---

23 JUROR: I could.

24 THE COURT: Okay. Let me repeat. Let me say if you
25 could be fair and impartial, you can take your seat. If you

1 do not feel you can be fair and impartial, you would remain
2 standing.

3 (Whereupon, the juror is seated.)

4 THE COURT: Let the record reflect that all indicated
5 they could be fair and impartial. Is there any member of the
6 panel who has any religious, philosophical or moral beliefs
7 that would prevent them from sitting in judgment of a fellow
8 human being? If so, please stand at this time.

9 (Whereupon, no one stands.)

10 THE COURT: Is there any member of the panel who has ever
11 had what they would characterize as an unpleasant experience
12 with law enforcement that would affect your ability to be fair
13 and impartial? If so, please stand at this time.

14 (Whereupon, no one stands.)

15 THE COURT: Does any member of the panel know of any
16 reason whatsoever why he or she should not serve as a juror in
17 this case with particular emphasis being placed on your
18 ability to be fair and impartial to both the State and the
19 defense? If so, please stand at this time.

20 (Whereupon, no one stands.)

21 THE COURT: Are there any additional questions from the
22 State?

23 MR. VOIGT: None from the State, Your Honor.

24 THE COURT: From the defense?

25 MR. HARRIS: None, Your Honor.

1 THE COURT: Strikes will be ten and five. Who is going
2 to demonstrate for me? Mr. Robinson or Mr. Major? Ladies and
3 gentlemen, if your name is called, please come forward as Mr.
4 Major is doing and stand where he is standing, turn back
5 facing your -- your fellow panel members until either we seat
6 or excuse you as a juror. If you would, give the clerk your
7 undivided attention. Give us a few moments.

8 (Whereupon, there is a brief pause in the proceedings
9 while the jury list is generated, printed and
10 distributed.)

11 THE CLERK: Juror number 82, Kelly Grobmeyer, juror
12 number 82.

13 (Whereupon, a white female comes forward.)

14 THE CLERK: What say you for the State?

15 MR. VOIGT: The State would thank but excuse this juror.

16 THE CLERK: Ms. Grobmeyer, please have a seat back in the
17 audience. You've been excused from the trial of this case.

18 Juror number 42, Keith Culbreath, 42.

19 (Whereupon, a white male comes forward.)

20 THE CLERK: What say you for the State?

21 MR. VOIGT: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MR. HARRIS: Beg the Court's indulgence, Your Honor.

24 THE COURT: Mm-hmm.

25 MR. HARRIS: Please seat the juror.

1 THE CLERK: Mr. Culbreath, please have a seat in the jury
2 box. You've been selected as a juror in this case. Juror
3 number 14, Danielle Bowles, number 14.

4 (Whereupon, a black female comes forward.)

5 THE CLERK: What say you for the State?

6 MR. VOIGT: The State would thank but excuse this juror.

7 THE CLERK: Ms. Bowles, please have a seat back in the
8 audience. You've been excused from the trial of this case.
9 Juror number 107, Lorilee Hoyle, 107.

10 (Whereupon, a white female comes forward.)

11 THE CLERK: What say you for the State?

12 MR. VOIGT: Please present this juror.

13 THE CLERK: What say you for the defendant?

14 MR. HARRIS: Please seat the juror.

15 THE CLERK: Ms. Hoyle, please have a seat in the jury
16 box. You've been selected as a juror in this case. Juror
17 number 16, Alicia Brown, number 16.

18 (Whereupon, a black female comes forward.)

19 THE CLERK: What say you for the State?

20 MR. VOIGT: Please present this juror.

21 THE CLERK: What say you for the defendant?

22 MR. HARRIS: Please seat the juror.

23 THE CLERK: Ms. Brown, please have a seat in the jury
24 box. You've been selected as a juror in this case. Juror
25 number 275, Jessica Walters, 275.

1 (Whereupon, a white female comes forward.)
2 THE CLERK: What say you for the State?
3 MR. VOIGT: Please present this juror.
4 THE CLERK: What say you for the defendant?
5 MR. HARRIS: Please excuse this juror.
6 THE CLERK: Ms. Walters, please have a seat back in the
7 audience. You've been excused from the trial of this case.
8 Juror number 286, Cynthia Wilcher, 286.
9 (Whereupon, a black female comes forward.)
10 THE CLERK: What say you for the State?
11 MR. VOIGT: The State would thank but excuse this juror.
12 THE CLERK: Ms. Wilcher, please have a seat back in the
13 audience. You've been excused from the trial of this case.
14 Three strikes for the State. Juror number 63, Erica Gadsden,
15 63.
16 (Whereupon, a black female comes forward.)
17 THE CLERK: What say you for the State?
18 MR. VOIGT: Please present this juror.
19 THE CLERK: What say you for the defendant?
20 MR. HARRIS: Please seat this juror.
21 THE CLERK: Ms. Gadsden, please have a seat in the jury
22 box. You've been selected as a juror in this case. Juror
23 number 193, Alex Pearson, 193.
24 (Whereupon, a black male comes forward.)
25 THE CLERK: What say you for the State?

1 MR. VOIGT: Please present this juror.
2 THE CLERK: What say you for the defendant?
3 MR. HARRIS: Please seat the juror.
4 THE CLERK: Mr. Pearson, please have a seat in the jury
5 box. You've been selected as a juror in this case. Juror
6 number 33, Henry Cheves, 33.
7 (Whereupon, a white male comes forward.)
8 THE CLERK: What say you for the State?
9 MR. VOIGT: Please present this juror.
10 THE CLERK: What say you for the defendant?
11 MR. HARRIS: Please seat the juror.
12 THE CLERK: Mr. Cheves, please have a seat in the jury
13 box. You've been selected as a juror in this case. Juror
14 number 205, Paul Porter, 205.
15 (Whereupon, a black male comes forward.)
16 THE CLERK: What say you for the State?
17 MR. VOIGT: Please present this juror.
18 THE CLERK: What say you for the defendant?
19 MR. HARRIS: Please seat the juror.
20 THE CLERK: Mr. Porter, please have a seat in the jury
21 box. You've been selected as a juror in this case. Juror
22 number 251, Helen Spann, 251.
23 (Whereupon, a black female comes forward.)
24 THE CLERK: What say you for the State?
25 MR. VOIGT: Please present this juror.

1 THE CLERK: What say you for the defendant?
2 MR. HARRIS: Please present the juror.
3 THE CLERK: Ms. Spann, please have a seat in the jury
4 box. You've been selected as a juror in this case. Juror
5 number 52, Glenda Elayda, juror number 52.
6 (Whereupon, an Asian female comes forward.)
7 THE CLERK: What say you for the State?
8 MR. VOIGT: Please present this juror.
9 THE CLERK: What say you for the defendant?
10 MR. HARRIS: Please excuse this juror.
11 THE CLERK: Ms. Elayda, please have a seat back in the
12 audience. You have been excused from the trial of this case.
13 Juror number 115, Christina Janke, 115.
14 (Whereupon, an Asian female comes forward.)
15 THE CLERK: What say you for the State?
16 MR. VOIGT: The State would thank but excuse this juror.
17 THE CLERK: Ms. Janke, please have a seat back in the
18 audience. You have been excused from the trial of this case.
19 Four strikes for the State. Juror number 255, Stacy Stewart,
20 255.
21 (Whereupon, a white female comes forward.)
22 THE CLERK: What say you for the State?
23 MR. VOIGT: Please present this juror.
24 THE CLERK: What say you for the defendant?
25 MR. HARRIS: I beg the Court's indulgence, Your Honor.

1 THE COURT: Mm-hmm.

2 MR. HARRIS: Please seat the juror.

3 THE CLERK: Ms. Stewart, please have a seat in the jury
4 box. You've been selected as a juror in this case. Juror
5 number 259, Matthew Sullivan, 259.

6 (Whereupon, a white male comes forward.)

7 THE CLERK: What say you for the State?

8 MR. VOIGT: Please present this juror.

9 THE CLERK: What say you for the defendant?

10 MR. HARRIS: I beg the Court's indulgence for a moment.

11 THE COURT: Mm-hmm.

12 MR. HARRIS: Please seat the juror.

13 THE CLERK: Mr. Sullivan, please have a seat in the jury
14 box. You've been selected as a juror in this case. Juror
15 number 131, William Kufner, 131.

16 (Whereupon, a white male comes forward.)

17 THE CLERK: What say you for the State?

18 MR. VOIGT: The State would thank but excuse this juror.

19 THE CLERK: Mr. Kufner, please have a seat back in the
20 audience. You have been excused from the trial of this case.

21 THE COURT: The State has exhausted its strikes.

22 THE CLERK: Juror number 262, Cathy Thomas, 262.

23 (Whereupon, a white female comes forward.)

24 THE CLERK: Any challenge from the State?

25 MR. VOIGT: No challenge.

1 THE CLERK: What say you for the defendant?
2 MR. HARRIS: Please excuse this juror.
3 THE CLERK: Ms. Thomas, please have a seat back in the
4 audience. You have been excused from the trial of this case.
5 Juror number 70, Robin Givens, 70.
6 (Whereupon, a black female comes forward.)
7 THE CLERK: Any challenge from the State?
8 MR. VOIGT: No challenge.
9 THE CLERK: What say you for the defendant?
10 MR. HARRIS: Please seat the juror.
11 THE CLERK: Ms. Givens, please have a seat in the jury
12 box. You've been selected as a juror in this case. Juror
13 number 143, Julie Lowman, 143.
14 (Whereupon, a white female comes forward.)
15 THE CLERK: Any challenge from the State?
16 MR. VOIGT: No challenge.
17 THE CLERK: What say you for the defendant?
18 MR. HARRIS: Please seat the juror.
19 THE CLERK: Ms. Lowman, please have a seat in the jury
20 box. You've been selected as a juror in this case. Your
21 Honor, how many alternates?
22 THE COURT: Two, strikes are one and two.
23 THE CLERK: Picking for the first alternate. Juror
24 number 187, Laura Patrick, 187.
25 (Whereupon, a white female comes forward.)

1 THE CLERK: What say you for the State?
2 MR. VOIGT: Please present this juror.
3 THE CLERK: What say you for the defendant?
4 MR. HARRIS: Please present the juror.
5 THE CLERK: Ms. Patrick, please have a seat in the jury
6 box. You've been selected as a juror in this case. Now
7 picking for the second alternate. Strikes are one and two.
8 Juror number 184, Laura Owings, 184.
9 (Whereupon, a white female comes forward.)
10 THE CLERK: What say you for the State?
11 MR. VOIGT: Please present this juror.
12 THE CLERK: What say you for the defendant?
13 MR. HARRIS: Please excuse this juror.
14 THE CLERK: Ms. Owings, please have a seat back in the
15 audience. You have been excused from the trial of this case.
16 Juror number 132, Walter Latimer, 132.
17 (Whereupon, a white male comes forward.)
18 THE CLERK: What say you for the State?
19 MR. VOIGT: Please present this juror.
20 THE CLERK: What say you for the defendant?
21 MR. HARRIS: Please seat the juror.
22 THE CLERK: Mr. Latimer, please have a seat in the jury
23 box. You have been selected as a juror in this case. Your
24 Honor, the jury has been selected and are seated.
25 THE COURT: Any objections? Any motions regarding

1 selection of the jury from the State?

2 MR. VOIGT: None from the State, Your Honor.

3 THE COURT: From the defense?

4 MR. HARRIS: None from the defense, Your Honor.

5 THE COURT: Okay. Ladies and gentlemen, we appreciate
6 your patience. Again, I know that this is a long day for you,
7 but hopefully we'll get as much done today as possible so that
8 you will know what to expect of your week. Please know that
9 we do not take your time for granted. The bailiffs can take
10 the remaining panel up to Judge Harrington, courtroom 4C. Is
11 that correct, Mike?

12 THE CLERK: Yes, ma'am.

13 THE COURT: Thank you all. Have a great day.

14 (Whereupon, the remaining jury panel members leave the
15 courtroom at 12:05 p.m.)

16 THE COURT: Ladies and gentlemen, you have been selected
17 for the State of South Carolina versus Jerome Renaldo
18 Campbell. I need to talk with the lawyers about some
19 scheduling. If you would bear with me for a few moments, I
20 suspect we may break for lunch and then get an early start on
21 the afternoon. It's been a long morning for you all.

22 During this break, please do not discuss the case among
23 yourselves. Please don't speculate about what you think it
24 may or could be about. We appreciate your patience. If you
25 would, go with the bailiffs.

1 (Whereupon, the jury exits the courtroom at 12:07 p.m.)
2 THE COURT: You may be seated. Are there any pretrial
3 motions?
4 MR. VOIGT: None from the State, Your Honor.
5 MR. HARRIS: Your Honor, just that the witnesses in the
6 case that are non-law enforcement -- I mean Burckhardt would
7 be and ---
8 THE COURT: The case agent and the victims.
9 MR. HARRIS: The case agent and the victims.
10 THE COURT: Are you asking that the witnesses be
11 sequestered?
12 MR. HARRIS: Yes, Your Honor.
13 THE COURT: Any exception from the State?
14 MR. VOIGT: Your Honor, I'm going to call my investigator
15 first and I would ask that after he be called that he be
16 released from sequestration just to be ---
17 THE COURT: That's the case agent. We've already
18 exempted him.
19 MR. VOIGT: No, no, no, no. Ryan Kelly, my investigator
20 took some pictures, so I'm going to call him.
21 THE COURT: Oh, your investigator.
22 MR. VOIGT: So I'm going to put him up first and ---
23 THE COURT: That's Mr. ---
24 MR. VOIGT: It's just ---
25 THE COURT: That's Mr. Kelly?

1 MR. VOIGT: That's Mr. Kelly.
2 THE COURT: Okay. Any exceptions?
3 MR. HARRIS: No exceptions, Judge, except one question I
4 do have is the three victims are also three witnesses, if they
5 ---
6 THE COURT: We can't exclude them by the statute. The
7 statute gives them the absolute right to be present at all
8 proceedings.
9 MR. HARRIS: Okay.
10 THE COURT: All right, any other pretrial motions? Any
11 Jackson v. Denno? Any Biggers? Anything that I need to be
12 aware of?
13 MR. HARRIS: None, Your Honor.
14 THE COURT: Okay. That's unusual. All righty. Do y'all
15 want to break for lunch and start back like say at -- Well,
16 I'll be doing some other stuff. Two o'clock? Is that
17 acceptable? Because I've got to do some more guilty pleas. I
18 just thought about that. I was going to say 1:30, but I think
19 I'd be pushing it tight for myself.
20 MR. VOIGT: That's fine.
21 THE COURT: Is that good for y'all?
22 MR. HARRIS: That's fine.
23 THE COURT: Okay. (To bailiff) Please bring in the jury
24 for me. You ready to swear them, Mike?
25 THE CLERK: Yes.

1 (Whereupon, the jury comes into open court at 12:11 p.m.
2 after a brief discussion between the Court and other
3 counsel regarding guilty pleas to be done.)
4 THE COURT: Ladies, if you would, remain standing.
5 Ladies and gentlemen, remain standing. Raise your right hand
6 so that the Clerk can administer the oath.
7 THE CLERK: Ladies and gentlemen of the jury, once I have
8 given you this oath if you accept it, please respond by saying
9 "I do." Do you swear or affirm that you shall well and truly
10 try and a true deliverance make between the State of South
11 Carolina and the defendant at the bar whom shall have a charge
12 and a true verdict render according to the evidence and the
13 law, so help you God?
14 (Whereupon, all jury members respond with "I do.")
15 THE CLERK: If you have accepted this oath, please have a
16 seat.
17 (Whereupon, all jury members are seated.)
18 THE COURT: You may be seated. Ladies and gentlemen, as
19 I've indicated, you have been selected for the cases of the
20 State of South Carolina versus Jerome Renaldo Campbell. I'm
21 going to go ahead and give you your lunch break. We're going
22 to resume at 2:00. I know that seems like a long time, but
23 actually we're still going to be working for another thirty to
24 forty minutes before we can go to lunch and so I need to be
25 able to give adequate time to the remainder of the staff to go

1 to lunch as well and it doesn't make any sense to have you all
2 waiting during that time frame.

3 During the break, please do not discuss the case among
4 yourselves or with anyone else. Please don't speculate about
5 what you think it may or could be about. Please don't do any
6 independent research. That includes anything that could be
7 found on the internet or any other alternate source. As the
8 fact finders in this case, you are bound to decide this case
9 according to the evidence that you hear from the lips of the
10 sworn witnesses and the other evidence that will be
11 introduced.

12 Also, please do not have any contact with anyone in or
13 about the courthouse. There are a lot of witnesses in this
14 case and again, we would not want an innocent conversation to
15 be observed and misinterpreted. I hope that you all have a
16 great lunch. You will return directly to your jury room at
17 2:00. The bailiffs will show you how to do that and we will
18 see you at 2:00 at which time we will resume with opening
19 argument and instruction. Have a great lunch.

20 (Whereupon, the jury leaves the courtroom at 12:13 p.m.)

21 THE COURT: You may be seated. All right, I'll see you
22 all at 2:00.

23 MR. HARRIS: Thank you, Your Honor.

24 THE COURT: Thank you and Mr. Campbell will be taken into
25 custody as the case has been sworn and his bond has been

1 called.

2 MR. VOIGT: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 (Whereupon, there is a break in the proceedings from
5 12:13 p.m. until 2:19 p.m. When the proceedings resume
6 at 2:19 p.m., the defendant and all counsel are present,
7 but the jury is not yet present in the courtroom.)

8 THE COURT: Is the State ready to proceed?

9 MR. VOIGT: Yes, Your Honor.

10 THE COURT: Is the defense ready to proceed?

11 MR. HARRIS: Yes, Your Honor.

12 THE COURT: We apologize for the delay. We did not get
13 done with court until 1:35 and so I had to give staff adequate
14 time to collect themselves before we resumed session. I
15 understand that there is something about a juror that the
16 State wanted to bring to the Court's attention.

17 MR. VOIGT: May it please the Court, Your Honor.

18 THE COURT: Mm-hmm.

19 MR. VOIGT: My -- Member's of my client -- of my victim's
20 family were in the snack bar downstairs and saw members of the
21 jury conversing with family members and friends of the
22 defendant's. Perhaps I should wait for Mr. Campbell.

23 THE COURT: Oh, I apologize. I didn't realize he wasn't
24 up yet.

25 MR. VOIGT: Your Honor, they witnessed two members of the

1 jury conversing with a family member or friend of the Campbell
2 group that was also down there in the snack bar as well. One
3 person in that group was overheard to say, "They're on our
4 side," after she had conversed with these jurors and I -- and
5 that's all I know about it, but I'd like to bring it to the
6 Court's attention.

7 THE COURT: How are they certain they were jurors? It's
8 my understanding all the jurors left the building. They were
9 coming back in when I was leaving, just getting done with the
10 hearing.

11 MR. VOIGT: One of the jurors had a jury sticker on, Your
12 Honor.

13 THE COURT: And we're certain it was this jury and not
14 the other jury ---

15 MR. VOIGT: That was what I was ---

16 THE COURT: --- for Judge Harrington or Judge McDonald?

17 MR. VOIGT: That's what I was led to believe. It was
18 someone who was serving on this jury.

19 THE COURT: Well, I need something more specific than
20 that. That's nebulous. That doesn't tell me who it is.

21 MR. VOIGT: I believe that juror 63, Erica Gadsden, is
22 wearing a yellow shirt. The description I have is someone
23 wearing a yellow shirt and an older woman wearing a dark
24 jacket. That fits the description of Ms. Givens as best as I
25 can recollect. I believe she's juror 70. And, Your Honor,

1 the family member that overheard this -- overheard the person
2 who is present in the courtroom right now that made that
3 statement. So I can identify the person having made the
4 statement.

5 THE COURT: I understand that, but I'm not going get into
6 tit for tat between these families.

7 MR. VOIGT: I understand.

8 THE COURT: Because, you know, what is actually said and
9 what is perceived as being said can be a totally different
10 thing. I'm going to handle it the way the law prescribes it
11 should be handled.

12 MR. VOIGT: Thank you, Your Honor. I was just trying to
13 ---

14 THE COURT: But I'm not going to get into all that.

15 MR. VOIGT: Trying to give you as much information as I
16 have been provided.

17 THE COURT: Yeah. I'm certain that that is the
18 perception, but I'm a little hesitant about that. But I'm
19 going to deal with it ---

20 MR. VOIGT: Thank you.

21 THE COURT: --- pursuant to case law very shortly. Is
22 there anything from the defense?

23 MR. HARRIS: On that issue, Your Honor?

24 THE COURT: Yes.

25 MR. HARRIS: Fair enough. I mean we don't know which

1 jurors these are or anything. Like you said, we don't know if
2 it's jurors from another jury. No one in the family came in
3 here during jury selection. So to say it was randomly
4 somebody picking and they never saw our jury, A, and there's
5 three juries. There's three hundred jurors in the building,
6 three juries were selected, but to say it may be two -- these
7 two people and select two people based on what they were
8 wearing.

9 I don't think -- I don't -- I don't believe that -- Maybe
10 these two jurors were talked to by somebody and maybe they
11 were on this jury. I mean it's a very broad accusation and I
12 mean it just happens to be two African American jurors on my
13 jury. I mean that is -- You know, it just -- I would ask that
14 if we're going to get -- If you're going to remedy this by
15 excusing jurors that we would ---

16 THE COURT: No, I'm going to do a voir dire.

17 MR. HARRIS: Okay.

18 THE COURT: Of the entire panel.

19 MR. HARRIS: Okay.

20 THE COURT: And if they answer me that they have not done
21 it, that's the end of it.

22 MR. HARRIS: Okay.

23 THE COURT: Unless there's something more specific
24 regarding the identity of these individuals. They're under
25 oath and they're under a criminal -- the -- They can be

1 criminally sanctioned for failing to follow the Court's
2 instructions and I'm going to be very adamant and I'm going to
3 make them aware that somebody -- precisely what I told you not
4 to do happened.

5 They might have been talking about the weather. I don't
6 know. Southerners tend to be very animated and have very --
7 conversations that look more intimate than they -- than they
8 actually are and for example -- I'll use myself for an
9 example. I'm very careful when I leave the secure area of the
10 building because I'm naturally a very congenial person. If I
11 see parties in the lobby and I'm on my way to the post office,
12 I'm not going to be rude. I'm going to smile.

13 MR. HARRIS: Right.

14 THE COURT: Now would that person perceive that I'm on
15 their side? Yeah, probably. They're in probably one of the
16 most stressful situations of their life, especially if it's a
17 criminal defendant and I'll like nod and hello and smile and
18 keep moving. They're going to think, ooh, the judge is on my
19 side. Not so.

20 MR. HARRIS: Okay.

21 THE COURT: Or the -- Or the victims may be congregated.
22 I'm not going to just walk by people and not say hello and be
23 congenial, but it's funny what people do versus how it is
24 perceived.

25 MR. HARRIS: Right.

1 THE COURT: And so I think it may well be that it is
2 perceived that that is what happened, but I'm not certain that
3 that is what actually happened and I'm not going to go into
4 any extensive voir dire of a jury without more than that. Now
5 I'm going to do a voir dire, however, of the panel because
6 they're required to follow my instructions and if they
7 haven't, then I'm going to -- I'll deal with that.

8 MR. HARRIS: Your Honor ---

9 THE COURT: We'll take it as it comes, but I am -- I
10 think it is appropriate that I voir dire them and make sure
11 that they followed my instructions and that nobody had any
12 inappropriate conduct -- contact with anyone in or about the
13 courthouse. Any exception from the State?

14 MR. VOIGT: None, Your Honor.

15 THE COURT: From the defense?

16 MR. HARRIS: None, Your Honor.

17 THE COURT: Please bring in the jury.

18 BAILIFF: Yes, ma'am.

19 (Whereupon, the jury enters open court at 2:26 p.m.)

20 BAILIFF: The jury is present, Your Honor.

21 THE COURT: You may be seated. Ladies and gentlemen, we
22 appreciate your patience. As I indicated to you, we were
23 going to take a brief break and actually -- Yeah, the
24 alternates -- And actually while we're doing that, why don't
25 we also do this. Number 107 is the foreperson. So why don't

1 we -- And I apologize. I meant to tell you that as you were
2 bringing them down the hallway. If we could, have her take
3 the foreperson seat. I need the two of you to switch for me,
4 switch seats.

5 Ladies and gentlemen, as I indicated prior to the lunch
6 recess, we had some other matters that we needed to take up in
7 cases unrelated to this case and as circumstances would have
8 it, we did not finish that until 1:30, 1:35, and so I had to
9 give my staff adequate time to refresh themselves and get
10 something to eat and just get a second wind. So we appreciate
11 you all being so very patient with us as we are delayed in
12 restarting the trial, but please know that we were actively
13 involved in the Court's business and we do not take your time
14 for granted.

15 Before we begin that process of opening instruction and
16 opening argument, I gave the jury strict instructions that
17 they were not to have any contact with anyone in or about the
18 courthouse who did not have a juror sticker on because, again,
19 very innocent conversations could be very easily
20 misinterpreted and misconstrued. I need to ask you all did
21 any of you during the lunch and recess have any contact with
22 anyone in or about the courthouse who did not have a juror
23 sticker on? If so, if you did, I need you to raise your right
24 hand for me.

25 (Whereupon, one juror raises her right hand.)

1 THE COURT: Okay. Yes, ma'am? Tell me your name and
2 your ---
3 JUROR STEWART: When I was at lunch. Stacy Stewart. I
4 was at lunch.
5 THE COURT: And who did you speak with?
6 JUROR STEWART: I don't -- Some gentlemen was having
7 lunch. I mean I didn't speak about this.
8 THE COURT: You were at lunch in the courthouse or
9 outside the courthouse?
10 JUROR STEWART: Outside.
11 THE COURT: Okay, but you do not know it to be someone
12 involved in this case?
13 JUROR STEWART: No.
14 THE COURT: Okay. Is there anyone else who had any
15 contact with anyone in or about the courthouse, either in the
16 snack bar or any other parts of the building that did not have
17 a juror sticker on and you had any interaction with them?
18 (Whereupon, there is no further response from any of the
19 jury members.)
20 THE COURT: Okay. Let the record reflect that the
21 response was negative. I need to reinforce the Court's
22 instruction. Again, very innocent conversations can be
23 misinterpreted and misconstrued. There are many parties. As
24 you can see, the gallery is full with members of the victim's
25 family, as well as victim's -- I mean as members of the

1 defendant's family who are here to watch these proceedings, as
2 well as other individuals who are just interested in the court
3 process.

4 I need for you all to be aware that reports have been
5 made to the Court that conversations took place in the snack
6 bar otherwise with members of -- with differing parts of
7 members of the family and that there was a perception that the
8 jury might be inclined or already predisposed regarding this
9 case. Again, I don't have any independent information that
10 that is accurate. However, I will reinforce that even an
11 innocent conversation can be easily misinterpreted.

12 Emotions run very high during a trial. As you are well
13 aware, the allegations in this case are significant and
14 perception becomes reality. So I would ask that you very
15 stringently follow my instructions and have no conversation
16 with anyone in or about the courthouse who does not have a
17 blue juror sticker on. Again, I would not want an innocent
18 conversation to be observed by a third party and misinterpret
19 it. And again, just having a friendly conversation about
20 nothing related to the case could be very easily
21 misinterpreted. A smile, a handshake, a laughter or otherwise
22 can be very easily misinterpreted.

23 So I would ask that you strictly abide by those
24 instructions. Otherwise if you don't, I would have to do what
25 is called an individual voir dire of each juror. That's very

1 time consuming and can also result in a mistrial, which as you
2 could all imagine would be a gross waste of your time as well
3 as the Court's resources.

4 So if necessary, every morning I will voir dire the panel
5 regarding whether you followed the Court's instructions, that
6 being not only about contact but also about information
7 outside of the proceedings whether it be on the internet,
8 newspaper or any other media outlet because it is very
9 important. It is essential that your impartiality as twelve
10 individual citizens sitting as the fact finders in this case
11 never be questioned because the integrity of the process is
12 paramount and it must be maintained. Okay? So I hope that
13 each of you and I have no doubt that each of you will follow
14 the Court's instructions accordingly. Any exceptions from the
15 State?

16 MR. VOIGT: None from the State, Your Honor.

17 THE COURT: From the defense?

18 MR. HARRIS: None, Your Honor.

19 THE COURT: Ladies and gentlemen, we're about to try the
20 case of the State of South Carolina versus Jerome Renaldo
21 Campbell. What I will now say is intended to serve as an
22 introduction to the trial of this case. These remarks are not
23 a charge on the law of this case and just so that you know,
24 charge and instructions are interchangeable terms. Charge is
25 a legal term of ours which means instructions. So when you

1 hear me use the term charge, that simply means instructions.

2 These remarks are not a charge on the law. I will
3 instruct you on the law applicable to this case at the end of
4 the trial before you retire to consider your verdict. This is
5 merely an explanation of the procedure that we will follow in
6 the trial of this case so that you may better understand what
7 may be happening.

8 During the course of this trial, you will be given the
9 opportunity to take notes and the bailiffs are going to pass
10 out the notebooks to you and the pens. There is a white
11 sticker on the front of each notepad. Please write your juror
12 number on that sticker so that you will be able to identify
13 very easily which notepad belongs to you. I will give you
14 some additional instructions regarding note taking near the
15 end of this instruction.

16 The defendant is charged by four separate indictments
17 filed in this court with the crimes of assault with intent to
18 kill, three counts, and murder, one count, the elements of
19 which I will explain to you later. The indictments, ladies
20 and gentlemen, are simply the formal charge or charges by
21 which the case is brought into court and it is not in any
22 sense evidence of any of the allegations they may contain.

23 The defendant has pled not guilty to the indictments.
24 The State therefore has the burden of proving each of the
25 elements of the indictments beyond a reasonable doubt and it

1 will be your duty, ladies and gentlemen, to decide whether the
2 State has met that burden or not.

3 Your purpose as jurors is to find and determine the
4 facts. You are the sole judges of the facts. If at any time
5 I make any comment regarding the facts, you must disregard it.
6 You are to determine the facts from the testimony you hear and
7 the other evidence introduced in court. It is up to you to
8 determine the inferences which you feel may be properly drawn
9 from the evidence. It is especially important that you
10 perform your duty of determining the facts diligently and
11 conscientiously because ordinarily there is no way to correct
12 an erroneous determination of facts made by a trial jury.

13 On the other hand and with equal emphasis, the same law
14 that makes you the judges of the facts makes me the judge of
15 the law. The law as given by the Court is the only law you
16 may consider. You must accept and follow it even though you
17 may disagree with it. I cannot tell you what the facts are
18 and you cannot disagree with the Court about what the law is
19 or what the law should be.

20 Your responsibility, ladies and gentlemen, is to take the
21 law as I instruct it and apply it to the facts as you find
22 them from the testimony of the witnesses and the other
23 evidence that will be introduced during the course of this
24 trial. After doing that, you will render your verdict, a true
25 and just verdict, under the solemn oath that you have taken as

1 jurors in this case.

2 Until I advise you to begin your deliberations, you must
3 not discuss this case with anyone. That includes your fellow
4 jurors, your friends, your family members or anyone involved
5 in the case. After the case is submitted to you, you must
6 discuss it only in the jury room with your fellow jurors.

7 The attorneys and the parties in this case have been
8 advised that they should not speak with you at all. So if you
9 see anyone involved in the case around the courthouse, in a
10 local restaurant or even in the garage or on the street and
11 they don't speak with you, please don't think they're being
12 unfriendly. They are simply following the Court's
13 instructions. Again, we would not want an innocent
14 conversation to be misinterpreted or misconstrued.

15 During the trial, you're not to read, listen to or watch
16 any news reports about this case. That includes anything that
17 could be in the newspaper, on radio, television or internet
18 and you're not to do any independent research regarding any
19 fact or issue in this case on the internet.

20 You must not consider anything that you may have read or
21 heard about this case outside the courtroom, whether before or
22 during the trial. It is important and essential that you
23 maintain an open mind and not decide any issue in this case
24 until all of the evidence has been presented, the parties have
25 made their closing arguments and I have instructed you on the

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2 (Whereupon, the proceedings continue beginning at 10:40
3 a.m. The defendant and all counsel are present, but the
4 jury is not yet present in the courtroom.)

5 THE COURT: What are the names of the -- of the
6 defendant's family members, their surnames?

7 MR. HARRIS: Their surnames, Your Honor?

8 THE COURT: Mm-hmm.

9 MR. HARRIS: There's Coaxum.

10 MR. CAMPBELL: Coaxum.

11 MR. HARRIS: Campbell and Ladson.

12 THE COURT: And what are the surnames of the victim's
13 family?

14 MR. VOIGT: German, Your Honor. We also as a part of my
15 motion would like to submit the ---

16 THE COURT: I didn't ask that question. I asked a very
17 direct question and I'm seeking a direct answer.

18 MR. VOIGT: Yes, Your Honor.

19 THE COURT: What are the last names of the victim's
20 family?

21 MR. VOIGT: German, Your Honor.

22 THE COURT: And that is the only surname?

23 MR. VOIGT: March and Bobo, Your Honor.

24 THE COURT: M-A-R-C-H?

25 MR. VOIGT: Yes.

1 THE COURT: And Bobo, B-O-B-O?

2 MR. VOIGT: Yes.

3 THE COURT: So their surnames then are German, March and
4 Bobo?

5 MR. VOIGT: Yes, Your Honor.

6 THE COURT: Who are the other individual surnames that
7 you mentioned in your opening argument, Mr. Voigt?

8 MR. VOIGT: Frank Haigler, Your Honor, and Michael Allen.

9 THE COURT: Those are the only additional names that you
10 mentioned?

11 MR. VOIGT: Of the lay witnesses, yes, ma'am.

12 THE COURT: You didn't mention German?

13 MR. VOIGT: I did mention German, Your Honor. I would
14 have thought that that would have -- would have occurred.

15 THE COURT: So the only names you mentioned in your
16 opening argument were Haigler, Allen and German?

17 MR. VOIGT: Yes. I also -- I highlighted Coaxum and
18 Ladson as well as part of my presentation to demonstrate the
19 defendant's relationship to several witnesses.

20 THE COURT: And those are all the last names that you
21 used in your opening argument?

22 MR. VOIGT: Including ---

23 THE COURT: Haigler, Allen, German, Coaxum and Ladson?

24 MR. VOIGT: As well as Campbell.

25 THE COURT: Campbell. I knew there was one that I

1 couldn't remember. And what is the last name of the
2 defendant's sister?

3 MR. HARRIS: One is Coaxum and one is Ladson.

4 THE COURT: Okay. The State may proceed with its motion.

5 MR. VOIGT: May it please the Court, Your Honor.

6 THE COURT: Let me ask another preliminary question. I
7 apologize. Mr. Harris, have you had an opportunity to watch
8 the video that was procured from the snack bar?

9 MR. HARRIS: I have not, Your Honor.

10 THE COURT: Is there a reason Mr. Harris has not been
11 provided with a copy of the video?

12 MR. VOIGT: I called Mr. Harris as I detailed your clerk,
13 Your Honor, at approximately 8:45 to 9 o'clock this morning
14 and offered him the opportunity to view the video before we
15 went to court. Mr. Harris informed me that he would rather
16 take it up once we got to court.

17 THE COURT: When did you procure a copy of the tape?

18 MR. VOIGT: I believe that a copy was procured by someone
19 in my office yesterday afternoon.

20 THE COURT: Was there a reason you didn't turn it over
21 then?

22 MR. VOIGT: I hadn't viewed it. I was unaware of the
23 contents then. When I left the office at 5:30, it was not
24 available to me.

25 THE COURT: Say that one more time?

1 MR. VOIGT: When I left the office at 5:30 yesterday, it
2 was not available to me. I did not see it ---

3 THE COURT: So you did not. When did you watch it?

4 MR. VOIGT: I watched it when I came to the office this
5 morning at approximately 8:30.

6 THE COURT: Okay. Is there a reason you have not watched
7 the video yet, Mr. Harris?

8 MR. HARRIS: Your Honor, I was going to come here and
9 watch it today. I assumed we would watch it. I didn't find
10 out about it until this morning. I didn't get the motion
11 until I walked in here at court. I got here at 9:30 in order
12 to get a shirt and tie to my client because they told my
13 client's wife at 8:30 that the attorney has to give it to
14 them.

15 THE COURT: That's correct.

16 MR. HARRIS: So I came down -- I left my home. I had to
17 take my mother to the airport and I apologize that delayed me
18 this morning. I got here at 9:30 as soon as I could. You
19 know, we were told we were starting at 10. I was hoping to --
20 I thought we could either go to chambers to watch the video
21 because I'm assuming it's only 25 seconds long.

22 THE COURT: No, it's a lot longer than that. The
23 operative portion is fairly short, but the entire video is
24 much longer than that.

25 MR. HARRIS: Okay, but I didn't have -- I mean I got a

1 motion while I was -- I was asked while in court if I got a
2 motion. Because I was here, I didn't have the accessability
3 to print it or to respond to it. So that's what I'm -- You
4 know, it was -- it happened between 8:45 and 9:30 this
5 morning. You know, that's a 45 minute window.

6 I didn't have time to go from North Charleston to here
7 and watch the video in time and again, I thought we were
8 starting at 10 o'clock, which would have been 30 -- it would
9 only have given me 30 minutes when I got here. I didn't have
10 time to write a motion or a response or anything like that
11 because like I said, Your Honor, this is something that came
12 up this morning.

13 THE COURT: And what time did you file your motion, Mr.
14 Voigt?

15 MR. VOIGT: It was officially filed, Your Honor. I sent
16 my legal assistant down to the Clerk of Court's office and the
17 date -- the time stamp is 9:54. I believe that I sent a copy
18 to your clerk approximately 20 to 25 minutes earlier than that
19 and that would have been the same copy that Mr. Harris would
20 have received. I also sent an amended copy a couple minutes
21 later because I realized I had the wrong indictment numbers on
22 my motion.

23 (Whereupon, the Court has a brief conference with the law
24 clerk regarding the time of the transmission of the
25 motion.)

1 MR. VOIGT: And I sent the amended copy to Mr. Harris,
2 too, and when I walked into the courtroom this morning, I
3 placed a written copy on counsel's table and informed Mr.
4 Harris that I had filed a motion.

5 THE COURT: Do you have the ability to let Mr. Harris
6 watch? Do you want to watch the video now?

7 MR. HARRIS: I'd like to. I would like to before we -- I
8 mean you just ---

9 THE COURT: Could you all give Mr. Harris the opportunity
10 to watch the video?

11 MR. VOIGT: I believe that you have the video. May I
12 approach?

13 (Whereupon, there is a break in the proceedings while
14 defense reviews the snack bar surveillance video.)

15 MR. VOIGT: Your Honor, Mr. Harris has reviewed ---

16 (Whereupon, the Court makes a gesture to stop Mr. Voigt
17 from speaking further at that time.)

18 MR. VOIGT: Thank you very much.

19 THE COURT: I'll inquire of him when I'm ready.

20 (Whereupon, there is a brief break in the proceedings.)

21 THE COURT: Mr. Harris, have you had an opportunity to
22 review the video?

23 MR. HARRIS: I have, Your Honor.

24 THE COURT: And Mr. Voigt, you were going to say

1 MR. VOIGT: Yes, Your Honor, and I apologize.
2 THE COURT: Certainly.
3 MR. VOIGT: In furtherance of the State's motion, Your
4 Honor, the State would offer two statements that were
5 collected by my office from Tiffany Peacock and Trenell
6 German, the contents of which were what I relayed to the Court
7 yesterday which got this started about the observations of the
8 family members in the snack bar and I've -- Mr. Harris has
9 reviewed those and I would offer those as -- in addition with
10 the video as Court's 1, 2 and 3.
11 THE COURT: Any exception?
12 MR. HARRIS: No exception, Your Honor.
13 THE COURT: You may proceed.
14 COURT REPORTER: It would be 2, 3 and 4. We already have
15 a 1.
16 MR. VOIGT: As a Court's exhibit?
17 COURT REPORTER: Yes.
18 MR. VOIGT: Okay.
19 (Whereupon, the DVD video is marked as Court's Exhibit
20 Number 2 and the two affidavits are marked as Court's
21 Exhibits Number 3 and 4.)
22 MR. VOIGT: For the record, Your Honor, there will be 2
23 as the video, 3 as the statement of Trenell German and 4 as
24 the statement of Tiffany Peacock.
25 Your Honor, as I set out in my motion, I believe that the

1 procedure employed by the Court yesterday to determine the
2 truthfulness of whether or not such contact had occurred
3 involved voir dire to the general jury panel. One of our
4 jurors volunteered that she had had a conversation at a
5 sandwich shop, although the contents of that conversation were
6 innocent and I believe we all -- we all believed that. The
7 two ladies though that I had brought to the Court's attention
8 ---

9 THE COURT: Actually you were very vague about who it was
10 and your motion is a bit misleading because you identify two
11 jurors, but you did not -- by their number, but you did not do
12 that on yesterday.

13 MR. VOIGT: Yesterday, Your Honor ---

14 THE COURT: You indicated someone in a yellow shirt,
15 which I -- I knew who that juror was, but you indicated
16 another juror who you really could not identify and you had a
17 very vague description of her.

18 MR. VOIGT: And ---

19 THE COURT: So to the extent that it is stated in the
20 motion that you actually brought with specificity those jurors
21 to the Court's attention is a bit misleading. So that needs
22 to be corrected for the record.

23 MR. VOIGT: And I would be happy, Your Honor, to go back
24 in the transcript of all of my remarks yesterday.

25 THE COURT: You don't need to because I've already

1 reviewed it. You may proceed.

2 MR. VOIGT: Thank you, Your Honor. I believe I named
3 Miss Gadsden by name and I believe, as I have done in my
4 motion, to the best extent possible I believe that the other
5 juror's name is Robin Givens, a name that I supplied in open
6 court to you, Your Honor. I did that because I know she's a
7 juror. I can recognize her as a juror, but in my notes
8 sometimes I -- I don't know which one of these people is
9 which. Miss Gadsden I could clearly identify because of the
10 bright yellow shirt and I -- I did give you that name
11 yesterday to the best extent I could.

12 Neither one of those ladies raised their hands to
13 indicate a conversation. I watched the ladies from where my
14 vantage point was. I observed nothing unusual about the juror
15 that I would call Ms. Givens for lack of a better term or
16 juror number 70, but Miss Gadsden clearly looked out into the
17 audience into the ---

18 THE COURT: I watched her the entire time and frankly,
19 she was avoiding my eyes and she looked toward the bailiffs.
20 So I would have to tell you that I don't find particular
21 veracity in that statement because I deliberately watched
22 both. I watched her specifically because you identified her
23 as having a yellow shirt on.

24 MR. VOIGT: Thank you, Your Honor. Nevertheless, I sat
25 on this chair and I believe that for a brief period of time,

1 not during the entire time that the Court was addressing those
2 jurors, I observed Miss Gadsden look out in that general
3 vicinity and that's -- that's -- and I'm not going to go any
4 further than that, but ---

5 {Whereupon, counsel for the State indicates the gallery
6 behind the defense table when pointing and stating
7 "general vicinity.")

8 THE COURT: I would caution you not to.

9 MR. VOIGT: Thank you, Your Honor, but that was an
10 observation which I will stand by. Nevertheless, neither one
11 of the ladies raised their hands. I believe that the Court
12 gave them the opportunity to give an innocent explanation were
13 there one for any of that, for any of the conversation. The
14 conversation is clearly captured on the video. It is not a --
15 the kind of innocent thing that the Court went to at length
16 and described to the jury about, you know, a congenial
17 greeting of sorts. I think that the conversation was more
18 than that.

19 It belies the fact -- you know, it belies their
20 indication to the Court that no conversation took place.
21 Ordinarily, had there been an innocent explanation and an
22 admission to such, there would be no way of asserting that
23 they were anything other than impartial and I believe the case
24 law indicates that where there has been -- where a juror has
25 deliberately misled the Court, and I believe the actions of

1 those two jurors indicate that they have, that they are not to
2 be given the same presumption of impartiality.

3 I think that the conduct of jurors should be free from
4 all extraneous and improper influences. I believe that they
5 should be impartial. I believe that the case law is clear on
6 that and I believe that they have demonstrated to the Court
7 that they cannot be that way and I would ask that you remove
8 them from the case in this matter.

9 THE COURT: Mr. Harris, would you like to respond?

10 MR. HARRIS: Thank you, Your Honor. May it please the
11 Court.

12 THE COURT: Yes, sir, you may proceed.

13 MR. HARRIS: Your Honor, I -- This was brought to our
14 attention, as it was, Your Honor, right after lunch. I -- And
15 I'm not -- I did the same thing you're talking about because I
16 knew exactly which one they were talking about. I knew one
17 they said was in a yellow shirt, one person, and the person
18 that was in that video was not in the courtroom after lunch
19 because when I brought that -- when it was brought to my
20 attention, I asked what ---

21 THE COURT: What person are you referring to?

22 MR. HARRIS: They say it's his sister, but it's not.
23 It's a cousin and I don't think she's in the courtroom today.

24 THE COURT: I need you to be more specific for the
25 record. When you say you're referring to "that person was not

1 in the courtroom", what do you mean?

2 MR. HARRIS: The person on the video. Let me get her.

3 THE COURT: You're saying the person depicted on the
4 video ---

5 MR. HARRIS: On the video.

6 THE COURT: --- was not in the courtroom after lunch?

7 MR. HARRIS: Right.

8 THE COURT: Okay. Now I'm clear what you're saying.

9 MR. HARRIS: Okay.

10 THE COURT: You may continue.

11 MR. HARRIS: And, Your Honor, two things. One, if this
12 was more than -- you know, there is no audio on this video. I
13 argue this was no more than a passing I know you, hey, what's
14 going on, because no one had seen this jury pool and I'm not
15 saying that excuses any of the jurors of saying I didn't have
16 a conversation. No one had seen this jury pool. We picked
17 the jury and then they went to lunch.

18 If someone in the family had said -- had walked up and
19 said there's some jurors that's on this jury, let me walk up
20 and talk to them, what my explanation from their family was
21 when the person they said they walked up, they recognized
22 them, they waved their hand, they said I'm not supposed to
23 talk to jurors. They didn't -- they said they didn't have a
24 word to speak with the person in the yellow shirt.

25 So therefore, I can understand how you -- On the video,

1 you don't see -- you see the person leaning in and talking to
2 the person on the right. There's nothing that's been shown to
3 us that shows that these two jurors know each other in such an
4 intimate way that they're going to know the same group of
5 friends or anything to that aspect.

6 You know, like I said, it would be something that we need
7 to talk to the jurors individually I believe because I think
8 the one in the yellow shirt, Ms. Gadsden, would say I'm
9 sitting at a table having lunch with a fellow juror because I
10 can't talk to anybody else and this person walks up and talks
11 to the person sitting here.

12 Like I said, there's no audio on this video, so you can't
13 tell if she's talking to the person in the yellow shirt. Just
14 from the -- me watching it a few minutes ago, it doesn't look
15 like she's talking to the person in the yellow shirt, but I
16 also say that I -- we don't know that this is anything more
17 than a innocent hey, I know you from somewhere. They didn't
18 know this person was on this jury. I mean that's what I'm
19 saying. No one had seen this jury before the afternoon
20 session because we sent them directly to lunch and nobody came
21 in the courtroom.

22 So I'd ask Your Honor -- and also to try to -- you know,
23 we have a juror that's already trying to get off the jury
24 once. We don't know if he's going to get off tomorrow if he
25 happens to know somebody that we talk about or that we bring

1 in here. If we excuse two jurors today and one tomorrow,
2 we've got a mistrial built in already at eleven jurors. So we
3 don't know because the gentleman said he could not be
4 impartial if he knew the family. So if we come in tomorrow
5 and he says, oh, yeah, I played basketball with this witness
6 and I can't be impartial, then we've got eleven jurors.

7 So if -- if Your Honor is going to grant a motion to
8 excuse jurors, the only person that shows on that video
9 clearly that is talking to a person, a relative of my family,
10 would be Ms. Givens, juror 70, and again, she comes in with a
11 jacket on and we don't know if it's clear that she had a juror
12 badge on or not. So the only person we see a juror badge on
13 is Miss Gadsden, who has on a yellow shirt.

14 So I'd ask that if Your Honor is going to excuse one that
15 you excuse Ms. Givens based on that you can see somebody
16 talking to her, but we don't know what that conversation
17 entails. Thank you.

18 THE COURT: You're welcome. I've had the opportunity to
19 watch the video. I've watched it several times and the
20 operative portions several times, which spans a fairly short
21 period. It appears from the video that some members and I
22 don't know whether they are members of the defendant's family,
23 I take that for granted based on what has been represented to
24 the Court, walk into the snack bar and make contact with a
25 juror who is -- they're sitting at a round table.

1 Her back is facing the camera. You really cannot see
2 her. The only way you would be able to identify her is the
3 fact that she walked in -- into the snack bar and you see
4 where she is seated with the young lady with the yellow shirt
5 who is facing toward the camera.

6 A person walks in and a comment it looks like is made and
7 she stands back and does a gesture with her hands almost like
8 -- almost like surprised to see the person. They interact,
9 which you cannot really see that interaction except for one
10 perspective on camera. There's been a representation that
11 hugging took place. There is absolutely no indication of any
12 hugging on the video and based on my perspective, there is no
13 interaction with the young woman in the yellow shirt with
14 anyone. If anything, she -- she is quiet. She goes -- You
15 see her get up as everyone is leaving, put her stuff in the
16 garbage can and then exit with a group of people.

17 And I looked very carefully to see if anyone could
18 observe anyone making statements. It's just really -- It sort
19 of -- It befuddles me a little because I'm a -- I'm trying to
20 figure out and I looked at it objectively to see when a
21 statement could have been made. There is a large group of
22 people, clearly all known to one another, who are leaving the
23 snack bar at the same time -- point in time. Other than that,
24 there's no interaction with them and they're so far away you
25 would not be able to hear what they're saying even though

1 there's no audio on the -- on the video itself.

2 But what's troubling to me, however, is that once the
3 Court gave the instruction that you're not to have any
4 interaction with anybody that doesn't have a juror sticker on,
5 there's clearly interaction with -- I don't know the juror's
6 number and I'm going to have to conduct some additional
7 inquiry of them, is that clearly there is some interaction
8 with a member of the defendant's family and a juror and that
9 was clearly prohibited and should not have taken place.

10 Now I asked the question about the -- the surnames
11 because I wanted to see if we had mentioned them during voir
12 dire and if there had been some deliberate concealment on the
13 part of any of the jurors during that process and when I
14 looked back through the witness lists that were propounded to
15 the Court, let me see, there was a Charise Coaxum that was
16 listed as a witness, a Sandra Campbell. Sandra Campbell.
17 Aaron Burnham.

18 Of the last names that were surnames, there was a Coaxum
19 and there was a Ladson. No, I'm sorry. There was Coaxum,
20 Campbell. There was no mention of a Ladson and then on the
21 State's list -- There was on the defendant's list a -- a
22 Robinson, but that's the GSR person, I assume some expert that
23 they have retained. There was a Burnham and there was a
24 Richardson. However, there was no mention of those names to
25 me by counsel when I asked.

1 On the State's list, again the surnames German, Allen,
2 McCarthy, Tawney, Haigler, Glover, but not -- but certainly
3 German and Ladson were mentioned and Campbell were listed as
4 potential surnames and while those -- while the particular
5 individuals may not have been listed and I believe that I
6 asked what the defendant's sisters' last names were, they said
7 Coaxum and Ladson. While their first names may not have been
8 mentioned, I don't know that there would have been any
9 indication without a mention of first names of a juror
10 listening to that information.

11 It is possible that they did not recognize -- because the
12 whole family was not in here during jury selection, it is
13 possible that they may have recognized one another later, but
14 certainly it should have been disclosed in voir dire when the
15 Court asked did you have any interaction with anyone during
16 the lunch and recess. Certainly you should have disclosed
17 that we saw -- Just out of an abundance of caution, you should
18 have disclosed we saw some people in the -- in the break room
19 and it is possible that I know them and I need to disclose
20 that. And I find it troubling that that was not disclosed
21 because it is not only the actual propriety that we must all
22 exercise, it is the appearance because perception is reality
23 and -- and I said that on yesterday that I was not going to
24 get into sort of a tit for tat because --

25 I'll give you a short story from Seinfeld. As George

1 Costanza would say, if I believe it, it's not a lie. So in
2 other words, if I perceive it, it's real to me. So I don't --
3 I believe that the people who say they overheard that
4 perceived that they heard that, although the video does not
5 support it because there's no way you can tell what is being
6 said or not being said and maybe I'm just naïve, but I can't
7 imagine I would say something that inculpatory when people I
8 know are walking through me where they can hear it.

9 But then, you know, stranger things have happened. But I
10 have no way of independently judging that because there is no
11 audio on the video and I don't know what was said. I just
12 know the logistics. I've been in that snack bar. The --
13 Although I go down there, I've been in there very rare times,
14 it's a large, vacuous area. I don't -- You know, there are --
15 I was surprised at how many people were down there having
16 lunch, how much court staff has lunch down there. I was
17 really shocked.

18 But I don't know that from where they were sitting, which
19 is way on the end by these windows, if you could hear what
20 somebody is saying way at the end of the door. Now there was
21 some people sitting at what I guess you could consider a lunch
22 counter of sorts, but where the talking would have been taking
23 place is when you see members of the victim's family walking
24 through members of the defendant's family and there does not
25 appear to be any discussion going on at that time.

1 Do I believe that's the perception? Yeah, absolutely, I
2 believe that's the perception and that is why I strictly gave
3 the instruction not to have any interaction with anyone and I
4 may have to instruct the jury not to have lunch in the snack
5 bar at all because there's too many people milling around the
6 courthouse and people do look very different in the courthouse
7 than they look in a courtroom.

8 But I'm going to voir dire the individual jurors and then
9 we'll see where we go from there because I need some answers
10 and I don't need somebody else's perception. I need their
11 answers about what actually took place and who they interacted
12 with and it is correct that -- and I don't know. I'll have to
13 take Mr. Harris' word for it that these individuals that may
14 have had interaction were not in the courtroom after lunch,
15 which may well have signaled this particular juror's memory or
16 not signaled it. In her mind, I don't know, she may have
17 interacted with somebody that she didn't know was involved in
18 the case, somebody she may have seen after a number of years,
19 an acquaintance or otherwise.

20 But since I knew of the specific juror that was
21 identified, the young lady in the yellow, I specifically
22 looked at her while I was talking and at no time did I see her
23 avert her eyes. If anything, she was trying not to look at
24 me. She was looking down at the floor. She looked over at
25 the bailiffs, but I was observing her specifically because I

1 wanted to know and make an independent judgment about whether
2 she was being misleading or not or whether in fact she had
3 some contact.

4 But the video very clearly shows her not really -- She's
5 more of a -- She's just in -- She's there because she's eating
6 lunch with this other lady, but I don't really see her having
7 anything other than ordinary social hospi -- I mean if the
8 person that I guess you could say liberally waved at her, it
9 would have been really rude for her not to have waved back or
10 to have acknowledged it in some way.

11 Which is the same observation I made on yesterday which
12 is why I avoid the public areas of this courthouse because I'm
13 a social -- I'm not going to be rude to somebody if they say
14 hi to me. I'm not going to not speak to them, but I also am
15 cognizant enough to know that if I see a criminal defendant or
16 if I see a victim's family and I exercise ordinary social
17 hospitality, they're going to misinterpret that. They're
18 going to be like, the judge smiled at me, the judge waved at
19 me and -- and frankly, I'm not going to remember who I waved
20 at or smiled at because my mind is 20 miles away doing
21 something else. It's on to the next thing, but I'm not going
22 to be rude to somebody as I'm walking through the courthouse
23 and I don't think anybody else would be either, but could that
24 be very easily misinterpreted? Absolutely.

25 Mr. Robinson, I need you to get -- I need you to get

1 juror number 63 for me, Miss Gadsden, and juror number 70,
2 Miss Givens, and have them stand outside in that hallway for
3 me, please.

4 (Whereupon, there is a brief pause in the proceedings
5 during which the Court views a portion of the video
6 again.)

7 THE COURT: Okay, could you bring in Miss Givens first?

8 BAILIFF: Miss Givens?

9 THE COURT: Pardon me?

10 BAILIFF: Miss Givens?

11 THE COURT: Yeah, number 70, Miss Givens.

12 (Whereupon, juror number 70, Miss Givens, is brought into
13 the courtroom.)

14 BAILIFF: Number 70, Miss Givens.

15 THE COURT: Hi, Miss Givens, how are you?

16 JUROR: Fine.

17 THE COURT: If you would, state your name for the record,
18 please.

19 JUROR: Robin Givens.

20 THE COURT: Miss Givens, I want to ask a question. Were
21 you in the snack bar on yesterday having lunch downstairs in
22 the courthouse?

23 JUROR: Mm-hmm.

24 THE COURT: And who did you have lunch with?

25 JUROR: Number 63, I can't remember her name.

1 THE COURT: Okay and while y'all were having lunch, did
2 some people come into the snack bar that you recognized?
3 JUROR: Yeah, a girl.
4 THE COURT: And who was that?
5 JUROR: I can't remember her name.
6 THE COURT: Where do you know her from?
7 JUROR: James Island.
8 THE COURT: Okay and when you say you know her from James
9 Island, what do you know of her from James Island?
10 JUROR: We -- I know her through another friend of mine
11 that lives on James Island.
12 THE COURT: Okay. When you say you know her through
13 another friend of yours, what -- how would you characterize
14 that?
15 JUROR: We've hung out together a few times.
16 THE COURT: You mean with the person you said hello to?
17 JUROR: Mm-hmm.
18 THE COURT: Okay. When you say you hung out, what do you
19 mean?
20 JUROR: We went to birthday parties together, like that.
21 THE COURT: Okay. Have you seen -- How long ago was
22 that?
23 JUROR: Last year in like June or July or something like
24 that.
25 THE COURT: Have you seen her since then?

1 JUROR: No, not since then before yesterday, no.

2 THE COURT: Okay and would you consider her a close

3 friend of yours?

4 JUROR: No.

5 THE COURT: Do y'all talk on the phone or have any

6 interaction other than the birthday party and when you saw her

7 yesterday?

8 JUROR: No.

9 THE COURT: And do you know her name?

10 JUROR: I can't recall her name. She named after a

11 champagne or a wine or something. Oh, I can't recall her

12 name.

13 THE COURT: Okay. What -- Tell me in your own words what

14 happened when she -- when you were sitting in the snack bar on

15 yesterday?

16 JUROR: We hailed each other.

17 THE COURT: When you say you hailed each other, tell me

18 what that means?

19 JUROR: Hi, how you doing, I ain't seen you in a long

20 time.

21 THE COURT: Mm-hmm.

22 JUROR: Stuff like that.

23 THE COURT: Were you surprised to see her?

24 JUROR: Yeah, mm-hmm.

25 THE COURT: To your knowledge, is she involved in this

1 case at all?

2 JUROR: Not to my knowledge.

3 THE COURT: Okay. Did you all have any discussion about
4 this case?

5 JUROR: No.

6 THE COURT: Did you all -- What did you all -- Other than
7 what you said, what else did you say?

8 JUROR: Then we just started talking about the friend I
9 told you about.

10 THE COURT: The friend in common that you have?

11 JUROR: Yeah, mm-hmm.

12 THE COURT: And then what else did you talk about?

13 JUROR: And she spoke about her -- that she moved in with
14 her grandmother.

15 THE COURT: Okay.

16 JUROR: That was it.

17 THE COURT: And again I ask did you in any way have any
18 interaction or discussion about this case?

19 JUROR: No.

20 THE COURT: Did you talk about the facts and
21 circumstances of this case?

22 JUROR: Oh, no, uh-uh.

23 THE COURT: To your knowledge, was she -- is she related
24 in any way to the defendant?

25 JUROR: Not to my knowledge.

1 THE COURT: Is she in any way related to the victims in
2 this case?

3 JUROR: Not to my knowledge.

4 THE COURT: Okay and did you hear the Court's
5 instructions not to speak to anyone that did not have a juror
6 sticker on?

7 JUROR: Yes, I did.

8 THE COURT: Okay and you just -- you forgot, is that what
9 you're saying?

10 JUROR: Yes.

11 THE COURT: Okay, because you saw what you considered to
12 be an old acquaintance? Is that an accurate statement?

13 JUROR: Just somebody to see from my neighborhood was
14 just ---

15 THE COURT: It was just that?

16 JUROR: Yeah, that was just that.

17 THE COURT: Okay and if you would, stand back in the
18 hallway -- Well, actually I need to ask this question. As a
19 result of that interaction, do you feel that you can remain
20 fair and impartial in this case?

21 JUROR: Yes.

22 THE COURT: Do you feel that you can render a fair and
23 impartial verdict in this case?

24 JUROR: Yes.

25 THE COURT: Do you feel that you can render a fair and

1 impartial verdict based solely on the evidence as it will be
2 presented and on the law as the Court will instruct?

3 JUROR: Yes.

4 THE COURT: Okay. Ma'am, if you would stand out in the
5 hallway please and do not discuss what we have discussed in
6 any manner whatsoever.

7 JUROR: Okay, thank you.

8 THE COURT: You're welcome.

9 (Whereupon, the juror leaves the courtroom with the
10 bailiff.)

11 THE COURT: Are there any additional questions in voir
12 dire for the juror from the State?

13 MR. VOIGT: No, Your Honor.

14 THE COURT: From the defense?

15 MR. HARRIS: None, Your Honor.

16 THE COURT: Is there any statements regarding whether
17 this juror should be excused or whether the juror should be
18 retained from the State?

19 MR. VOIGT: I would just reaffirm my motion.

20 THE COURT: Well, you need to be more specific than that.
21 You've heard voir dire now. I need to know if there is any
22 indication because you have the burden of proof to prove to me
23 that she can't be fair and impartial and that somehow she's
24 violated the Court's instructions.

25 MR. VOIGT: I believe Your Honor was very clear in voir

1 dire yesterday and in fact in today's voir dire she clarified
2 that, but it does not change in any way the fact that she
3 misled the Court yesterday.

4 THE COURT: Well, how did she mislead me yesterday?

5 MR. VOIGT: You asked that same sort of question about
6 contact with somebody other than someone with a juror badge
7 yesterday ---

8 THE COURT: Mm-hmm.

9 MR. VOIGT: --- and you had a different answer from her
10 yesterday ---

11 THE COURT: Mm-hmm.

12 MR. VOIGT: --- or a non-answer, which is I believe the
13 way the Court structured the voir dire would have been an
14 answer in the affirmative that she had not had such a
15 discussion. I don't believe that today's answer in any way
16 changes the fact that she was not entirely forthright with the
17 Court yesterday and because of yesterday's answer, she's not
18 entitled to any presumption of impartiality.

19 THE COURT: Mr. Harris?

20 MR. HARRIS: Your Honor, I don't believe that it was an
21 intentional omission on her part. I think it's like -- just
22 like she said. If a person says no name, it's an acquaintance
23 from a while back, like you said, it looked like somebody
24 waves their hands up like, oh my God, I haven't seen you in a
25 long time. It's been years.

1 I think she cleared it up today. We didn't say -- It's
2 not like we came to her and said we've got you on video, why
3 are you lying? You asked her clearly today were you in the
4 snack bar yesterday? Yes. Did you talk to someone yesterday?
5 Oh, yeah, I did.

6 It's kind of like it wasn't -- I don't think it was an
7 intentional omission on her part. I don't think she was
8 trying to mislead or deceive the Court. I think she didn't
9 think I saw a good friend of mine and I didn't realize that --
10 you know, she hadn't seen anybody in this courtroom at that
11 time.

12 So I'd ask that she remain on the panel. She told you
13 clearly she can be fair and impartial. She doesn't even know
14 the person's name. She said it might be after a wine or a
15 champagne. It's a passing acquaintance that she hasn't seen
16 in a year.

17 THE COURT: Bring in Miss -- Miss Gadsden for me, please.

18 BAILIFF: Miss Gadsden?

19 (Whereupon, juror number 63 is brought into the courtroom
20 by the bailiff.)

21 THE COURT: Tell me your name, ma'am, for the record?

22 JUROR: Erica Gadsden.

23 THE COURT: How are you doing this morning?

24 JUROR: Fine.

25 THE COURT: Miss Gadsden, did you have lunch with Miss

1 Givens yesterday in the lunch bar?

2 JUROR: No.

3 THE COURT: In the snack bar? Do you know who Miss

4 Givens is?

5 JUROR: No.

6 THE COURT: Okay. She's the lady that you came down the

7 hallway with. Did you have lunch with her yesterday?

8 JUROR: With her?

9 THE COURT: Yes, ma'am.

10 JUROR: Yeah.

11 THE COURT: So you don't know her name?

12 JUROR: No.

13 THE COURT: Okay. Y'all just sat in the snack bar

14 yesterday and had lunch?

15 JUROR: Yes, ma'am.

16 THE COURT: Okay and during lunch did anybody come up to

17 your table or did you interact with anybody during lunch while

18 you all were having lunch?

19 JUROR: Uh-uh.

20 THE COURT: Okay. Did anybody come up and speak to Miss

21 Gavins -- I mean Miss Givens?

22 (Whereupon, the juror nodded her head.)

23 THE COURT: I need you to tell me yes or no.

24 JUROR: Yes.

25 THE COURT: Okay and did you have any part in that

1 conversation?

2 JUROR: I might have just asked her if I know her from
3 someplace and stuff.

4 THE COURT: I'm sorry? Say that one more time.

5 JUROR: I asked her if I know her from someplace. That's
6 it.

7 THE COURT: And what was her response?

8 JUROR: No.

9 THE COURT: Okay and did you have any further contact
10 with anybody else in the snack bar during lunch?

11 JUROR: No, ma'am.

12 THE COURT: Other than Miss Givens?

13 JUROR: No, ma'am.

14 THE COURT: Okay. Is there a reason you didn't indicate
15 yesterday after lunch when I asked if you'd had any
16 interaction with anyone in or about the courthouse who didn't
17 have a juror sticker on?

18 JUROR: No.

19 THE COURT: I can't hear you.

20 JUROR: No.

21 THE COURT: Okay. Do you know any members of the
22 victim's family in that -- in this case, that being anyone who
23 is a member of Michael German's family?

24 JUROR: No, ma'am.

25 THE COURT: Do you know anyone that is a member of Mr.

1 Campbell's family?

2 JUROR: No, ma'am.

3 THE COURT: Okay. Ma'am, is there -- after the
4 interaction that you had in the snack bar, that being someone
5 asking if you knew them or not, do you feel that you can
6 remain fair and impartial?

7 JUROR: Fair.

8 THE COURT: I can't hear you.

9 JUROR: Fair.

10 THE COURT: Okay. Do you think you can render a fair and
11 impartial decision in this case?

12 JUROR: Yes.

13 THE COURT: I can't hear you.

14 JUROR: Yes.

15 THE COURT: Do you feel you can render a decision based
16 solely on the evidence as it will be presented and on the law
17 as the Court will instruct?

18 JUROR: Yes.

19 THE COURT: You tell me ---

20 JUROR: Yes.

21 THE COURT: Okay. If you would, step out into the
22 hallway for me and please do not discuss anything that we've
23 discussed with anyone.

24 JUROR: Okay.

25 THE COURT: Thank you.

1 (Whereupon, the juror leaves the courtroom.)
2 THE COURT: Any additional questions from the State?
3 MR. VOIGT: No, Your Honor.
4 THE COURT: From the defense?
5 MR. HARRIS: None, Your Honor.
6 THE COURT: Any argument from the State regarding the
7 witness?
8 MR. VOIGT: Your Honor, based on the witness' comments to
9 the Court today, as well as the difference in the video
10 evidence between this juror and the juror we previously
11 discussed, the State would withdraw its motion as to this
12 juror.
13 THE COURT: Any exception from the defense?
14 MR. HARRIS: No exception, Your Honor.
15 THE COURT: Okay. I am going to -- and I -- I watched
16 the video. As a matter of fact, I was going to watch it again
17 in light of what's been disclosed because I wanted to make
18 sure I was accurate, but the video does really -- it really
19 shows the same affect that the juror exercised today as
20 yesterday. She has a pretty flat affect, like I don't know.
21 She's young, I guess. I don't want to cast any aspersions on
22 her character, but she's a typical young person. She's just
23 sort of like I'm sort of here and that's pretty much how she
24 was acting on the video, almost like I'm just sort of a
25 peripheral part of this situation, just trying to get through

1 it basically and she doesn't really have any interaction with
2 anyone.

3 Now I really don't have any concerns about Miss Givens'
4 impartiality. She's indicated she can be fair and impartial
5 and she can render a fair and impartial decision. But I am
6 troubled I guess and I use that word very lightly because I'm
7 really not troubled by the fact that she didn't disclose when
8 I asked the question because she's a typical juror. They just
9 don't -- The things we think are important they don't think
10 are important and I really don't think she had any intention
11 to mislead the Court and there would have been no reason for
12 her to have disclosed the individuals in voir dire because
13 they weren't in the courtroom and their names specifically
14 were not mentioned and in addition to that, she indicated I
15 really don't even know this person's name. I just know she
16 has the name of a wine or champagne or something.

17 I do think that the interaction was innocent. I really
18 don't think it amounts to anything, but out of an abundance of
19 caution I'm going to excuse her just because I don't want
20 there to be any perception that whatever verdict is rendered
21 that it was not fair and impartial. But I really think that
22 anything she did was innocent. I don't even think she really
23 knows the woman. I think it's one of those things because you
24 can tell on the video the lady is very shocked that she sees
25 her. She's like -- It's almost like, oh, that's you, I