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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DARLINGTON COUNTY
The Honorable Roger E. Henderson, Circuit Court Judge

Appellate Case No: 2018-000184

BREYON TONEY, RESPONDENT,

v.

STATE OF SOUTH CAROLINA, PETITIONER.

APPENDIX

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INDEX

INDEX 1

GENERAL SESSIONS TRIAL TRANSCRIPT 1

GENERAL SESSIONS INDICTMENTS 489

FINAL BRIEF OF APPELLANT 502

FINAL BRIEF OF RESPONDENT 514

SC COURT OF APPEALS OPINION 2014-UP-005 538

PETITION FOR REHEARING 540

ORDER DENYING PETITON FOR REHEARING 548

REMITTITUR 549

POST-CONVICTION RELIEF APPLICATION 550

RETURN 556

AMENDED POST-CONVICTION RELIEF APPLICATION 562

POST-CONVICTION RELIEF HEARING TRANSCRIPT 566

STATE'S MEMORANDUM OPPOSING POST-CONVICTION RELIEF 680

MEMORANDUM IN SUPPORT OF POST-CONVICTION RELIEF 703

ORDER GRANTING POST-CONVICTION RELIEF 713

STATE'S 59(e) MOTION TO RECONSIDER 735

ORDER DENYING 59(e) MOTION TO RECONSIDER 744

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF DARLINGTON	)	
	)	
The State	)	May 18, 2011
	)	
Plaintiff,	)	
	)	
Versus	)	
	)	2010-GS-16-00077
Breyon Toney,	)	2010-GS-16-00078
	)	
Defendant.	)	
	)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

APPEARANCES

John Holt, Esquire
Patti McKenzie-Parker, Esquire
Kendall Burch, Esquire
ATTORNEYS FOR THE STATE

Matthew Swilley, Esquire
Richard Jones, Esquire
Tiffany Gibson, Esquire
ATTORNEYS FOR THE DEFENDANT

Pamela Ozment-Cartee
Circuit Court Reporter

Case is called for Trial by the Solicitor Page 008

Jury Qualification Page 008

Jury Selection Page 037

-- DAY TWO OF TRIAL --

Motions Page 050

Motion to Suppress
Recorded Telephone Conversation Page 050

Motion to Suppress testimony
of LaVincent Hankins Page 057

Ruling by the Court on witness intimidation Page 097

Jury Sworn Page 068

Introduction of the case Page 069

Opening Statements by The State Page 078

Opening Statements by The Defense Page 082

Discussion with Juror Number 10, Ms. Bishop Page 098

WITNESSES

NAME	DIRECT	CROSS	REDIRECT	RE-CROSS
Lavincent Q Hankins	087	089		
Mike Anderson	108	133	138	
Crystal M. Robinson	140	153	172	173
Marcus Branson	175	182	199	
Phillip A. Franklin	203	212	224	225
Janet Ross, M.D. Voir Dire Page 226	229	232		
Lavincent T. Hankins	237	243	254	
Laura South	256	None		

NAME	DIRECT	CROSS	REDIRECT	RE-CROSS
Brandon Landrum Voir Dire Page 259	262	266		
April Cook	268	270		
Cheryl McCall	271	280		

-- DAY THREE OF TRIAL --

NAME	DIRECT	CROSS	REDIRECT	RE-CROSS
E. Lynn Newsome, R.N.	289	291		
LeVern Davis	292	295	297	
Captain Waddell Coe	298	318		

State Rest Page 319

Motion for Directed Verdict Page 320

Response by The State Page 320

Ruling on Motion Page 320

Fifth Amendment Rights Examination of defendant Page 322

DEFENDANTS CASE

NAME	DIRECT	CROSS	REDIRECT	RE-CROSS
Tiffany Kaye Huggins	327	337	341	
Breyon Toney	342	354	354	

Defense Rests Page 384

Motions for a Directed Verdict Page 386

Ruling on Motion Page 386

Closing Arguments by The Defense	Page 394
Closing Arguments by The State	Page 419
Charge on the law	Page 444
Objections or Exceptions to The Charge on The Law	Page 468
Jury begins deliberations at 3:39 p.m.	Page 469
Jury announces a verdict at 5:00 p.m.	Page 470
Publication of the Verdict	Page 472
Poling of the jury	Page 473
Motion for a New Trial	Page 479
Ruling on Motion	Page 462
Sentencing Hearing	Page 479
Statement by Mr. Swilley	Page 482
Statement by Mr. Breyon Toney	Page 482
Statement by Mr. Holt	Page 483
Statement by Ms. Tarnieka Williams	Page 484
Sentence of The Court	Page 486
Certificate of Reporter	Page 488

5

VOIR DIRE

Case No.: 2010-GS-16-00078 Date: May, 16, 2011
Plaintiff: The State Attorney John Holt
Defendant: Breyon Toney Attorney Matthew Swilley
Presiding Judge: J. Michael Baxley Reporter: Pamela Ozment-Cartee

* * * * * * * * * * * * * * * * * * * *		* * * * STRIKES * * * *				
Juror #	Juror Name	Race	Sex	Court	State	Defd
063	Theresa D. Howle	W	F		X	---
118	Travis G. Russell	B	M		✓	✓
038	Julie C. Flinchum	W	F		✓	✓
107	Angela J. Oakey	W	F		✓	x
043	Phillip A. Gardner	W	M		✓	x
029	Franklin B. Douglas	B	M		x	---
069	Rachel C. James	B	F		✓	✓
013	Margie L. Brown	B	F		✓	✓
151	Sonja G. King	W	F		✓	✓
046	Bernard Gee	B	M		✓	✓
010	Juanita S. Bishop	**B**	F		✓	✓
119	Randall A. Samuel	B	M		x	---
126	Nickey E. Simmons	W	M		✓	x
139	Bobbie Williams, Jr.	B	M		x	---
133	Winnie L. Tedford	W	F		✓	✓
127	Darius r. Sims	B	M		✓	✓
020	Donald Childers	W	M		✓	x
005	Andrew K. Atkinson	W	M	**x**	---	---
021	Kendra E. Clifton	W	F		✓	✓
058	James Herring, Jr.	W	M		✓	x
122	Karen Segars	W	F		✓	x
102	Shirley O. Mingo	B	F		✓	✓
080	Milda J. Kirsten	W	F		✓	✓
ALTERNATE						
024	James W. Shire	W	M		✓	x
074	James N. Johnson	W	M		✓	✓
056	Johnnie M. Ham	B	F	**x**	---	---
090	Jayron M. Lucas	B	M		✓	✓

STATE EXHIBITS

NUMBER	DESCRIPTION		PAGE
1	Photograph		130
2	Photograph		130
3	Photograph line-up 11/24/09		116
4	Photograph line-up 2/13/09		116
5	Photograph		104
6	Photograph	See Court's Exhibit Number 1	119
7	Photograph		119
8	Photograph		119
9	Photograph		119
10	Photograph	See Court's Exhibit Number 2	119
11	Photograph		119
12	Photograph		119
13	Photograph		119
14	Photograph		119
15	Photograph		119
16	Photograph		119
17	Photograph		119
18	Photograph		119
19	Photograph		119
20	Photograph		119
21	Photograph		119
22	Photograph		111
23	Photograph		111
24	Diagram		124
25	Pathology Report		266
26	Bag of clothes	I.D.	279
27	Bag of clothes	I.D.	279
28	DVD of telephone call & transcript		317

COURT EXHIBITS

NUMBER	DESCRIPTION	PAGE
1	Photograph	105
2	Photograph	105
3	Telephone Transcript	317
4	Note from the jury. "The definition of murder"	N/A
5	Note from the jury "Definition of Manslaughter"	N/A

NO DEFENSE EXHIBITS

(Whereupon, this trial began at 11:04 a.m. on Monday, May 16, 2011.)

THE COURT: All right. Welcome back to the courtroom, everyone.

And, now, Mr. Solicitor, please call your first case for trial.

MR. HOLT: Thank you very much, Your Honor. At this time the state would like to call the following two Indictments on one defendant, Breyon Toney, 2010-GS-16-0077. The Indictment is for murder. 2010-GS-16-0078, possession during a violent crime. The defendant is represented by Matt Swilley with the Public Defender's Office.

THE COURT: All right, very good. Mr. Swilley, do you represent Mr. Breyon Toney with regard to both of these charges?

MR. SWILLEY: I do, Your Honor.

THE COURT: And how does he plea?

MR. SWILLEY: Not guilty, Your Honor.

THE COURT: All right. Then ladies and gentlemen, you have heard the charge called by the Solicitor. You have heard the entry of a plea of not guilty, thus the issue is joined for trial. And we will proceed to draw a jury in the case of The State versus Breyon Toney.

Now, what we would like to do at this point, and we have already finished qualifications and general questions about service. Now, we want to ask questions about this specific case. And, I know just from being on jury myself, that a lot of times when you are sitting in a group as you are, you hear a question and you think, well, that doesn't apply to me, or I don't want to embarrass myself and stand up, and make a mistake of some sort. Well, let me say that there are no wrong answers in jury qualifications. Please, if you have some inkling that you should respond, stand up and give us the benefit of that information. The purpose of this process that we are getting ready to embrace in is to make sure that whatever jury that we draw in this case, is a disinterested jury. When I say that, I don't mean that you don't care. What I mean is that you don't have some connection to the case that might make you an inappropriate juror for whatever reason that may be.

Now, what we are going to do first of all, is we are going to start by allowing the lawyers to introduce themselves, and to introduce the party; that is, the principles of the case. Now, that will include, when the state introduces themselves after the attorney, then there will be a complaining witness, or what I will use the term, alleged victim. When I use the term, alleged

victim, please understand; I am not saying that something happened, or something didn't happen. It is simply going to be up to the jury to determine what has happened here, not because it may say something on a piece of paper, but because the evidence in the case will prove it. And so, when I use the term alleged victim, please understand that is not casting some dispersion on either side. That is just simply a term that the Court uses so as not to give the impression that the allegations that are in these Indictments are true. That is up for the jury to determine. We will talk a little bit more about that later.

Let's start with having the Solicitor, who will be the prosecuting attorney in this case, introduce themselves and co-counsel. Please go ahead.

MR. HOLT: Thank you very much, Judge. My name, like I said earlier, is John Holt. And I work for the Solicitor, here in Darlington County. And I have both of my bosses with me today. This is Patti Parker, and this is Kendall Burch, and they both work in the office with me.

THE COURT: All right. And let's switch to the defense counsel, and let the defense counsel introduce themselves as well.

Mr. Swilley, go ahead.

MR. SWILLEY: Thank you, Your Honor. My name is Matt Swilley. I am with the Fourth Circuit Public Defenders Office. Seated with me again is Mr. Rick Jones, and Ms. Tiffany Gibson.

THE COURT: All right. Thank you. You may be seated. Now, again, my question to you is about the lawyers. I want to ask whether or not on either side of this case any of you are related by blood or marriage to any of the lawyers to whom you have just been introduced? Whether you have some close business, or social, or professional connection to any of these lawyers that you have just been introduced? And for those lawyers, who may have been in private practice at one time, if you have ever been represented by them in any manner? If that applies to you, if any of that applies to you ladies and gentlemen, please stand. I am looking for related either through blood or marriage, have some close personal connection to any of them, or have been a client of theirs.

All right. Sir, please tell us your name and jury number.

MR. SHIRE: Jim Shire, number 124.

THE COURT: And Mr. Shire, tell me, for which lawyer are you standing?

MR. SHIRE: Mr. Jones.

THE COURT: Okay. And what connection did you have with Mr. Jones?

MR. SHIRE: I worked with him when he was in private practice.

THE COURT: Okay. Very good. And, thank you. And it is not uncommon in a small county like Darlington, that someone in the jury panel may know or have a working relationship with one of the lawyers. The question for you is, would that prevent you from being fair and impartial somehow if you were a juror, and Mr. Jones was one of the lawyers?

MR. SHIRE: I don't think so.

THE COURT: All right. Then I find that you are qualified by your response. Thank you, Mr. Shire.

Anyone else now, ladies and gentlemen, who would stand and say they have some past connection or present connection to any of these attorneys?

All right. Now, let me ask if there is any member of this jury panel who has some business connection to the Solicitor's Office, or the Public Defender's Office? The Solicitor's Office, of course, is the prosecuting wing of county and state government. And the Public Defender's Office is the defense wing of county government and state offices. So, I ask you if any of you have ever been a client before of the Solicitor's

Office or of the Public Defender's Office? That is, either you have been represented as a victim of crime, or perhaps been represented as someone accused of a crime. If that applies to you, please stand.

I want to ask now whether there is anybody who has some business connection to either the Solicitor or Public Defender's Office such as a --- you may be a vendor, or some type of independent contractor doing some business with either of these offices, or you may have a family member who is somehow connected to one of these offices. If that applies to you, please stand. Let's let the record reflect that no one has stood.

Now, let's talk about the parties in the case. And, Mr. Holt, please introduce, if you will, tell us the name of the victim, and who will be the family representative here of the alleged victim.

MR. HOLT: Your Honor, the victim in this case was ---

THE COURT: Let me get you to turn to the jury so they can be sure to hear you.

MR. HOLT: Thank you. It is a young man by the name of James Tucker. He was from the City of Hartsville. His family should be here tomorrow. His mother's name is Barbara Tucker. She is from Hartsville, and has lived there on and off for some time

now.

THE COURT: All right. Now, let me ask if you have any other identifying information. Do you happen to have an address of where Mr. Tucker may have resided at the time this happened?

MR. HOLT: I do not, Your Honor.

THE COURT: All right. And can you tell us what his approximate age is?

MR. HOLT: Mr. Tucker was seventeen at the time. He would be nineteen now. He was a very young man.

THE COURT: And it makes no difference, but for purposes of identification, can you tell us if he is an African American, or a Caucasian individual?

MR. HOLT: He is an African American young man. He was just about to finish high school.

THE COURT: All right. Thank you. You may be seated.

And, now, Mr. Swilley, please introduce your client to the jury, please.

MR. SWILLEY: Mr. Breyon Toney, from the City of Hartsville.

THE COURT: All right. Thank you. And you may be seated.

Now, asking about the parties to the case, ladies and gentlemen, you have heard the name called of the

alleged victim, as well as the defendant. You have met the defendant. I want to ask you now if there is any member of this jury panel who believes you are related by blood or marriage to either of these parties; have some connection to them, whether it is business, social, professional, church, whatever it may be, or even think you may even know either the victim in the case, that is the alleged victim, or the defendant. If that applies to you, please stand.

All right. Now, let's follow up, and ma'am, please tell me your name and your juror number.

JUROR: Juror number 56, Johnnie Ham. James Tucker is my cousin.

THE COURT: All right. You are related to Mr. Tucker?

JUROR: Yes, sir.

THE COURT: Well, let's do this. For that reason, and it is not that you are not capable or qualified. It does not appear to be proper for someone who is related to the victim to be on the jury; related by blood. So, for that reason, I am going to stand you aside for this case. And what we will do is I am going to let you leave for the day, ma'am. This is the only jury we are going to draw today. And, after 6:00 tonight, please call the juror number for further

instructions to the entire panel, but you are free to go at this time, ma'am. All right. You have a good day, ma'am. Thank you.

Sir, please tell me your name and your juror number.

JUROR: My name is Andrew Atkinson, and I --

THE COURT: Tell me your name one more time, sir.

JUROR: Andrew Atkinson.

THE COURT: All right.

CLERK OF COURT: Number five.

THE COURT: All right. And tell me, which one of the parties do you know?

JUROR: I went to high school with Mr. Toney.

THE COURT: All right. How long has it been since you have seen Mr. Toney?

JUROR: Maybe 2010.

THE COURT: You said 2010?

JUROR: Tenth grade.

THE COURT: Oh, tenth grade. All right. Would the fact that you know Mr. Toney in the past from going to school together, would that prevent you from being fair and impartial in this case if you are called as a juror?

JUROR: Yes, sir.

THE COURT: It would?

JUROR: Yes, sir.

THE COURT: All right. Then based on that, I am going to stand you down in this case. What I would ask you to do is I am going to let you leave as well. But, please call the juror number after 6:00 tonight for further instructions to the entire jury panel. All right, sir? You are free to leave at this time. All right. Anyone else now, who would stand and say they have some connection to the victim or the defendant; if so, please stand?

All right. Let the record reflect that no one further has stood.

All right, sir. In the back.

JUROR: James Wingate, 145. I know the victim.

THE COURT: All right. You know what member of the family?

JUROR: The victim's mother.

THE COURT: Okay.

JUROR: Barbara Tucker.

THE COURT: Would the fact that you know the victim's family, or a member of the family, would that prevent you from being fair and impartial, Mr. Wingate?

JUROR: No, sir.

THE COURT: All right. Then I find that you are qualified by your response. And thank you sir. Thank

you for the information.

All right. Now, please listen to the names of potential witnesses who may appear in the trial of this case. We are going to start with the state. And, if you are in the courtroom, and your name is called as a potential witness ladies and gentlemen, please stand and face the jury panel, so they might see you.

Go ahead, Mr. Holt.

MR. HOLT: Thank you, judge. This is Mike Anderson. He is an investigator with the City of Hartsville Police Department. And now, the next four names I call are all young people who would have been around the age of the victim in this case. Crystal Robinson, she is also from Hartsville. Marcus Branson, Phillip Franklin, and LaVincent Hankins. All four of those are around twenty-year-old individuals from the City of Hartsville. Also, John Specht, with HPD is going to be a witness. Dr. Janet Ross from Newberry pathology, she will be a witness. Laura South is the evidence custodian at HPD, she will be a witness. A guy by the name of Brandon Landrum, who did the toxicology at SLED, he is coming down and will be a witness. Lynn Newsome, she is a nurse at Carolina Pines Hospital, I think she works mainly in the Emergency Room. April Cooke was with the City of Hartsville Police Department,

she is now with the Sheriff's Office. She will be a witness. Cheryl McCall with HPD. Levern Davis, he is with HPD. Jackie Catoe, HPD. Terry Anderson, HPD, and Waddell Coe, he works for the sheriff. All of those people are potential witnesses for the state's case.

THE COURT: All right. Thank you, Mr. Holt. And ladies and gentlemen, when I am talking about the parties to a case, I asked you if you even knew them. But when I am talking about the witnesses, my question is not as close. What I am looking for is whether you have some close connection to any of these individuals, whether it be through business, professional, or whatever it may be, or social, or whether you are related to any of them by blood or marriage. If any of that applies for any of the witnesses' names you have just heard, please stand.

JUROR: All right. I am Thomas Sawyer and my juror number is 120. I am related to Waddell Coe.

THE COURT: All right. And, how are you related, sir?

JUROR: Through his mother, who is my first cousin. His mother is Pat Coe.

THE COURT: All right. I see. Very good. And, counsel, let me get you to step up for just a moment. Just remain right where you are, Mr. Sawyer. We will be

right back with you.

(Whereupon, a bench conference was held in the, presence of the jury, but out of their hearing range.)

THE COURT: All right. Mr. Sawyer, we had a little discussion here. The gentleman, Mr. Coe, is going to be a witness in the case. And let me ask you about this. I realize that you say you are related. I think you said to his mother, who is your cousin?

JUROR: Correct.

THE COURT: All right. When was the last time that you saw Mr. Coe?

JUROR: Mr. Coe?

THE COURT: Yes, sir.

JUROR: Oh, we haven't seen each other in a number of months now.

THE COURT: Okay. Would the fact then that he would be a witness in this case prevent you from being fair and impartial if you are called as a juror?

JUROR: No, it would not.

THE COURT: And let me ask you this way. Would you give his testimony greater weight or importance simply because you may have some relationship to him over what other witnesses may say?

JUROR: I don't think so.

THE COURT: All right. Then based upon your responses, and you say you don't think so. But I want to ask and make sure. Are you certain of that?

JUROR: I will give it internal consideration.

THE COURT: Tell me that again, now?

JUROR: I am considering your question, and I am trying to be fair and honest with myself, as far as me knowing him.

THE COURT: Right.

JUROR: And I know him from a young kid. So, I am just trying to say to myself, taking it that I know him --

THE COURT: Well, let me ask it this way. Would you be able to follow the law as I give it to you, as the judge in the case, apply it to the facts as you find them, and be fair and impartial in doing that?

JUROR: Yes.

THE COURT: Then based on that answer, I find that you are qualified, Mr. Sawyer. Thank you. Thank you for your candor.

JUROR: Thank you.

THE COURT: And ma'am, tell us your name and juror number, please.

JUROR: My name is Barbara DuBose, and I am juror number 32.

THE COURT: Tell me why you are standing, ma'am?

JUROR: Me and Waddell is kin by my grandmother.

THE COURT: Okay. Through your grandmother. How long has it been since you have seen --- is it Mr. Waddell?

JUROR: Yes, sir.

THE COURT: How long has it been?

JUROR: Well, just in passing.

THE COURT: Okay. Would the fact that through your grandmother, and how would you be related to Mr. Waddell, a cousin?

JUROR: Yes, sir.

THE COURT: All right. Would that prevent you from being fair and impartial in this case, if you were a juror, ma'am? You heard me talk to Mr. Sawyer about --

JUROR: Yes, I could.

THE COURT: Would you be able to apply the law as I give it to you, to the facts as you find them?

JUROR: Yes, sir. I would try to, to the best of my knowledge.

THE COURT: All right. Are you certain of that?

JUROR: (No response.)

THE COURT: Do you think the fact that you have a cousin, who is going to appear as a witness for the

state, would that prevent you somehow from being fair and impartial?

JUROR: Well, I am going to be honest, I am not certain, because it is my first time going through it.

THE COURT: Okay. Well, if you tell me that you are certain that you can follow the law as I give it to you, and apply it to the facts as you find them. And the fact that you have a somewhat distant relative that appear for the state would not prevent you from being fair and impartial, then I will let you serve, ma'am. But, if you can't tell me that with certainty, then I will stand you aside.

JUROR: Well, I will do it to the best of my knowledge.

THE COURT: All right. Very good. Then what we will do is we will let you remain with us. Thank you for your candor. And, I find that you are qualified.

Sir, please tell me your name and juror number.

JUROR: I am Zachary Garner, and I believe I am 42.

THE COURT: All right.

JUROR: I have a slight professional relationship with Mr. John Specht. I work with his girlfriend at Mr. B's.

THE COURT: Okay. Would the fact that you have

that relationship with a person who may appear as a witness for the state, would that prevent you from being fair and impartial in this case?

JUROR: No, sir.

THE COURT: All right. Then I find that you are qualified by your response. Thank you. You may be seated.

And, sir, just to make sure, give us your name one more time.

JUROR: Zachary Garner.

THE COURT: Thank you.

CLERK OF COURT: Juror number 44.

THE COURT: Thank you, sir. Please be seated. Yes, sir? Please give us your name and juror number.

JUROR: Phillip Gardner, number 43.

THE COURT: All right. Mr. Gardner, tell us, why are you standing, please?

JUROR: I work for the City of Hartsville, so I know the majority of the City of Hartsville police officers.

THE COURT: Would the fact that you know them, and working for the same entity, would that prevent you from being fair and impartial in this case if you were called as a juror?

JUROR: No, it would not.

THE COURT: All right. Sir, then I find that you are qualified Mr. Gardner. Thank you for your response.

And, sir, please give us your name and juror number.

JUROR: James Johnson, number 74. I am also with the City of Hartsville, and I know all of the police officers.

THE COURT: All right. And, would that prevent you, the fact that you have that working relationship with the same organization that the police officers work for, would that prevent you from being fair and impartial somehow in this case?

JUROR: No, sir.

THE COURT: All right. Mr. Johnson, I find that you are qualified. Thank you for your response.

All right. Now, is there anyone else now who would respond about any of the witnesses whose names you have heard called?

All right. Let me say this to you about our case that is being presented today.

First of all, I want to make sure that you understand, and that I discuss with you the fact that you have just listened to the names of potential witnesses for the state. The defendant in this case and this is a bedrock foundational principle of our justice

system, he is presumed innocent of these charges. You heard him enter a plea of not guilty. But, even if there was not an entry of a plea, he is presumed innocent, because the burden is always on the state to prove what the state alleges. It never shifts to the defendant to disprove, or to prove his innocence. That is not the way the process works. And as a result of that, the defendant is not required to put up a case. Not required to call witnesses. Not required to respond to the charges. But, I want to ask at this point, Mr. Swilley, do you have other individuals for whom we should qualify this jury who may be called as witnesses in the case?

MR. SWILLEY: I do, Your Honor.

THE COURT: All right. Please call out the names of those individuals. If you are present, ladies and gentlemen, please stand when your name is called.

MR. SWILLEY: Tammy Toney, Antwain Toney, Tiffany Huggins, India Grimes, Brandy Tetter.

THE COURT: Okay. Thank you. Now, I am going to ask you the same question I just asked about the state's potential witnesses. Is there any member of this jury panel related to any of those individuals by blood or marriage, or have some close business, professional, or social connection to any of them? If

so, please stand. Let's let the record reflect that no one has stood in response to the Court's question.

All right. Members of the jury panel, I have in my hand two Indictments. These are simply pieces of paper by which the state commences a prosecution against an individual. I will tell you that the Indictment is not to be accepted as evidence in the case, because it is not evidence. And it is not to be accepted as the truth. And that is because whatever the truth is, is going to be determined by the jury based on the testimony in the case, under oath, and here in this courtroom. Not because it says something on a piece of paper. What is on these Indictments are allegations. But I want to give you the substance of the allegations to ask you if you know anything about this alleged incident.

The Indictment for murder alleges that Breyon Toney did in Darlington County, on or about March 24, 2009, willfully, and feloniously, and intentionally killed the victim, James Tucker, with malice aforethought by means of stabbing, and that the victim did die as a result thereof.

The Indictment for possession of a weapon during the commission of a crime alleges that on the same date, which is March 24, 2009, that the defendant Breyon Toney

did in Darlington County, possess or viably display what appeared to be a knife during the commission or attempted commission of a violent crime against the laws of South Carolina. So, both these charges arise out of the same incident, March 24, 2009. I give you these allegations to ask you. Is there any member of this jury panel who knows anything about this incident, or this case, or this prosecution from whatever source it may be. If you know something about this case, please stand. Let's let the record reflect then that no one has stood in response to the Court's question.

All right. I want to ask now ladies and gentlemen, a little bit about your history if I may. I want to ask if there is any member of this jury panel who has ever been employed yourself, full time or part time in law enforcement. If you have worked full time or part time in law enforcement, please stand.

All right. And then ma'am, please give us your name and juror number.

JUROR: I am juror number 70, and my name is Rosena James. I am not a corrections officer, but I work as a custodian for the Sheriff's Department and the Detention Center.

THE COURT: Okay. And ma'am, would that prevent you from being fair and impartial in this case, the fact

that you have worked in law enforcement at the Detention Center previously?

JUROR: I working there now.

THE COURT: Yes, ma'am. I understand that. What I meant to say was would that prevent you from being fair and impartial?

JUROR: No, it would not.

THE COURT: All right. Then I find that you are qualified by your response. And you may be seated.

Counsel, step up just a moment if you would please.

(Whereupon, a bench conference was held in the presence of the jury, but out of their hearing range.)

THE COURT: All right. Ladies and gentlemen, let me discuss a matter that was just brought up. Of course, if you think about it, and you are probably familiar with the system; if you are arrested on a particular charge, you are booked through the Detention Center. And there was a comment just made about the Detention Center. I want to ask you ladies and gentlemen, if there is any member of this jury panel who believes that because Mr. Toney may have been in the Detention Center, that that would prevent you somehow from being fair and impartial; if that would apply to you, if you believe that, then please stand. That would

prevent you somehow from being fair and impartial, the fact that Mr. Toney has been arrested, and has been at the Detention Center as a result of that arrest. If that applies to you, please stand.

All right. Now, let's go back to where we were. Is anyone else who would now stand and say that they have been employed themselves, either now or in the past part time or full time in law enforcement?

All right. Now, I want to ask about your immediate family members, and this is how we are going to define immediate family member. Your immediate family member is anyone who lives in your household, plus your spouse wherever they might live in your household or not. And your children in your household or not. So, your spouse, your children, and anyone who lives with you in your household. I am asking you now if there is anyone in this jury panel who has an immediate family member as I just defined it, who is presently employed in law enforcement. If that applies to you, please stand. Let's let the record reflect no one has stood in response to the Court's question.

I want to ask now, ladies and gentlemen, if any of you have ever --- this is you or a member of your immediate family as I have just defined it, has ever been the victim of a violent crime. When I say a

violent crime, I mean any crime which may have interpersonal attack or violence as a part of it. If that applies to you, or any member of your immediate family please stand. I am asking you now if you or a member of your immediate family has ever been the victim of a violent crime, please stand.

All right. Ma'am, again please tell us your name and juror number.

JUROR: Angela Oakey, 107.

THE COURT: All right. Ma'am, and tell me, is this you or is it a family member?

JUROR: It is a family member.

THE COURT: And tell me, if you will, what family member are we talking about? What relationship?

JUROR: My sister.

THE COURT: Your sister? All right. And, was there a criminal prosecution as a part of that?

JUROR: Yeah.

THE COURT: Did you participate in that ma'am?

JUROR: Well, we really didn't go into trial.

THE COURT: Well, let me ask you this. Would that experience somehow prevent you from being fair and impartial in this case, given what the allegations are that you just heard?

JUROR: I can.

THE COURT: Then I find that you are qualified by your response. Thank you.

All right. Ladies and gentlemen, again my question to the greater jury panel, is there any member of this jury panel who either you or a member of you immediate family ever been the victim of a violent crime as I defined it.

And then out of fairness, I want to flip the question and ask if any of you, either you or a member of your immediate family have ever been accused of committing a violent crime. If that applies to you, please stand. Let's let the record reflect that no one has stood in response to the Court's question.

I want to ask now ladies and gentlemen, if any of you may be members of an organization that has as its purpose the advocacy for the rights of victims of crime. And let me immediately say that there is nothing wrong with being a member of such an organization that has that purpose. I just simply wish to know if you are. These are organizations such as MADD, Mothers Against Drunk Driving, SADD, Students Against Drunk Driving, CASA, which is Citizens Against Spousal Abuse, CASA, it is called Citizens Against Violent Crime, and other organizations of the like. I ask you now if you are a member of such an organization, would you please stand?

All right. And, ma'am, please tell me your name and juror number.

JUROR: Wanda Robinson, number 112.

THE COURT: All right. Ms. Robinson, tell me what organization you might be a member of?

JUROR: MADD.

THE COURT: Okay. And would the fact that you are a member of MADD, somehow prevent you from being fair and impartial in this case, in your opinion?

JUROR: No, sir.

THE COURT: All right. Then I find that you are qualified. Thank you for your response, ma'am.

And, sir, please tell me your name and juror number.

JUROR: George Chase, number 19. I am a member of MADD.

THE COURT: All right, sir. And would the fact that you are a member of MADD somehow prevent you from being fair and impartial somehow in this case?

JUROR: No, sir.

THE COURT: Then I find that you are qualified by your response. Thank you ladies and gentlemen, for your response. Anyone else?

There may be an allegation in this case about someone having a child out of wedlock. I want to ask

you ladies and gentlemen, if there is anybody in the jury panel who has a belief, whether it be a personal belief, or a religious, or moral, or ethical belief that the fact that there may have been someone who had a child out of wedlock involved in this case would somehow prevent you from being fair and impartial? And again, what we would like to know, and I don't ever differ or criticize anyone for what beliefs they may have. There is nothing wrong with that belief. And I may have asked the question in such a way that it sounds as if that belief is incorrect, and I certainly don't mean to convey that. But, I am just simply asking whether they may be someone who believes they cannot be fair and impartial if that fact or that comes into evidence. If that applies to you, or if you believe that it does, please stand.

All right. Ladies and gentlemen, we really know nothing about this case. But we know that there is an allegation of murder and the use of a weapon during the commission of a violent crime. And I ask if there is anyone who believes, based simply on these allegations that you could not be fair and impartial because of a personal, religious, moral, or ethical belief that you have or hold; if that applies to you, or if it is something that you wish to discuss with the Court and

the lawyers, please stand. Let's let the record reflect that no one has stood in response to the Court's questions.

Any further jury inquiry from the state?

MR. HOLT: There is none, Your Honor.

THE COURT: And from defense?

MR. SWILLEY: There is not, Your Honor.

THE COURT: All right. Very good. Ladies and gentlemen, let's talk a little bit about the process that we are going to go into now.

First of all, how many strikes are claimed by the state?

MR. HOLT: Five, Your Honor.

THE COURT: The state is permitted five by statute. And, how many claimed by the defense?

MR. SWILLEY: Ten, Your Honor.

THE COURT: The defense is permitted ten by statute. All right. Here is what is getting ready to happen. We are going to qualify now and actually pick a jury. And all of your names who remain potential jurors have been scrambled and then in the computer, using a computer system, we have drawn a list of the jurors --- not in any particular order, but in a random order. And when your name is called, what we are going to ask you to do is please stand. And both sides are

going to have the opportunity to say whether they are going to seat you or excuse you. Now, I am just going to warn you in advance. This is a little bit psychologically uncomfortable, because here is what is going to happen. You stand up, and they are talking at the table there. And you know they are talking about you, and we know they are talking about you, but it is a process that we have used which has stood us well through --- stood our country well for quite some time, and so please don't be offended by the fact that they are speaking of you. And then each side will have an opportunity to seat or excuse you. Now, if you are excused, don't be offended by that either. In fact, that may suit you fine. But, I will simply say this to you; you may be excused because of some response given here in court today. Something that you may have returned on a jury questionnaire. It may be some strategy or tactic that only counsel knows. But, I will tell you what it is not, it is not because of your sex, or your race, it is against the law to strike for those reasons. Both sides have the opportunity to challenge the other side's strikes. And therefore, it will not be for those reasons. If you are not chosen, if you are excused, I can't let you leave immediately. We may have to revisit the jury draw for some reason. So, if you

would just be seated. If you are chosen, then please bring your personal belongings, not because you are going to be sequestered somewhere, it is just because you are going to change your seat in the courtroom, and come up here and sit in the jury box with us please.

All right. Is the state ready to strike?

MR. HOLT: We are.

THE COURT: Defense ready?

MR. SWILLEY: Yes, Your Honor.

THE COURT: Mr. Clerk, are you ready?

CLERK OF COURT: Yes, sir.

THE COURT: If you want to turn to the other side of your table, and face the jury panel, turn your back to the Court, you are welcome to.

Please proceed, Mr. Clerk.

JURY DRAW

CLERK OF COURT: Juror Number 63, Theresa Howle. What saith The State?

MR. HOLT: Please excuse this witness.

CLERK OF COURT: You have been excused in this particular case, Ms. Howle. Thank you.

Juror Number 118, Travis Russell. What says the state?

MR. HOLT: Please present Mr. Russell.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please swear Mr. Russell.

CLERK OF COURT: If you would come forward and have a seat in the jury box for me please, Mr. Russell.

Juror Number 38, Julie Flinchum. What saith The State?

MR. HOLT: Please present Ms. Flinchum.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please swear Ms. Flinchum.

CLERK OF COURT: If you would please come forward and have a seat in the jury box for me please.

Juror Number 107, Angela Oakley. What saith The State?

MR. HOLT: Please present this juror.

CLERK OF COURT: What says the defense?

MR. SWILLEY: Please excuse Ms. Oakley from the trial of this case.

CLERK OF COURT: You have been excused from this trial, Ms. Oakley. Thank you.

Juror Number 43, Phil Gardner. What saith The State?

MR. HOLT: Please present Mr. Gardner.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please excuse Mr. Gardner from the trial of this case.

CLERK OF COURT: You have been excused from this

case, Mr. Gardner. Thank you.

Juror Number 29, Franklin Douglas. What saith The State?

MR. HOLT: Please excuse Mr. Douglas.

CLERK OF COURT: You have been excused from this particular case, Mr. Douglas. Thank you.

Juror Number 69, Rachel James. What saith The State?

MR. HOLT: Please present Ms. James.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please swear Ms. James.

CLERK OF COURT: Please come and have a seat in the jury box for me please, Ms. James.

Juror Number 13, Margie Brown. What saith The State?

MR. HOLT: Please present Ms. Brown.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please swear Ms. Brown.

CLERK OF COURT: Please come and have a seat in the jury box for me please, Ms. Brown.

Juror Number 151, Sonja King. What saith The State?

MR. HOLT: Please present Ms. King.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please swear Ms. King.

CLERK OF COURT: Please come and have a seat in the jury box for me please, Ms. King.

Juror Number 46, Bernard Gee. What saith The State?

MR. HOLT: Please present Mr. Gee.

MR. SWILLEY: Please swear Mr. Gee.

CLERK OF COURT: Juror Number 10, Juanita Bishop. What saith The State?

MR. HOLT: Please present Ms. Bishop.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please swear Ms. Bishop.

CLERK OF COURT: Please come and have a seat in the jury box for me please, Ms. Bishop. Thank you.

Juror Number 119, Randall Samuel. What saith The State?

MR. HOLT: Please excuse Mr. Samuel from the trial of this case.

CLERK OF COURT: You have been excused Mr. Samuel. Thank you.

Juror Number 126, Nickey Simmons. What saith The State?

MR. HOLT: Please present Mr. Simmons.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please excuse Mr. Simmons.

CLERK OF COURT: You have been excused, Mr.

Simmons.

Juror Number 139, Bobbie Williams. What saith The State?

MR. HOLT: Please excuse Ms. Williams.

CLERK OF COURT: You have been excused in this case, Ms. Williams.

THE COURT: The state has one strike remaining.

CLERK OF COURT: Juror Number 133, Winnie Tedford. What saith The State?

MR. HOLT: Please present Ms. Tedford.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please swear Ms. Tedford.

CLERK OF COURT: Please come forward and have a seat in the jury box for me please, Ms. Tedford.

Juror Number 127, Darius Sims. What saith The State?

MR. HOLT: Please present Mr. Sims.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please swear Mr. Sims.

CLERK OF COURT: Please come forward and have a seat in the jury box please, Mr. Sims.

Juror Number 20, Donald Childers. What saith The State?

MR. HOLT: Please present Mr. Childers.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please excuse Mr. Childers from the trial of this case.

Clerk of Court: You have been excused from the trial of this case, Mr. Childers.

Juror Number 21, Kendra Clifton. What saith The State?

MR. HOLT: Please present Ms. Clifton.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please swear Ms. Clifton.

CLERK OF COURT: If you would come forward and have a seat in the jury box for me please.

Juror number 58, James Herring. What saith The State?

MR. HOLT: Please present Mr. Herring.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please excuse Mr. Herring from the trial of this case.

CLERK OF COURT: You have been excused in this particular case, Mr. Herring. Thank you.

Juror Number 122, Karen Segars. What saith The State?

MR. HOLT: Please present Ms. Segars.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please excuse Ms. Segars from the trial of this case.

CLERK OF COURT: You have been excused from this

case, Ms. Segars. Thank you.

Juror Number 102, Shirley Mingo. What saith The State?

MR. HOLT: Please present Ms. Mingo.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please swear Ms. Mingo.

CLERK OF COURT: Please come forward and have a seat in the jury box for me please, Ms. Mingo.

Juror Number 80, Milda Kirsten. What saith The State? **MR. HOLT:** Please present Ms. Kirsten.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please swear Ms. Kirsten.

CLERK OF COURT: If you would come forward and have a seat in the jury box for me please, Ms. Kirsten.

THE COURT: All right. Mr. Suggs, if you would seat two alternates please. And the strikes will be one for the state and two for the defense as to each alternate.

CLERK OF COURT: Juror number 124, James Shire. What saith The State?

MR. HOLT: Please present Mr. Shire.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please excuse Mr. Shire from the trial of this case.

CLERK OF COURT: You have been excused from this

particular trial, Mr. Shire.

Juror Number 74, James Johnson. What saith The State? **MR. HOLT:** Please present Mr. Johnson.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please swear Mr. Johnson.

CLERK OF COURT: Please come forward and have a seat in the first chair outside of the jury box for me please, Mr. Johnson.

Juror Number 90, Jayron Lucas. What says the state?

MR. HOLT: Please present Mr. Lucas.

CLERK OF COURT: What saith the defense?

MR. SWILLEY: Please swear Mr. Lucas.

CLERK OF COURT: Mr. Lucas, if you would come forward and have a seat in the second chair outside of the jury box for me please.

THE COURT: All right. Let me ask now of the parties. Is there an objection to the procedure used by the Court to choose the jury or the strikes employed by the other side? What says the state?

MR. HOLT: Just a moment, Your Honor.

THE COURT: Very good.

(PAUSE.)

MR. HOLT: There are none, Your Honor.

THE COURT: And from the defense?

MR. SWILLEY: There are none, Your Honor.

THE COURT: All right. Counsel, step up for a moment and let's talk about scheduling please.

Ladies and gentlemen, both our jury panel in the box, as well as our greater panel, we will be back with you in just one minute.

(Whereupon, a bench conference was held in the presence of the jury, but out of their hearing range.)

THE COURT: All right. Now, ladies and gentlemen, just a moment about scheduling. Let me ask before we start here. Tell me, how many of you have served on a jury before, whether it is a criminal jury or a civil jury? I see we have some experience in the jury box. Let me say this to you. If you find yourself there for the first time, don't be uncomfortable about where you find yourself, because jurors need two tools to serve well, and you have them both. The first is your ability to listen, and the second is your collective common sense. Armed with those two things, you are going to find yourself in good shape.

All right. We are not going to start the trial of this case this afternoon. We are going to start tomorrow morning at 9:30.

So, what I am going to ask you to do please is be

back in the jury room tomorrow morning at 9:30. When you leave here, our bailiff will show you where the jury room is, so that tomorrow morning you will just come back to the jury room, and we will start the case at 9:30.

Now, a couple of things. First of all, please don't feel like you need to go out this afternoon and launch your own investigation into this matter. If you will come back tomorrow, everything will be ready for you. The lawyers will present their case, as well the Court to go forward. And your loved ones are probably going to say, well now, what is this case about? And what I would ask you to tell them is this. Please tell them that the facts of the case you cannot discuss with them. We don't even know what the facts are obviously at this point, but until it is over with and then you can discuss it with them. And the reason I say that is this. Whatever decision you make as jurors should be based on the evidence in this courtroom. It comes right here from this witness chair that is under oath, and under direct and cross examination, and not something that that is said by some third person outside of these proceedings that may be of influence in your life. So, please tell your loved ones that the Court has instructed you not to discuss the case until it is over

with.

All right. So, you do not need to call the jury number tonight. You just be back tomorrow morning at 9:30, and we will be ready to begin at 9:30, and we will see you then.

Are there any questions about scheduling? All right. Then we will all remain where we are out of respect for you as you depart the courtroom.

Have a nice day. We will see you tomorrow morning at 9:30.

BAILIFF: Come this way, please.

(Whereupon, the jury is excused from the courtroom for the day, at 12:05 p.m.)

THE COURT: All right. Mr. Suggs, do you need any further information from our remaining jury panel?

CLERK OF COURT: No, sir.

THE COURT: Mr. Solicitor, let me get y'all to step up just one more moment, so I can get some further information. Mr. Suggs, join us here if you would, please.

(Whereupon, a bench conference was held.)

THE COURT: All right. Ladies and gentlemen of the remaining jury panel. I know you are disappointed you were not chosen in this case. But, I cannot tell you what the remainder of the week is before us. There

are many things that can happen that can influence the length of this trial, and whether or not we will draw another jury. I simply cannot tell you. If I knew I would tell you. But what I will ask you to do is after 6:00 tonight, and we won't know until the end of the day, that is when we put the message on the machine, please call your jury number. We will make sure that as you are leaving you have that number; you should have it already, for further information to the entire jury panel. That will be to you. And please respond to whatever it may be, whether it is to call again the next day, or appear at a certain time. But, I can tell you that the rest of the day is yours. And I hope you have a nice day. It is a pretty day outside. And you are free to go at this time. Have a good day, ladies and gentlemen. Thank you.

(Whereupon, the greater jury panel was released at 12:07 p.m.)

THE COURT: All right. Then court come back to order please for a moment. Let's talk about where we find ourselves in this case. I am told that there are some motions that we need to resolve. But, what we will do is we will take those up at 9:00 tomorrow morning, and stand this case down at this time.

Is there anything further in this case before we

adjourn it for the day; from the state?

MR. HOLT: No, sir.

THE COURT: From the defense?

MR. SWILLEY: Nothing from the defense, Your Honor.

THE COURT: All right. Very good. Then we will reconvene at 9:00 tomorrow morning in this case.

(Whereupon, these proceedings are completed for the day at 12:10 p.m. on Monday, May 16, 2011.)

-- END OF DAY ONE OF TRIAL --

(Whereupon, the Court begins its proceedings for the day at 9:07 a.m. on Tuesday, May 17, 2011.)

-- DAY TWO OF TRIAL --

THE COURT: Court comes to order so we can be sure to start at 9:30 with the jury.

Let's go ahead and begin this morning. We are back now in the case of State versus Toney. And there are issues, evidence that I am told that the parties wish to present.

And, I believe you are the moving party, Mr. Swilley?

MR. SWILLEY: Your Honor, I have two motions. One to suppress the recordings of the phone conversations taken at the Detention Center. And also to suppress evidence relating to another incident involving my client and a potential State's witness that occurred a few days ago. Whichever you would like for me to proceed on, I'll go first with that.

MOTION TO SUPPRESS TELEPHONE CONVERSATION

THE COURT: All right. Let's start first with the telephone conversations.

MR. SWILLEY: Your Honor, just for a factual background. My client turned himself in at the Detention Center, I believe, on the morning of March 24th. He made several calls, I believe, eight in all in

which the state intends to submit, where he spoke to members of his family, his girlfriend, and friends. In these conversations he does discuss the facts surrounding this incident. He does discuss retaining an attorney. He discusses with a party --- actually the law, or what they perceived to be the law.

The grounds in which I would submit to the Court to suppress these conversations, I think it is in violation of his Fourth Amendment Right against improper search and seizures. South Carolina's counterpart to that, which is Article I Section 10, as well as SC Code 17-30-10, which provides only in very limited circumstances, the telephone calls to be intercepted or recorded. And I believe those procedures were not followed in this instance, Your Honor.

Also, due to the fact that Mr. Toney did discuss whether or not he should retain an attorney, I think that would also encroach on the attorney/client privilege.

Essentially, Your Honor, the way --- the Detention Center has a system called Evercom. Evercom connects, or the inmate calls a party, Evercom --- it is a collect call. Evercom allows the party to accept, and then upon accepting, the Evercom says this call may be monitored or recorded, after the party has accepted. I would

contend that due to the fact that the system does inform the parties that it may be recorded or monitored, that it is not voluntary consent. I think the consent in this scenario is actually legal fiction. The detainee is never told that the arresting officer or prosecuting attorney will listen to these calls. If it is consent, I think it is way outside of the scope of the consent. I think it exceeds the reasonable scope the detainee consented even if the Court finds that it does exist, and therefore should be suppressed.

I don't think that it falls within Subsection b of Section 17-30-30(b).

THE COURT: All right. Let me hear from the state, and we will come back to you if you want to reply.

MS. PARKER: Thank you, Your Honor. We believe that there would not be any protection of the Fourth Amendment to phone calls made from the jail. There would be a reduced expectation of privacy in that type of setting. I did pass up some case law, and I understand that it is from some different jurisdictions around the country, however, I do not believe there is a case directly on point to this from South Carolina. But other states also have wiretapping laws. Indiana for example, has a wiretapping law, and of course an

exception to that law is when consent is given. Just like South Carolina's law, Mr. Swilley has quoted in South Carolina Code of Law 17-30 --- a section from that title. I believe he quoted 30 and 80. But consent is an exception to the South Carolina Wiretapping Law, and in this case consent is given when a phone call is placed from the jail, because a recording comes on telling the inmate and telling --- also the party on the other line can hear that it says this call is subject to recording and monitoring. Other jurisdictions have upheld that that type of warning is distinction for there to be implied consent. Because, obviously using the telephone is a voluntary act. If you do not consent once you hear that recording, you are welcome to hang up, and not --- certainly not make the phone call, and certainly not discuss any particulars about your case.

I have passed up Lemmon v. State, which says of course, there is no violation of the Fourth Amendment, that inmates have a reduced expectation of privacy. And in that case the Indiana Wiretapping Law is not violated. State v. Johnson also holds that there is no reasonable expectation of privacy in a phone call that is placed from prison where a recorded voice at the beginning of the telephone call alerted the defendant that the call may be monitored and recorded. And that

is just like the case we have here.

THE COURT: You are talking about The State of New Mexico versus Tracy Alvin Johnson?

MS. PARKER: Yes, sir. That is a Supreme Court case out of New Mexico.

THE COURT: All right. Madame Court Reporter that is 229 P.3d 523. Go ahead.

MS. PARKER: And then Mr. Swilley also contends in his argument and in his Memorandum of Law, that basically the fact that the defendant had no other option but to use those phone calls from the jail somehow renders the event invalid, but People v. Mars held that just because the defendant contends that he didn't have any other option but to use those phone calls, obviously making a decision not to use the phone at all was a tough choice, but it is still an option. In that case the defendant contended that he did not consent, and that he had no choice but to use the telephones at the prison. But he certainly could have chosen not to make any phone calls at all even though that is a tough choice.

THE COURT: All right. Tell me this, it has been sometime since I have been at the jail and looked at the phone. What type of notice is on the phone itself, or on the wall by the phone in addition to whatever

communication information may come when you connect to the other party?

MS. PARKER: Your Honor, I have discussed that with Director Stanley, Mitch Stanley, and there is not a sign or anything of that nature posted by the phones that are in booking or out in the Pods. So, I do understand that at one time there was a sign posted, but in our jail here in Darlington County there is no actual visual sign that is posted by the phone. It is just the notice that I am talking about is the recorded message that comes on when you pick up the phone. And obviously, those calls are placed collect, and there is a message that comes on, and even the other party who is receiving the call hears it as well.

THE COURT: Help me gauge this for prejudice. What is in those telephone conversations?

MS. PARKER: Your Honor, he kind of early on in the phone calls, he is admitting to killing the victim. He is talking directly about the incident. And also, some of the parties he is speaking with, it seems that they are advising him, and then you kind of see his story evolve, where in some of the initial phone calls he has made --- it kind of seems like he is kind of concocting a story as the phone conversations go along. But it is directly to the incident that happened on that

night, to the fight itself between he and the victim, and him showing up with the knife, and why he stabbed him.

THE COURT: All right. Thank you. Do you want to briefly reply to that?

MR. SWILLEY: Yes, Your Honor. Essentially the way this works at the jail under my understanding, is if you don't use these phone --- this phone. I think there is one phone that is actually portable that I have seen. Usually, I don't think I am permitted to go into the booking area, however, I have been in there with Mr. Goodman. But, if the individual doesn't use this phone, he is left incommunicado. He can't speak to anybody unless somebody comes up there and visits him days later. I don't think there is really any way to communicate with anybody once you are in booking, the holding cells, unless you use these phones. You know, I don't think --- and the first time you are ever going to call anybody, you are going to have to tell them what you are charged with. It is apparent in this situation, my client who was seventeen, tells his parents what he was charged with, the facts surrounding the circumstances. I don't think --- I think it is in violation of his Fourth Amendment. My client did refuse to speak with law enforcement proceeding to him making

these calls in the holding cell. He did invoke his right to an attorney, and chose not to speak with law enforcement concerning this matter. I think he had every intention to wait until he spoke to an attorney. I think he had intention for his family to retain an attorney for him, which they were unable to do due to financial reasons. I think he had every intention of withholding information from law enforcement. I think that it is reasonable to believe that --- and I am not arguing to the Court that it is unreasonable to monitor or record these calls for purposes of jail security. However, I do think it is outside the scope of any kind of consent that might be given, to be able to give these recordings to the prosecutor's office or to law enforcement in the course of a prosecution of a particular inmate.

THE COURT: All right. Let's move forward and go to the next issue now, which is the altercation with a potential witness.

MOTION

MR. SWILLEY: Your Honor, as far as my understanding goes, there are conflicting stories that I've gotten about this incident. I wanted to hear from the potential state's witness, his account of what went on in order --- I think in order for everyone to gauge

if this is actually relevant to the principle matter at hand for which my client is on trial or not. I know that there are allegations there was an altercation at a park in Hartsville. I think there has been allegations surrounding whether or not it was related to this matter. But as far as what was said, what was alleged by either party, I haven't heard directly from this state's witness before. I don't think I've even ever seen him before. So, I would just kind of like to see what the state alleges that he is going to say in order for you to say whether it is going to be relevant or not prejudicial to my client.

THE COURT: Let's hear from the state what you intend to illicit from the witness. Please tell us what the witness is intended to be called for in the first place.

MR. HOLT: The witness is one of the witnesses in the murder, Your Honor. He was there that night. I started getting this trial ready with Mr. Swilley, to let him know we were getting ready to call this, at which time shortly thereafter Mr. Toney bonded out of jail. When he first gets out he makes contact with this witness on the Street. Wants to know what is up with this court shit, is what I think is going to be the testimony. What's up with this court shit? I don't

know what my --- I think my witness kind of plays off like he is not coming. Several weeks later I give Mr. Swilley --- he is missing a few things as part of the Rule 5. He comes over to my office to look through my file just to make sure that he's got everything. I made it available to him. He takes the statement from this witness at 4:00. At 6:00 in Hartsville on the day Mr. Toney comes up to my witness, who is in a car, he beats him about the face area. Saw my witness the next day. He had a fat lip and a swollen eye. And the watch that Mr. Toney was wearing actually came off in his lap. The intimidation of a witness charge is something to be handled later with law enforcement. They've got the watch. I think they have sent it off for some analysis. Be that as it may, I think what he is going to testify to is that Mr. Toney said something to the effect of, if you come I'm gonna kill you. I'm gonna run out of state. I think that is the effect, it is clearly intimidation. I think we are only talking about two hours here in between me giving that statement to Mr. Swilley and Investigator actually coming to my office with the young man whose face was beaten up. He is going to testify to that. And Mr. Swilley doesn't think that that is coming in. I think his Motion is that it is not relevant. I certainly believe it is relevant

Your Honor. I think it is more of a 403 issue, is it more prejudicial than probative. I certainly think it is more probative, Judge. I think anytime that a defendant would beat one of the state's witnesses out of court and before trial, and two hours after he gave a statement, it is probative of the math. I think that any kind of problems that Mr. Swilley has with that can be handled on cross. And I think certainly if there is another side to that story, that it can be handled from direct testimony from the defendant. He's got --- the whole --

THE COURT: But counsel, did you just say that he has a pending intimidation of a witness charge?

MR. HOLT: I don't know, Judge, how that is going to play out. That is still in law enforcement's hands. How they are going to get it to me --- I can tell you this, if it comes to my office, I am definitely going to prosecute it. Where they are at with that charge, I don't know. We can't speak of it at this time, is what I'm saying. I know that the watch was dropped off of Mr. Toney's hand and into the car, and they are probably waiting on stuff to come back before they file things, before they file warrants or arrest warrants. And I imagine that they are tied up in this trial the last week and a half, and he hasn't had time to think about

that kind of stuff. But I certainly think that anything that comes out of my witness can be handled with cross examination, or in the alternative side of their story. I don't think he is going to say anything so outlandish that can't be cured by Mr. Swilley, and the defendant being right across from him.

THE COURT: But really there are two issues here. There is a pending charge for which the defendant has the right to remain silent and assert Fifth Amendment Right. However, it is being used against him in a murder prosecution, and would have the effect of stripping of his right to remain silent with regard to the intimidation charge.

The Court is concerned that it would be unfair to this defendant to have that pending charge, not being tried here simultaneously, and then being questioned about it under oath. So, one of two things would either have to happen. The Solicitor will have to make a determination not to prosecute that charge, or the Court would have to enter a ruling on whatever is said in these proceedings may not be used in a subsequent proceeding for intimidation of a witness. Otherwise, the defendant is in a situation that would be unfair with regard to the other charge.

MR. HOLT: And I would be more than happy with

your second option, Your Honor. That anything said here could not be used against him. And I think that is fair, that it can't be used against him in a future proceeding for intimidation of a witness.

THE COURT: Mr. Swilley, do you want to first of all reply to what you have heard, and secondly respond to what the Court said?

MR. SWILLEY: Your Honor, my main concern with this matter coming in, I have serious questions as to the veracity of the state's witness. I don't know --- the reason I filed this Motion is that I wanted you to hear what he was going to say to determine if it was going to be outside of the scope of Rule 402, which is relevance. Or if it was going to be exceedingly prejudicial, or substantially more prejudicial than probative. I just think --- I just don't want this to turn into a mistrial if he says something just off the wall, which I kind of expect him to say that would be just so inflammatory as to unduly prejudice Mr. Toney.

Your Honor, I don't know --- I just don't know what this individual is going to say. I haven't received an incident report as to this matter. I haven't received any kind of written, or audio, or video recorded statement from this individual. I am just kind of berated to what the substance of what he is going to

testify to. And that is what really concerns me.

THE COURT: All right. Do you want to reply to that, Mr. Holt?

MR. HOLT: Yes, sir, Your Honor. Veracity is something that is handled on cross examination, I think. I think whatever comes out of there can be --- I think cross examination is his answer to everything he is bringing before you, cross examination is the answer.

THE COURT: Well, I think that is fair. But, what Mr. Swilley is really saying is, that he doesn't have enough information to know if it passes the admissibility test. He can handle the attack on it or the confrontation of it on cross examination. But he is saying that he doesn't believe there is sufficient evidence for it to even come in.

Let me go over with you one more time. Your witness is going to say that he was attacked by the defendant who hit him while he was seated in a vehicle. That the defendant's watch came off, and was retained, and is in custody --- or was taken into evidence, and that this was promptly reported to law enforcement. Am I understanding that to be correct?

MR. HOLT: Yes, sir, Your Honor.

THE COURT: Is the defendant --- is the witness going to attempt to testify as to some statement that

may have been made while this was going on?

MR. HOLT: If Your Honor allows us to, yes, sir.

THE COURT: Well, what is the potential statement?

MR. HOLT: It is some kind of threat to come to court. The exact statement is not with me right now. It is some kind of threat to come to court, and his ability to leave the state on his own.

THE COURT: Is the witness in the courtroom right now?

MR. HOLT: The witness is in my office right now.

MR. SWILLEY: Your Honor, if I may. I think what this is going to turn into is a 404(b) problem, prior bad acts. If I am not mistaken, I think that the Court would have to establish that by a preponderance of the evidence that this is --- that it is true.

THE COURT: It is actually 404(b) is greater than the mere preponderance, I believe. But, I hear what you are saying.

MR. SWILLEY: Your Honor, I think that the jury has to determine beyond a reasonable doubt, whether it is true. But I think you have to make a determination by the preponderance of the evidence if the jury is to hear it. I think that is my understanding, but I may be incorrect.

THE COURT: Very good.

MR. SWILLEY: I'm sorry. I'm sorry. I think it is clear and convincing standard ---

THE COURT: It is.

MR. SWILLEY: --- that you have to make. Okay.

THE COURT: All right. Counsel, I did not anticipate --- let me ask you, what kind of criminal record does your witness have? What priors does he have, if he is going to come in and testify?

MR. HOLT: Nothing that can impeach him. I think he's got some juvenile stuff. I actually gave Mr. Swilley my only copy of his record just five minutes ago.

MS. PARKER: Your Honor, his juvenile convictions. He was in our Pilot Juvenile Drug Court Program. He had a prior --- the defendant --- oh, you are asking about this witness?

THE COURT: I am talking about the witness.

MS. PARKER: Oh, I was talking about the defendant.

MR. HOLT: Judge, as far as convictions goes, he has none. It looks like he was arrested for trespassing, assault upon a military personnel, and contributing to the delinquency of a minor in 2010. I don't see any kind of disposition, and I don't think

they are pending. He might be in PTI right now. I think --- I am absolutely positive that I have placed this young man in PTI well before I even knew about any of this kind of stuff.

THE COURT: Very good. I didn't know in advance, Mr. Swilley, that you wanted to hear testimony this morning. It was my impression that this would be a very quick hearing with argument from counsel. I told the jury to come at 9:30. This may have been a mistake, and I don't want to delay the jury while we have what is essentially an evidentiary hearing on that matter.

MR. HOLT: And, Your Honor, I might can be of some scheduling help if you would allow me.

Bring the jury in at 9:30, do openings. Start with investigator Anderson, and I imagine right about that time it would be time for a break. I could call that witness next, and during that break you can hear that evidence. And I don't think it is going to take more than ten minutes for you to listen to it.

THE COURT: All right. Then that would mean that counsel cannot go into that in opening, because obviously, we have not made a determination about the testimony about the testimony with regard to that witness intimidation nor with regard to the telephone calls from the jail. I am going to leave them both

under advisement.

When we take our first break, we will take an extended break, and allow the jury a little extra time while we hear briefly from that witness. It can't be a lengthy hearing due to our schedule, but give Mr. Swilley an opportunity to hear what it is the witness will say.

MR. HOLT: And we have prepared our opening as such, Judge.

THE COURT: All right. Very good. Is the jury all here?

BAILIFF: Yes, sir.

THE COURT: All right. Are we ready to bring in the jury?

MR. HOLT: I just want to step out and use the bathroom, if I may.

THE COURT: All right. You may.

(Whereupon, a brief recess was taken from 9:32 a.m. until 9:35 a.m.)

THE COURT: All right. Ladies and gentlemen, everyone is back. Are we ready to proceed for opening statements?

MS. PARKER: Yes, sir, Your Honor.

THE COURT: And is defense ready?

MR. SWILLEY: We are, Your Honor.

THE COURT: All right. Then please bring in the jury.

BAILIFF: All right, sir.

(Whereupon, the jury enters the courtroom at 9:35 a.m.)

THE COURT: Good morning, ladies and gentlemen.

JURY: Good morning.

THE COURT: Welcome back to the courtroom. I trust you had a nice evening, since we were last together.

We are actually going to begin this trial with you accepting the oath as jurors in this specific case. Please follow our Clerk's instructions.

(Whereupon, the jury was sworn at 9:48 a.m. on Tuesday, May 17, 2011.)

THE COURT: All right. Let's let the record reflect that everyone is seated, thus, all of our jurors have taken the oath.

Again, welcome back to the courtroom, ladies and gentlemen. Let me ask, since we were last together, I talked with you about not discussing the facts. Is there any member of this jury panel who has been contacted by anyone, or had a discussion about the facts with anyone? If you have, please raise your hand. Let the record reflect that no one raised their hand. Thank

you for complying with the Court's request in that regard.

There are a couple of things that I want to tell you as we start here. You are not required to sit in the same seat in the jury box. If you want to move around, as you get more comfortable in the jury box, please feel free to do so. I just ask that our two alternates be seated on the outside, and our twelve on the inside. But where you sit amongst yourselves is up to you.

INTRODUCTION TO THE CASE

THE COURT: What I want to do now is discuss with you a few things that I call the introduction to the trial of a criminal case. This is not intended to take the place of a more detailed charge that I will give you on the law before you retire to deliberate. But these are a few things that I think you need to know going into the trial.

Now, as you know, this is a criminal case. It is brought by the state, and it is against the defendant. And I will call the state the prosecution. Quite often it means the same thing. And the defense table we usually refer to as the defendant. The case is based on an Indictment, actually two charges in this case. Both tried together, based on two Indictments. And as I

discussed with you yesterday, as I am sure you understand the Indictment is not evidence. It is not to be accepted ultimately as the truth. The Indictment is simply a set of allegations by which the state commences a prosecution against an individual. The defendant pled not guilty to these charges. You heard that in open court yesterday. And of course, even if the defendant didn't enter a plea, the burden of proof at all times remains on the state. And that burden is to prove each and every essential element of the particular charge in question, beyond a reasonable doubt. That is the standard. I will tell you that is a high standard. And the purpose of this trial is to determine whether or not the state can meet that high burden. The defendant is presumed innocent of these charges. And is entitled to a verdict of not guilty unless and until the state proves to your satisfaction each of the required elements of these charges, beyond a reasonable doubt.

Now, let's talk a little bit about your role in this case. I will first mention mine. I am the judge of the law, which means at the end of the case I will give you a more detailed charge on the law. And if there is some dispute during the course of the trial, an objection over evidence, or procedure, then I will resolve that during the course of the trial. But your

role is more important than mine, because you are the judges of the facts. And what that really means is, in a nutshell, is that you listen to the testimony. You determine what the facts are. You apply those facts to the law that I give you at the end of the case. And that is how working together we are going to reach a verdict.

Now, I will tell you in advance, just like you, I have not heard the testimony in this case. But, I also will tell you just from experience that many times in cases, whether they be criminal or civil, we will have witnesses who will take the stand, and will testify to things that will sometime seem inconsistent, and sometimes absolutely mutually exclusive, and cannot be reconciled. I am not telling you that someone is going to be dishonest with you. This is for you to decide. I am simply saying I think we all know from human experience that people will observe an event and then the descriptions of that event will be so varied you will wonder well, is this the same event that everyone is talking about. And if that happens here in this courtroom, in this trial, you will have to determine which of the witnesses are more credible and believable in order to determine what the facts are. Well, now, if you think about that, you do this, we all do it every

day with everybody we talk to; whether it is an adult or a child, you gauge that individual for credibility and believability every time they tell you something. And you should use those same factors that you use every day here in the courtroom. But some other things you may want to look to, and again, I tell you this in advance, because the witnesses are going to be sitting here when they testify so that you can closely observe them, is, what is their demeanor when they are testifying? Are they hesitant? Are they straightforward? What is their ability to know what they are in here testifying about? And is their testimony consistently even with itself, and is it weakened or strengthened by the other evidence in the case? And further, in light of the global evidence in this case, as you determine that global evidence to be, how reasonable is what that witness is saying? And finally, might there be a reason a witness would want to help or hurt one side or the other of the case? Might that witness have a bias or a prejudice? These are things that you should consider as you listen to and observe the witnesses' testimony.

Now, let's talk a little bit about how we are going to go forward here. In just a moment I am going to conclude this opening comment to you, and then both of the lawyers are going to come before you in opening

statement. Opening statement is not some big persuasive event, like you might imagine from television. It is just an opportunity for the lawyers to tell you what they believe the evidence either will or will not show during the course of this trial. And after opening statements are concluded, we will move to the state, because the state has the burden of proof, and the state goes first. They call their witnesses one after another. And every time they call a witness that witness is subject to direct examination by state's counsel, and cross examination by defense counsel. I tell you that because the rules are a little bit different for direct and cross examination, and you may see that occur during the course of the trial.

After the state has called all of their witnesses, one after another, the state rests. And at that point, if the defendant wishes to put up a case, the defendant may do so. But, let me say again; the defendant never has a burden of proof in this courtroom. The state always has the burden of proof. It doesn't shift to the defendant. The defendant is not required to speak. Not required to testify. Not required to call witnesses. Not required to confront or contest the evidence put up by the state. It is the state's duty to meet its burden of proof. But, if the defense wishes to call witnesses,

we give them that opportunity. And they call their witnesses one after another just like the state did, subject to direct examination by the defense counsel and cross examination by the state. Then all the testimony closes. The lawyers come before you in closing argument. I give you the charge on the law. And you retire to deliberate. Just in a brief description, that is how the trial is going to go.

Now, we normally go about an hour and a half or so before we take a break. And it may be a little shorter than that for our first session this morning. But I say that to you to tell you this. If you need to take a break before we reach the break point, please raise your hand. I will understand what that means. We will take a break immediately. I do that for two reasons. Number one, you are giving your time, or just about giving it for a high civic duty, and a very important public duty. I want you to be comfortable about what you are doing. But secondly, I don't want you worried about something else, I want you to be able to listen to the testimony and make a determination about what the facts are at the close of the case. So, if you need to stop us, you need to take a break, no questions asked, raise your hand and we will take a break.

Secondly, when you do take a break, please, don't

go back and discuss the case among yourselves. It is not proper to discuss a case until the end of the evidence, and it is given to you for deliberation. And the reason for that is this. If we took part of a witness, or maybe the first witness and took a break, and the jury went back and made some preliminary decision based only on that, that drove the rest of the case, it would be unfair. So, please don't discuss the case among yourselves until it is given to you for deliberation at the very end of the case.

Now, we operate this courtroom on a system of rules that we call the Rules of Criminal Procedure, or the Rules of Evidence. And if one side or the other believes that the other is either about to or is breaking those rules, then they call that to my attention by an objection. And just like you are sitting over there where you are, and I am sitting over here where I am, I don't know what the objections are, or when they are going to come, and when they do come, what they are going to be. But when they do come, I rule on them based on my training as a judge, my understanding of South Carolina law, and training in South Carolina law, my experiences for many years in the courtroom, as both a judge and a lawyer before becoming a judge. But never do I somehow rule on an issue that

is in front of me to send you a message about how I feel about the facts or about that issue. I am going to tell you right now, I have no position on the facts of the case because, if I did, I would be invading your providence. You are the judges of the facts, not me. And so, please take no inference from any rulings you may see the Court make during the course of this trial other than the fact that I had an issue before me which required a ruling to be made.

And finally I would say to you this. The lawyers are advocates. They represent their parties, or they represent the state. They are going to come before you in opening in just a moment, and closing at the end of the case. But what the lawyers tell you is argument. It is not evidence. So, please appreciate the distinction between a lawyer's argument and the evidence in the case. The lawyers are not under oath. They are not under direct and cross examination, the witnesses are. And this is where the evidence comes from, and any exhibits that are placed into the record during the course of the trial. I am not saying that the lawyer is going to be dishonest with you, don't misunderstand me. I am just simply saying please appreciate the distinction and the difference between a lawyer's argument and the evidence in the case. And any evidence

--- you will notice in this trial that we will keep up with what is in evidence and what is not, because there may be a lot of documents floating around this courtroom. But everything that is in evidence will go back with you when you deliberate, when you retire to deliberate. So, if you can't see something at the moment it is being discussed, don't be concerned about that. You will have it with you if it is an exhibit during the course of your deliberations.

With that ladies and gentlemen, I look forward to working with you. Thank you again for coming forward and

serving as a juror this week in this term of criminal court.

The Court now recognizes the state for opening statements.

MS. BURCH: Thank you, Your Honor.

THE COURT: All right. Ms. Burch.

OPENING STATEMENT BY MS. BURCH

MS. BURCH: Good morning.

JURY: Good morning.

MS. BURCH: I think we have all heard the statement, sticks and stones may break my bones, but words will never hurt. Well, on March 23rd or 24th, 2009, words hurt some feelings, and James Tucker's family and friends wish that they were sticks and stones, and only broke bones, but unfortunately there was a knife brought by the defendant Breyon Toney, that killed James Tucker.

On March 23rd, there was an argument between James Tucker and Breyon Toney. Words were exchanged and the two split off. Later that night into the early morning hours of March 24, 2009, James told his friends that if Breyon wants to fight me, he can wait on me on 8th Avenue. Unfortunately, the two did meet on 8th Avenue. James squared up to fight, and Breyon brought out his knife. When James saw the knife, he started telling him

to put it down, put it down. And his friends start screaming for him to run. Well, James was trying to get away from Breyon, picks up a bottle, throws it at Breyon trying to get him to back off. Breyon is still coming at him with a knife. He picks up another bottle, throws it at Breyon, and unfortunately it was too late. James realized that he was vastly hurt, and was laid into his friend's car, taken to Carolina Pines Hospital in Hartsville, and was pronounced dead due to a stab wound inflicted by Breyon Toney, to his heart.

Now, Breyon Toney has been charged with two crimes. One is murder, and the second one is possession of a weapon during the commission of a violent crime.

Now, murder requires three things in South Carolina. A killing of a person with malice aforethought.

Malice, is the wrongful intent to injury someone that indicates a depraved heart or a wicked spirit with intent on doing wrong.

And aforethought, is just the deliberation. It is defined as the time evil is conceived.

So, basically, malice aforethought is an evil plan to hurt or kill someone. That is the way I understand it.

So, we have James Tucker, who is a person, who was

killed, and we have malice aforethought, and we have Breyon Toney, who came back to the second fight with a knife, with intent on doing harm.

The second crime is possession of a weapon during the commission of a violent crime. Murder in South Carolina is a violent crime. And possession of a knife. The following statement, I think is going to be pretty easy to understand. You are going to have plenty of time to hear about that, as we go through this trial. But, I want you to keep a few things in mind while you are sitting there.

First of all, it is the state's burden to prove this case. And that burden of proof, as Judge Baxley told you, is proof beyond a reasonable doubt. And that is not proof beyond any doubt, or beyond a shadow of a doubt. It is just doubt for which you can give a reason for. And what I use if you think about it is, if I show you that last night it snowed outside, and y'all looked out of the window and there is white stuff all over the ground, and there are children out there playing, building a snowman that is proof beyond a reasonable doubt that it did in fact snow.

The second thing that I want you to keep in mind is we all know the show CSI. There are three or four of them on TV now. Unfortunately, some of that technology

does not exist. And, I am not sure that we could afford it if it did. So, I don't want you to think that we are going to be able to put a hologram, and you know, the computer screens, and the big fancy charts and all of that. The evidence in this case will come from this witness stand.

And speaking of the witness stand, the first thing that I want you to keep in mind, as Judge Baxley was telling you, is you are the judges of the facts. And all you need to do, that is to use your common sense. So, when a witness gets on that stand, y'all can believe all of, part of, or none of what they are saying. It is completely up to you. You use your common sense, and you do it every day.

And lastly, whenever this trial is over, you are going to be asked to step back to the jury room in deliberation and come up with a verdict. Now the word verdict comes from the Latin word veridicto, which means to speak the truth. And that is what we are going to ask you to do at the end of this trial, is to speak the truth, and find the defendant Breyon Toney guilty of possession of a weapon during the commission of a violent crime, and murder.

Thank you, very much.

THE COURT: And opening statement for defense.

MR. SWILLEY: Thank you, Your Honor. If it pleases the Court?

THE COURT: Yes, sir.

OPENING STATEMENT BY MR. SWILLEY

MR. SWILLEY: Good morning, ladies and gentlemen. My name is Matt Swilley. And it is my pleasure to represent Mr. Breyon Toney, seated to my right. Throughout the course of this trial you are going to be able to decide that Breyon Toney is not guilty of the crimes for which he is charged. Because, there were no crimes --- there were no crimes --- excuse me that took place. It is not against the law in South Carolina to take somebody's life in defense of your own life. That is self-defense, and that is what this case is about.

Now, the testimony of the witnesses from that stand you are going to find out that there was a dispute, a disagreement between the decedent, the one who died, Jimmy Tucker and my client, Breyon Toney. And what this is about was a disagreement over a young lady. Okay? Over some girl. No drugs involved in this dispute. Nothing to listen to like that. Just two teenage boys who were mad at each other about a woman, a young woman. Okay? The accident, the final act Breyon Toney had to take that night was in defense of his own life.

Now, what you are going to find out is that the young lady that is at issue was the girlfriend of the decedent, Mr. Tucker. Mr. Tucker was very angry at my client with what he thought was a good relationship with this young lady. Mr. Tucker was furious about this. It was Mr. Tucker who wanted to fight Mr. Toney. Breyon didn't want to fight James. He did not want to be there. Mr. Tucker who was at Marion Avenue that crossed the intersection of Marion Avenue and East Chapman, in the City of Hartsville, Mr. Tucker is who went there to kill Breyon Toney. The evidence is --- Maybe in the beginning he probably just wanted to fight him, but later on decided that he was the one that wanted to kill him with a broken bottle, broken from the bottles that he had thrown before that.

Now, the fact that Mr. Tucker died in the tragedy, don't think for a second that I am trying to tell y'all that anybody deserved to die in this situation. Okay? A young man, eighteen years old passed away from some trivial --- and that is a tragedy. Okay? It is a tragedy, but it is not a crime. It is not a crime on behalf of my client. When anybody dies before their time it is a tragedy, but I am going to tell you another tragedy would be to convict somebody for a crime for which they did not commit. And that is what happened to

Breyon Toney here, and you find Breyon Toney not guilty. He is not guilty of these two crimes.

Now, the witnesses for the state you will come to find out --- there are three witnesses other than Mr. Tucker, who witnessed the crime, two boys and a girl. All right? You are going to hear from four people who claim they were there, one boy who really wasn't there who says he was.

Now, they knew or they thought that there was going to be an altercation that was going to go down. Okay? They thought James Tucker was going to fight Breyon Toney, and they were there to see. All three of these people were actually there. Okay? Two people instigating it, one girl --- one young lady who was sitting back and watching this go on.. All right.

Now, the witnesses you are going to see who claim this are angry. They are upset that their friend passed away two years ago. And they want somebody to pay, and you will be able to see that through their testimony. You decide what is true. And you decide if you believe somebody or not. You twelve are the judge of the facts. You are going to see that the stories don't add up, or are inconsistent. You are going to observe that. Inconsistent statements on the part of all four that are going to be made. All right. You are going to see, you

know, that there is no snow outside. Okay? There is no proof beyond a reasonable doubt that Breyon Toney is guilty of these crimes, because he is not guilty, because he did not commit these crimes. No crime was committed.

Now, you are also going to see through testimony, I believe, that Mr. Tucker, whose body was penetrated one time, a defensive wound --- a defensive impellent .7 inches long. One time. It was penetrated one time. It was a wound. There was a strike that was made in defense of one's self. He wasn't stabbed multiple times. He wasn't cut, he wasn't slashed, there was one --- and that is going to be uncontroverted. The fact of the matter is this is just a case of self-defense. You will be instructed on the law about that at a later time. It is not an unlawful killing. There is no malice aforethought. No intent to kill. No hate in anybody's heart. No evil plan. It is not there. Mr. Toney had no choice but to defend himself. Okay?

Now, earlier Judge Baxley instructed y'all that there are three bedrock principles in our justice system. And I like that term. He said it better than I can. There are three bedrock principles, and I think it is pertinent that you know as well. The defendant is presumed innocent at all times. Two, the burden of

proof is always on the state. The defendant does not have to prove anything. The state even has to prove that he did not act in self-defense. They have to prove that. We don't have to prove anything. Okay. That is a foundational bedrock principal in the American Justice System. Number three and most importantly, the burden of proof in this case is beyond a reasonable doubt. Okay. That is a very, very high burden. That is a feat the state can't accomplish.

I would like to remind you that this is a very important case. This is a very, very important case. Y'all have the opportunity to judge the facts, and it is a big deal. This is a huge, huge, deal. This is a charge of murder, and it is a serious charge. Make no doubt about that. Okay?

I would like you to be open minded. Mindful that somebody's life is on the line. Please be attentive during the course of the trial. I know that you will. I just want you to understand how important this is to everybody involved. Okay. Somebody's life hangs in the balance, and this is important that you pay attention as closely as you can. All right?

Thank you for being here. I hope you are aware of how important you are during the course of this trial.

THE COURT: All right. Thank you. Mr. Holt,

please call your first witness.

MR. HOLT: Thank you, very much, Your Honor. At this time the state would like to call LaVincent Hankins to the stand.

CLERK OF COURT: If you would come forward and place your left hand on the Bible, raising your right.

WHEREUPON, LAVINCENT HANKINS

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MR. HANKINS: Yes.

THE COURT: How are you, sir?

MR. HANKINS: I am all right.

THE COURT: Tell us your full name, please. And spell your last?

MR. HANKINS: LaVincent Hankins. H-A-N-K-I-N-S.

THE COURT: All right. And would you move a little closer to that microphone, so we can all hear you?

And go ahead, Mr. Holt, briefly.

MR. HOLT: Thank you very much.

DIRECT EXAMINATION BY MR. HOLT

Q. Mr. Hankins, I am specifically referring to an altercation that took place in March, about two months ago. Can you tell us how that altercation happened, what your role in the altercation was, as well as what Mr. Toney's role in the altercation

was?

A. When I was just sitting in the park in the car, and that's when the fight started. I was in the car and he came into the car and he hit me, and then he just fought me and then my girl got in the car and she drove off and went straight to the Police Department.

Q. Now, were you in the passenger's side or the driver's side?

A. Passenger.

Q. Passenger. Did the defendant strike you in the face?

A. Yes.

Q. How many times?

A. Say about six.

Q. Did anything off of his person fall into your car?

A. A watch.

Q. And what, if anything, did the defendant tell or say to you that you could hear?

A. Can you cuss in the courtroom?

Q. Yes, sir. Just be completely honest with what happened?

A. I wrote in the statement, I'm gonna kill you bitch.

Q. And, is that all he said?

A. Yes.

THE COURT: All right. Mr. Swilley, I don't believe there is any purpose in cross examination. You said you wished to hear. Do you have anything that you wish to add?

MR. SWILLEY: I do, Your Honor.

THE COURT: All right. This is not a discovery device. But, if you want to follow up specifically on those issues, please do so.

MR. SWILLEY: I understand.

THE COURT: We are going to have cross examination now.

CROSS EXAMINATION BY MR. SWILLEY

Q. LaVincent, at the park, who all was there that day?

A. Michelle King, her kids, my girlfriend, her kids, and some girls, I'm not familiar with their names.

Q. What were you doing in the car that day?

A. Just sitting there and she was letting the kids play.

Q. Were you smoking pot?

A. No.

Q. Were you stoned at the time?

A. No.

Q. Okay. Did you smoke pot that day?

A. Probably. I smoked weed before. I'm not sure about it.

Q. You don't remember if you were high or not?
A. I wasn't high at the time.
Q. Okay. Now, you hadn't seen Mr. Toney in two years, is that correct?
A. I saw him on the corner of Jasper about a month and a half ago.
Q. You saw him where?
A. At the corner of Jasper about a month and a half ago.
Q. Okay. So, you saw him about a month and a half ago. How did you know it was him? Were you sitting straightforward in your car?
A. Yes.
Q. Okay. And you said he hit you five or six times?
A. Yes.
Q. Which side of your face?
A. Right here --- my face.
Q. Just point to me what side?
A. Right here.
Q. You were sitting in the passenger side seat, correct?
A. Yes.
Q. Wouldn't that be your right side?
A. I was pulled out of the car.
Q. You were pulled out of the car?

A. Yes.
Q. Why did you fail to mention that to Mr. Holt?
A. Cuz that is just what he asked me.
Q. Okay. You said he pulled you out, and that --- did you see Breyon Toney?
A. I saw him walking to the car. I went to the car to leave.
Q. Okay. So you never saw the person's face who hit you?
A. I did not say that.
Q. Well, I'm asking you?
A. Yes, I saw him walking into the park. When I saw him walking in the park, I was walking to the car, and my girlfriend was coming to the car to leave.
Q. Okay. But did you see his face? The person's face who punched you?
A. Yes. That is why I went to the car.
Q. No, I'm talking about the time you were getting punched?
A. Say that again?
Q. At the time you were getting beat up did you see the person's face who was punching you?
A. Yes.
Q. Okay.
A. Not when I fell to the ground, I didn't see him

anymore. But I know who it was.

Q. How do you know who it was?

A. Because I saw him walking up, and I knew what he had on. I went to the car to prevent it from happening.

Q. All right. So, you went to the car after you saw Breyon Toney; correct?

A. Yes.

Q. And how many people were around, in number, how many were at the park at that time?

A. Around me or in the park period?

Q. Just around you.

A. Around me?

Q. Within a twenty-five-foot radius?

A. A twenty-five-foot radius, twenty-five-feet is about from here to that bench, right; over there?

Q. Yeah, that's about right.

A. Me, my girlfriend, and Breyon.

Q. You say your girlfriend and her kids was around too?

A. Yes.

Q. All right.

THE COURT: Anything further?

MR. SWILLEY: Nothing further.

THE COURT: All right. Sir, then I'm going to

let you step down. Please watch your step as you exit the witness box.

All right. Now this limited discussion is down to one issue, which is prejudice under Rule 403. Let me hear from both sides as to why the probative nature or value to this is greater than any prejudicial impact? First from the state?

MR. HOLT: Your Honor, every piece of evidence that I put up is going to be prejudicial to some extent. I agree this is prejudicial. However, I think it is extremely probative that an individual who is on trial for murder is going to beat up a potential witness, and then threaten to kill him, especially when the whole thing he witnessed the first time was this young man killing somebody. What could be more threatening than that? And, therefore what could be more probative, Your Honor? I don't --- aside from his testimony that he was there and saw it that night I don't think I have anything more probative than that.

THE COURT: Okay. Thank you. And on prejudice, if you wish to be heard versus probative value, Mr. Swilley.

MR. SWILLEY: Your Honor, I think what this young man says is extremely prejudicial. It is collateral, ancillary. I think it is an attack on his character as

well. I know that you just want to hear about Rule 403, but I think under Rule 404(b) this does rise to that of a prior bad act. And I don't think that this young man's testimony establishes that to the level of clear and convincing evidence. But I do think the prejudicial impact --- the potential prejudicial impact is substantially outweighed by anything probative in this situation. I mean, it is two years later. It is not really probative or not to whether Mr. Toney is guilty of murder and possession of a weapon during the commission of a violent crime.

THE COURT: All right. Thank you, just one moment please.

(PAUSE.)

RULING OF THE COURT REFERENCE WITNESS INTIMIDATION

THE COURT: All right. First of all, the Court makes the following ruling.

I am going to permit the testimony to come in for the following reasons.

First of all, this is not an issue of first impressions. Witness intimidation has been addressed by our Supreme Court on many occasions. And, the Court relies primarily in its ruling in this case on the precedence of The State versus Daniel Edwards, which may be found at 678 S.E.2nd 405. It is a 2009 case from the

Supreme Court.

Basically, the first issue that the Court looks to is whether or not there is proof, reliable proof that the defendant committed the act, or the intimidation itself.

Here I find that the proof is clear and convincing with eyewitness testimony. And then the detaining of a piece of jewelry or article from the defendant while the fight was going on is sufficient evidence that proves to this court that the state has met the burden to show that the defendant is the perpetrator of this act.

Now to the issue as to whether it is more prejudicial than probative. I have had the benefit of opening arguments. The defense is asserting a self-defense defense that the state must actually disprove under our current state of law. Taking the position that this is an altercation, that it was not intended, that there was no malice aforethought, it was simply a stabbing inflicted in self-defense. This type of witness intimidation would go to the intentions of the defendant both at the time of the act on trial here, as well as the incident that the witness has testified to. It goes to guilty knowledge. It is probative to the core issues that are raised in this case.

While I realize that it is prejudicial, I find that

it is much more probative than it is prejudicial.

Therefore, having found the evidence reliable with a clear and convincing and consistent with the Supreme Court ruling in State versus Edwards, the Court finds this is admissible including the statement made by the -- -- allegedly made by the defendant at the time because that too goes to statement of purpose, and intent.

Now, what I would like for us to do is stand down, take our own break at this time.

We will have to take up the issue of the telephone conversations at a later time and actually, I think it is going to be important that the Court hear those in order to make a ruling again, based on the prejudice versus probative value.

MR. HOLT: If I could just speak to the scheduling on that, Your Honor. Mr. Swilley has already provided me with a list of things he finds to prejudicial. My investigator, currently, I think, he is finished if not almost there. He has redacted those. That witness is not scheduled to come until tomorrow morning. That is really the only witness that we want to put up tomorrow morning, I believe, Judge. We can handle that after the jury leaves today, if you are worried the jury is why I am bringing that up.

THE COURT: Very good. Let's stand down now

ourselves for approximately five to ten minutes.

(Whereupon, a recess was taken from 10:18 a.m. until 10:30 a.m.)

THE COURT: All right. Let's go back on the record in the matter that we had just heard before standing down, which is, whether or not the witness intimidation issue will be admitted.

I failed to say to both parties that the Court would allow the defendant to testify on that issue, if the defendant wishes to do so. I am not requiring the defendant to testify, but if he does take the stand, and he does speak to that issue, whatever he says will not be admissible. Cannot be used against him in a later proceeding, that is a trial or prosecution on the issue of intimidation of a witness. Otherwise, it would strip the defendant of his right to remain silent with regard to that charge, and the Court will not permit that.

So, please understand that whatever testimony comes from the defendant on that issue, will not be admissible, nor usable in a later prosecution.

And finally, I want to make the point that the Court believes that evidence should come in because, it is a factual issue for the jury, and the jury is the finder of fact. And that allegation of witness intimidation, particularly when it comes right after the

disclosure of the individual as a witness who has given the statement, it goes to the heart of our justice system. And to permit that type of activity, without this court allowing it into evidence for whatever purpose the jury may use it I think would be a failure on the part of this court to see that an appropriate response was made by the system; that is the justice system. And for that reason, the Court believes it is imperative to this case.

All right. Now, we have a juror who has asked to speak to the Court. Having heard arguments, now believing that she may have some connection to one of the parties that she was not previously aware of. So, tell me, which of our jurors is it?

CLERK OF COURT: It is Juror 10, Juanita Bishop, listed as number eleven on the strike sheet.

THE COURT: All right. Let's bring Ms. Bishop in, please. Just Ms. Bishop.

And counsel, I am going to let her stand in front at the microphone, so we can all hear, please.

(Whereupon, Ms. Bishop enters the courtroom at 10:25 a.m.)

CLERK OF COURT: If you would, come around in front of this microphone for us, please.

THE COURT: Good morning, how are you Ms. Bishop?

MS. BISHOP: Good morning.

THE COURT: Come right to the microphone please. Ms. Bishop, our Bailiff tells us that you have expressed a concern to the clerk that you felt that you may know the parties now that you have heard the opening statements, and have a little bit more understanding of what the case is about. And tell me, what is it that you have realized this morning, please?

MS. BISHOP: Well, yesterday I wasn't sure that they were the same James Tucker's son that got killed.

THE COURT: Yes, ma'am.

MS. BISHOP: But this morning, after I thought about it this morning, I realized that it could be the same person.

THE COURT: Okay. And tell me, if it is the same person, are you talking about the father of the deceased; am I correct, James Tucker?

MS. BISHOP: Yes, sir.

THE COURT: And what is your connection to, or how do you even know Mr. Tucker or other members of the deceased family?

MS. BISHOP: Well, his Grandfather was married to my Aunt.

THE COURT: So, you would be related by marriage?

MS. BISHOP: Right.

THE COURT: All right. And do you know him? Do you have communication with him and see him from time to time?

MS. BISHOP: I haven't seen him in a while.

THE COURT: Okay. All right. Do you believe, based on what you have told me that it would be difficult for you to be fair, and impartial, if you are a juror in this case, now that you realize this connection?

MS. BISHOP: I think it could be.

THE COURT: Okay. Would you like for the Court to set you aside ma'am?

MS. BISHOP: Yes.

THE COURT: All right. Let's do this. Before I make a decision, I am going to let you return to the jury room, and we will be right back with you. Okay?

MS. BISHOP: Okay.

THE COURT: Thank you. And thank you for coming forward and the candor of your response. Okay?

MS. BISHOP: Okay.

THE COURT: Ms. Bishop, when you go back in, please don't discuss with the jury what you and I have discussed, or what it is that you know about the family. Okay?

MS. BISHOP: All right.

THE COURT: All right. Thank you. All right. Now, Ms. Bishop has exited the courtroom. Before a decision is made, I want to give either party an opportunity to respond if they wish to place something on the record about this.

What says the prosecution?

MR. HOLT: It doesn't bother the prosecution, whichever way you take, Your Honor, if you want to take an alternate or leave her in. It doesn't sound like there is some close family bond there.

THE COURT: All right. And what says the defense?

MR. SWILLEY: I believe the lady did say it would affect her ability to be fair and impartial. So, I think I would ask the Court to dismiss this juror.

THE COURT: All right. Then I am going to defer to her judgment, because I believe the very fact that she has come forward and mentioned it, tells me that it is troubling her. And thus, I am going to release her.

What I am going to do, is we are going to bring the jury back in, so that the rest of the jury will know what is happening. We are going to put the other two alternates' names in a hat or in a container of some sort. Mr. Suggs, very good. Let you draw one, and we will seat that one to replace Ms. Bishop. Is there any

objection to that procedure from the state?

MR. HOLT: There is not, Your Honor. I do have something else I would like to ask you though.

THE COURT: From defense?

MR. SWILLEY: No objection to that procedure.

THE COURT: Very good. Now, what else do we have Mr. Holt?

MR. HOLT: For the Court's sake and brevity, we have four photographs that Mr. Swilley tells me now he doesn't want in. I think you've got them. We might can just decide without the four before the first witness, and that way I would know and it would be easier on I know the Court Reporter.

THE COURT: Okay. All right. These are marked already as exhibits, and they are State's Exhibits 5, 6, 10, and 12. Tell me, Mr. Swilley, what is it about these exhibits that you believe are inappropriate?

MR. SWILLEY: Your Honor, there are several pictures that I did conceive to that do show blood splattering. I think there is another picture in there that shows the yellow markers on the Street, which marks where the blood was found. I think to allow those four in would just be cumulative under Rule 403, needless presentation, of unneeded evidence. I think --- just think the state has already established --- what those

pictures tend to show with other pictures that I would concede into the record.

THE COURT: All right. Just a moment, please.

(PAUSE.)

THE COURT: Mr. Holt, tell me why you believe these pictures are either probative or not prejudicial?

MR. HOLT: They are very probative, Your Honor. And I don't think they are prejudicial. What I want to show is how much he bled out. A lot of those are little drops. A lot of them are big drops. I think it is important that the jury know that he was bleeding as he went running that way to demonstrate you know that there might have to come a time when I have to say that he believes he was dying for whatever reason. There might come a time when I believe that I need to say something about he was exerting or not exerting or the blood was flowing or not. I don't think they are cumulative, Your Honor. I am just trying to show they are not all little tiny drops of blood, they are different sizes. Some of them are big, I reckon you could say dollops, I don't know a word for it, Judge. Big dollops, little dollops, I think that is important. It is not like I am trying to get anything gory in, it is just where blood hit the ground. And I am going to show that it was a long string. I want to show how much he was bleeding out.

THE COURT: Very good. Thank you.

MR. HOLT: And, Your Honor, I didn't say this. There are sixteen or seventeen spots. I am only putting in about six photographs. I have already cut it down by a third.

THE COURT: All right. Very good. The Court finds that the States 12, which shows a trail with yellow markers, is clearly more probative than it is prejudicial, based upon the theory that the state has just discussed.

With regard to 5, 6, and 10, which are individual areas that shows blood loss, to prevent a cumulative nature of the evidence, the Court is going to require the state to choose one of these three, and exclude two, and permit one. The choice will be given to the state to choose what is consistent with its theory.

(PAUSE.)

MR. HOLT: Five, Your Honor.

THE COURT: All right. The state chooses five, and we will therefore exclude, and if you wish to mark the other two as a Court's Exhibit, Madame Court Reporter, for review. The Court will permit what has been marked State's Exhibit 5.

WHEREUPON, STATE'S EXHIBIT NUMBER 5 IS MARKED AND

ADMITTED INTO EVIDENCE
OVER OBJECTION.
WHEREUPON, COURT'S EXHIBIT
NUMBER 1 AND 2 ARE MARKED
AND ADMITTED INTO THE
RECORD.

THE COURT: All right. Anything further, now? The Court finds that the other two are cumulative, and thus not necessary.

Hearing nothing further, please bring in the jury.

BAILIFF: All right, sir.

(Whereupon, the jury enters the courtroom at 10:41 a.m.)

THE COURT: All right, ladies and gentlemen, welcome back. That took us a little longer than we expected. Thank you for your patience. I am always uncomfortable when the jury is back in the jury room just waiting on us, because I don't ever want you to have the impression that your time is not important, because it is.

But, obviously, we deal with some issues that are rather weighted here and of pivotal nature in people's lives that we just can't go rushing through. We have to stop, and make sure what we do is appropriate. Thank you for your patience.

Now, during our break, one of your colleagues, Ms. Bishop came forward and discussed with the Court the fact that --- and let me just stop right here and say this is not uncommon. That we will pick a jury and then someone --- there will be other people in court the next day. There will be opening statements, and a juror may realize that this is someone that they in fact know, or have a connection with, that they didn't realize previously. And Ms. Bishop tells me that she has a relationship by marriage that is through marriage, she is related to the family of the deceased. And for that reason, I am going to stand Ms. Bishop aside. It is not that she is not capable. It is not that she is not a competent juror. But it is just best that for anyone who is reviewing this record that there is not some question that someone who may have, or would have reason to have a bias should be on the jury.

So, Ms. Bishop, I am going to respectfully, at this time, release you. So I am going to let you go ahead and step out if you will. And I am going to come down and shake your hand as my expression of gratitude for your service. And tell you ma'am I hope you I have a good day. Thank you. And if you would call back after 6:00 tonight to the jury line, and just follow the instructions. You have a nice day, ma'am.

MS. BISHOP: Thank you.

THE COURT: Thank you. All right. Now, to our alternate jurors, the process that we use in criminal court when one of our jurors stands down, or leaves for any reason is, we put your name in a box, and the clerk makes a blind draw, that is not knowing what name the clerk is pulling, and then we seat that juror as one of the twelve. Is there any objection to that procedure from the state?

Hearing none?

MR. HOLT: There is none, Your Honor.

THE COURT: Defense?

MR. SWILLEY: None, Your Honor.

THE COURT: Go ahead then, Mr. Clerk.

CLERK OF COURT: Juror Number 74, James Johnson.

THE COURT: All right. Mr. Johnson, let me ask you to step over and please be seated. Welcome to the twelve.

As you will recall, we finished opening arguments at the end of our first session. We move now to our testimony. And prosecution, call your first witness.

MR. HOLT: Thank you very much, Your Honor. At this time the state would like to call Investigator Mike Anderson.

WHEREUPON, MIKE L. ANDERSON

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MR. ANDERSON: I do.

THE COURT: Good morning.

MR. ANDERSON: Good morning.

DIRECT EXAMINATION BY MR. HOLT

Q. Investigator Anderson, would you please state your whole name for the jury?

A. Michael L. Anderson.

Q. Do you feel good today?

A. No, I don't.

Q. And, where are you employed?

A. I am a Detective Sergeant with the Hartsville Police Department.

Q. Have you always worked there?

A. No, I have about twenty-four years with South Carolina Law Enforcement Division, a division known as SLED.

Q. And so combined with SLED, and now at HPD, approximately how many years do you have in law enforcement?

A. Thirty-nine.

Q. Now, I want to ask you about March 24, 2009, specifically, the early morning hours. So it would kind of be like night of March 23rd.

A. Yeah.

Q. Where were you working that day?
A. I was working for the sheriff's Office out of Darlington, now. Excuse me, Hartsville Police Department.
Q. Okay. And what did your duties at that time consist of?
A. All criminal investigations from homicide up to bank robberies, including larceny. All the crimes that you have read about in the news, news media, paper, arson.
Q. And specifically, we are talking about the death of James Tucker, how did you get involved in that case?
A. I received a call approximately at 4:00 in the morning on the 24th, from Sergeant Cheryl McCall of the Hartsville Police Department informing me that she was at the Carolina Pines Hospital. That a black male was walking down Marion Street that had been stabbed.
Q. And once you were notified of the situation, what did you start doing?
A. I started getting myself together, and I arrived at Carolina Pines Hospital at 4:25 in the morning.
Q. And when you got to the hospital, who did you meet with, what did you do? Can you just walk us

through what happened while you were there?

A. I met with Sergeant McCall, and also Levern Davis, a police officer with Hartsville Police Department. I took photos of the victim's body, and also received the victim's clothing from Sergeant McCall.

Q. What, if anything, else about the situation or the facts surrounding James Tucker's death did you learn while you were at the hospital?

A. While I was there at the hospital, there were two witnesses in the lobby, a Ms. Cheryl Robinson, and a Marcus Brunson. I went out and met them, along with the victim's family, they were there. And I had a short discussion with the two witnesses.

Q. Okay.

MR. HOLT: If I may approach, Your Honor?

THE COURT: You may.

Q. I am going to show you what has been previously marked as State's Exhibit 23 and 22 for identification purposes only. I ask you to look at those, Investigator Anderson. Now, without specifically telling me what they are, can you tell me if you have seen those before, and if you know what they are?

A. Yes, I have. And I do know what they are.

Q. And what are they?
A. They are pictures of the deceased, James Tucker.
Q. And did you take those photographs?
A. Yes, I did.
Q. And since last you have seen those photographs, have they been altered or deleted or has any kind of crazy thing happened to them?
A. No, sir.

MR. HOLT: Your Honor, at this time the state would ask that they be placed in evidence?

THE COURT: Is there an objection?

MR. SWILLEY: There is none.

THE COURT: Then without objection, then 22 and 23 in evidence for the state.

WHEREUPON, STATE'S EXHIBIT NUMBER 22 AND 23 ARE MARKED AND ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

MR. HOLT: I need to approach again one more time.

THE COURT: Yes, sir, you may. You don't need the Court's permission, go ahead.

Q. Investigator Anderson, can you tell us, looking at 22, what is exactly displayed on those pictures, on

those photographs? Can you explain to the jury what they are?

A. One is a photo of the wound to the chest area, around the heart area. I'm not a doctor, but it is around the heart here taken of the deceased, Mr. James Tucker.

Q. And the other photograph?

A. Also.

Q. All right. Now, when we last left your story, you had met two witnesses at the hospital. What did you do then?

A. I had a brief interview in the lobby at the hospital, and I started talking with them. And at any time most people don't get involved until it is in their family. But after doing an interview with them, I brought them --- they agreed to give me a statement, and I took them down the Police Department and obtained a handwritten statement from both people.

Q. And while you were there, did they give you a statement?

A. They did. Ms. Robinson gave me a statement at 4:45, and a short time at 6:05 Mr. Brunson gave me a statement. And at that time I had Sergeant John Specht also with the Hartsville Police Department

prepare a photo lineup for me for their viewing of the suspect, Mr. Tucker.

Q. And we are talking about that right there. Did you have an occasion to conduct a photograph display in this case?

A. I did, sir.

Q. And about what time did you do that?

A. Around --- it was after I took the statement, it would be 7:15 a.m.

Q. And where did this photographic display take place?

A. At the Hartsville Detective Department.

Q. And if you could estimate for us about how long since the stabbing occurred to when the photographic display took place?

A. Mr. Brunson identified Mr. Toney at 6:00 in the morning.

Q. Okay.

A. And prior to that, Ms. Robinson at 5:30 a.m. identified Mr. Toney.

Q. And what, if anything, were the witnesses to this photograph display told before being permitted to seeing the photographs?

MR. SWILLEY: Objection, Your Honor. Hearsay.

THE COURT: Sustained.

Q. Did you tell the witnesses anything before you

showed them the photographs?

A. No, I did not.

Q. Okay. And did they view the lineups together, or were they separate when they viewed them?

A. They were separate.

Q. And were the lineups the exact same lineups or had they been altered when you showed them to the two?

A. They had been altered.

Q. And when you say they had been altered, can you explain to the jury what you mean by that?

A. Yeah. One through six photos, it has the names of the victims to match with the number. What we do is like if they pick number six, again Mr. Toney. When I went back to Mr. Marcus it would be switched around. It wouldn't be in the same order in other words.

Q. All right. Now let me ask you this, did you suggest in any manner who to pick in these photographic lineups?

A. No, sir.

Q. Were all the photographs in those lineups of individuals with the same character, reveal the same race?

A. Yes, sir.

Q. All right.

MR. HOLT: All right. Your Honor, if I could approach one more time.

THE COURT: Yes, sir.

Q. I am going to show you what has been marked for state's purposes as Exhibit 3 and 4. Without you telling me what they are right now, do you recognize the content of that exhibit?

A. Yes, sir. I do.

Q. And how are you able to recognize those contents?

A. I witnessed it as my name and my signature.

Q. And are those contents in substantially the same condition as they were when you originally used them?

A. Yes, sir.

Q. And has there been any material altercations or deletions made? I know I have a sticker put on there, but beside that, anything?

A. No, sir.

MR. HOLT: All right. Your Honor, at this time the state would move for State's Exhibit Number 3 and 4 to be placed into evidence.

THE COURT: Do you want to see them?

MR. SWILLEY: Beg the Court's indulgence. Yes, I would like to see them.

(PAUSE.)

MR. SWILLEY: No objection.

THE COURT: Three and four then, in evidence without objection for the state.

WHEREUPON, STATE'S EXHIBIT NUMBER 3 AND 4 ARE MARKED AND ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

Q. Just as soon as she hands them back to you, I want you to look at number 3, and looking at number 3, whose signature is that right there?

A. Ms. Robinson, Crystal Robinson.

Q. And whose signature is that right there?

A. That is mine.

Q. And whose signature is that right there?

A. Specht's, I mean Sergeant Specht.

Q. All right. If you could just open that up, and display it to the jury just from where you are at, just what those are. And explain to them how a photographic lineup works. And who is the result of --- that is Ms. Robinson's, as a result of your speaking to her, her statements with her, her looking at that lineup, who did she pick out of that lineup?

A. Number 3. And I had her sign her name above it, Ms. Robinson.

Q. And number 3 is who?
A. Mr. Toney.
Q. And is Mr. Toney in the courtroom today?
A. Yes, sir. He is.
Q. And where is he at? Could you point him out for the record?
A. Right there.
MR. HOLT: And let the record show that he points to the defendant.
Q. Okay. So after you go to the hospital, after you get the statement, the lineup, what do y'all do then?
A. We return to the crime scene, myself and John Specht, Ms. Robinson and Mr. Brunson.
Q. And, what did y'all do while you were at the crime scene?
A. We got there, and I think Ms. Robinson was in my vehicle, and Mr. Brunson was in Sergeant Specht's vehicle. Once we got there we had them walk us through the crime scene where the altercation occurred with their vehicle, and took measurements of that diagram, took photos of the crime scene, blood splatter trail, processed it for additional evidence, which we recovered some bottles, which SLED identified with latent prints.

MR. HOLT: And I want to approach one more time, and show you some stuff.

Q. Investigator Anderson, I would like to show you what has been marked as State's Exhibits 5, 12, 21, 20, 19, 18, 17, 16, 15, 14, 13, 11, 7, 8, and 9. I apologize for reading all of those out. I am going to show these to you, and without you telling me what they are, I would like to ask you, have you ever seen them before? And if so, how are you able to identify them?

A. These are photos that I take myself of the crime scene of Chaplin Circle.

Q. Now, Investigator Anderson, since last you viewed those photographs, have they been altered, or changed, or has anything happened to them?

A. No, sir. They are the same.

MR. HOLT: Your Honor, at this time the state would ask that they be moved into evidence.

THE COURT: All right. What says the defense?

MR. SWILLEY: No objection.

THE COURT: All right. Then without objection, let me state for the record that these are for the state, Exhibits 5, 7, 8, and 9; then 11, 13, 14 through 21, and also number 12. Thank you.

WHEREUPON, STATE'S EXHIBIT

NUMBERS 5, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, AND 21 ARE MARKED AND ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

THE COURT: What we do, ladies and gentlemen, when something is admitted, our court reporter marks it in a particular way, it already has a sticker on it. But we mark it in a particular way when it is admitted so there is no question about what is in and what is out. Let's wait just a moment while they are marked.

(PAUSE.)

THE COURT: All right, we are ready.

MR. HOLT: Yes, sir, Your Honor. Thank you. I'm sorry about making everybody wait.

Q. This is something that we forgot to go over. I apologize. That is Number 4. State's Exhibit Number 4. And can you just explain to the jury what that is, and whose signature is on that front page?

A. This is another photo lineup with my signature and Mr. Marcus Branson's signature on the front. He identified number six, and also his name above number six.

Q. And who did he identify? Can you tell the jury who number six is?
A. Marcus Toney.
Q. And is that person in the courtroom today?
A. Yes, sir. He is sitting right over here.
Q. And just for the jury's edification --
A. Marcus Toney is sitting over there --- Breyon.
Q. And just for the jury's clarification, who did you ask them to identify? When they were giving you their statement, who were you looking to find? The person that did what?
A. The one that stabbed and murdered Mr. Tucker.
Q. Thank you.

MR. HOLT: Investigator -- Please answer --

Q. Please tell the jury what number 15 is a photograph of?
A. This is a directional sign at Marion Street and East Chaplin Circle, a stop sign.
Q. Now, if you can tell the jury what Number 21 is a photograph of?
A. This is a building that is on Marion Street that is on longer there. It has been taken down since then. But that is on Marion Street, an old vacant building.
Q. And how about Number 9?

A. This is where they parked the car in front of this building. This is a photo of a night --- a night light out there on the corner of Marion and Chaplin.

Q. And Number 20?

A. This is --- If you are looking south to north on East Chaplin Circle, you will see a path. This path leads from here across this little field here back up beside this building that I described earlier, to that location.

Q. And Number 16?

A. This is a works container, that contained a number of bottles that were beside the road, and it was on the west side of Chaplin Circle.

Q. Number 12?

A. This is what we call blood splatter, a trail, where initially I was able to track blood leading from point A up to point B, leading back up toward Marion.

Q. Number 5?

A. This is a lot of blood splatter that was in the middle of the road out there, number 10 on East Chaplin.

Q. Let me show these three as a group Officer Anderson, 7, 19, 18, and 17. If you could just say

what those are as well.

A. Blood splatter, blood trail, reflecting the other photos with the other photos with the other numbers and markers.

Q. Now, Officer Anderson, I am going to show you what has been marked for identification only, as State's Exhibit Number 24.

A. Yes, sir.

Q. I would like to ask you, without you showing it to the jury, without looking at it, just examine it for a second.

(PAUSE.)

A. Yes, sir.

Q. Do you recognize this exhibit?

A. Yes, sir. I do.

Q. And how are you able to do so?

A. This is my diagram and my signature at the bottom, done on the day, March 24, 2009.

Q. And was this exhibit prepared by you?

A. Yes, it was.

Q. And where was this exhibit prepared?

A. It was prepared at my office.

Q. How was it prepared?

A. It was prepared by going back to the crime scene that they --- Ms. Robinson and Mr. Brunson walked

us through for measurements and distance from the location of the vehicle the altercation occurred.

Q. Now you said on the scale?

A. On the paper, not to scale.

Q. Are you an artist?

A. No, sir.

Q. Does it accurately reflect though the relationship and objects in that neighborhood on the day in question?

A. It does. But I do have one error that I did myself on it, and I can explain it as you get to it.

Q. We will get to that. Now, are distances and directions shown?

A. Yes, they are.

Q. And is this exhibit in substantially the same condition as when you originally prepared it, aside from it being blown up?

A. Yes, sir. It is.

Q. And have there been any material altercations or deletions made to this exhibit?

A. No, sir.

MR. HOLT: Your Honor, at this time the state would please move for Exhibit 24 to be admitted into evidence.

THE COURT: Is there an objection?

MR. SWILLEY: There is none, Your Honor.

THE COURT: All right. Then 24 in evidence without objection.

WHEREUPON, STATE'S EXHIBIT NUMBER 24 IS MARKED AND ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

MR. HOLT: Your Honor, at this time the state would also ask permission for Officer Anderson to step down, and help identify some pertinent important facts.

Q. Okay. Officer Anderson, help the jury see what Street is this right here?

A. This is Marion Avenue.

Q. And what Street is this right here?

A. Chaplin Circle.

Q. Where does it go circle wise? Which way does the circle go?

A. It comes out and goes East and comes out --

THE COURT: Mr. Holt, let's do this. Why don't you and Mr. Anderson change sides, so he is pointed back to our court reporter who can hear him. When he is facing away it is difficult for her to do her job.

And please speak up, since you are off Mic. Thank you.

Q. Now, Officer Anderson, what is that right there?

A. This is the --- Ms. Robinson's vehicle where they parked, this building.
Q. And is that the building where you took the photograph of the building that is no longer there?
A. Yes, sir.
Q. Now, you got the word path right here. What is that?
A. That is like I said earlier, that is a path leading back across this field back to East Chaplin Circle through here.
Q. Okay. Now, where is the mistake that you said you made when doing this?
A. From point A to point B, seventy-three feet and eleven inches, and I made a mistake here and put wrong type, thirty seven, and it should be seventy three.
Q. That is a big mistake. All right. What are 713, 711,
707, 705, what does that mean?
A. These are homes that are the side of the Street there at East Chaplin Circle.
Q. Okay. Now, I am looking at trash box full of bottles right there. What is that?
A. There is a lot right here, the bottom of the photograph that I showed you earlier containing a

number of bottles, that is what that photo is taken from, this area here.

Q. Okay. And now it looks like you have some marks right here. And first off, what is this arrow pointing to and what are all these little dots right there in the road?

A. Well, this point up here is pointing to a busted thirty-two-ounce Cobra bottle. And this one right here is also a recovered thirty-two-ounce Cobra bottle fully intact. These spots here measured forty-seven feet from point A to point B of blood path, blood trail that I showed earlier on the stand.

Q. Where was State's Exhibit 21? Where would that be?

A. I'm sorry. Right here.

Q. And State's Exhibit 9, where would that be?

A. Street light, right here.

Q. And, State's Exhibit 16, where would that be?

A. Right here.

Q. And State's Exhibit 12, where would that be?

A. This would be this path right through here, forty-seven feet.

Q. Okay. And now Number 20, could you tell us everything in that --- point it out for us so the jury knows.

A. If you were down this Street, and looking like I said earlier, looking toward looking south and I am looking this way, this is showing me the path. I went across here. Also, you have the building that is in this photo right here also and it is going like to Marion.

Q. Investigator Anderson, throughout the course of your investigation into this incident, about where did the fight take place, originally. Where did it originally --- where did it go to? Can you just explain that to the jury?

MR. SWILLEY: Objection, Your Honor. It calls for speculation.

THE COURT: You have to lay a foundation for that first. I am going to sustain until a foundation is laid.

Q. Investigator Anderson, during the course of your investigation did you learn facts, pertinent information about where the fight started and where it stopped?

A. Yes, sir. I did.

Q. And did --- how did you gather that information?

A. From Ms. Robinson and Mr. Brunson.

Q. And, you testified that after you left the investigations office you went to the crime scene,

what did you do again at the crime scene?

A. Once I got there and I stayed with them and let them walk through what they observed that morning.

Q. Who was there with you at that time?

A. Myself, Sergeant Brian Specht, Ms. Crystal Robinson, and Mr. Brunson.

Q. And is that when you made all these detailed notes, and directions and diagrams?

A. I did.

MR. HOLT: Your Honor, at this time, I would like to ask him a question.

THE COURT: Mr. Anderson, did you find objective evidence that supported what you were told by the witnesses at the scene?

MR. ANDERSON: Yes, sir.

THE COURT: Very good. Is there further objection?

MR. SWILLEY: There is none.

THE COURT: All right. Objection withdrawn. You may proceed.

Q. About where did the fight take place that your evidence shows?

A. Right here.

Q. Where did the fight originate?

A. Here in front of their vehicle.

Q. Okay. What objective evidence did you find to prove that this is where it took place right here?

A. Both witnesses said here, and this is where the witnesses stated that he Mr. Tucker got her, the bloody knife.

Q. What evidence did you find at or around this area right here?

A. The blood.

Q. Yes, sir. And what else?

A. The bottle that was placed right here in front of 705. It measured right beside the sidewalk.

MR. HOLT: Okay. Investigator Anderson. Thank you so much for doing this. You can definitely sit back up there please.

A. Yes, sir.

Q. Now, throughout --- after you have done all of this at the crime scene, and that is where we were in this court when you left off, what did you do after you left the crime scene?

A. We left there and went back and processed the vehicle that Ms. Robinson --- that was left at Carolina Pines.

Q. Were you part of the group that processed that vehicle?

A. I was there. I witnessed it, yes.

MR. HOLT: Permission to approach, Your Honor.

Q. I want to show you what has been marked as State's Exhibit 1 and State's Exhibit 2. And I want to ask you without your telling the jury or me what it is, do you recognize these photographs?

A. Yes, sir. I do.

Q. Do those photographs fairly and accurately depict what you saw that day at Carolina Pines Hospital?

MR. HOLT: Your Honor, at this time the State would move photographs State's Exhibit 2 as well as State's Exhibit 1 be placed into evidence.

THE COURT: Is there an objection?

MR. SWILLEY: There is none.

THE COURT: All right. One and two for the state then in evidence without objection.

WHEREUPON, STATE'S EXHIBIT NUMBER 1 AND 2 ARE MARKED AND ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

Q. Now, if you could look at 1 and 2, and pull those out so the jury can see them, would you tell the jury --- explain to the jury what those photographs are one at a time, please?

A. This is a photo of Ms. Robinson's vehicle taken at the Carolina Pines parking lot. This is a photo of

the passenger's side vehicle, belonging to Ms. Robinson's vehicle.

Q. Now, Investigator Anderson, throughout the course of your investigation, why do you believe that much blood is in the car in Ms. Crystal Robinson's car?

A. That is Mr. Tucker bleed to death.

Q. Okay. And, once again, one more time, what was this right here?

A. Ms. Robinson's vehicle.

Q. All right. Investigator Anderson, once you finished looking at the car, what else did you do in your investigation? Specifically, did you track down other witnesses that were there that night?

A. I did, sir.

Q. Okay. And what else did you do?

A. Interviewed those witnesses.

Q. And were you able to get statements from those witnesses as well?

A. Yes, sir.

Q. And, did those witnesses versions of what happened substantially match what Marcus Brunson and Crystal Robinson told you at the very beginning of that very first night?

A. Yes.

MR. HOLT: Beg the Court's indulgence, Judge.

(PAUSE.)

MR. HOLT: Your Honor, at this time I believe me and Mr. Swilley might need to approach you, and take up a brief matter of law.

THE COURT: All right. You can step up if you wish.

(Whereupon, a bench conference was held in the presence of the jury, but out of their hearing range.)

THE COURT: All right. You may proceed.

MR. HOLT: Thank you.

Q. No, Investigator Anderson, you said right here you found a broken bottle.

A. Yes, sir.

Q. And then right here you found another bottle?

A. Fully intact, yes, sir.

Q. Okay. Now, what did you do with those bottles after you found them?

A. I collected both of them for evidence and the one that was intact, I secured it properly, and I sent it to the SLED lab in Columbia, latent prints to have it analyzed for fingerprints.

Q. And what --- when those fingerprints came back whose fingerprints were on that broken bottle?

A. James Tucker.

Q. And, did the fact that James Tucker's fingerprints were on that bottle, did that match up perfectly with the version of events that you got from all four witnesses?

A. Yes, sir, it did.

MR. HOLT: Your Honor, at this time the state doesn't have any further questions.

THE COURT: All right. Then, cross examination.

MR. SWILLEY: Thank you, Your Honor.

CROSS EXAMINATION BY MR. SWILLEY

Q. Detective Anderson, let me refer you back to the State's Exhibit that depict Mr. Tucker in the --- at the hospital, which would be State's Exhibit 23, and State's Exhibit 22. Can you --- isn't it true that there was only one wound on Mr. Tucker's torso?

A. Yes.

Q. Okay. And also, isn't it true that all of this at the top of his chest under his clavicle to about --- pretty much all over his torso, isn't it true that that is just dried blood?

A. Yes.

Q. Okay. So, those aren't lacerations; is that correct?

A. No, sir.

Q. Okay. Thank you. Do you know approximately what time Mr. Tucker arrived at the hospital?
A. No, sir.
Q. Okay. When you arrived on scene, was it your understanding that he -- that the body of Mr. Tucker had been there for a substantial amount of time, over an hour?
A. No, I wasn't aware of that.
Q. Okay. Now, when you were at the hospital, and you were the head investigator for this matter; is that correct?
A. Yes, sir.
Q. You and Detective Specht?
A. Yes, sir.
Q. Were Ms. Robinson and Mr. Brunson accompanying each other?
A. Yes, sir.
Q. Okay. To your knowledge did they not have any information as to this incident first?
A. At first.
Q. Okay. To your knowledge were there any other eye-witnesses present at the hospital at the time you made contact with Ms. Robinson and Mr. Brunson?
A. No, sir.
Q. There were not? Okay. You said you gave them a

photo lineup; is that correct?

A. Yes.

Q. That Mr. Holt put into evidence?

A. Yes, sir.

Q. For what reason do you give witnesses these types of lineups?

A. We use that to see who the perpetrator was, for my own purposes and everything, I felt secure doing a lineup with it, and that is what I did through my investigation. And like I said earlier they identified Mr. Toney.

Q. So, did they deny knowing Mr. Toney in the meantime to you?

A. No, sir.

Q. Okay. So you used those to be sure?

A. Just to be sure.

Q. Okay. With Mr. Holt's exhibit here, he pointed to the trash box to bottles on Chaplin Circle right here?

A. Yes, sir.

Q. Do you recall that? Do you remember approximately how many bottles were left in that --

A. -- No, I didn't go through and count them. No, sir. It was full.

Q. Okay. And how many pieces of broken bottles did

you recover on East Chaplin Circle?

A. I recovered the cap of the broken bottle. I couldn't see anything else there. And like I said earlier, I recovered a full intact Cobra bottle, fully intact.

Q. Okay. So you found one cap, and then another fully intact bottle.

A. It was a cap --- you know the glass --- the top was still intact, but it was shattered.

Q. Okay. Okay. And from your observation, did it appear that they were connected, that the pieces were once one bottle?

A. Yes, sir.

Q. Okay. All right. As far as around the area of where Ms. Robinson's vehicle was reported to be, did you find any other forensic evidence in this area right here?

A. No, sir.

Q. Okay.

A. No, sir.

Q. Okay.

A. No, sir.

Q. All right.

A. I walked the area but didn't find any. No, sir.

Q. So it is fair to say that all the forensic evidence

as far as the broken glass bottles that were recovered, some distance up on East Chaplin Circle?

A. Yes, sir.

Q. Okay. And just to be sure, you did --- did you go to Newberry and take the prints off of Mr. Tucker's corpse?

A. No, I contacted a good friend of mine that I worked with a number of years ago, Vicki Holloman. She is with the SLED Forensic's Team. And I requested her to go to Newberry and get me a master card, and she did that for me.

Q. Okay. So you are fairly sure there was no mistake as to whose fingerprints were taken; that it was Mr. Tucker's fingerprints whose were taken?

A. No doubt.

Q. Okay. And during the course of your investigation, did you recover anything that was reported to have impelled Mr. Tucker?

A. No, sir.

Q. Okay. Who were the other officers that arrived at the hospital before you that night?

A. It was Sergeant Cheryl McCall and Officer Levern Davis.

Q. To your knowledge had they interacted with Ms. Robinson and Mr. Brunson?

A. I think Officer Davis had.

Q. Okay.

MR. SWILLEY: Beg the Court's indulgence.

(PAUSE.)

MR. SWILLEY: Thank you, Your Honor. I have nothing further for Detective Anderson.

THE COURT: All right. The way we have witness presentation, we have direct, and then cross, and then if a new issue has been brought up on direct, then on redirect the proponent of the witness may address that issue.

Is there any redirect for the witness?

MR. HOLT: Just briefly, Judge.

THE COURT: Go ahead.

REDIRECT EXAMINATION BY MR. HOLT

Q. Investigator Anderson, you said right here you found the broken bottles and then you said cap, and you used your thumb like that. About how much of that broken bottle was left?

A. Very little. You know, when you tighten the top on, it was glass, it was just shattered. It wasn't very much. It was just the cap itself and a little bit of glass.

Q. Would you say over an inch or under an inch?

A. Under an inch.

Q. Now, Mr. Swilley brought out something about --- did the witnesses --- did Crystal Robinson and Marcus Brunson tell you everything right off the bat? And your answer was no?

A. No.

Q. And let me ask you this. When it comes to young people and the police, do they normally volunteer everything they know first up in your thirty-year' experience?

MR. SWILLEY: Objection, Your Honor.

THE COURT: On what basis?

MR. SWILLEY: Relevance. I mean, he is making a generalization.

THE COURT: Overruled. You may go ahead.

A. No.

MR. HOLT: Thank you very much, Investigator Anderson, I appreciate that.

THE COURT: All right. Do you want to follow on that point, Mr. Swilley?

MR. SWILLEY: No, Your Honor.

THE COURT: All right. Sir, I know you began that you were under the weather today. I realize that you are the investigating officer, but if you wish to leave you may.

MR. ANDERSON: I would like to, Your Honor, if I

may.

THE COURT: Go ahead.

MR. ANDERSON: Thank you, so much.

THE COURT: You are welcome.

MR. ANDERSON: Y'all have a good day.

THE COURT: Please call your next witness.

MR. HOLT: Thank you very much, Your Honor. At this time the state would like to call Crystal Robinson.

THE COURT: Please come forward and take the oath of a witness.

WHEREUPON, CRYSTAL MICHELLE ROBINSON

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MS. ROBINSON: Yes.

DIRECT EXAMINATION BY MR. HOLT

Q. Ms. Robinson, can you please state your entire name for the jury?

A. Crystal Michelle Robinson.

Q. And how old are you?

A. Twenty-three.

Q. And where are you from?

A. Hartsville, South Carolina.

Q. Did you grow up in Hartsville?

A. Yes.

Q. And, what do you do for a living?

A. I work at Morrell's Home, as a CNA.

Q. And what is a CNA?

A. A Certified Nurse's Assistant.

Q. And how long have you been a CNA?

A. Three and a half years.

Q. And on the day in question, Tuesday, March 24th, we are talking about a Monday night, March 23rd, what had you been doing all day on the 23rd?

A. Nothing --- home.

Q. And, where were you ---

MR. HOLT: If I can approach, Your Honor?

THE COURT: Yes, you may.

Q. And, how did you find yourself on Chaplin and Marion that night?

A. I mean, that night I was dropping my home-girl, my friend off at her boyfriend's house, and I was just coming through and see a crowd of people outside. So I'm stopping by and really didn't know them. Ha-ha.

Q. And, let me ask you this. Did you know both Breyon Toney the defendant in this case as well as James Tucker the victim in this case?

A. Yes.

Q. And can you just kind of ---

MR. HOLT: Your Honor, if she can come down and look at the diagram?

THE COURT: She may. But, remember she is a little bit soft spoken, so please speak up ma'am. I'm going to let you go to the far side of that diagram, so you are facing back toward our court reporter. Thank you.

Q. All right. In this diagram, where is your car?

A. Right here.

Q. And is that the car you drove to get there that night?

A. Yes.

Q. All right. And if you could tell us when you pulled up, who did you start talking to?

A. Marcus.

Q. Okay. And can you just kind of take us, in your own words, using the diagram when you need to.

A. Yes.

Q. Take us through what happened after you talked to Marcus, and what happened that night, and what you witnessed?

A. Well that night I stopped by to drop my friend off. There was a crowd of people and I saw Marcus out there so I start talking to him, and see him talking in the car. And the next thing I know Junie walked up. He was in Marcus --

Q. -- When you say Junie, who do you mean?

A. James Tucker. But James Tucker --

THE COURT: Now just a moment. Now our witness has her back to some jurors, and I doubt that they are able to hear. Can you hear ma'am?

JUROR: I can't hear her clear enough.

THE COURT: Let's get this testimony from a microphone, counsel.

MR. HOLT: Yes, sir.

THE COURT: Ma'am, we are going to let you come back to the microphone, so we can all be sure to hear you.

And for your information, Ladies and Gentlemen of the jury, obviously, when we have testimony you are listening to it, but we also have a recording system here that in the event the jury needs to have a replay of a testimony, because you can't reenact testimony, then we use that recording system. So, if you are off Mic. we lose it. So, please be sure to speak up, and go ahead, ma'am. You may want to ask your question again.

Q. Now, if you --- you said that you stopped and you were talking to Marcus.

A. Yes.

Q. And if you could --- and you were right here. If you could just tell the jury what you saw back then and then speak right into this.

A. I could see Marcus seating in the car. The next thing I seen James Tucker walk up and was talking to Marcus and said, he get some text message and some phone call from a boy --

MR. SWILLEY: Objection, Your Honor. Hearsay.

THE COURT: Response?

MR. HOLT: Witness unavailable due to death, Judge.

THE COURT: All right. Ladies and gentlemen, we will talk about this so that we will have an understanding of what the issue is.

The Rules of Evidence has what is called a hearsay rule, and it can be a little bit complicated, and have a lot of exceptions to it. But, the general rule for hearsay is that if someone who is out of court said something, rather than have someone repeat it, because often there may be a misunderstanding, or confusion, it is best to have the person who said whatever they said come in and say what they said, rather than have someone say what they heard someone say.

Now, counsel, do you want to respond to Mr. Swilley's objection again?

MR. HOLT: Your Honor, I think I have two hearsay exceptions. The first being that it is going to go to what Mr. James Tucker's state of mind was that night,

what he was telling Ms. Robinson in her car. And secondly, the defendant is unavailable due to his death.

THE COURT: All right. Response to that, Mr. Swilley?

MR. SWILLEY: Your Honor, I think that what had happened previously was an account of facts. I don't think it had anything to do with the state of mind of the decedent.

Also, as far as him being unavailable as to death, I don't think that falls within the --- falls within Rule 804. I think --- that is not an exception to the hearsay rule, because somebody has died. I mean, there are certain --- there are certain situations in which an unavailable hearsay would come in. And I don't believe that is one of them.

THE COURT: All right. Just a moment, please.

MR. SWILLEY: Reference 804, subsection B.

(PAUSE.)

THE COURT: All right. Having reviewed this, Ladies and gentlemen, we don't come to these decisions off the top of our head. We actually have rule books and other things that we follow, because precedents are established.

The Court is going to overrule the objection for the following reasons.

First of all, it is akin to show the state of mind that then existed, mental condition. And that is Rule 803, subsection 3.

And the Court finds that it is admissible. You may proceed.

MR. HOLT: Thank you very much, Your Honor.

Q. Crystal, just that question again is; and to summarize. You were in your car. James Tucker came up to speak to you. What did he say that was going on?

A. He just said that he had some texting of somebody fighting.

Q. And what did he say they were going to fight him about?

A. They just say they wanted some --

THE COURT: Ma'am, I didn't hear that. I don't know if the jury did or not. Say that again, please, ma'am.

A. Oh, cuz he bought the baby mamma some Pampers.

THE COURT: Slow down and tell us that one more time.

A. Because he brought the baby mamma some Pampers.

Q. Junie brought Breyon's baby's mamma some Pampers?

A. Yes.

Q. Okay. Now, then on --- okay --- Tell me what

happened in relationship to Jimmy and Breyon in relation to this guy again here?

A. Well he was sitting in his car and then when I seen Breyon coming up the road.

Q. Okay.

A. And then that he and Junie is getting ready to fight.

Q. Where on this diagram did Breyon come up the road and where did the fight happen?

A. As he was coming up the road on Marion, and then end up about to fight in this open space beside the park. Beside the church there is a place right here.

Q. Okay. All right. And tell us what happened, and what you saw, and what you witnessed then.

A. They was going in circles, like he was going in circles. Each of them took a swing at each other. And the next thing Junie hollered out he got a knife.

Q. Junie hollered out that Breyon had a knife?

A. Yes, that Breyon had a knife. He shouted it.

Q. And then what did you say?

A. I was like --

MR. SWILLEY: Objection, Your Honor.

THE COURT: On what basis?

MR. SWILLEY: Hearsay.

THE COURT: On what she said?

MR. SWILLEY: That's correct.

THE COURT: Overruled on what she said, on what the witness herself said is not hearsay.

Q. What did you say Ms. Robinson?

A. I say, for real. I was like see y'all were far back --- I was far back on like the road on top of this right here.

Q. Okay.

A. And they was here. I was like --- they were like -- they are like for real. He got a knife. And I heard James Tucker like they dropped the knife and start --

Q. -- James Tucker said what now?

A. No, drop the knife.

Q. And then?

A. After that I told like the boy Marcus and Phillip Franklin, like y'all get the knife. And nobody did anything, so I just told Jimmy to run. And he took off --

Q. -- You told who to run?

A1. Well, James Tucker.

Q. Okay.

A. I told him to run and that is when he took off

running down Chaplin Circle. And he stopped.

Q. About where did he stop running?

A. Like this. Like that house that burned off he stopped and picked up two big beer bottles.

Q. Okay. When he picked up those beer bottles, what did he do with them?

A. He threw them at Breyon.

Q. Okay. And then what did you see?

A. I seen --- I saw Breyon swung at James Tucker and James Tucker fell to the ground and he got back up immediately.

Q. When James Tucker jumped back up, what did he do then?

A. He ran toward the top of Chaplin Circle where we was.

Q. And where is that? Can you show that to the jury?

A. Right here.

Q. And what did he say to you then, James --- what did James Tucker say to you then?

A. He said, oh shit he cut me. Breyon cut me.

Q. And did he show you that cut?

A. Yeah, I ran to him like way at --- and I saw the cut gushing down. And I say, gonna take you to the hospital. And it was like yeah we got in the car and I left to go to the hospital.

Q. Now, did you ever actually see a knife?
A. No.
Q. Okay. When you got to the hospital --- Well, first off who rode in the car with you?
A. Me and James Tucker.
Q. And where did James Tucker sit?
A. My passenger seat.
Q. And can you explain to the jury what that car ride was like, and what happened on that car ride?
A. Well, I was scared, but at the same time I was calm, because I work in CNA field so I see this often. I see this often. So I basically was just getting him to the hospital and getting him help.
Q. And, what happened specifically in that car --- what did you witness?
A. Um, James Tucker was gasping for air. And to me was going into shock, because he was --- start shaking and his eyes were rolling back in his head, foaming out the mouth. So pretty much it was going pretty fast to the last stages.
Q. And you witnessed all of this from the driver's side?
A. Yes.
Q. And this was happening in your passenger seat?
A. Yeah, like every five minutes I'd look over like --

- I'd look over at him while driving.

Q. And what happened when you got him to the hospital? What did you do?

A. I ran in and got help.

Q. What happened next?

A. The people from the back and came and got him out of the car.

Q. And what happened next after that?

A. The next thing I know they say he was gone, he died.

Q. Okay. When did you meet Investigator Anderson?

A. At the scene of the crime.

Q. When did you first meet him?

A. At the hospital.

Q. Okay. Now, take us through --- First off, about what time was this in the day, do you remember?

A. It's like six or five.

Q. Okay. Just approximately, that's good. Did you -- - Did Investigator Anderson and the other police, did they show you a photographic lineup?

A. Yes.

Q. Who did you pick out of that photographic line up as the person that stabbed James Tucker?

A. Yes.

Q. Who was it?

A. Breyon Toney.
Q. Okay. And did you go to the crime scene with Investigator Anderson?
A. Yes.
Q. And what did y'all do there?
A. They seen like everything that happened.
Q. And then did you take them to your car?
A. Yes.
Q. And I am going to show you what is State's Exhibit 1, and 2, and if you could just tell me what those are pictures of I'd appreciate it.
A. This is my car. And this is the picture of where Junie was in the passenger seat.
Q. All right. And just to be clear that night, did you ever see Junie or James Tucker --- Did you ever see him with a knife?
A. No.
Q. And, did you hear Breyon say anything that night?
A. No.
Q. Okay. All right.

MR. HOLT: Beg the Court's indulgence, just briefly, Your Honor.

(PAUSE.)

MR. HOLT: No further questions at this time, Your Honor. Thank you, Crystal. Please answer --

THE COURT: Cross examination.

MR. SWILLEY: Thank you, Your Honor.

CROSS EXAMINATION BY MR. SWILLEY

Q. Crystal, my name is Matt Swilley, and I represent Breyon Toney.

A. Yes.

Q. Let me go ahead and ask you. You say you went to Marion Avenue, correct?

A. Yes.

Q. What was the reason for which you did this?

A. I was passing through.

Q. Passing through. Okay. And what reason did you stay there?

A. Because I saw Marcus and I saw a lot of other people --- the other people I know from the area around the neighborhood.

Q. About how many other people were there?

A. I'd say five to ten.

Q. Five to ten. Okay. Now, can you name some of those other people for me?

A. Yeah. Phillip Franklin, Phillip Franklin, Marcus, I really don't the other boy's name, but see here today.

Q. Okay. And that is the only people you can name?

A. No, James Tucker. He was there, he came and Breyon

was there.

Q. And that's it?

A. That's it.

Q. All right. All right. Now, do you recall giving a written statement to Detective Anderson?

A. Yes.

Q. Do you recall writing down the statement?

A. Yes.

Q. Now, in that statement did you reference ever that you dropped off or planned to come to Marion Avenue?

A. Yes.

Q. Did you know?

A. No, I didn't.

Q. Okay. And why not?

A. I guess I didn't.

Q. Okay. Do you remember writing down that you were just sitting on Marion Street with Marcus?

A. Yes.

Q. All right. And that y'all were just talking?

A. Yes.

Q. All right. And do you remember stating that Marcus got a text message from an unknown number; do you remember that?

A. Yes.

Q. All right. And who was that unknown number?
A. Jimmy.
Q. And what did that text message say?
A. I think it was a text message about a verse, a lyric verse. I really don't what it said cuz I ain't looked at it.
Q. Okay. Do you remember representing a firearm, particularly a 44?
A. No.

MR. HOLT: Objection, Your Honor. She has already testified that she didn't know what it was.

THE COURT: Counsel, you may show her a written writing, if it will refresh her recollection, if that is what your question is counsel.

I am going to overrule the objection, but require you to allow the witness to refresh her memory if it will assist her. But, if she doesn't know, obviously, she doesn't know.

MR. SWILLEY: Thank you, Your Honor, I will move on.

THE COURT: Go ahead.

Q. So did Marcus and Junie ever speak on the phone, before Junie arrived at Marion Street?
A. No.
Q. Okay. Then why did you state that James told

Marcus about as he put it some dude that wanted to fight him.

A. Because James never came out there.

Q. Okay. All right. But, you stated that Marcus asked James if he was coming out, and he put a no, correct?

A. Correct.

Q. Can you explain that?

A. I mean that was over two years ago. I really can't remember everything that I wrote.

Q. Okay. Now, you told Mr. Holt now that he never heard Breyon Toney say anything; is that correct?

A. Correct.

Q. So, what why did you say in your statement you kept saying over and over again that I'm gonna kill this person?

A. I --

Q. -- I'm sorry?

(PAUSE.)

Q. Do you recall doing that?

A. No.

Q Can you read your statement what I just underlined in blue?

A. Uh-huh. The boy kept repeating over and over that he gonna kill this nigger.

Q. Did you write that?
A. Yes.
Q. Okay. So, Crystal let me ask you, why didn't you just tell --- Why did you write on here that he said that, that you told Mr. Holt that you didn't hear Breyon Toney say anything?
A. I mean, because I can't remember it. It was over two years ago. I can't remember everything I wrote, but it would probably refresh my memory if I did write it --- Or if I did wrote it.
Q. Well, I'm asking you now what actually happened? Did you hear him say anything or did you not hear him say anything?
A. Well, I don't remember him saying anything.
Q. Okay. But, you do admit that you wrote a statement that he said that?
A. Yes.
Q. Okay. So, and you have no explanation for that other than you don't remember making it?
A. No.
Q. Okay. Crystal, how long have you known Breyon Toney?
A. I just know him from around the neighborhood.
Q. How long have you known Breyon Toney?
A. Seven years, I mean, I met him --- I don't --

Q. -- Seven years from the time of this incidence so --

A. -- Oh, no. Before the incident.

Q. So nine years in all, is that correct?

A. Yes.

Q. All right. Crystal, how come in your statement you reference you just kept referring to the individual that fights Mr. Tucker as the boy?

A. I mean because I didn't know his name. I knew like Toney, I just knew his last name as Toney. I didn't actually knew his name, but I know when I see him.

Q. Okay. Now, you have known someone for nine years.

A. Uh-huh.

Q. At the time seven years, and you didn't know his whole name?

A. Yes. I mean, I know him from around the neighborhood, but I didn't actually have a conversation with him, like me close --- like he is my associate.

Q. Okay. Even though do you remember in your statement you said the boy that stabbed James Tucker, Breyon Toney?

A. Yeah.

Q. Can you explain this?

A. Because we did a lineup, and they printed it out, and I knew it was him.

Q. Okay. So, did it wind up having his full name on there?

A. Yes.

Q. Okay. So, I want to ask you. Why were you trying to make it look like you didn't know who it was that James Tucker was fighting?

A. I mean I knew him, who he was, but I didn't knew his name. I know him when I seen him.

Q. All right. Crystal. You acknowledged that the intersection at Marion Street and East Chaplin Avenue is a residential area; correct?

A. (No response.)

Q. People live there, it is not vacant, right?

A. Yes.

Q. It is off a main road, right?

A. Yes.

Q. All right. So it is not just some random neighborhood, correct?

A. Yes.

Q. Let me ask you, isn't it true that you were there because you thought you were going to be a spectator of a fight, correct?

A. No.

Q. No. Okay.
A. Uh-huh.
Q. So you said that you came and you saw a bunch of people standing around, and you didn't think there was going to be a fight; is that correct?
A. Yes.
Q. All right. Tell me about your knowledge of the prior difficulty between Mr. Tucker and Breyon Toney.
A. Well, I didn't know nothing about that.
Q. You didn't know anything about it?
A. No.
Q. You didn't know anything about them having an argument concerning Mr. Toney and his relationship with India Grimes?
A. No.
Q. You don't know anything about that?
A. No.
Q. You don't know anything about that now?
A. Yes.
Q. Crystal, you understand that you are under oath right now, right?
A. Yeah, I mean I know.
Q. Yeah. Do you understand that you can get in trouble for lying under oath? Are you aware of

that?
A. Yes.
Q. All right. So I am going to ask you again. Did you know anything at the time about Breyon Toney, James Tucker, and India Grimes?
A. No.
Q. Okay. You don't know. You didn't know then, and don't know now? Okay. You say you had no idea that Jimmy wanted to fight Breyon; correct?
A. Yes.
Q. All right. Let me ask you again. When you first met Detective Anderson at the hospital, right?
A. Uh-huh.
Q. Who were you with at the time?
A. Marcus.
Q. Marcus. All right. And you testified to Mr. Holt that you and you alone drove James Tucker to the hospital, correct?
A. Yes.
Q. All right. And what kind of car do you drive?
A. A 1998 Pontiac Grand Prix.
Q. Is that what you were driving at the time?
A. Yes.
Q. How many seats does that Grand Prix have?
A. Two.

Q. There are only two seats?
A. Well, three because there is a passenger in the backseat.
Q. There is a backseat in this car, right?
A. Yes.
Q. How come Marcus didn't ride with you to the hospital with James Tucker?
A. I don't know.
Q. You don't know. Was James and Marcus friends?
A. Yes.
Q. Y'all grew up in the same neighborhood, right?
A. Yes.
Q. All right. What neighborhood is this?
A. What?
Q. What neighborhood is this that y'all grew up in?
A. I mean, Hartsville.
Q. Okay. All right. You and you alone took James Tucker to the hospital even though your car had room for other people?
A. Yes.
Q. All right. Who did Marcus ride with to the hospital?
A. They got --- they found a ride with Phillip --- Phillip Franklin and the other boy --- I don't know his name.

Q. And, about that other boy, how come you only reference you and Marcus? You don't reference anybody else by name in your statement?
A. Yes.
Q. And why is that?
A. Because the statement is about what happened.
Q. Don't you think that a statement about what happened would want to contain everybody's name --
A. -- Yes, I told who all was there.
Q. What now?
A. Cuz I told who all was there when they asked me the question was all there. I told who all was there.
Q. But you didn't write it down, right?
A. Didn't write it down.
Q. And why not?
A. I just didn't.
Q. You just didn't. Let me ask you another question. How come when you first met Captain Anderson at the hospital you claimed to have no knowledge of anything that went on? Okay? Do you remember that?
A. Uh-huh.
Q. And why did you lie there?
A. Because I was scared.
Q. Okay. So you admit that you lied to law

enforcement to their face?

A. Yes.

Q. Okay. And to Marcus as well?

A. Yes.

Q. All right. And you say your reason for doing this is because you were scared. Is there any other reason?

A. No other reason.

Q. Did you think that you were going to get in trouble?

A. No.

Q. All right.

A. No. Just scared part.

Q. All right. What made you want to change your story and tell them what you told?

A. Because I couldn't live with myself in knowing that I know what happened.

Q. Okay. So, you just had this moral epiphany and decided to tell everything that you know, even though what you say today and what you said in your statement are different; correct?

A. Yes.

Q. Okay. How many times did you see James Tucker pick up a bottle and throw it at Breyon Toney?

A. Once.

Q. Just once. Okay. All right. Now you said that -- When this was going on did anybody else try to jump into this altercation?

A. No.

Q. Okay. Even though you said that Marcus tried to get the knife, but wasn't able to get it in your statement?

A. Yes.

Q. Okay. And so which is true?

A. That he did try to get the knife.

Q. That he did try to get the knife?

A. Yes.

Q. So why did you write it in there?

A. (No response.)

Q. Crystal let me ask you. Did you and Marcus, after you denied your involvement in this plan, did y'all go talk some and decide to make up this story and then go to law enforcement and tell that story?

A. No.

Q. Okay. Even though you lied first, you lied again, and now today we have gotten a third story that we have here?

A. I don't have a third story.

Q. All right. The first story is that nobody tried to get the knife, and that you never heard Breyon

Toney say anything, and that you never saw a knife, and --

A. -- I never did say I saw the knife. I saw a knife. I wish I didn't see a knife.

Q. Okay. You said you saw in your statement the boy swing at James. How did he swing at James?

A. Like he throwing a punch.

Q. Throwing a punch to the face?

A. Well they was about to fight down the road and he swung like down.

Q. He swung in a downward motion?

A. Yes.

Q. Okay. And that was the last time you saw Breyon make contact with James?

A. Yes.

Q. Okay. Now, like punch him down?

A. No, like down.

Q. Okay. Like swinging a hammer?

A. Yeah.

Q. Okay. All right. Did you say anything to James Tucker before, during, or after this fight pertaining to the altercation?

A. No.

Q. You never told James Tucker to go home and don't follow that up?

A. I told him that when we was at the park.
Q. Okay. So you did tell him something?
A. Yeah.
Q. All right. Why did you tell him that?
A. Because it was pointless.
Q. What was pointless?
A. Them fighting.
Q. Okay. Even though you were a spectator in this fight, correct?
A. Yes.
Q. Crystal, let me ask you, what does the term boosting it up mean?
A. I mean getting the fight rowdy.
Q. Say that again?
A. Getting rowdy, boosting it up.
Q. Okay. Was anybody boosting it up in this situation?
A. No.
Q. No. So you are telling me you've got five or ten people out there, a fight happened, and nobody is boosting it up?
A. I'm just standing there like looking.
Q. Okay. So, Crystal, you never mentioned by name the people that you knew at the scene, but you did go out of your way to mention a random text message

that Marcus got from Jimmy before he ever got there.

A. Yes, because he all the phone.

Q. So, what was so important about this text message that you felt like you had to reference it if it was just a rap lyric like you say?

A. I couldn't say, cuz he just got a text.

Q. All right. Crystal, who else was at the hospital, who else was present on Marion Avenue and East Chaplin Street?

A. Everybody, Phillip Franklin, Marcus, and I call the boy's name but ain't his real name, just his nickname.

Q. You call him what?

A. I call him Mouk, cuz that is his nick name. I don't really know his real name. I don't know him --- I ain't been knowing him for that long.

Q. Could you give us a phonetic spelling of that Mouk?

A. MO --- MO --- M-O-U-K. Mouk.

Q. Mouk.

A. Mouk, yeah. Now I don't know how he spell it.

Q. Thank you. You said they were at the hospital as well?

A. Yeah, they came up there after.

Q. After you and Marcus did --- or after you did?

A. After I arrived.
Q. Okay. And you don't know anybody who came separately, right?
A. No.
Q. Okay. So it is your testimony that nobody jumped in this fight, or jumped into this altercation to help James Tucker?
A. Yes.
Q. Is that what happened?
A. Yes.
Q. Okay. So you are saying that never happened?
A. I say nobody took the fight.
Q. Say that one more time?
A. I say yes.
Q. All right. Crystal your testimony as far as the bottle being thrown was that James Tucker was running away from Breyon Toney. Is that right?
A. Uh-huh.
Q. And in the process of running away from somebody with a knife, he stops. Is that what you are telling me?
A. Yes.
Q. So you are telling me that James Tucker is being chased with a knife, stopped, bent over, picked up a bottle out of a recycling bin, and threw a bottle

at Breyon Toney?
A. Yes.
Q. Okay. That is what you are telling me?
A. Yes.
Q. All right. Did he ever pick up anything else?
A. Nope.
Q. Okay. Never picked up another bottle to throw?
A. Well, he had two of them in his hand.
Q. And you said he only threw one down?
A. I didn't say just one. He throwed two bottle --- he throw one, he had two in his hand. You asked me if he picked up two of them, he picked up more than one.
Q. Okay. How many did he throw though?
A. I think two, because he already pick up two beer bottles.
Q. All right. Previously, I think while you were sitting up there, you told me he just threw one. Is that correct?
A. I didn't say one, he threw beer bottles, and that means more than one.
Q. And you understand that someone is taking down everything you say, right?
A. Yes.
Q. All right. Okay. Crystal let me ask you this. As

far as James Tucker, were you good friends with James Tucker?

A. Yes.

Q. Okay. How long had you known James for?

A. Forever, cuz he stayed right beside me and he was young. He was young like junior high age.

Q. He was your next door neighbor?

A. Yes.

Q. Okay. So y'all knew each other pretty well, didn't you?

A. Yes.

Q. And you were upset when he passed away weren't you?

A. Yes.

Q. You were angry about that weren't you?

A. Weren't angry.

Q. You weren't angry that your friend had died?

A. Well I mean like I --- like sadly upset I wasn't like furious. I wasn't.

Q. Okay.

MR. SWILLEY: Beg the Court's indulgence.

(PAUSE.)

MR. SWILLEY: Your Honor, I have nothing further.

THE COURT: All right. Is there redirect?

MR. HOLT: Briefly, Judge.

THE COURT: Okay.

REDIRECT EXAMINATION BY MR. HOLT

Q. Crystal, were you lying when you gave your statement?

A. I don't think I was. Just from memory.

Q. Okay. And are you lying about anything here today on that stand?

A. No.

Q. And your statement was two years and something ago. Do you have like that super photographic memory where you remember every spec of paint on the wall, and how everything happens in your whole entire life?

A. No.

Q. Do you remember what you ate for breakfast Thursday nine weeks ago?

A. No.

Q. Okay. Now, Crystal, when Junie jumped up in your car and was bleeding to death, was that stressful on you?

A. Yes.

Q. Okay. And do you remember when something happens to you every single little detail of what was going on around you?

MR. SWILLEY: Objection, Your Honor.

THE COURT: Sustained. Leading, counsel. Do not lead your witness, counsel.

MR. HOLT: Thank you, Your Honor, that's all.

THE COURT: All right then ma'am. Do you want to follow up on that point?

MR. SWILLEY: Yes, Your Honor. I do.

THE COURT: What is the new issue he brought up on redirect?

MR. SWILLEY: Ms. Robinson's ability to remember things.

THE COURT: You may. Go ahead.

RE-CROSS EXAMINATION BY MR. SWILLEY

Q. Crystal, Mr. Holt asked you if you have a photograph memory; is that correct?

A. Yes.

Q. Okay. So your memory would have been better at the time you wrote your statement or today?

A. When I wrote the statement.

Q. Crystal, how many times has somebody died in your car?

A. Once.

Q. Okay. And do you think that was pretty memorable?

A. Yes.

Q. Okay.

MR. SWILLEY: Nothing further.

THE COURT: All right. This is your witness, do you want to follow up on those issues?

MR. HOLT: No, Your Honor. Thank you.

THE COURT: Is there any objection to the release of the witness?

MR. HOLT: No, sir.

THE COURT: Is there an objection?

MR. SWILLEY: No objection.

THE COURT: All right. Hearing none, ma'am, you are not required to leave, but you are free to leave if you wish.

Please watch your step as you exit the witness box.

Counsel, let's step up and let's talk about scheduling for a moment, please.

(Whereupon, a bench conference was held in the presence of the jury, but out of their hearing range.)

THE COURT: All right. Ladies and gentlemen, we have been in here for about an hour and a half. So we are going to take about a ten minute break, and then come back and take at least direct on the next witness.

So, please don't discuss the case. I'll let you go back to the jury room and take a break.

We will be in recess now for about ten minutes.

(Whereupon, the jury exits the courtroom

at 12:02 p.m.)

THE COURT: All right. We will be in recess ten minutes.

(Whereupon, a recess was taken from 12:02 p.m. until 12:17 p.m.)

THE COURT: All right. Are we ready for the jury? Then please bring in the jury.

BAILIFF: All right, sir.

(Whereupon, the jury enters the courtroom at 12:17 p.m.)

THE COURT: All right. Welcome back, ladies and gentlemen. And state, call your next witness.

MR. HOLT: Thank you very much, Your Honor. At this time the state would like to call Marcus Brunson to the stand.

THE COURT: Please come forward and take the oath of a witness.

WHEREUPON, MARCUS BRUNSON

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MR. BRUNSON: I do.

THE COURT: Go ahead, counsel.

MR. HOLT: Thank you, Your Honor.

DIRECT EXAMINATION BY MR. HOLT

Q. Mr. Brunson, could you please give your name for the jury?

A. Marcus Brunson.
Q. And where are you from?
A. Hartsville, South Carolina.
Q. And how old are you?
A. Twenty-seven.
Q. And what do you do for a living?
A. Cut hair.
Q. Where do you currently reside?
A. North Carolina.
Q. All right. Now, I want to take you back to March 24, 2009. Where did you reside then?
A. [redacted] Hartsville.
THE COURT: I'm going to get you to move a little closer to that microphone, so our jury can hear you better. Thank you.
Q. I want to ask you specifically on that night in question, March 24, 2009, did you have an occasion to be on Marion Avenue and East Chaplin Circle?
A. Yes, sir.
Q. And can you walk the jury exactly through what you saw that night and what happened, beginning with Crystal Robinson's car pulling up.
A. I went outside to chill with her, to be with her. We were just sitting in the car, and I got a phone call, a text from James Tucker. And I didn't

understand the text, so I called him back and asked him what the text meant. He said it was just a rap. He raps music and he was sending it to me. And he asked me how it sound, and then he start talking about him and Breyon, about having problems wanting to fight. So I asked him where you at and he said the house in the bed. And I told him to stay in the bed and don't come out of the house. I say probably thirty to forty-five minutes later I felt somebody on the back of the car, and it was James out there. He got in the car and I said, what you doing out here?

MR. SWILLEY: Objection, Your Honor. Hearsay.

THE COURT: Do you want to respond to that?

MR. HOLT: The victim's state of mind at the time, Your Honor. From what I know from his opening about what his side ---

THE COURT: For the same reasons the Court previously admitted the evidence as to the state of mind of the declarant, the Court will permit it. You may ask your question again if you wish.

Q. What did he tell you the fight was about?

A. Something about a pack of --- he brought Breyon's baby a pack of Pampers or something about a girl --- it had something to do with a girl or something

like that.

Q. And --- All right. And from there, can you tell us what happened next?

A. Well they --- to be honest, coming up the Street man, and James was taking his clothes off, getting in a fighting stance. After that, he was just like why you brought a knife?

Q. Let me ask you about that. Did you hear Breyon yelling anything as he walked up Marion Avenue?

A. (No response.)

Q. Which side of Marion Avenue did he come walking up? Can you point to the diagram for the jury?

A. From toward A Street.

Q. And let me ask you this. Where did they originally --- Where was Breyon --- Where was Junie now, where was he squaring up to fight? Where was he located?

A. Right in the middle of that --- right at the top of the Street where trouble start at. Like by the stop sign.

Q. All right. Now, let me ask you this, where did Breyon ever meet him and they square up together, where did that happen?

A. Right where he was standing at.

Q. And after they squared up, what happened then?

A. I don't know. Junie was like you got a knife, put

the knife down.

Q. You heard --- who did you hear say that?

A. Junie.

Q. Okay.

A. So after that it was talking about Junie lying. Like he --- man put the knife down, I'll fight you. I'll fight you. So, by that time its backing up, and Jimmy backing up away from him picking up bottles and stuff, and throwing them at him.

Q. Where did you see him back up to?

A. Right back toward down the Street. Chaplin Circle like to this first house I guess, that's where he found the first bottle at. Threw the bottle and missed. And we just kept telling him to run. I guess he wasn't hearing us. And then the last bottle he threw, you know, he fell. He threw the bottle. He fell, hit the ground and bounced right back up and he left Breyon, came back up toward the Street where we was at, and like man he cut us for real.

Q. Where were y'all at? You said y'all were out there and he came running back up the Street, can you show me?

A. We still up at the top of the Street like.

Q. And you were watching it all happen right up here,

and y'all were right there?

A. Yeah.

Q. And when he came running back up here you were about to tell us what he said. What did he tell you then?

A. He just say that man crazy, he trying to cut me for real. I ain't messing with that man. And he looked down at his shirt and he was like he cut me for real. And I said, like lift up your shirt, and he lift up his shirt and we seen the blood.

Q. And what did y'all tell him then?

A. We was calling the ambulance. He told us to call the ambulance or the police and we was like, let's see how bad it is and he lifted up his shirt and it was bad. So I told him to get in the car and told her to take him to the hospital. Told Crystal to take him to the hospital.

Q. And who took him to the hospital?

A. Crystal Robinson.

Q. And who rode with her and Junie to the hospital?

A. No one.

Q. How did you get to the hospital?

A. I called a ride after she called me and told me that he was dead in her car.

Q. And once you got to the hospital, can you kind of

tell us what happened then?

A. Nothing really happened then, it's just --- like he was pronounced dead and the police came and started talking to the police and they talked to me. And that's pretty much it.

Q. When the police first approached you, would you --- do you think you were eager to give them information, or do you think you were reluctant to give the information?

A. I wasn't eager to give out information.

Q. And why is that?

A. Huh?

Q. And why was that so?

A. I really can't explain it right off. I don't know. I don't know. I guess I was still in shock with what happened. I really didn't want to talk to nobody.

Q. Okay. Now, let me ask you this. Did you have an occasion to look at a photographic lineup?

A. No, I don't think so. I don't remember a photo lineup.

Q. Okay. Was it --- did you ever get any rest in between being up with all night with this and then talking to the police?

A. No.

Q. So you just left this to go to the hospital?
A. Yeah, and from the hospital to the police station.
Q. All right. And how long ago was this?
A. About like two years ago.
Q. Now, let me ask you this. Did you ever see the knife, truthfully?
A. No. I never saw a knife.
Q. But did you hear --- did you hear Jimmy say about it?
A. I just heard Junie say why you got a knife?
Q. And, when Junie came running back up to you he had been stabbed?
A. Yes.
Q. Okay.

MR. HOLT: Beg the Court's indulgence, Your Honor. I'm sorry.

THE COURT: That's okay.

(PAUSE.)

MR. HOLT: All right. Thank you very much, Mr. Brunson. If you would answer any questions the defense may have.

THE COURT: Cross examination.

MR. SWILLEY: Thank you, Your Honor.

CROSS EXAMINATION BY MR. SWILLEY

Q. Mr. Brunson --

A. -- yes, sir. --
Q. --- what do you have in your hand right there?
A. A statement.
Q. A statement that you gave on March 24, 2009?
A. Yes.
Q. Okay. Why would you need that?
A. I don't need it. You didn't see me look at it did you?
Q. You opened it up, didn't you?
A. No.
Q. You didn't open it up and look at it?
A. No.
Q. Why are you holding it in your hand?
A. Because I plan on throwing it away after I get off the stand.
Q. How did it come into your possession to begin with?
A. It was just handed to me.
Q. All right. Now, Marcus, how long had you been out on East Marion Avenue before you heard from James Tucker?
A. Ah, I really can't answer that adequately.
Q. Okay. Now, Marcus, you testified that you are twenty-seven; correct?
A. (Affirmative response.)
Q. How old is James Tucker at the time of his death?

A. I'm not sure. About seventeen, I believe, sixteen or something.
Q. And how old was Crystal Robinson at the time?
A. I believe like nineteen, twenty, I think.
Q. Okay. So, and you are twenty-seven now, right?
A. (No response.)
Q. You are a grown man. What are you doing hanging around a bunch of teenagers?
A. I wasn't hanging around no teenagers. I was hanging around Crystal.
Q. All right. And she was nineteen at the time, right?
A. Yeah.
Q. Is nineteen a teenager?
A. Well, yeah.
Q. All right. Crystal was your girlfriend at the time, right?
A. No.
Q. You were in the car with her by yourself?
A. Yeah.
Q. What were y'all doing?
A. Mellowing, talking.
Q. What were you talking about?
A. (No response.)
Q. Marcus, what's so funny?

A. Huh? You want to know what me and her were talking about two years ago?
A. Yes.
Q. Yeah. That's what I'm asking.
A. Are you serious?
Q. No. Yes, I'm serious.
A. I can't answer that man.
Q. All right. Can you answer this, now after Junie had to go to the hospital, how come you didn't ride with Crystal in her car?
A. Cause he was in the front seat.
Q. Okay. Did her car have four seats?
A. Yeah. But, don't you think it was more important to get him to the hospital.
Q. Don't ask me a question, just answer it.
A. It was more important to get him to the hospital instead of trying to lift the seat up and get in the backseat of a two-door car.
Q. Okay. So you didn't ride with Crystal, because you didn't want to get in the back seat, correct?
A. Correct.
Q. All right. Who did you ride with?
A. Sissy Pate, Siserella Pate. (Phonetic)
Q. Siserella Pate?
A. Uh-huh.

Q. Okay. And how long did it take --- How long after Crystal did you leave to go to the hospital?
A. I don't know, about the same time as it takes to get from Chaplin Circle to the hospital. I don't know, about ten fifteen twenty minutes?
Q. All right. So you are saying that you left directly after Crystal left?
A. I left after she called.
Q. She left you from the hospital?
A. Yeah, on my cell phone.
Q. Okay. And that is when you decided to go? Right?
A. (Affirmative response.)
THE COURT: Please answer verbally, so we can make sure we get that on the record.
A. Uh-huh.
THE COURT: What was your answer?
A. Yes.
Q. Marcus, you told Mr. Holt that you told Junie not to come out there; is that right?
A. Yes, sir.
Q. All right. Now, did you write that at the time Mr. Anderson gave you this statement, piece of paper?
A. Say that again?
Q. Did you put that in your statement?
A. Yeah.

Q. All right. You told him to stay at home?
A. Uh-huh.
Q. All right. Where did you write that in your statement?
A. I don't know.
Q. Take your time.
(PAUSE.)
A. I can't write it in my statement.
Q. So you left out the fact that you told him to stay home?
A. Yeah.
Q. And do you know why you did that?
A. No.
Q. Okay. Now, you said that --- First let me ask, where did you grow up?
A. Hartsville.
Q. Hartsville. The same neighborhood as Crystal?
A. Yeah.
Q. Same area. Okay. How long did you live there?
A. All my life.
Q. Until you moved to North Carolina?
A. Uh-huh.
Q. Okay. Did you know Breyon Toney real well?
A. No, just actually me and him are a couple of years.
Q. About how many?

A. I can't be exact on that.
Q. All right. So at the time of this incident, you know who Breyon Toney was, right?
A. Yes, sir.
Q. All right. So how come Marcus --- and in your statement you didn't give mention to Breyon Toney's name?
A. I didn't?
Q. You did mention his name?
A. Yeah, it's in there somewhere.
Q. Take a look and see.
(PAUSE.)
A. I don't find it in the statement.
Q. So, for what purpose was his name left out?
A. Cuz they didn't tell me to say who did what. They just told me to say what happened.
Q. So, Marcus, you are telling me that it was your understanding that there was someone that died, and you didn't want to write --- that you didn't think you were supposed to write who did it?
A. I wasn't told to write who did it. They just told me to tell them what I saw. And that is what I did.
Q. Okay. And that is why you just said, you referred to Mr. Toney as some dude; is that why you did

that?

A. Um.

Q. Is that a yes or a no?

A. Yes.

Q. Okay. Were you just trying to make it seem like Breyon Toney was just some random guy; is that what you were trying to do?

A. No. I --- actually to be honest, actually when it first happened I really didn't know Breyon to be honest.

Q. You didn't --- Marcus, are you telling me you were on Marion Street and East Chaplin Circle, right?

A. Um.

Q. And you didn't know that James Tucker was fighting --

A. My statement says that dude came up the Street --

Q. -- I am not asking you what your statement says.

A. I did not know who Breyon was coming up the Street.

Q. Okay. So you didn't know Breyon was even there?

A. I said I did not know who he was walking up the Street. Up the Street. That is what is in my statement.

Q. I'm asking you know what you did know? Do you know who James Tucker was fighting with at the time?

A. No, not until they got up --- not until I got up

close until he actually arrived.

Q. Okay. At the time you would have written this, you knew who he was fighting with, right?

A. Yeah.

Q. Okay. Marcus, do you go by any nicknames?

A. Yeah. They call me Cruddy.

Q. They used to call you Cruddy?

A. Uh-huh.

Q. What is the origin of that monitor?

A. I don't know.

Q. You don't know?

A. Uh-huh.

Q. Just something people call you?

A. Yeah, just something people call me.

Q. All right. Marcus, before you said you were --- you said you were just sitting on Marion Avenue, you and Crystal were in the car just sitting there, right? Before you ever saw James Tucker? Why were y'all in just some random neighborhood, random Street? Do you live near there?

A. No. I live at F. Street. My home-girl stays across the Street. She got a fenced in yard and I can't park my car in the yard at the house we usually be at. Everybody usually parks across the Street in the church yard. It's just a big space.

Q. All right. So, your home-girl lives across the Street. Who is that?
A. That is Takita. (Phonetic)
Q. Takita who?
A. I don't know Takita's last name. She became my home-girl through my best friend Reid Allen. That is his baby mamma.
Q. Okay. How many people were at this scene when Mr. Tucker and Mr. Toney were having this altercation?
A. Just the four of us.
Q. Just the four of y'all? So, it wasn't --- and the four of y'all being who?
A. Me and the other three witnesses.
Q. Who are?
A. I don't know the other guy. I just know him by Mouk.
They call him Mouk. And Phillip Franklin and Crystal Robinson.
Q. Okay. Now, Marcus, in your statement you didn't even reference that Phillip Franklin or anyone else was there; correct?
A. Yes. Correct.
Q. All right. And any reason why you didn't do that?
A. There wasn't no specific reason why I did it.
Q. Okay. So, it is your testimony that before you

ever heard from James Tucker, you and Crystal were just hanging out on Marion Avenue, right?

A. Yeah.

Q. Okay. Marcus, have you always been a barber?

A. No, I ain't always been a barber?

Q. What did you do before that?

A. I had various jobs. Of course I had part of my life, I made mistakes, man, you know.

Q. Now, Marcus, was there ever a time in your life that you dealt narcotics?

A. Yep.

Q. And was this the time period?

A. No, I was a barber during that time.

Q. You were doing what?

A. I was a barber during that time.

Q. Okay. All right. But you do acknowledge that this is not your first time in this courtroom, correct?

A. Yeah.

Q. All right. And you got in some trouble for some drugs, and got convicted, correct?

A. Uh-huh.

Q. Okay. Marcus, let me ask you, what does the term boosting it up mean?

A. Huh?

Q. Boosting it up. What does that mean?

A. I don't know where it come from.
Q. I'm asking you, have you ever heard that term before?
A. Boosting it up?
Q. Like --
A. -- Oh, talking about boosting something up. Okay, yeah. Like that is to get me, I guess.
Q. Okay. So, to tell the truth you and Phil were boosting it up that night between Breyon and James, right?
A. No, sir. Cuz I didn't know what was going on until I talked to James on the phone.
Q. Okay. You said James sent you a text message first from a number you didn't recognize?
A. Uh-huh.
Q. What did that text message say?
A. It was --- it was a rap or something. It's in here.
(PAUSE.)
A. I wrote it down in here.
(PAUSE.)
A. I didn't write it in here, but ah, I can't remember what exactly --- I can't remember none of it really.
Q. You are telling me it was a rap lyric or something?

A. Yeah, it was a rap lyric.

Q. All right. Marcus, let me give you this to refresh your memory. Can you read out loud what I have outlined in the pink right there?

A. Crap song back, crap falls back, let me finish the fight.

MR. HOLT: Objection, Your Honor.

THE COURT: All right. Just a moment.

MR. HOLT: Number one, I don't know what in the world he is showing him. Number two, I doubt Mr. Brunson created that document, since the only document he created was his statement that he has in his hand.

THE COURT: I'm going to sustain on that basis, because you may refresh his memory with the writing that he has made previously, and if that is what that is, then you may continue. But, if it is not his document, then you must go to another issue. Sustained the objection.

Q. Marcus, going back to the text message that you received, do you know who that was from?

A. Yeah.

Q. You recognize that number. Who was that text message from?

A. James.

Q. Okay. James. And it was a rap lyric. Why would

he be texting a rap lyric?
A. Cuz we all used to like music.
Q. Okay. All right. And, Marcus, what is a four-four?
A. A four-four is a gun.
Q. A firearm?
A. Uh-huh.
Q. Okay. Now, Marcus let me go back to when --- when you got to the hospital after Crystal got there with James. The first time you spoke to Officer McCall, do you remember that; you and Crystal?
A. On the phone, but I guess.
Q. Okay. It was a female. Cheryl McCall, do you recall that?
A. I recall that.
Q. All right. Marcus, do you recall what you told Officer McCall at that point, pertaining to this incident?
A. No, sir.
Q. You don't recall telling her that James Tucker ran when he stumbled up, said he was stabbed, and then he wanted to go to the hospital?
A. I might have said that.
Q. So, you don't recall that? Is that what you are telling me?

A. I don't recall exactly what I said to her.
Q. All right. What I am asking you Marcus is why did you choose to lie at first about your knowledge of this incident, and then later on change your story?
A. Later on changed my story. I ain't never change a story. All this is the same night.
Q. Yeah, this is the same night while you were at the hospital. You are telling me that you never told anybody from the Hartsville Police Department that James Tucker just ran, stumbled up stabbed and wanted to go to the hospital, and Crystal took him to the hospital. You are telling me you never did that?
A. Oh, I did that.
Q. Okay. And then do you recall later on that you informed the police that you wanted to give a longer version of the story, and claimed to know more information, do you remember that too?
A. Uh-huh.
Q. And that is when you wrote this statement; right?
A. Uh-huh.
Q. So, what I am asking you is, what was the reason for which you could not tell the truth the first time?
A. Actually it was basically like I didn't want to do

the police on the phone to be honest with you.

Q. Okay. Marcus, after you initially spoke with law enforcement and told them a lie, did you have a chance to speak with Crystal after that?

A. No, cuz when I talked to the police --- well, they talked to both of us. We were sitting right beside each other.

Q. All right. And then later on Detective Anderson spoke with you, right? Later on after that?

A. I don't think I remember talking to Anderson.

Q. At all?

A. I don't think so.

Q. Do you remember going out to the incident scene with Detective Anderson?

A. Yeah, he was one of them that was out there. I just remember Specht and the lady, and the investigator. I don't remember everybody.

Q. Okay. Marcus, how well did you know James Tucker? Were you all --

A. I knew James ever since we was --- since I was about seven or eight. We use to play a little basketball.

Q. Would you say y'all were good friends?

A. Yeah.

Q. Okay. And you say you and Breyon Toney were not

good friends; is that correct?

A. No, I don't know Breyon.

Q. Okay. But were you acquainted with him; you knew who he was?

A. Yeah.

Q. Okay. Now, who was James Tucker with? What female was he with at the time? Who was his girlfriend at this time?

A. A girl named India Grimes.

Q. India Grimes. And to your knowledge, has there been any allegations that anybody else had been with India Grimes in a sexual manner?

A. I don't --- I don't know. I can't answer that.

Q. Okay. So you are telling me that you don't have any knowledge of James being upset that someone else may have been with her; correct?

A. (No response.)

Q. Okay. Marcus, do you remember telling Officer Levern Davis of the Hartsville P.D. that you saw Breyon sling at Junie?

A. Yeah, I remember.

Q. Did you tell her that it was in an upward or downward motion?

A. I don't remember.

Q. Okay. All right. Now when you were at the

hospital, you were in possession of James's jacket and cellular phone; correct?

A. Yeah.

Q. You never had --

A. -- That wasn't me.

Q. That wasn't you?

A. No.

Q. So they were wrong when they said that when they noted that that was you?

A. Yeah.

Q. Okay.

MR. SWILLEY: Beg the Court's indulgence.

(PAUSE.)

MR. SWILLEY: Nothing further, Your Honor.

THE COURT: Is there redirect?

MR. HOLT: Just briefly, Your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION BY MR. HOLT

Q. Marcus, when you gave your statement, were you telling the truth?

A. Yes, sir.

Q. And are you telling the truth to the jury now?

A. Yes, sir.

MR. HOLT: Okay. Thank you very much.

THE COURT: All right. Sir, you are free to step

down. You are not required to stay. You are free to leave if you wish.

MR. BRUNSON: Okay.

THE COURT: Did you want to follow?

MR. SWILLEY: I have one question for Mr. Brunson. Just one last question.

THE COURT: Tell me what the question is before we call Mr. Brunson back. What is it?

MR. SWILLEY: Why are the two statements different?

THE COURT: Well, I am going to leave that as it is. And you are free to go, sir. All right.

All right. Ladies and gentlemen, we are going to take our lunch break at this time.

Just one moment.

(PAUSE.)

THE COURT: Counsel, step up just a moment, if you would, please.

(Whereupon, a bench conference was held in the presence of the jury, but out of their hearing range.)

THE COURT: All right. Ladies and gentlemen, we are going to bring you back at 2:30 for lunch. Court often times will set matters weeks ahead, not knowing when they will fall. I've got a matter at 2:00 today in

a completely different case that needs to be resolved. So, we will give you a little extra time for lunch. Enjoy your lunch, and we will see you at 2:30.

All right. Lunch is on your own. Please don't discuss the case with whomever you have lunch with, but enjoy your lunch. Thank you.

BAILIFF: This way, please.

(Whereupon, the jury exits the courtroom at 12:50 p.m.)

THE COURT: All right. The jury is clear. Are there any issues that we need to take up before we break for lunch, Mr. Holt, from the state?

MR. HOLT: Your Honor, just briefly. I just went in now when I went in with my victim and inquired about that tape. I realize that my investigator has been able to redact everything Mr. Swilley wanted redacted.

THE COURT: Okay.

MR. HOLT: The only problem is he can't burn that redaction to a CD. He can play it only from his computer.

THE COURT: Well, if that resolves the issues, between --

MR. HOLT: -- I don't think it does.

THE COURT: How long is all of this --- What we are going to listen to, how long is what I need to hear?

How much time?

MR. HOLT: The entire thing now is probably fifty-four minutes.

THE COURT: Fifty-four?

MR. HOLT: Yes, sir. The eight phone calls. Somewhere around in there.

THE COURT: All right. I don't know how much we will be able to do of that then over the lunch hour. But for our staff, we have a matter that is set at 1:45 in a civil matter and then another one at 2:00. So, we will adjourn until 1:45, and then we will take this case up about 2:15 or so to see if we can't make some headway on that issue about the tapes.

All right. The Court is in recess.

(Whereupon, a lunch recess was taken from 12:52 p.m. until 2:25 p.m.)

THE COURT: All right. Our jurors are here. And are we ready? If the state is ready, we will bring them in.

MR. HOLT: We are, Your Honor.

THE COURT: Please bring the jury in.

BAILIFF: All right, sir.

(Whereupon, the jury enters the courtroom at 2:25 p.m.)

THE COURT: All right. Welcome back to the

courtroom, ladies and gentlemen. I trust you had a nice lunch. As you will recall we were in the state's case at the end of the morning hour, and we remain there.

Please call your next witness.

MR. HOLT: Thank you very much, Your Honor. At this time the state would like to call Phillip Franklin. If you would, just come forward?

THE COURT: Please come forward and take the oath of a witness.

WHEREUPON, PHILLIP ANTON FRANKLIN

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MR. FRANKLIN: Okay.

DIRECT EXAMINATION BY MR. HOLT

Q. Mr. Franklin, would you please give your whole name for the jury?

A. Phillip Anton Franklin.

Q. Where are you from?

A. Hartsville.

Q. And how old are you?

A. Twenty-one.

Q. Okay. And on the day in question, the early morning hours of March 24, 2009, where were you located?

A. In the morning?

Q. Well, what I mean to say is --

A. -- The night of the incident --
Q. The night of the incident.
A. I was on Marion Street.
Q. Okay. And Mr. Franklin --

MR. HOLT: Permission to approach, Your Honor?

THE COURT: You may.

Q. If you would look right here at this diagram, we have created. This is Marion Avenue, and this is East Chaplin Circle, going around like that. And, here is the abandoned church that is torn down now.

Now, on the night in question, this is Ms. Robinson's vehicle, and this is the path. Can you explain to the jury, using this diagram, where you were when you saw -- - when you saw Mr. Tucker first, when the altercation started, and when you saw Mr. Toney? If you could just explain everything about that night to the jury, please.

A. As I was standing I was getting like right in front of the church, me and Quintell, ourselves.
Q. Wait, just point where?
A. I was standing right there in front of the church, like that field right there and I was standing in front of the church, talking to Mr. Hankins.
Q. Okay.
A. And that is when I noticed Junie coming through the

pathway, like coming from --- this is the pathway, and he came up from around the bush and was talking to me, you know, letting me know everything that was going on.

THE COURT: Please move closer to that Mic., just so we can all hear you.

MR. HOLT: I can hear you.

THE COURT: To the microphone. Thank you.

Q. All right. Just keep going. You saw Mr. Junie walk up. And by Junie, you mean?

A. James Tucker.

Q. Okay. And what did he say to you?

A. He was letting me know he came --- he came outside for the simple fact that Breyon was testing him and calling him over, you know whatever.

Q. Okay.

A. He was just showing like what's the purpose of coming out here. He was like he was meeting up with Breyon, you know, they were just probably just going to probably just talk it out probably most likely. But I guess it didn't go --

Q. Well, tell us how it went? What did you see? Did you see Mr. Toney walk up?

A. Yeah, I saw him walk up from down the Street.

Q. Did you hear him? Was he saying anything, or was

he just walking up quietly?

A. He was just talking loud.

Q. And what specifically was he saying that you heard?

MR. SWILLEY: Objection.

THE COURT: On what basis?

MR. SWILLEY: Hearsay, relevance.

THE COURT: Hearsay. What say ye about that, counsel?

MR. HOLT: Party opponent, Your Honor.

THE COURT: Response.

MR. SWILLEY: Your Honor, I don't believe I'll -- I don't believe this has been --- has being offered against the party opponent, which is the defendant in this case. I think this is just Mr. Holt asking what was he saying as he arrives to the general area.

THE COURT: He's asked what the defendant was saying as he arrived to the area. Am I correct? Wasn't that your question?

MR. HOLT: That is exactly my question, Your Honor.

THE COURT: The objection is overruled. You may proceed.

A. Well, I couldn't really tell --- I don't exactly remember because it was too long ago. But I just know he was talking loud, and probably out of

anger, you know.

Q. Okay. And then tell us what happened next?

A. Well, they got face-to-face and they was talking you know going to resolve the conflict. They was talking face-to-face, you know. So, I guess they had done got into their head that they were going to probably most likely fight or something. So, I guess that is when Junie spot the knife. So he was like he got a knife. So, Cruddy was like man he got a knife. Get away from that you know what I'm saying? Well, like Junie just run. He got a knife. But --

Q. Okay. Now, you said that you saw Junie start running, which way did he start running?

A. He went running forward but they was moving backwards.

Q. Which way was he moving backwards? Which direction was he traveling?

A. Toward the pathway, like going back into that area. Just like the path right there they was like when he start going backwards.

Q. Okay.

A. Like backing away.

Q. And what happened after Junie saw the knife, and started backing away?

A. They was backing away still talking to each other, and that is when they got into the shadows, and whatever happened in the shadows.

Q. Now where exactly would you say were the shadows that you are talking about?

A. Okay. If this is the house right here that's got all the graffiti on it.

Q. Here is the old church --

A. -- Okay --

Q. -- And here is the path --

A. -- Okay. And there is the house okay and the path that leads you to Chaplin Circle. And there is the house like right there that got all the graffiti on it and they was in that area.

Q. Okay. And could you -- Where were you at exactly still?

A. See I was standing at the top. Like I was standing at the top of Marion.

Q. Okay. All right. Is it your testimony that you couldn't exactly see exactly what happened?

A. No, I couldn't see like actually.

Q. Let me ask you this. Was James Tucker stabbed before he walked into the shadows? Was he bleeding?

A. No, sir.

Q. When he came out with Breyon there was he bleeding then?

A. Yes, sir.

Q. Okay. Now, did you see ---did you see James Tucker throw any bottles?

A. I didn't see it, but you can hear it.

Q. Okay. Did you see Breyon Toney swing at James Tucker?

THE COURT: Don't lead your witness, counsel.

A. No, sir.

THE COURT: Just a moment, just so we can explain to the jury.

There is no objection, but, and generally the Court doesn't self-start. But it is not appropriate when you have your own witness on the stand to ask a question that contains the answer. That is a leading question. And you can't testify through your witness by leading your witness around.

Please don't ask leading questions. However, on cross examination you can lead the witness to see as to whether or not they stick to what they testified to in direct. Go ahead.

Q. All right. And, let me ask you this. After Junie was stabbed, what happened next?

A. He came out and was like he cut me you know so that

when they were like calling 911 Crystal was like she can take him to the hospital in time.

Q. And did you speak to Breyon Toney after that? After they left to go to the hospital, did you speak to him?

A. Yes, sir.

Q. And what did he tell you? What did you say to him --

A. -- He didn't tell me anything. I was just informing him that Junie was in critical condition. And let me know everything like he up in the hospital and in critical condition.

Q. Specifically at the scene, when they left, did you speak to Mr. Toney?

A. I like damn boy you cut on him; you know what I'm saying, he was just walking off.

Q. And what did he tell you as he was walking off?

MR. SWILLEY: Objection.

THE COURT: All right. Just a moment. On what basis?

MR. SWILLEY: Your Honor, I was cite --- I would cite relevance. It was after the incident occurred.

THE COURT: I'm going to overrule on relevance. Any other reasons?

MR. SWILLEY: No other reason.

THE COURT: Overruled. You may answer the question. You may ask your question.

Q. If you need to pull your statement out and look at it to refresh your memory that is perfectly okay. But do you remember --- and the question was, what Mr. Toney told you after you told him that Junie had been stabbed?

A. He was like came and gave a --

Q. -- And you feel free to use whatever language he used that night.

A. He didn't give a fuck.

Q. All right. Now, is that the last time you talked to him?

A. Over the phone, yes.

Q. Okay. And did you --- What happened when you got to the hospital?

A. That's when I talked to him --- that's when I talked to him over the phone when I was at the hospital letting him know that he was in critical condition.

Q. Okay. Did you talk to a --- at the scene right here on Marion Avenue, right here, did you talk to Breyon Toney before he walked away from here?

A. I got in a couple of words but he ignored me and just walked off.

Q. Okay. All right.

MR. HOLT: All right. Mr. Franklin, thank you very much. Please answer any questions Mr. Swilley might have.

THE COURT: And cross Examination.

CROSS EXAMINATION BY MR. SWILLEY

Q. Phillip, what time did you arrive on the scene of the intersection of Marion Avenue and East Chaplin Circle?

A. I don't remember.

Q. You don't remember. When you arrived who was present at the time?

A. Crystal and Cruddy was talking.

Q. Cruddy being --

A. Marcus Brunson.

Q. All right. Anybody else there?

A. Me and LaVincent was together.

Q. Okay. You and LaVincent were together. What were y'all --- what were y'all doing --

A. -- Hanging out being teenagers, you know.

Q. All right. So, I want to ask you, for what reason were you congregating at that specific spot?

A. We was young and we was just hanging out. It was just what people do.

Q. All right. But what is the significance of that

actual intersection?

A. Nothing.

Q. Okay. Just a random intersection?

A. Yeah, hang out anyway.

Q. Okay. Now, Phillip, did you have knowledge --- Did you have the understanding that there was a fight that was about to take place before you got to Marion Avenue and East Chaplin Circle?

A. No, sir. They was talking about talking it over, not fighting.

Q. Okay. All right. Let me ask you this Phillip. What --- For what reason did this dispute arise?

A. Over a lie. That's all I can tell you. Because none of this stuff that it happened over was true, so it was all over lies.

Q. Okay. So what I'm asking you is, to your knowledge, what did Mr. Tucker express was the reason for which he was angry with Mr. Toney? What lie did you perceive him to believe?

A. About the baby Pampers.

Q. Okay. Now, it is my understanding that you feel as though it was your understanding that Mr. Toney was mad at Mr. Tucker for buying his baby's mother diapers?

A. You say from my understanding, that's what --- yes,

sir.

Q. That was from your understanding. Now, let me ask you Phillip, who was Mr. Tucker's girlfriend at the time of this incident?

A. This dark skinned female named India.

Q. India, do you know her last name?

A. No, sir.

Q. Okay. Was it Grimes?

A. I think --- Yeah, that's it.

Q. Okay. Now, to your knowledge did Mr. Tucker --- had Mr. Tucker heard any allegations that Mr. Toney had had any relations with her?

A. No, sir.

Q. Okay. Phillip, let me ask you, were y'all smoking marijuana that night at that time?

A. No, sir.

Q. Do you smoke marijuana?

A. I did.

Q. You did. So you did marijuana at the time?

A. Yes, sir.

Q. Okay. All right. Phillip, did you ever --- Did you or Marcus ever attempt to take any kind of weapon from anybody?

A. It wouldn't have --- the thought had came across but by the actions you weren't able to.

Q. Okay. So he said --- You are telling me now that you didn't try to take a knife or a weapon away from anybody?

A. No, sir.

Q. All right. Phillip, do you remember giving a written statement to Investigator Anderson?

A. Yes, sir.

Q. About this? And how many days after the incident did you give the statement?

A. I don't remember.

Q. All right. I mean was it one or two --- can you give me an approximation?

A. Nope. No, sir.

Q. All right. It wasn't at the same time? It wasn't that same day was it?

A. (No response.)

Q. All right. Now, Phillip, do you remember what you said in that statement?

A. Yes, I do.

Q. All right. And do you remember that you said you tried to get the knife away from Breezo?

A. I remember saying I attempted to get the knife, but I knew I wasn't able to.

Q. Okay. So, you did or did not attempt to get the knife away from --

A. -- Attempt, by attempt I would look --- I seen --- once I spotted he had a knife I started to go for it, but then I knew I wasn't --- I wasn't going to put myself in that predicament. So, I just stopped.

Q. All right. So you are telling me that y'all got there and nobody there was expecting to see a fight?

A. No, sir.

Q. All right. How many people in all were present at this scene?

A. Including everybody?

Q. Total, yeah.

A. Probably six.

Q. Six. Okay. Except for Mr. Toney and Mr. Tucker?

A. Oh, then there was four.

Q. Okay. And that was yourself?

A. Quintell, Crystal and Marcus.

Q. Okay. Now, at any time was Mr. --- did you claim that Mr. Tucker ran away from Mr. Toney?

A. He wasn't running away, he was backing away like this. Backing away like this.

Q. So he was back-peddling?

A. Yeah.

Q. He was never running away?

A. If you call it back-peddling, back-peddling is the same as running.

Q. Okay. All right. And you say they got too far in the Street to see anything?

A. Yes, sir.

Q. All right. So you never really saw much of the altercation then did you? It was in the shadow?

A. Yes, sir.

Q. All right. So, you saw them get into a tussle, you saw them move down the road, and then you saw Junie walk back, correct?

A. Yes, sir.

Q. And that is all you saw. All right. Now let me ask you about --- let me ask you about prior to the altercation, did --- were you able to look at any text on Mr. Tucker's phone?

A. He showed me a text when he --- when he arrived.

Q. All right. And what did that text say?

A. A text, they were just talking trash. I don't remember what like, what it said.

Q. All right. Do you remember writing a statement that you said, one of the text said meet me on Marion Street?

A. I remember writing that in the statement.

Q. Okay. And do you have any reason why that text was

not found in Mr. Tucker's phone?

A. No, sir.

Q. Okay. All right. Do you recall that you stated prior in your statement that one said listen to your rapper and try to live your life. Do you remember saying that?

A. Huh?

Q. I'll give you this to refresh your memory.

MR. SWILLEY: Permission to approach?

THE COURT: Yes, sir. You may.

Q. Can you read the green highlighted part of your statement?

A. Saying what's going to happen. One said to rapper and try to live his life. The other text said, meet me on Marion.

Q. Okay. Can I have that back? And you are claiming that those are the texts that Mr. Toney had sent Mr. Tucker, correct?

A. (No response.)

Q. Is that what you were claiming?

A. Yes, sir.

Q. All right. And then you say you don't know of any reason why those texts were never found in his phone?

A. Yes, sir.

Q. All right. Do you have a reason why they weren't there or you don't?

A. I don't have none.

MR. HOLT: Objection, Your Honor. Mr. Swilley is talking about a phone that is not in evidence. Or anything could be in there and Mr. Franklin --- How would Phillip Franklin know what is in whose phone?

THE COURT: I'm going to overrule. The question has been asked and now answered. You can move on. Overruled.

Q. Phillip, you claimed that you were at the hospital when James Tucker was taken to the hospital.

A. Yes.

Q. All right. Did you speak to anybody from law enforcement at that time?

A. No, sir.

Q. Well, how come Crystal and Marcus did, but you did not?

A. Because I was outside.

Q. Why were you outside?

A. I was on the phone with Breyon.

Q. Okay. So you were speaking to Breyon. All right. Did you bring any proof with you that this call actually occurred?

A. No, sir.

Q. Okay. All right. Between the time that you were at the hospital, and that you gave a statement to law enforcement, who did you talk to about this incident?

A. What you mean tell law enforcement?

Q. No, I'm talking about anybody. Who did you speak with about this incident from the time that James Tucker died to the time you wrote a statement?

A. No one.

Q. You never talked to anybody out on the Street about this?

A. Only me and Quintell, cuz I stayed at his house that night.

Q. But you did speak with Quintell about it after Mr. Tucker passed away. Okay. You never talked to Marcus about it?

A. Huh-uh.

Q. Never talked to Crystal about it?

THE COURT: You need to answer verbally please.

A. Oh, no, sir.

THE COURT: Thank you.

Q. Phillip Franklin, is it your testimony here today that you were at Marion and East Chaplin Circle prior to any altercation that may or may not --- that may or may not was supposed to go down,

correct? And do you find this to be a pretty big coincidence that the altercation was supposed to happen there, and you were there before you claimed you knew about it?

A. Say that again?

Q. The fact that you happened to be at a certain location, and the fact that this was a place that was supposedly set to be a fight, do you find that to be a coincidence at all?

A. No, sir.

Q. Okay. Let me ask you, Phillip, can you define the term boosting it up for me?

A. Boosting it up?

Q. Yeah. What does that mean?

A. I guess you are jacking something up.

Q. And as in relation to a physical altercation, if someone was -- somebody else was boosting it up, what would that mean?

A. Boosting it up.

Q. Which would imply the action of what?

A. Telling --- like saying get 'um, go ahead fight, get 'um, go ahead fight, get 'um, get 'um, fight, fight. That's all.

Q. Would it be synonymous with instigating a fight?

A. (No response.)

Q. Now, Phillip, what kind of cellular phone did you have at the time?
A. I had so many phones on me I don't know.
Q. Okay. Did you have cellular phone at the time of this incident?
A. Yes, sir.
Q. All right. And, were you or were you not video recording this incident on your cellular phone?
A. I were not.
Q. You were not doing that?
A. My phone didn't even have a camera on it.
Q. Okay. Which phone was that?
A. I can't remember, but I know I ain't got no camera phone at the time.
Q. Okay. And do you know any reason why no one else heard Breyon say the things that you said he said?
A. What you mean? The only reason they didn't hear it because they didn't talk to him, I talked to him.
Q. Okay. You did say that you spoke with Breyon at the intersection of Marion Avenue and East Chaplin Circle after the altercation, correct?
A. I said something to him but he just kept walking.
Q. All right.
A. I was like you know you cut him man. As a matter of fact, my exact words was you cut that man.

Q. Okay. And that you claim that happened at the hospital? When you said --- when you said, you cut that man, and he said I don't give a "F" you said that was your phone conversation?

A. No. He didn't say nothing when I said you cut that man. He just walked off. When I told him he was in critical condition that's when the words were said.

Q. And why in your statement did you tell or did you write that after you told him that you cut the man at the scene, you said he didn't give a "F" and walked off? Do you remember saying that?

A. No, sir.

Q. Just to be sure, that is in fact --- is that in fact what you wrote here under the blue pen?

A. I say, he say he don't give a fuck.

MR. SWILLEY: Okay. Thank you. Beg the Court's indulgence.

(PAUSE.)

Q. Very briefly, Phillip, did you ever see with your own eyes a weapon in this situation?

A. No, sir.

Q. You never saw any weapon of any sort?

A. No, sir.

MR. SWILLEY: All right. Thank you. Nothing

further.

THE COURT: And is there redirect?

MR. HOLT: Just briefly, Your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION BY MR. HOLT

Q. Mr. Franklin, you said you called Breyon Toney from the hospital. Did you have his number in your phone, or did you know his number?

A. It was Junie's phone, and he called. I didn't call, he called Junie's phone.

Q. Okay. Were you friends enough to call Breyon and speak with him?

A. Yes, sir.

Q. So you weren't enemies with Breyon were you?

A. No, sir.

Q. And when you wrote this statement to the police, were you telling the truth?

A. Yes, sir.

Q. And two years later today, are you telling the truth now?

A. Yes, sir.

MR. HOLT: Thank you very much, Mr. Franklin.

THE COURT: All right. What new issue came up?

MR. SWILLEY: Your Honor, as far as the cellular call, I think there is some prior inconsistent

testimony.

THE COURT: All right. We will let you pursue that issue. Go ahead.

RE-CROSS EXAMINATION BY MR. SWILLEY

Q. Phillip, you just told -- you just told Mr. Holt that you never called Breyon, and you had Junie's phone, and you called Junie's phone and you were at the hospital?

A. Yes.

Q. You were in possession of Junie's cellular phone, right?

A. Yes.

Q. How did you get possession of that?

A. It was on the ground.

Q. Okay. And you picked it up?

A. Picked up his phone and his coat.

Q. All right.

A. And his CD player.

Q. All right. So, you said in your statement that I called Breezo and told him that James was in critical condition, and that is not true, right; because you never called him yourself?

A. I called him back. He called me, we talked, and I called him back. He can tell you himself.

Q. Now you are saying that you called him back after

you spoke on Jimmy's phone?

A. Yeah.

MR. SWILLEY: Okay. Nothing further.

THE COURT: All right. This is your witness. Do you want to follow-up on that issue?

MR. HOLT: No, Thank you, Judge.

THE COURT: Then sir, you are free to step down and you may leave if you wish, or you may stay.

Please call your next witness.

MS. PARKER: Your Honor, at this time the state calls Dr. Janice Ross.

THE COURT: Please come forward and take the oath of a witness.

WHEREUPON, JANICE E. ROSS, M.D.

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

DR. ROSS: I do.

VOIR DIRE EXAMINATION BY MS. PARKER

Q. Good afternoon, Dr. Ross, would you please state your full name for the Court's record.

A. Janice Edwards Ross.

Q. And, Dr. Ross, what do you do for a living?

A. I am a Forensic Pathologist, and a hospital pathologist in Newberry, South Carolina.

Q. And, how long have you been a Pathologist, a Forensic Pathologist?

A. Thirty-five-years.

Q. And tell the Court a little bit about your education, your educational background.

A. I got a Bachelor's Degree from the University of South Carolina, and my M.D. from Upstate Medical Center in Syracuse, New York. I did training in pathology there in Syracuse, and I am Board Certified in three areas of Pathology.

Pathology is the study of disease. We learn how to identify tumors, and cancers, and infections through use of the microscope, and looking at tissue, and using the blood work. We also learn how to do the autopsy. A Forensic Pathologist uses pathology knowledge for legal matters. The word forensic means legal. And we do autopsies in a certain way to identify patterns of injury, such as homicide, suicides, accidents, rape victims, etcetera.

Q. And how many autopsies would you say you have performed during your career?

A. Over five thousand.

Q. And how many times have you been qualified as an expert in the Circuit Courts of South Carolina?

A. Over sixty.

MS. PARKER: Your Honor, at this time I would move to have Dr. Ross qualified as an expert in the

field of Forensic Pathology.

THE COURT: All right. The witness is offered as an expert. Our previous witnesses have all been lay witnesses. Lay witnesses may testify about what they saw, or heard, or did. But an expert witness, because of training, or knowledge, or experience in a particular specialized field is permitted to come in and testify about what they saw, or heard, or did, but also about what opinion they derived. And that is the difference between a lay witness. When an expert is offered, we stop right there, give the other side an opportunity to question the witness on expertise issues only, or to consent to the offer of the witness.

What is your position Mr. Swilley?

MR. SWILLEY: I'll stipulate to Dr. Ross' expertise.

THE COURT: All right. Without objection. Ladies and gentlemen, I will go further and say to you that please understand this evidence is not given for the purpose of controlling your judgment in a particular area, but for assisting you in finding matters of fact that are before you that are within the purview of the expert's area of expertise. So, you give it the weight you deem it to be entitled to.

With that understanding, you may proceed.

MS. PARKER: Thank you, Your Honor.

DIRECT EXAMINATION BY MS. PARKER

Q. Dr. Ross, did you have an opportunity to perform an autopsy on the victim in this case, Mr. James Tucker?

A. Yes.

Q. And what date did you receive James Tucker's body?

A. March 24, 2009.

Q. And where was the autopsy performed?

A. In the morgue at Newberry County Memorial Hospital, in Newberry, South Carolina.

Q. Was it performed that same day you received the body?

A. Yes.

Q. And, before we get into the specifics of the autopsy and cause of death, I want you to tell the Court, did you collect any samples, bodily fluids as evidence for law enforcement?

A. Yes. During the autopsy procedure, we routinely take fluids from the body, including fluid from the eye, blood, urine, bile, and then we do some tissue on certain cases.

Q. And in this case, did you collect samples of those bodily fluids and tissue you just mentioned?

A. Yes.

Q. And, how were those samples packaged?
A. The fluids go in tubes, or bottles, depending on what they are. They are labeled, and I sign off on each label, and they are put in plastic bags that are sealed, heat sealed, and I sign and date it over the seal. Those things are packaged, and taken to SLED. We don't take homicides to SLED for testing. And when law enforcement is not available to take it right there from the autopsy room, then we store it in a refrigerator in our locked office.
Q. And is that what was done in this case?
A. Yes.
Q. Okay. Now, I want to talk --- Now that we have talked about those samples, I want to get back to talking about the deceased in this case. Would you tell the jury about your initial observations of the deceased when you first saw him?
A. Yes. The body came to us --- some of the clothing was underneath him, but basically he was nude. He had some blood dried on his chest. We then proceeded to take pictures, and clean off the wound, and identify the injuries.
Q. And what injuries were right off the bat identified?
A. There was a stab sound in the right lower chest.

And there were a few little wounds in the palmer aspect inside the left hand.

Q. Okay. And tell the Court exactly where was the stab sound?

A. In the chest, just to the right midline in the lower chest.

Q. And what was significant about the location of the stab wound? What exactly did it penetrate?

A. Well, the injury went --- the stabbing went slightly upward and toward the midline of the body and backward and hit the heart.

Q. Okay. And I want to touch on the angle of the stab wound. What was the direction of the stab wound?

A. Slightly upward, and towards --- from right to left. So, toward the middle of the body and backwards.

Q. Dr. Ross, were you able to determine a cause of death in this case?

A. Yes.

Q. And what was that?

A. How do I explain it? It is called cardiac tamponade. The stab wound went into the heart. The heart sits inside of a bag, it is kind of like a membrane, but it is the bag that holds fluids. So the blood went from inside the heart to outside

the heart surrounded the heart inside that bag and caused it --- what we call a tamponade, it is pressure on the heart so it could not work. That is a cardiac tamponade, due to the stab wound of the heart, due to the stab wound of the chest.

Q. Okay. And what were your findings concerning the left hand?

A. There were a few little nicks and incise wounds on the hand, at the base of the index finger and the thumb.

Q. In your opinion, would those appear to be defensive wounds?

A. Yes.

MS. PARKER: Thank you, Dr. Ross. Please answer any questions that Mr. Swilley may have at this time.

THE COURT: Cross Examination.

MR. SWILLEY: Thank you, Your Honor.

CROSS EXAMINATION BY MR. SWILLEY

Q. Ms. Ross, as to the wound to the deceased, is it possible to tell what angle the object was coming in at?

A. No. With the stab wound, usually a knife is straight, so you would think it would be coming in from the lower right of the body.

Q. Okay. So, it would have to come from below, a

motion where a hand would be lifted up?

A. That is a possibility. It depends on how the victim was. If he were bent over then it could be a different angle.

Q. Okay. You said there were a few abrasions inside of the left hand of the decedent, correct?

A. On middle incisor, an abrasion.

Q. What do you mean by incise wound?

A. A incised wound is a wound made by a sharp instrument as opposed to something like a hammer that might split the skin. That is called a laceration.

Q. Okay. What type of objects -- what type of common objects could make incisor wounds?

A. Anything sharp, a piece of glass, a knife. Anything sharp.

Q. Now, you said in your professional opinion to Ms. Parker, you said these were defensive wounds. What would suggest that?

A. Just the position of where they are in the body. Usually we talk about defense wounds being on the hands or the arms.

Q. Okay. Could these --- and you said these wounds could be made by glass; is that correct? Do you recall a piece of glass here make those wounds --

A. Something sharp, yes.
Q. Okay. So that is feasible. And you said this was on the left hand of the decedent; correct?
A. Correct.
Q. And you also testified to Ms. Parker that the object, which went into the torso came in from right to left?
A. Correct.
Q. Okay. Came in from right to left, down to up; correct?
A. Correct.
Q. Dr. Ross, you said --- how long did this wound measure in length?
A. I don't always measure the length of the wounds, because especially in a young person the tissue is elastic so that you can push a two inch knife into somebody like that and hit the heart as well as a six inch knife.
Q. Okay. In your report you noted that the wound in the heart measured .7 inches in length, and obliquely oriented. Can you explain that in layman terms?
A. Yes. The wound is --- the length is in inches. Oblique means at an angle. You have up and down which is vertical. You have side to side which is

horizontal. And you have oblique. And that is just the relationship of the back wall of the heart.

Q. I understand. You said in part of your report to the stab wound you did note that one edge is difficult to identify. Could you expound on this statement?

A. Yes. Usually knifes have a sharp edge and a blunt edge, and if you can measure the blunt edge of the wound you can correlate that with a knife. Sometimes it is very difficult, because the knifes may taper, and at the end both edges are sharp. In this case I couldn't decide. I couldn't tell which was which.

Q. Okay.

A. It would just refer to how the knife went in.

Q. I understand. In terms of inches, how deep was this wound from the top layer of the skin to the inside of the decedent's body? Can you give me a definite length?

A. Do you mean just to get into the chest wall?

Q. Just the total length of the entering of the object. How deep did whatever object go into the decedent?

A. I would say at least four inches, but you know it

could have been a short length pushed in harder. As I say, in a young person like this their tissue is elastic, and their chest cavity is elastic. And you can push a short knife in pretty deep.

Q. Okay.

MR. SWILLEY: Beg the Court's indulgence.

THE COURT: Yes, sir.

(PAUSE.)

MR. SWILLEY: Nothing further, Your Honor.

THE COURT: Is there redirect?

MS. PARKER: None from the state.

THE COURT: Ma'am, you are free to leave, if you wish, Dr. Ross. Thank you.

DR. ROSS: Thank you.

THE COURT: Please call your next witness.

MR. HOLT: Your Honor, at this time the state would like to call LaVincent Hankins to the stand.

THE COURT: Please come forward and take the oath of a witness.

We need to swear the witness. I'll be glad to do that. Or will you do that Mr. Suggs?

CLERK OF COURT: Yes, sir.

WHEREUPON, LAVINCENT Q. HANKINS

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MR. HANKINS: I do.

THE COURT: Bring that chair up just a little bit closer, if you will. And start by giving us your full name, please.

MR. HANKINS: LaVincent Hankins.

THE COURT: Thank you.

DIRECT EXAMINATION BY MR. HOLT

Q. LaVincent, what is your middle name?

A. Quintell.

Q. And do you often times --

MR. HOLT: Permission to approach, Your Honor?

THE COURT: Yes, sir.

Q. And do you have a nickname that people would know you as?

A. Mouk.

Q. Okay. And how old are you?

A. Eighteen.

Q. And where are you from? Where did you grow up?

A. Darlington.

Q. And where did you move subsequently?

A. Hartsville.

Q. Okay. About how long ago did you move to Hartsville?

A. About four years ago.

Q. Was it tough making that move?

A. Yes. I had a lot of problems.

THE COURT: Hang on. We've got to get a little bit louder. You can bring your chair forward, if it would help. All right. Go ahead.

Q. Did I ask you how old you are now?

A. Yes.

Q. And what did you say?

A. Eighteen.

Q. Okay. And what do you do for a living?

A. I am currently doing --- at the Nuclear Plant doing landscaping.

Q. All right. The day in question, March 24, 2009, here in the County of Darlington it was really late at night on the 23rd; do you see what I'm saying?

A. Hum.

Q. Early in the morning of the 24th. Okay? Where were you at?

A. On Marion Avenue.

Q. And where on Marion meets what?

A. Chaplin Circle.

MR. HOLT: Permission to approach, Judge?

THE COURT: Yes, sir.

Q. And I am going to show you what is a diagram. Here is Marion Avenue, okay, that is a road, all right. And here is Chaplin Circle, and that is the road that goes around here. All right. Here is your

group of houses. Here is an abandoned church that has been torn down since then, and here is a path that goes through that church, okay? Here is your street light right there. Now, I want you to use this diagram, all right, and tell the jury what you witnessed that night? Were you there when --- from the point where James Tucker walked up?

A. Yes.

Q. Start with what he said and go on forward.

A. Um, he was talking about the text messages saying there was supposed to be a fight. And, um, Breyon came down Marion saying let's get it mother fucker --- excuse my language. And you are going to die or whatever. And when he got up here it literally looked like a fight. You couldn't see the knife or nothing like that. And then as it went on, as we saw the knife, Junie said they had a knife that nobody can see or whatever. So we told Junie to run. So I'm guessing that his pride would not let him run away or whatever.

MR. SWILLEY: Objection, Your Honor.

THE COURT: I'm going to sustain that. I am going to ask the jury to disregard that. That is an assumption. But go ahead, sir, and tell us what you saw.

A. So, we was about right up in here. Like where the light is. And that is when we were telling Junie to run. So he was backing up and not running. And he saw a beer bottle or whatever on the ground and he threw it and Breyon dodged that and came over with the knife. And that's when it was like man on the ground walking that way whatever and when Junie came back up he was like I think I can't breathe, like I can't breathe. So he ran to the car and got in the car and Crystal took him to the hospital.

Q. Now, how many times have you seen Breyon since that night?

A. Twice.

Q. Can you explain the first time you've seen Breyon since then to the jury?

A. At the corner of Jasper with Phillip playing basketball with his girlfriend.

Q. About how long ago was this?

A. Say about a month.

Q. And did he say anything to you?

A. He asked me what I was going to do about that court shit.

Q. And what did you respond to him?

A. I said I wasn't going.

Q. But that wasn't the last time you saw him was it?

A. No.

Q. How long ago was the last time you saw him?

A. About two weeks ago.

MR. SWILLEY: Objection, Your Honor. I renew my previous objections.

THE COURT: Overruled.

MR. SWILLEY: That it is not a question.

THE COURT: Very good. You may proceed.

Q. About two weeks ago start at the moment you saw him, and then go through. Tell us what you were doing, what happened, and all of that.

A. Well, I was sitting in the car and I saw him walking in the side of the park. They had recently fenced it in. So that is when I start walking to the car, and my girlfriend was coming to the car also so we could leave. And at the time I was looking back to make sure the kids were straight, because we were leaving the kids at the park. And, that's when like when I kind of turned around and that's when Breyon came up and hit me in the car --- pulled me out of the car --- and that's so we can fight --

Q. -- Hold on a second. Hold on a second. Who's children were you looking after?

A. Joanell. (Phonetic)

Q. And who is Joanell?
A. My girlfriend.
Q. Okay. Now, was she at the park with you?
A. Yes.
Q. Okay. Why were y'all leaving again? I don't know if the jury was sure it was --
A. -- Because Breyon was walking into the park.
Q. Okay. So you saw Breyon coming, and that made you want to leave?
A. Yes.
Q. Okay. Now, you said Breyon walked up to you when the door was open.
A. Hum.
Q. Did he say anything to you?
A. Right before he said, let's get it mother fucker.
Q. And when he said let's get it mother -- what did he do next?
A. Swing and hit me.
Q. Where did he hit you?
A. In the face.
Q. How many times did he hit you after that?
A. About six times.
Q. And what did he do then?
A. After he was pulled away by who I could not see, because everything was happening so fast, he said I

read your statement and I'm going to kill you bitch.

Q. All right. Now, look into the microphone and tell the jury what he told you clearer than that. Like as clear as you can, what he told you. Just say it one more time for me.

A. He said I read your statement and I'm gonna kill you bitch.

MR. HOLT: Thank you very much, Mr. Hankins. Beg the Court's indulgence.

(PAUSE.)

MR. HOLT: No further questions, Your Honor. Thank you.

THE COURT: Cross examination.

CROSS EXAMINATION BY MR. SWILLEY

Q. You weren't at the altercation at Marion Avenue and East Chaplin Circle, were you, that night?

A. Yes.

Q. You were there. Then answer me, or answer the question as to why nobody else mentioned you being there except for Mr. Franklin?

A. I don't have no idea.

Q. All right. Now, Mr. Hankins, you claimed you witnessed the whole altercation, correct?

A. Yes.

Q. And the only thing you could tell law enforcement was a paragraph summary of this, correct?
A. I do not understand what you are saying.
Q. All you can tell law enforcement was one little paragraph about the incident seven days later; correct?
A. I explained it the best way I could.
Q. Okay. Now, explained that Mr. Toney showed up with a knife swinging it wildly; correct?
A. No.
Q. All right. What is it you claimed happened first?
A. It looked like a fight. The knife was took. Junie had told her he had a knife, and we told him to run. And after the bottle was thrown he was cut.
Q. You told Junie to run away?
A. Yes, we all did.
Q. You weren't there boosting it up were you?
A. No.
Q. Okay. Do you know what that means?
A. Yes.
Q. All right. What was the purpose for what you were at this location originally?
A. Really I was just hanging out with Phillip Franklin. I really didn't have no friends in Hartsville except for Phillip Franklin. So I

called him. It was real late. I wrong for being out there probably. But I called Phillip and Phillip was there, so I went to just hang out with Phillip, and that was all.

Q. Okay. How did you meet Phillip Franklin?

A. Actually I met Phillip Franklin by --- cuz when I first came to Hartsville I was jumped by a couple of guys or like I was beat up by a couple of guys and like --- and Phillip was one of the ones that kept 'um off me, so that's just why I felt comfortable with him in Hartsville.

Q. Okay. So you would say Phillip was probably your best friend in Hartsville at the time, wasn't he?

A. That I know of.

Q. No. He was your best friend. Was he your best friend in Hartsville?

A. Yes.

Q. Okay. Now, you say you claim you showed up with Phillip. How come you and Phillip --- How come you and Phillip decided to go to this location at this given time?

A. It's just where it was at the time.

Q. All right.

A. And I walked to Phillip. Phillip was already there.

Q. All right. So Phillip was the one who told you to come there?
A. No, I volunteered myself.
Q. All right. But Phillip was the one who told you he was there; correct?
A. Told me who was there?
Q. Phillip was the one that told you Phillip was there, right?
A. Yeah, he told me he was there and I came there.
Q. All right. And why did Phillip tell you he was there?
A. Because that's where he was at. I called him on the phone and asked him where he was, I was hoping he was probably at his house on A Street where I go at most of the time, but he say he was on Marion Street and that's why I went.
Q. Why was Phillip --- What was Phillip's purpose for being on Marion Avenue?
MR. HOLT: Objection, Your Honor.
THE COURT: Sustained, no foundation, counsel.
Q. Mr. Hankins, isn't it true that you knew good and well that Junie Tucker wanted to fight Breyon Toney at this point, and that is the reason for which you came?
A. I was already there before Junie arrived.

Q. But you knew --- Isn't it true that you knew that he was going to be there, he was trying to get Breyon Toney there to fight, and that is the reason why you went there?

A. No.

Q. Okay. And you understand that you are under oath right now, is that correct?

A. Yes, sir.

Q. And you understand that you can get into a lot of trouble for sitting there telling a lie?

A. I'm not lying, sir.

Q. Do you understand that you can get into a lot of trouble for doing that though?

A. Yes.

Q. Okay. Now, you said that when Breyon showed up to this spot, what was Breyon --- what was he saying?

A. He was saying let's get it on mother fucker and when he got closer he said that you gonna die whatever.

Q. He said you are going to die whatever? Is that what he said to him?

A. No, he said he was going to die. I'm sorry for not being clear.

Q. All right. How come you didn't say in your statement that he said let's get it MF'er, how come

you didn't say that in your statement?

A. Because I just thought about it. I have in my statement that he said that he was going to die over and over.

Q. Okay. Yeah. And how come nobody else heard him say that?

A. I don't know. He probably had just put it in there.

Q. All right. How come nobody else testified about that today?

A. I don't know.

Q. All right. LaVincent, did you see --- did you ever see --- you say you saw Mr. Toney swing at Mr. Tucker; is that correct?

A. Yes.

Q. How did he swing at Mr. Toney?

A. Over the top.

Q. Okay. So you saw over the top?

A. Yes. Like this.

Q. Up, down, is that what you are telling me?

A. (No response.)

Q. Okay. All right. Now, Mr. Hankins, did you go to the hospital that night where Mr. Tucker was?

A. Yes.

Q. All right. And did you accompany Mr. Franklin as

well?

A. Yes.

Q. All right. And did you volunteer any kind of information that you had to any authority that night?

A. No, sir.

Q. And why not?

A. Because I didn't think about it. I was nervous, man. I didn't know what to do. I was a teenager at the time.

Q. And why did you wait seven days to speak with the authorities about what happened?

A. Because I was afraid if I was in a situation that I was in my life may be in danger.

Q. Okay. Now, is it a coincidence that you and Phillip happened to give your statement to law enforcement on exactly the exact same day?

A. Yes. Because, after Phillip went to law enforcement, he called me right before I was going to school, and told me that I needed to go there.

Q. Okay. So, you and Phillip had plenty of time to talk about all of this between the time Mr. Tucker died and the time which you gave a statement; is that correct?

A. Yes.

Q. Okay. Y'all talked about this a lot didn't you?
A. No, sir.
Q. All right. But you did talk about it with him; correct?
A. Yes. Everybody did.
Q. All right. Who is everybody?
A. Me, Phillip and Michelle --
Q. People that were present at this incident, or people that were not people.
A. Just people. It was a small little fight and everybody was talking about that too.
Q. All right. Now, let me ask you. How many people total were present at this location on Marion Avenue and East Chaplin Circle that night, total?
A. You mean witness or everybody?
Q. I'm talking every human being that was around the area. How many were there?
A. Everyone I seen was me, the three other people I said today, and Junie and Breyon.
Q. Okay. So that is six in all; correct?
A. Yes.
Q. Okay. Let me go back a couple of years later. You claimed you saw Mr. Toney at a store? No, you said you saw him playing basketball somewhere?
A. Say that again?

Q. After this incident, when was the next time you saw Mr. Toney?
A. On the corner of Jasper Avenue.
Q. On the corner of Jasper Avenue? All right. And what was he doing?
A. He was chasing or pulling up. I think he had family that stayed in the apartments on corner.
Q. Okay. And you claimed that at that time that Mr. Toney said what to you?
A. What am I gonna do with that court shit?
Q. Okay. And you claimed that you were what?
A. Standing on the corner, I just got finished playing basketball.
Q. What did you reply to what you allegedly said to what Mr. Toney said?
A. I said nothing, I wasn't going.
Q. All right. And at this time did you feel that somebody in law enforcement might want to hear about this?
A. I reported it, sir.
Q. Okay. You claim you reported it to them?
A. Yes.
Q. All right. And who did you report this to?
A. Mike Anderson.
Q. All right. Now you said again that Mr. Toney

claimed --- You claim that Mr. Toney attacked you at the park two weeks after that?

A. I'm sure of it.

Q. All right. You are sure of it. But you told me that you couldn't see who it was that pulled you out of the car?

A. No, I didn't. I say he was walking on the side of the fence where they fenced it in and he came in and Joanell [sic] was coming to the car, and I was walking to the car as soon as I saw him, and she was getting ready to crank up so we could leave and I was making sure the kids were all right. And my door was open and that's when I kind of turned around and I saw him right there and he said let's get it. And that's when he punched me and pulled a knife and probably hit me a few times and I pulled away from him.

Q. You said that he said that let's get it MF? That is what you said?

A. Yes.

Q. All right. Which is what you claimed he did the exact same thing you said on the night on Marion Avenue and East Chaplin Circle?

A. I just said he told me and I don't know if he was trying to make a statement or what. That was just

the way he was saying it.

Q. All right. So, you claim that he said the exact same thing on two separate occasions two years apart?

A. As far as I know.

Q. Well either he did or he didn't. Did it happen or are you telling me a lie?

A. As far as I know.

Q. Okay. And when you were at the park that day you claimed Mr. Toney assaulted you, how many other adults were around the area?

A. What do you mean around the area? It was like close to me or in the park where I at?

Q. In the park, how many other grownups were around?

A. Me, my girlfriend, Michelle King, and some other females that was sitting at the park up under the little tent little thing. I don't know their names though.

Q. So there were a bunch of girls around when this happened?

A. It wasn't close to me. It was up under the little thing, man that prevents rain and stuff from whatever.

Q. You claim he just walked up to you unprovoked and just started beating you up?

A. Yes.
Q. Okay. And, did anybody call law enforcement from the park at that time?
A. I don't know. My girlfriend drove me straight to law enforcement.
Q. Drove you where now?
A. Law enforcement, to the Police Department.
Q. Okay. So Joanell [sic] had took you in a car directly to the Police Department?
A. Yes.
Q. She didn't take you to the hospital?
A. No.
Q. Okay. All right.

MR. SWILLEY: Beg the Court's indulgence.

THE COURT: Yes, sir.

(PAUSE.)

MR. SWILLEY: Nothing further.

THE COURT: Is there redirect?

MR. HOLT: Just briefly, Your Honor.

REDIRECT EXAMINATION BY MR. HOLT

Q. The second time --- when she took you to see law enforcement, after he hit you in the face a bunch, who did you go see?
A. I was going to look for Mike Anderson, but I'm not sure who I was talking to.

Q. Okay. And, did you ever actually see a knife?

A. Not clearly, but I was told that he had one.

Q. And who told you that again?

A. Junie.

MR. HOLT: No further questions. Thank you, Mr. Hankins.

THE COURT: All right, sir. You may step down and you are free to leave, but you don't have to leave.

MR. HANKINS: All right.

THE COURT: All right. Counsel please step up and let's talking about scheduling.

(Whereupon, a bench conference was held in the presence of the jury, but out of their hearing range.)

THE COURT: All right. Ladies and gentlemen, we are going to take direct on one more witness, and then we will take our afternoon break.

Please call your next witness.

MS. PARKER: Your Honor, at this time the state calls Laura South.

THE COURT: Please come forward and take the oath of a witness.

WHEREUPON, LAURA SOUTH

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MS. SOUTH: I do.

DIRECT EXAMINATION BY MS. PARKER

Q. Good afternoon, would you please state your full name for the Court's record?

A. Laura Ann South.

Q. And Ms. South, where are you employed?

A. With the Hartsville Police Department.

Q. And what is your position there?

A. I am the Evidence Custodian.

Q. And explain to the Court, what are the duties generally of the Evidence custodian?

A. Basically, I log in and store evidence. Transport it to and from SLED for purposes of getting it analyzed, and things like that.

Q. Okay. And how long have you been an Evidence Custodian?

A. About two years.

Q. Now, did you have an opportunity to pick up evidence in this case from Newberry Pathology?

A. Yes, ma'am. On March 11, 2010.

Q. Okay. And where did you go to pick -- tell me what it is that you picked up?

A. I picked up the fluids that were in the tubes, sealed in the bag which was blood, bile, urine, and tissue, brain and liver tissue.

Q. Okay. And where was this evidence located?

A. At Newberry Pathology.
Q. And when you received it was it sealed?
A. Yes, ma'am.
Q. And what did you do with it next?
A. I put it in a cooler, and transported it directly to SLED in Columbia.
Q. And when did you transport it to SLED?
A. The same day. I went straight there.
Q. Okay. So, when was the evidence submitted to SLED?
A. It was submitted on March 11, 2010 at 12:05.
Q. And who received that evidence at SLED?
A. Amy Stevens.

MS. PARKER: Okay. That is all the questions I have for you Ms. South. Please answer anything Mr. Swilley may have.

THE COURT: Mr. Swilley, let's go ahead and take cross examination as well before we take our break. Any cross?

MR. SWILLEY: There is none, Your Honor.

THE COURT: Very good. Then ma'am, you are free to step down and free to leave if you wish.

MS. SOUTH: Thank you.

THE COURT: All right. Ladies and gentlemen, we will take our afternoon break at this time. If you wish to go outside, we will make that opportunity available

to you. We will be in recess probably fifteen to twenty minutes. And enjoy your break. And we will remain where we are while you depart the courtroom.

BAILIFF: Come this way, please.

(Whereupon, the jury exits the courtroom at 3:27 p.m.)

THE COURT: All right. Court is in recess now subject to the return of the jury.

(Whereupon, a recess was taken from 3:28 p.m. until 3:45 p.m.)

THE COURT: All right. I am told the jury is back. And are we ready for the jury? Is the state ready?

MR. HOLT: Yes, sir. Your Honor.

THE COURT: Please bring in the jury.

BAILIFF: All right, sir.

(Whereupon, the jury enters the courtroom at 3:47 p.m.)

THE COURT: All right. Ladies and gentlemen, welcome back. We are still in the state's case. Please call your next witness.

MS. PARKER: Thank you, Your Honor. At this time the state calls Brandon Landrum.

THE COURT: Please come forward and take the oath of a witness.

WHEREUPON, BRANDON J. LANDRUM

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MR. LANDRUM: I do.

VOIR DIRE EXAMINATION BY MS. PARKER

Q. Please state your full name for the Court's record.

A. Brandon Jermell Landrum.

Q. Mr. Landrum, where are you employed?

A. South Carolina Law Enforcement Division, also known as SLED.

Q. And where is that located?

A. Columbia, South Carolina.

Q. And, what is your position there currently?

A. I am currently on the Executive Protection Detail. Prior to that, I was a Forensic Toxicologist in the Toxicology Department at the Lab.

Q. Okay. And you said prior to that you were doing toxicology in the lab. How long did you work in that capacity as a toxicologist?

A. I worked in the Toxicology Lab as a Forensic Toxicologist up till November 2, of this past year. So, going on a little more than six years.

Q. And tell us a little bit about your educational background?

A. I have a bachelor's degree in biology from Winthrop University with a minor in Chemistry. I then went

to Carolina College of Health Sciences in Charlotte, North Carolina, where I received training and certificate as a Medical Technologist. Basically, what a Medical Technologist is, is anytime you go to the hospital or doctor and get blood drawn, or they say we are sending your blood or urine or whatever to the lab to have lab work done, I'd be the person that would be responsible for analyzing that.

Upon completing that program, I was hired on at Palmetto Richland in their Core Lab and their E.R. Lab, where I performed both clinical chemistry as well as drug analysis and alcohol analysis as well as hematology and some other things dealing with lab work in the hospital.

Upon being hired on at SLED, I went through a year and a half in-house training that was intensive and involved analyzing over a thousand previously run blood alcohol samples, and my results had to be within five percent of what was reported out by the analyst who signed the reports. As well as doing a hundred drug screens and my results had to be also in line with that.

Also including in that training is both practical and oral testing that has to be done as

far as --- we have to pass that and be signed off on by the Chief Toxicologist. Upon being signed off as a Forensic Toxicologist, I have since gone to the Borkenstein School in Indiana University, dealing with alcohol and the driver. I have done some alcohol analysis and training as well as going to what they call drug recognition and evaluator school held at the Police Academy, and witnessed how different people react to being on different types of drugs.

Q. So, Mr. Landrum, I guess just to simply sum it up, you look as a toxicologist for SLED, you look at substances that are found in the blood or in the bodily fluids, is that right?

A. Yes. What a Forensic Toxicologist is, is a Forensic Toxicologist is basically --- we apply science to law. We take --- we analyze both biological and non-biological samples such as blood, urine, brain, liver, moonshine, for the presence or absence of alcohol, drugs or poisons. And then we take those results and interpret those results for courts of law, pathologist for lawyers, for police departments, for whoever might want to know what the results mean from those results.

Q. All right. How many samples would you say you have

tested in your career at SLED?

A. Over a thousand, not including the thousand that was run prior to training.

Q. So it was a thousand other than the thousand you did in training?

A. Correct.

Q. Now, how many times have you been qualified in a state court in South Carolina to testify as an expert in the field of toxicology?

A. Over twenty times.

Q. Okay.

MS. PARKER: Your Honor, at this time the state would move to have him qualified as an expert witness in the field of Toxicology.

THE COURT: All right. Is there an objection or questions?

MR. SWILLEY: I have no objections to that, Your Honor.

THE COURT: Very good. The witness is so qualified. You may proceed.

MS. PARKER: Thank you, Your Honor.

DIRECT EXAMINATION BY MS. PARKER

Q. Mr. Landrum, do you have a record of receiving samples labeled belonging to a James Tucker?

A. Yes, I do.

Q. And when did you receive those samples?
A. The samples were submitted to our lab on 3/11/2010.
Q. And what type of samples did you receive?
A. We received blood, well iliac vein blood, urine, ocular fluid. And ocular fluid is basically fluid from behind the eye. Bile, gastric, brain and liver.
Q. And, tell us about the condition of the packaging when you first received the samples.
A. Upon samples being received to SLED, the delivering agency brings it into our log-in department. They take their evidence, put in what we call a tamper evidence or a heat sealed pouch. Basically, they put the evidence into a clear plastic bag. It is then heat sealed, and the delivering officer initials and dates across the heat seal. That then gets logged into our department --- logged into the Log-in Department, and it is brought up to our department, where we cut it open, inventory it, take pictures of it, and then we perform our analysis. And upon me performing this analysis, everything was in tack, according to our protocols and procedures.
Q. So you say everything was intact, everything was sealed?

A. Yes, upon it being brought up to the Toxicology Department, everything was sealed.

Q. And out of all of these various samples that you received, which ones did you test, and what were your results?

A. I performed analysis on the blood labeled James Tucker, with the FA-number, FA-09-212. And I did analysis on the ocular fluid labeled James Tucker, FA-09-0212. From the blood I performed a drug and alcohol screen analysis on this. The alcohol came back negative for ethanol, methanol, acetone, and isopropanol. Ethanol is your drinking alcohol that is found in all of your beers. And then isopropanol is sort of your rubbing alcohol. Acetone is sort of what you find in fingernail polish. Then as for the drug screens, we screen for amphetamines, benzodiazepines, methamphetamine, Oxycodone, cannabinoids, cocaine metabolite and opiates and all of those came back negative.

Q. Okay. And what is the cannabinoids, what is that? What would be the street term for that?

A. Cannabinoids is the active or the component of marijuana.

Q. So in this case with Mr. Tucker, everything was negative?

A. Everything was negative, yes.

Q. Mr. Landrum, I want to show you what has been marked State's Exhibit 25. Do you recognize that?

MS. PARKER: Beg the Court's indulgence for just a moment.

THE COURT: Yes, ma'am.

MR. SWILLEY: I'm sorry?

(PAUSE.)

Q. Mr. Landrum, I am showing you what has been marked State's Exhibit 25, do you recognize that?

A. Yes, it is a copy of my report.

MS. PARKER: Your Honor, at this time the state would move to have that exhibit, that is 25, moved into evidence.

THE COURT: Is there an objection?

MR. SWILLEY: No objection to State's Exhibit 25.

THE COURT: Without objection, State's Exhibit 25 in evidence.

Do you have it in your hands?

MR. LANDRUM: Yes, sir.

THE COURT: Let our court reporter mark it, please, as in evidence.

Thank you.

WHEREUPON, STATE'S EXHIBIT

NUMBER 25 IS MARKED AND ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

MS. PARKER: That will be all of my questions, Mr. Landrum. Please answer any that Mr. Swilley may have.

THE COURT: And cross examination.

CROSS EXAMINATION BY MR. SWILLEY

Q. Mr. Landrum, was the extent of your involvement in this investigation just testing the blood samples?

A. Yes. I performed the analysis on the blood and the ocular fluid, and that is all I did for this case.

MR. SWILLEY: Thank you, Your Honor. Nothing further.

THE COURT: Redirect on that one issue?

MS. PARKER: No, Your Honor.

THE COURT: All right. Then, sir, you may step down. You are free to leave if you wish. Have a good day.

Please call your next witness.

MS. BURCH: Your Honor, we are missing one of the law enforcement officers. I think she has gone to the restroom.

THE COURT: All right. Please find her. All right. While we are waiting, let's talk about something

that I would like for you to do in the morning when you first arrive. And, Mr. Lucas, you are our alternate juror, and what I would like for you to do is preside over the decision that is going to be made. If you would, be the chairperson over the jury while the decision is being made. I would like for you to choose among yourselves your foreperson. Whether that is a forewoman or foreman is absolutely your decision. I will tell you that my suggestion, the best foreperson is one who is not a dictator or controller of opinion, but one who is a moderator of discussion and a facilitator of opinion, because ultimately your verdict in these cases must be unanimous. So, when you are all together tomorrow, Mr. Lucas, please preside while that decision is being made. You are welcome to have a vote in the process, but you should not be chosen, because as the alternate you may not actually sit with the jury to deliberate. All right, sir. Just think about that overnight if you will, and when you finish that in the morning, and make the decision, if you would kindly write it on a piece of paper, knock on the door and send it out to us, we will be ready to go after that decision is made.

Thank you.

All right. Please call your next witness.

MS. BURCH: Your Honor, at this time the state would call April Cook.

THE COURT: Please come forward and take the oath of a witness.

WHEREUPON, APRIL T. COOK

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MS. COOK: I do.

DIRECT EXAMINATION BY MS. BURCH

Q. Please state your name for the record.

A. April Tyner Cook.

Q. And, Ms. Cook, where were you employed on March 24, 2009?

A. Hartsville City Police Department.

Q. What was your position there?

A. Investigator and Evidence Custodian.

Q. Are you familiar with the case involving the death of James Tucker on that date, March 24, 2009?

A. Yes, ma'am.

Q. Will you tell us about your involvement in that case?

A. That morning when I came into work, I was advised by Sergeant Specht and Investigator Anderson that they were at the hospital. And I met with them there, and they briefed me about the incident that had occurred earlier that same morning. I'm sorry.

I'm out of breath from running.

Q. Are you okay?

A. Yeah. I'm good. I went back to the Investigations Office for the City of Hartsville. From there, I was given a Warrant Affidavit to take to the Magistrate Judge, Judge Thomas, and have it signed. Once the Warrant was signed, I notified the other investigators that were working and officers that were in the area trying to locate the defendant. From there, a short time later I was notified that the defendant had turned himself in at the Police Department. And from there I went up there, he was already in custody when I got to the Police Department, and he was back in the holding area back in the Police Department. I was advised by Officers Eckhart, and Corporal Peavey, that his --

MR. SWILLEY: Objection, Your Honor. Hearsay.

THE COURT: I'm going to sustain that as to hearsay, counsel. Please ask your next question.

Q. Disregard that part. What happened after you got to the Hartsville Police Department and spoke with Officers?

A. All right. The defendant was in the back of the Police Department already in custody. And he was -- he was crying and stating that he was his best

friend, he was his best friend. He never said anything further than he was his best friend. I called --- contacted Investigator Anderson, advised him that the defendant was in custody. I was advised that --- or I was told to interview him at a later time. So, an interview was not done at that time, by myself.

MS. BURCH: Thank you, Ms. Cook. Beg the Court's indulgence.

(PAUSE.)

MS. BURCH: No further question, Your Honor.

THE COURT: And cross examination.

CROSS EXAMINATION BY MR. SWILLEY

Q. Ms. Cook, is this the extent of your involvement in this case?

A. Yes.

Q. That you just testified to?

A. Yes.

Q. To your knowledge, did Mr. Toney turn himself in peacefully on this date and time?

A. I was not there, but I mean --- I can't tell you that. But he did turn himself in to the Police Department. But I was not there at the time he was taken into custody.

MR. SWILLEY: Okay. That's all the questions I

have, Your Honor.

THE COURT: All right. Is there redirect on that one issue?

MS. BURCH: No, Your Honor.

THE COURT: Then ma'am, you may step down. You are free to leave if you wish.

MS. COOK: Thank you.

THE COURT: You are not required to leave, but you may leave.

Please call your next witness.

MR. HOLT: Your Honor, I believe Ms. Parker is just right outside the door, is our next witness.

THE COURT: All right.

MS. PARKER: Your Honor, at this time we are ready, and the state calls Cheryl McCall.

THE COURT: Please come forward and take the oath of a witness.

WHEREUPON, CHERYL MCCALL

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MS. MCCALL: Yes, ma'am. I do.

DIRECT EXAMINATION BY MS. PARKER

Q. Good afternoon. Would you please state your full name for the record?

A. Cheryl McCall.

Q. And, Ms. McCall, where are you employed?

A. Hartsville Police Department.
Q. And, what is your position there?
A. Sergeant on patrol.
Q. Okay. And how long have you worked for Hartsville Police Department?
A. A little over nine years.
Q. How long total have you been in law enforcement?
A. A little over nine years.
Q. So you have spent all of your law enforcement career at the Hartsville Police Department?
A. Yes, ma'am.
Q. Now, I want to take you back to the early morning of March 24, 2009. Were you working that night?
A. Yes, ma'am.
Q. And what shift would you have been working at that time?
A. Night shift.
Q. And tell us about any kind of call that you may have received that you responded to concerning the case of James Tucker?
A. Yes, ma'am. On March 24th, we received a call from our dispatcher that there had been a subject brought into Carolina Pines, our hospital in our jurisdiction, that appeared to have been stabbed. And he had been brought in by subjects, not by

ambulance, and that they needed us to respond to find out what was going on.

Q. Okay. And did you in fact respond to Carolina Pines?

A. Yes, ma'am. Myself and one of the officers on my shift, LaVern Davis responded to that call.

Q. Okay. Tell us about what was going on when you first arrived at the hospital.

A. When I first arrived, I briefly spoke to the two people that I was directed by the hospital staff that had brought Mr. Tucker in to the Emergency Room for treatment. And I recognized one of them as Mr. Brunson, and Ms. Robinson was identified as the second one. And I just you know rushed and asked them what happened? What they had seen? And they said he just asked for a ride, and you know he said he had been stabbed, and you know we just brought him up here because he needed help. And I left Officer Davis out there to speak to him at that time, and I went back to start speaking to the hospital staff to see what was going on.

Q. Now, who on staff did you speak with, with the hospital?

A. Lynn Newsome, she was the nurse in charge that night, and I spoke with her and asked her you know

what they had done or what was going on.

Q. Okay. And did she in her view, tell you what was going on or what condition the victim James Tucker was in?

A. Yes, ma'am. She advised me that Dr. Ball, she was the E. R. Physician on duty at the time had pronounced Mr. Tucker dead at approximately 03:40 a.m.

Q. Now, at this point you had learned that James Tucker had been pronounced dead, what would be protocol --- what would you do next?

A. Our normal policy and procedure is to notify our staff officer on call who at that time was Lieutenant Tracy Meyers, I called him at his residence, and advised him of what we had. And he immediately directed me to call out Detective Anderson and Sergeant Specht to come assist with the scene and the investigation.

Q. You said that you spoke with Lynn Newsome. Did you have an opportunity to see the body?

A. Yes, ma'am. She directed me back into one of the trauma rooms, because I wanted to see if I recognized the person, and see what was going on, and she directed me back in there and I observed Mr. Tucker lying in the hospital bed, and he had

what appeared to be a small stab wound right in the middle of his chest. Most of his clothing and items had been removed, and they had collected those and placed them in a bag for me.

Q. Okay. And were you able --- Did you take those clothes that were placed in the bag?

A. Yes, ma'am. I collected all of those clothing items and all of his personal belongings, and later provided them to Detective Anderson as evidence.

Q. Okay. Now, tell us a little bit more --- I guess a little later on while you were at the hospital kind of what developed out in the lobby, and what was going on?

A. Once I realized that Mr. Tucker had in fact died, I returned outside and tried to speak to Mr. Brunson and Ms. Robinson again. And informed them that it was not just a minor incident you know that Mr. Tucker had passed away, and needed for them to be more forthcoming. And at that time also, some of the family members I guess had been notified by other people and they started to arrive including Ms. Tucker.

Q. Ms. Tucker, what would her relationship be to the deceased?

A. Ms. Barbara is Mr. Tucker's mother.

Q. Okay. I didn't mean to interrupt you.
A. That's all right. I began speaking with her, and I think she was kind of you know just out loud, full of emotion, you know, what's going on, what happened to my son, and was trying to you know gather some more information out of Brunson and Robinson. And that is when they decided that they wanted to be a lot more cooperative. They realized that it was a lot more serious than what they had initially thought it was going to be.
Q. Okay. And who began to speak with them after they were willing to give statement?
A. I directed Officer Davis to take both of them into separate places in the E.R., and obtain written statements from them both about what happened and where the incident happened. Because to that point we did not know where we needed to start looking for the scene.
Q. Okay. Now, did you get information about where this all occurred, and where the crime scene would actually be?
A. Yes, ma'am. Officer Davis, once he spoke to them real quickly, Brunson and Robinson that is, he said that the incident had occurred around Chaplin Circle right at about Marion Avenue. That is where

Brunson had initially approached them and asked for help. Excuse me, Tucker had initially approached them and asked for help.

Q. What did you do as soon as you learned that information about where this crime scene could potentially be?

A. There were other officers that were working that night as well as some sheriff's deputies that had heard about the incident, and had already been calling in, what can we do to help? I directed them to go immediately to Chaplin and Marion, and try to locate any signs of a struggle, any signs of blood or anything, and they later called me and said they had found what they thought was a blood trail, and they had secured everything and was waiting on us to arrive.

Q. Okay. Now, did you have an opportunity to go out to the scene yourself?

A. Yes, ma'am. Once Ms. Tucker had been allowed back to see her son --

Q. -- Tell us a little bit about that. What is your knowledge about how that occurred?

A. Well --

MR. SWILLEY: Objection, Your Honor.

THE COURT: Sustained. Please move to your next

question.

MS. PARKER: Okay.

Q. Tell us what you first observed when you went out to the scene?

A. There was crime scene tape that had been taped off probably --- I don't know how many feet. Halfway down the block of Chaplin Circle from the corner of Marion Avenue, and there were police cars securing the area to make sure nobody had walked through. Officers Catoe and Hall, I believe, you know, directed me to where they thought they had found the blood trail had started, and where it ended like where he had gotten into Ms. Robinson's car to ask for help. And he just kind of walked me along that area, and showed me some different items along the way, and I just told him to just keep everything right where it was until Detective Anderson and/or Sergeant Specht got there.

Q. Were you there when Detective Anderson arrived?

A. Yes, ma'am. And I did the same thing the officers had done with me. I walked with him along through the area, and showed him what they had observed and what I had observed, and gave him a chance to observe anything that he needed to look at.

MS. PARKER: Your Honor, Beg the Court's

indulgence for just a moment.

THE COURT: Yes, ma'am.

(PAUSE.)

THE COURT: Counsel, while that is being done if I could get you all to step up for just a moment please.

WHEREUPON, STATE'S EXHIBIT NUMBER 26 AND 27 WERE MARKED FOR IDENTIFICATION ONLY.

(Whereupon, a bench conference was held in the presence of the jury, but out of their hearing range.)

THE COURT: All right. Counsel, is there an objection?

MR. SWILLEY: Your Honor, at this time I would object to the introduction to any kind of clothing. I don't think it establishes anything on behalf of the state. I don't --- necessarily probative.

Also, I think it is highly prejudicial, and I think any prejudicial impact substantially outweighs any kind of probative value it may have.

THE COURT: Counsel, let me ask you. You have photographs of the deceased. Tell me, what probative value does the clothing have?

MS. PARKER: Your Honor, we will not make any

kind of motion.

THE COURT: I am going to sustain the objection, to avoid any prejudice that may come from that evidence.

And the objection is sustained. Anything further?

MS. PARKER: Officer McCall, that will be all the questions I have for you. Answer any questions Mr. Swilley has.

THE COURT: Cross examination.

CROSS EXAMINATION BY MR. SWILLEY

Q. Officer McCall, to your knowledge, were you the first person with law enforcement to interact with Mr. Brunson and Ms. Robinson?

A. I think myself and Officer Davis arrived --- he arrived just a few minutes before me. I think he had actually spoken to them just a moment or two before I did.

Q. Okay. And, isn't it true Officer McCall that both Robinson and Brunson denied any knowledge of the other party, as well as the actual location of the incident?

A. At first, yes, sir. They were very hesitant to cooperate with us until they realized the seriousness of the incident.

Q. But in your report you --- do you recognize that

you did state that they affirmatively denied any knowledge of the other party where the actual incident location?

MR. SWILLEY: Permission to approach?

THE COURT: You may.

Q. Top paragraph, highlighted part in pink.

A. Yes, sir. I wrote that.

Q. Okay. And Officer McCall isn't it true that Ms. Robinson actually affirmatively stated that she and Brunson were just sitting in the vehicle talking when they were approached by Mr. Tucker, and he just asked for a ride to the hospital?

A. Yes, sir. That is what she initially told us.

Q. Okay. Okay. And let me ask you, during the course of your investigation, was it --- did Mr. Brunson indicate that he had Mr. Tucker's cell phone and coat?

A. Yes, sir. That is what he told me.

Q. Okay. And that was Mr. Brunson. And, did Mr. Brunson provide these items to law enforcement to go into evidence?

A. He did, to me. Yes, sir.

Q. He provided to yourself?

A. He gave them to me at the hospital.

Q. Okay. And, can you tell me Officer McCall,

approximately how much time from the initial fabrication of Mr. Brunson and Ms. Robinson until the change of their story, about how much time elapsed?

A. Maybe about ten to fifteen minutes. Once Mr. Tucker's family started coming into the E.R., and realized what was going on.

Q. That is when they changed their story?

A. Yes, sir.

Q. Okay. And you don't have to call me, sir. And is that when Officer LeVern Davis started working with them and trying to get them to give a story?

A. He asked them if they wanted to provide a written statement, and they both said at that time that they wanted to cooperate with us.

Q. Okay. Officer McCall, during the course of your investigation at the hospital, were you made aware of anyone else who may have been an eyewitness to this incident?

A. No, sir.

Q. To your knowledge --- from your recollection, do you recall Ms. Robinson or Mr. Brunson informing you that there may be other parties who witnessed this present in the vicinity?

A. No, sir. They did not share that with me. No,

sir.

Q. Okay. Did Mr. Brunson or Ms. Robinson give any other names to you of anybody at all that might have been involved in this?

A. They mentioned the name Breezo to myself and Officer Davis.

Q. And of course that was subsequent to their initial fabrication? After the initial lie is when they brought in the name of Breezo?

A. They didn't really fabricate other than they just weren't cooperative at first.

Q. Okay. But you do note in your report that they both deny having any knowledge of the suspect, or an actual incident location. So would you concede that is a fabrication?

A. Yes, sir. The conversation more went something like what happened? I don't know.

Q. Okay.

MR. SWILLEY: I have no further questions, Your Honor.

THE COURT: Is there redirect?

MS. PARKER: No, Your Honor.

THE COURT: Then ma'am, you may step down. You are free to leave if you wish or free to remain.

Ladies and gentlemen of the jury just one more

comment about the clothes. I don't want the jury to think that somehow the Court is attempting to or either the parties to hide or prevent you from seeing something. Usually whenever evidence is offered it has some probative value. There is something in that evidence that is not obtainable by other evidence. In this case you have photographs from the hospital, of the deceased, and details that would give the same information and would be cumulative as to whatever the review of the clothing may be. But additionally, the clothing would be a biohazard, and it would also --- may have been cut or torn at the hospital. And for those reasons the Court just believes it is best not to make that as evidence. Again, not to hide something from you, but that is the Court's thinking in sustaining that objection.

Please call your next witness.

MR. HOLT: Your Honor, at this time could me and Mr. Swilley approach?

THE COURT: You may.

(Whereupon, a bench conference was held in the presence of the jury, but out of their hearing range.)

THE COURT: All right. Ladies and gentlemen, again along the theme of not trying to have a discussion

here and trying to hide something from you, what we are talking about is scheduling, how many witnesses we may have yet to go. Of course, when you think about it when you summon witnesses who may work at a hospital, or on their job, it is not always possible to know exactly how long the previous witnesses are going to take. And counsel for the state tells me that they have completed the witnesses who are present today. But they have perhaps three more witnesses who will testify in the morning. So we are going to stop for the day.

What I would ask you to do is be back at 9:30 tomorrow morning. We will start at 9:30. Again, when your loved ones --- when you are home with your loved ones, please, if they ask you what it is about, well, now you know some of the issues and facts. Please don't discuss the case with them for the same reasons we talked about yesterday.

And Mr. Lucas, when the jury is all together tomorrow morning first thing, if you would lead them as you all chose your foreperson. Thank you in advance for that. And we will see you tomorrow morning at 9:30.

Now, we all will remain where we are out of respect for you as you leave for the day.

Have a nice day.

BAILIFF: All right. Come this way, please.

(Whereupon, the jury exits the courtroom at 4:23 p.m.)

THE COURT: All right. Then ladies and gentlemen and staff, we will be in recess until 9:00, at which time we will take up the issue of what evidence can come in from the Detention Center.

Let the record reflect that the Court is taking the CD home tonight to listen to as well as a copy of the purported transcript of it so that we will not have to watch it in court tomorrow.

So we are going to adjourn this proceeding until 9:00 tomorrow morning.

(Whereupon, these proceedings were completed for the day at 4:25 p.m. on Tuesday, May 17, 2011.)

END OF DAY TWO OF TRIAL

(Whereupon, Court reconvenes this trial at 9:15 a.m. on Wednesday, May 18, 2011.)

DAY THREE OF TRIAL

THE COURT: All right. We have just had a discussion at the bench about the tapes from the Detention Center. So, rather than conduct a hearing, I am going to stand down. We will wait until the jury is all together, and we will just come back and get started.

If you all need me, I will be back in the back. All right.

MR. HOLT: Thank you, Your Honor.

THE COURT: All right. Court will remain until recess until 9:30.

(Whereupon, a recess was taken from 9:15 a.m. until 9:30 a.m.)

THE COURT: All right. The jury tells me that they have elected Darius Sims, Juror Number 127 as their foreperson.

And are we ready to proceed?

MS. BURCH: Yes, Your Honor.

THE COURT: Ready for the jury? Please bring in the jury.

BAILIFF: All right, sir.

(Whereupon, the jury enters the courtroom

at 9:30 a.m.)

THE COURT: Good morning, ladies and gentlemen.

JURY: Good morning.

THE COURT: Welcome back to the courtroom. And let me ask, since we were last together is there any juror who has had a discussion concerning the facts of this case with anyone, if you have, please raise your hand? Let's let the record reflect that no one has raised their hand.

And, Mr. Sims, I see that your colleagues have chosen you foreperson. So, first of all I will say congratulations to you for the confidence they have shown in you. And during my charge on the law I will talk to you a little bit further about your responsibilities as foreperson. But, here at the beginning, let me just simply say thank you for serving on that important position. And, Mr. Lucas, thank you for your assistance to the jury as leadership as they made that choice.

As you will recall we ended the day in the state's case. They have a few remaining witnesses.

Please call your next witness.

MS. BURCH: Thank you, Your Honor. The state would call Lynn Newsome.

THE COURT: Please come forward and take the oath

of a witness.

WHEREUPON, ELIZABETH NEWSOME, R.N.

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MS. NEWSOME: I do.

DIRECT EXAMINATION BY MS. BURCH

Q. Good morning.

A. Good morning.

Q. Would you please state your name for the record?

A. Elizabeth Newsome.

Q. And Ms. Newsome, where are you employed?

A. At Carolina Pines Regional Medical Center in Hartsville.

Q. How long have you been there?

A. For about sixteen years.

Q. So you were employed there on March 24, 2009?

A. Yes.

Q. And what is your position?

A. I am Registered Nurse in the Emergency Room.

Q. Do you remember on March 24, 2009, a man by the name of James Tucker being brought in to the hospital?

A. I do.

Q. Would you tell us what you remember about his condition, about that night?

A. I don't specifically remember his condition. I

just remember that he came in with a friend from the car who said that he had been stabbed.

Q. Did you observe that wound?

A. Yes.

MS. BURCH: Permission to approach?

THE COURT: You may.

Q. I am going to show you a picture that has been put into evidence. It is State's Exhibit 22. Do you recognize that picture?

A. Yes.

Q. How do you recognize this picture?

A. That is my hands.

Q. The body --

A. -- Yes.

Q. You mean significant to?

A. Yes.

Q. And why is that?

A. That was the stab sound.

Q. And, Ms. Newsome, what was your involvement with law enforcement that night?

A. When they came in I just notified them that the patient had expired. And they asked to see the body. And I took them into the room. And they asked to take pictures, so I just showed them where the stab wound was for them to take a picture of

it.

MS. BURCH: Your Honor, no further questions at this time.

THE COURT: All right. And is there cross examination?

MR. SWILLEY: Briefly, Your Honor.

THE COURT: All right. Go ahead.

CROSS EXAMINATION BY MR. SWILLEY

Q. Ms. Newsome, you said that Mr. Tucker had been accompanied by one friend?

A. As best as I can remember, it was one friend.

Q. A female?

A. Yes.

Q. Okay.

MR. SWILLEY: Thank you, I have nothing further.

THE COURT: Is there redirect on that one issue?

MS. BURCH: No, Your Honor.

THE COURT: All right. Then ma'am, you are free to leave if you wish. You are not required to leave, but you are free to leave.

MS. NEWSOME: Okay. Thank you.

THE COURT: Have a good day. All right. Please call your next witness.

MS. BURCH: Thank you, Your Honor. At this time the state would call Levern Davis.

THE COURT: Please come forward and take the oath of a witness.

WHEREUPON, LEVERN DAVIS

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MR. DAVIS: I do.

DIRECT EXAMINATION BY MS. BURCH

Q. Good morning.

A. Good morning.

Q. Please state your name for the record.

A. Levern Davis.

Q. And where are you employed?

A. Hartsville City Police Department.

Q. How long have you been there?

A. About three and a half years.

Q. And, what is your position?

A. Officer on the Street. Patrol.

Q. Were you employed with Hartsville Police Department on March 24, 2009?

A. Yes, ma'am. I was.

Q. And are you familiar with a case involving the death of James Tucker on that day?

A. Yes, ma'am. I am.

Q. Would you tell us about your involvement in that case?

A. Okay. I was dispatched to Carolina Pines in

reference to a stabbed victim. I arrived on location and met with Lynn Newsome, the E.R. Nurse. She said that James Tucker was rushed into the Emergency Room, and that he was stabbed. I asked about Mr. Tucker's condition at the time. She replied he was dead.

Q. What happened after you found out he was dead?

A. I notified my supervisor, who was Sergeant McCall.

Q. Did you do anything else after that? Did you go any further into case?

A. Yes. The E.R. Nurse, Ms. Newsome, stated that he was brought in by a female that was in the waiting room.

Q. Did you get her name?

A. Yes, ma'am.

Q. What was it?

A. It was Crystal Robinson.

Q. Was there anybody else there with her in the waiting room?

A. And a male --- let me see if I can remember. Let me see his last name. The last name was Brunson. I don't recall his first name.

Q. That's fine. Were you able to interview Ms. Robinson and Mr. Brunson?

A. Yes. I spoke with Ms. Robinson, who stated that

Tucker came running --

MR. SWILLEY: Objection, Your Honor. Hearsay.

THE COURT: Response? Thank you. The question was intended not to say what someone told you. You can say what you did, or what you saw. But please direct the answer to the next question. Go ahead.

Q. Did you have an occasion to interview them?

A. Yes.

Q. Okay. Were they cooperative?

A. At first they were hesitant. Then later after I advised them that we had a victim --- after I advised them that Mr. Tucker was dead, that is when they started to make a statement.

Q. Were they cooperative whenever they made that statement?

A. Yes.

Q. After you got their statement, what happened after that?

A. Detective Anderson came on location, and basically the scene was turned over to him. They both was turned over to him, Robinson and Brunson.

Q. Thank you. Let's go back to Crystal Robinson and Marcus Brunson's statement.

A. Okay.

Q. Without telling what they said, whenever they gave

their statements did their stories match or were they different?

A. I can't remember verbatim, but they were similar.

Q. After Sergeant Anderson came, did you have any more involvement in this case?

A. I transported Robinson and Brunson to the Detective Division for them to make a victim's statement.

MS. BURCH: Beg the Court's indulgence.

(PAUSE.)

MS. BURCH: No further questions at this time, Your Honor.

THE COURT: All right. Is there cross examination?

MR. SWILLEY: Yes, Your Honor.

CROSS EXAMINATION BY MR. SWILLEY

Q. Officer Davis, which one of the two individuals Ms. Robinson or Mr. Brunson did you encounter first?

A. They both was sitting at the --- in the waiting room.

Q. In the waiting room. Okay. Approximately what time did you arrive on scene?

A. About 3:48 a.m.

Q. Do you know what time Mr. Tucker arrived with Ms. Robinson to the hospital?

A. No, sir. I don't.

Q. Okay. Officer Davis, from the initial lie that they told you about their knowledge of the case until the time in which they changed their story, can you give me an amount of time that passed between those two points, to your recollection?

A. I can't recall.

Q. Okay. And from your recollection, did their stories change after they had knowledge that Mr. Tucker had expired?

A. No, sir.

Q. So, they --- What I am asking you is they gave you their initial account and then they were informed Mr. Tucker expired, correct?

A. I didn't speak one on one. I arrived on location and I spoke immediately with the E.R. Nurse.

Q. Were you present when they were informed that Mr. Tucker was dead?

A. I don't remember.

Q. Okay.

MR. SWILLEY: Beg the Court's indulgence.

(PAUSE.)

Q. Officer Davis, you have your report in front of you, don't you?

A. Yes.

Q. And you did type this report up?

A. Yes.

Q. Okay. And you do acknowledge that you did record that Ms. Robinson initially stated that Mr. Tucker came running up to her car with blood gushing from the mid-section of his chest; right?

A. Right.

Q. And that was the initial conversation that y'all had?

A. When I first spoke with her.

Q. Okay. And that was all she relayed to you?

A. Uh-huh.

Q. At that time?

A. Yes, sir.

Q. Okay.

MR. SWILLEY: Thank you, Your Honor. Nothing further.

THE COURT: Is there redirect?

MS. BURCH: Yes, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION BY MS. BURCH

Q. Did Ms. Robinson and Mr. Brunson change their story after they saw James Tucker --

A. No, ma'am. They wanted to tell more.

Q. They wanted to tell more. So, they just added more to their story?

A. No, once they saw here, it appeared that they got comfortable and tell exactly what happened.

MS. BURCH: Thank you, Your Honor, no further questions.

THE COURT: All right. Then sir, you may step down. You are free to leave as well. You are not required to, but you may if you wish.

Please watch your step as you leave the witness stand.

And, the state, please call your next witness.

MS. PARKER: At this time the State calls Captain Waddell Coe.

THE COURT: Please come forward and take the oath of a witness.

WHEREUPON, WADDELL COE

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

CAPTAIN COE: I swear.

DIRECT EXAMINATION BY MS. PARKER

Q. Good morning, Captain Coe.

A. Good morning.

Q. Would you please state your full name for the Court's record?

A. Waddell Coe.

Q. And where are you employed?

A. Darlington County Sheriff's Office Detention Division.

Q. So you work at the Detention Center?

A. Yes, ma'am.

Q. And, what is your position there?

A. I am the Captain over booking and transportation.

Q. And I want you to tell the Court --- tell us about the telephone system at the Detention Center?

A. The telephone system is monitored by Secure out of Texas. It is two telephones in the booking area, and phones in each housing unit. The phones in the booking area are free local phone calls. And we really don't have a time limit on how long you can use the telephones in the booking area. We just allow you to use the telephone until we process you to go to the back, or either be released from our custody.

Q. You say that --- you mentioned something out of Texas that y'all used to record the telephone system. Are you telling this court that you can pull any phone call that is made from the Detention Center from those booking phones or those phones out in the pod?

MR. SWILLEY: Objection, Your Honor.

THE COURT: On what basis?

MR. SWILLEY: Leading the witness.

THE COURT: I'll sustain that, counsel. Don't lead your witness. Please rephrase your question.

Q. Tell us about how you can pull up phone calls.

A. We have software, a computer that I can go back and do a query on any phone numbers, or calling card numbers that we have now.

Q. Okay. And how exactly is it that you pull those calls up when you want to look them up?

A. When I want to look one up?

Q. Yes, sir. How is it exactly pulled up? Explain what you do.

A. I can do a query for that particular telephone. For the booking area I can do for booking one and two, I can just do a query for the booking area, and it will give me all the numbers that was called that particular day, or hour, or minute or so, however you want it.

Q. Did you have an occasion to work with Detective Mike Anderson concerning this case?

A. Yes, ma'am.

Q. Explain to the jury what you did.

A. He provided me with some numbers that he wanted me to pull up, and at that particular time I did. To pull the numbers for March 24th through 13:00 hours

which is 1:00 until 23:59 that night. At that particular time we pulled up thirty-three numbers, and we went through the numbers, and we recorded the numbers that he needed.

Q. Okay.

A. Burned the calls that he needed.

Q. And what was significant about March 24, 2009, 13:00 hours? What was significant about that time frame?

A. That was the time that Mr. Toney was in the booking area.

Q. Okay. Now, with the phone calls that were recorded to the disc, have you had an opportunity to listen to some of them?

A. Yes, ma'am. I was in --- we was listening to the phone calls as he was going through them.

Q. And did the inmate on those particular phone calls in anyway identify himself at the beginning of the call?

A. Yes, ma'am.

Q. And who was identified in the calls specifically that you pulled for Detective Mike Anderson?

A. Breezo.

Q. And your understanding --- who is Breezo?

A. Breyon Toney.

Q. All right. I want you to explain, is there any way those phone calls are recorded on that data base, is there anyway those phone calls can be altered or changed in that database?

A. No, ma'am.

Q. And did you offer to change any phone calls that you provided to Detective Mike Anderson?

A. No, ma'am.

MS. PARKER: Your Honor, may I approach?

THE COURT: You may.

(Whereupon, a bench conference was held in the presence of the jury, but out of their hearing range.)

THE COURT: All right. Ladies and gentlemen, the state tells me that they are currently working on this evidence so that they may offer it to the jury. There is an objection. We need to discuss that. What I am going to do is I am going to let you all return to the jury room, and enjoy a break for a few minutes, while number one we resolve that issue, and secondly while we wait to see if technologically they are able to do what they are attempting to do in putting together the portion of the tape they wish to publish.

So, I am going to let you return to the jury room.

We will wait here where we are. Enjoy your break, ladies and gentlemen.

BAILIFF: Right this way, please.

(Whereupon, the jury exits the courtroom at 9:50 a.m.)

THE COURT: All right. Counsel, do you want to tell us what it is that you intend to publish at this time, so that I can hear from the defense as to what your position is.

Captain, you know you are welcome to remain where you are, or if you are more comfortable standing down, sitting on the side, whatever suits you.

CAPTAIN COE: I'll stay right here.

THE COURT: All right. You can stay right there where you are.

MS. PARKER: It is call three, and it starts probably about six minutes thirty seconds. This is Breyon speaking. He had two beer bottles. That he was coming close. I'm saying I was like man get back man. He talking to me. He talking about putting the knife down. Hey that's when he threw one of the bottles and I ducked until it busted in the middle of the Street. And then he ran up the Street a little bit. Just that insert. We would stop it there.

THE COURT: All right. And then what is the next

one.

MS. PARKER: That one is call two at about three minutes and five seconds. We would start it --- we would start it probably just a few seconds prior to three minutes, and go through probably about three minutes and ten seconds. I am trying to find that portion of the transcript.

MR. SWILLEY: Your Honor, Ms. Parker can you tell me on that call three what page and line you are referring to?

MS. PARKER: Yes. It is page 30 and 31. It starts on the bottom of page 30.

(PAUSE.)

MR. HOLT: Where we have the information stored and broke down we gave to the investigator so that he can cut and --

MR. SWILLEY: Your Honor, as to the first quote that Ms. Parker referenced, that is one paragraph that my client says. I would just request that they just include the entire paragraph. I think she said she wanted to stop when he said, put the knife down. And then he goes on to complete the story until he stops talking, and the other party stops. I would just want that entire excerpt to be played if that is going to be put in. I think just half of that would mislead the

jury.

THE COURT: All right. Let me ask, are you saying then that you consent to the state's publication, if you are permitted for completeness purposes to have the remaining of the paragraph played too?

MR. SWILLEY: Your Honor, I think I would still want to --- I think I would still oppose the entry of the tape in general to preserve the record on appeal. However, if you were to rule against me for my previous grounds, I think that for completeness purposes, I think the remainder of that should go in, or else it would be misleading, I believe.

THE COURT: All right. Do you have the second part yet, Ms. Parker?

MR. SWILLEY: Your Honor, I can read the rest of the remaining part if you would like.

THE COURT: How about on the record read what you believe should be included in the first paragraph.

MR. SWILLEY: If His Honor would choose to admit these tapes from my previous grounds, I would want the entire --- from the entire expert they want. And it says:

"He had two beer bottles and he was coming close. So, I'm saying, I was like, man, get back, man."

THE COURT: Slow down. Slow down.

MR. SWILLEY: I'm sorry.

"So, I was saying, I was like, man, get back, man. He talking about to -- he talking about put the knife down. Hey and that's when he threw one of the bottles and I ducked until it busted in the middle of the Street. Then he ran up the Street a little bit. He had another bottle there. He picked the broke one up. He started coming at me with a broke one. So, I was -- I just started poking, man, like back up."

THE COURT: Okay.

MR. SWILLEY: And that for the record Your Honor, that is line 23 on page 30 of the transcript until line 7 on page 31.

THE COURT: Okay. And now do we have the second one yet?

MS. PARKER: Your Honor, I think it --- "Yeah, we about to fight in the middle of the Street, and them boys was egging on. So he picked up two bottles -- he threw two bottles at me. I thought I had about to die but then I wasn't. I wasn't even going to do nothing with him. He did --- he threw a bottle and the bottles --- so what I'm saying --- he hadn't rushed but he was rushing at me with a bottle. So I went ahead and swung the knife. That is page 22. I think that is what John was looking for.

MR. SWILLEY: Twenty-two, lines what through what?

MS. PARKER: Starting about line 15. But once I get the redacted transcript that actually matches up with what he has cut out downstairs, I may need to read that into the record to be sure. And I don't know exactly if he went a little above this, or I told him to go a little below each point to get some context. So that is not exact.

THE COURT: All right. And then Ms. Parker, if Mr. Swilley wants to add a portion, I am assuming that technically, you all are not in a position to just play the next paragraph; am I correct? Or can you do that?

MS. PARKER: If he wants a portion added, like if he wants us to go further than where we stop it?

THE COURT: As he just said.

MS. PARKER: That is for call six? I have no objection to adding the additional paragraph in call six. I think that you know in fairness that probably gives it more completeness and context. I would have no objection to that.

THE COURT: All right. But my question is, technically, do you have it set up so that you can just hit the button and continuously play the next part, other than what he is downstairs working on right now,

which is the part you requested?

So I guess my question is, is he downstairs working on the tape or on the CD, or is he downstairs working on the transcript?

MS. PARKER: Both. I would need to let him know to go a little further past where I had told him to stop in six minutes. I think he could cut another disc in a matter of seconds. I mean he could just go and let that paragraph play out. That is call six. I need to know -- I guess Matt, to accompany me downstairs to see what Tim has done with call three. That way, we can agree where to stop and start.

THE COURT: All right. And back to the next call, Mr. Swilley, is here anything else you would add, or that you would object to that specifically is in that portion which they wish to publish?

MR. SWILLEY: Your Honor, if you were to admit the tape, I would not request that any more out of that excerpt be played.

THE COURT: All right. Then let me go ahead and make the ruling, so that we can all know where we are, and make a response to it.

The Court is prepared to rule now on the issue of whether these tapes are admissible. And this is a case of first impression as far as this court can determine.

We cannot find South Carolina precedence for this.

First of all, the Court analyzes this as to whether or not the defendant should have an expectation of privacy in the call in which he is making. The Court does not perceive as was argued in part by the defense that there is no warnings, there is no Miranda Warning. This is not a custodial interrogation. And thus, the Court does not find that there should be some separate Miranda Warning given before a telephone conversation occurs.

And speaking specifically to the Fifth Amendment, the Court does not perceive that there would be some reason that the defendant should be advised that he has a right against self-incrimination or that specifically what he may say might be used against him simply because this is a conversation that the defendant entered into voluntarily, and actually initiated himself. Thus, the Court does not find that this is of such a nature that these warnings should be given to the defendant.

But further, on the tape itself, and it is clear not only from the audio but from the transcript, the system advises the defendant that the call may be monitored or recorded. The Court finds that there is no expectation of privacy. And therefore, you would think if you are using a telephone in the booking area of the

jail that you would have an expectation of privacy to begin with. First of all, because of your surroundings, and where that telephone is. But secondly, you are at the jail, using a jail telephone, and making outgoing calls. I find that there is no objectively reasonable expectation of privacy, particularly when you are advised that the conversation may be recorded.

There is no attempt before me in the evidence of the actions of the jail officials to sort of lull the defendant into believing that the conversation would remain private. He is not told that. And for all these reasons, the Court believes that the evidence is permissible, and will permit the tape to come in.

Now, I would like to analyze it for a 403 analysis as to whether what is in the proposed tape is more prejudicial than it is probative. Of course this is a case where the defense alleges self-defense. The state is required to disprove that under our current law. These comments really go to the core of what happened. They are reasonably contemporaneous with the events, certainly much more so than they would be today, because, obviously, we are two years out now. These calls occurred on the day following, or within twenty-four hours of this event.

Thus, I find, and because it goes to what happened

at the scene it is clearly probative.

The state has agreed to for completeness sake to include language that the defense wishes to include. Some of that the Court finds helpful to the defendant, and some of it may not be helpful to the defendant. But, it is all up to the jury how they determine.

And I don't find a high prejudice at all in these publications. But I do find that it is highly probative. So, for those reasons, the Court believes that it withstands the Rule 403 analysis. And the Court will permit the playing of the tape.

Now, the only last issue is, I don't want to stand down thirty minutes while we get the CD fixed, because we can just publish the transcript if we have to. What is the status of that?

MR. HOLT: Your Honor, for the sake of judicial economy, what the state was thinking was we set our computer up with our investigator, and he played the sections from his computer. Just start, pause, play. Then Your Honor, we can go ahead and get back to the business of the Court. He can go downstairs. Burn a CD for the time he played up here from those same seconds on the stop clock. And when it comes time to put it we can just move it into the record then, and then put the CD into the record at another time later down the road.

THE COURT: How much time do you need to set that up, as you proposed?

MR. HOLT: Fifteen minutes to set it up.

THE COURT: We will stand down for fifteen minutes now, and let that be done. We will bring the jury back after fifteen minutes, and go into the testimony. All right?

MR. HOLT: Yes, sir.

THE COURT: All right. Court will be in recess for fifteen minutes.

Captain Coe, I am going to ask you not to speak to either lawyer on either side since you are a witness in testimony. Okay? Stand down and take a break if you wish.

(Whereupon, a recess was taken from 10:05 a.m. until 10:29 a.m.)

THE COURT: All right. Ladies and gentlemen, court come back to order. And, we will wait for the defendant to arrive.

MR. SWILLEY: He is on his way up.

THE COURT: All right. Good. Counsel, for completeness sake, let's take that entire transcript which we had, either the copy or the original, which I have possession of. And the record should reflect that I am the one that opened original. And let's mark it as

a Court's Exhibit so the Court can determine from the greater amount what was reduced and openly put into evidence.

MS. PARKER: Yes, sir.

THE COURT: That is Court's Number 3.

WHEREUPON, COURT'S EXHIBIT NUMBER 3 IS MARKED AND ADMITTED.

THE COURT: Is there anything further for this record, before we bring in the jury?

MS. PARKER: Your Honor, can the jury get brief instructions that they are getting excerpts and that there are parts that are being cut out, and that we have agreed?

THE COURT: All right. Very good. I will discuss that with the jury.

And please bring in the jury.

BAILIFF: All right, sir.

THE COURT: Do you have other questions for Captain Coe before you begin this publication?

MS. PARKER: Just one question.

THE COURT: Captain, come on back over here and join us on the witness stand, please.

(Whereupon, the jury enters the courtroom at 10:30 p.m.)

THE COURT: All right. Welcome back, ladies and gentlemen. Thank you for your patience while the state was finalizing an exhibit. We ended with Captain Coe was on the stand being questioned under direct. Are there further questions now; if so, please proceed?

MS. PARKER: Yes, Your Honor, briefly. Thank you

Q. Captain Coe, tell the Court what would an inmate hear, or what would one hear if you just picked up the phone and look at it and go to dial? Is there some sort of recording?

A. Yes. It would say press one for English, two for Spanish. Then it would say, dial your number. And then once you dial your number it will say, say your name. And then from there it would proceed and the other call party would say we have a free phone call from County Jail. Mash one to accept or two to block it or something like that.

Q. Is there anything else said about --- with respect to monitoring or recording?

A. Yes. It says this call can be subject to monitoring or recording.

Q. And who hears that warning?

A. Both sides.

Q. Okay. And Captain Coe did you provide a disc of the calls you looked at off of the data base,

pulled off the data base for Detective Anderson?

A. Yes, ma'am.

MS. PARKER: Your Honor, at this time the state would move to enter into evidence phone call recordings from the jail and would also request permission to publish that to the jury.

THE COURT: All right. And tell me counsel do you have a transcript to assist the jury?

MS. PARKER: Yes, Your Honor. I do.

THE COURT: All right. Is there an objection to the transcript?

MR. SWILLEY: Not to the transcript, Your Honor. However, I would renew my previous objection to the admission of the recording.

THE COURT: All right. Very good. The objection previously made is overruled for the reasons given.

All right. Ladies and gentlemen, the state intends to publish portions of telephone calls made from the booking area at the Detention Center. The Court has determined that that is admissible. But, it is not a complete entire telephone call that you are going to be listening to. It is simply excerpts. And the reason for that is again not to keep things from the jury, but there is a lot in those conversations that has nothing to do with the facts --- the core facts of this case.

And thus the Court has excluded what would be a family conversation, or some other discussion about matters not pertinent to this trial.

Therefore, rather than listening to a length conversation to try to gleam a little piece out of it, what the Court has permitted is just that piece that is on point will be played for you.

Now, there has been a transcription of it, but I want you to understand, and I think you will understand as soon as you hear that these are people talking on the telephone. The transcriptionist is not sitting right there amongst them saying I didn't catch that. I didn't understand that. What was it that you said? Therefore, you may find that this transcription is not verbatim, word-for-word correct. If you perceive something said differently than you read on a piece of paper, then you are the judges of the fact, you make that determination. I just simply give you that as a warning.

Now, you may hand out the transcripts.

MS. PARKER: Thank you, Your Honor.

THE COURT: All right. We are going to mark the Exhibit as State's 28 as well as the portion of the tape.

Ladies and gentlemen, you will have a CD that will be cut of what is being played, so you will have it with

you in the jury room, and the ability to play it if you wish to listen to that portion again. And that 28 is marked over objection of the defendant.

WHEREUPON, STATE'S EXHIBIT NUMBER 28 IS MARKED AND ADMITTED INTO EVIDENCE OVER OBJECTION.

WHEREUPON, COURT'S EXHIBIT NUMBER 3 IS MARKED FOR THE RECORD

.

THE COURT: All right. Are you ready?

MS. PARKER: We are ready.

(Whereupon, State's Exhibit Number 28 was published to the jury.)

MS. PARKER: That is it, Your Honor.

THE COURT: Is there anything further?

MS. PARKER: No, Your Honor.

THE COURT: Any further questions for the witness?

MS. PARKER: Not for this witness, Your Honor.

THE COURT: All right. Ladies and gentlemen, I am going to permit you to keep the transcript that you have for purposes of use in your deliberations, if you think it will be useful. That is up to you. And again,

you will have a copy of those excerpts that you can play in the jury room during deliberation, if you wish to.

Cross examination.

MR. SWILLEY: Briefly, Your Honor.

CROSS EXAMINATION BY MR. SWILLEY

Q. Captain Coe, were you working at the time Mr. Toney was in the booking room at the jail? Were you working at that time?

A. On that particular day, I could have been. I don't know if I was there.

Q. You don't recall?

A. No, sir.

Q. Okay. And does the Detention Center keep records of the people in which the inmates choose to call from the jail phone?

A. It has a backup system with the company that we use.

Q. Okay. So, and are people at the jail allowed to receive calls on these phones?

A. No, sir.

Q. They are only allowed to make outgoing calls?

A. Right.

Q. And these phones don't receive incoming calls; is that correct?

A. That's right.

MR. SWILLEY: Thank you, Your Honor. I don't have any further questions.

THE COURT: All right. Is there redirect?

MS. PARKER: There is none.

THE COURT: All right, sir. You are free to step down. Please watch your step. And you are free to leave if you wish.

CAPTAIN COE: Thank you.

THE COURT: Please call your next witness.

MR. HOLT: Your Honor, at this time the state would rest.

THE COURT: All right. The state has rested, ladies and gentlemen. You are going to feel like a ping pong ball here in a minute. But at the close in every case, whether it is civil or criminal of a party's case, at the close of the party's case, the Court stops, takes up some issues of law, reviews whatever matters are necessary to be reviewed, and then we move forward. So, while we do that, I am going to ask you to step back to the jury room, and give you yet another break. And we will be back with you probably in less than five minutes.

BAILIFF: All right, come this way, please.

(Whereupon, the jury exits the courtroom at 10:38 a.m.)

MOTIONS

THE COURT: All right. Now at the close of the state's case, are there Motions from the defense?

MR. SWILLEY: Yes, sir, Your Honor. There are Motions on behalf of the defense. I would make a motion for a Directed Verdict as to both Indictments. Your Honor, I don't believe there was any competent evidence in the record to indicate an intentional killing with malice aforethought. I don't think through the testimony heard --- I don't think that the testimony given by the state's witnesses that anyone can infer that there was any evidence of an intentional homicide, let alone any evidence in which there was malice on behalf of the defendant.

And as to the second Indictment, possession of a weapon during the commission of a violent crime, being there was no competent evidence as to the charge of murder, I believe there is no competent evidence as to that Indictment as well. So, I would move for a Directed Verdict for both Indictments.

THE COURT: All right. Do you want to be heard in response for the state?

MR. HOLT: Your Honor, I don't think much of a response is warranted. I think the fact that he was stabbed, we had four people testify that they saw them

fighting. That they saw him making motions that he stabbed him. We had audio tape that he did in fact stab him. And I think the defendant admitted to most of what the state is trying to prove on the tape and in the transcript. I think that malice could certainly be implied by getting stabbed and being mad about the comment that was made earlier. And I think that we have the evidence that the defendant then proceeded to try to cover everything up by intimidating and beating up witnesses.

THE COURT: All right. Very good. Mr. Swilley, I am going to deny your Motion for this reason. It is not for the Court to weigh the evidence at this juncture. The Court does not sit as the judge of the facts.

The question before the Court is, is there admissible, competent evidence tending to prove guilt of the accused.

I find that there is evidence in this record that would tend to prove the guilt of the accused, and that evidence is competent and was admissible. And thus, the issue is for the jury.

For that reason, I am going to respectfully deny your Motion.

Is there anything further now with regard to

Motions?

MR. SWILLEY: Not on behalf of the defense, Your Honor.

THE COURT: All right. I am going to speak with the defendant if I may. And, Mr. Toney, we are going to get you to stand if you would please, sir. And follow our Clerk's instructions.

WHEREUPON, BREYON TONEY

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MR. TONEY: Yes, ma'am.

THE COURT: All right. Mr. Toney, how are you doing, sir?

MR. TONEY: Doing all right, sir.

THE COURT: All right. Very good. You have heard the state now close their case. And you realize that it is time for the defense to put up a case if they wish to do so. Do you understand that?

MR. TONEY: Yes, sir.

THE COURT: And have you had ample time now to talk with your lawyer about your right to testify, as well as your right to remain silent as part of this case?

MR. TONEY: Yes, sir.

THE COURT: Okay. And have you in that discussion, understood in your opinion the things that

your lawyer has told you?

MR. TONEY: Yes, sir.

THE COURT: Now, with regard to your right to remain silent, I want to make sure that you understand that as part of your case you are not required to testify. You don't have a burden of proof. And you don't have to take the stand. In fact, if you choose not to testify, the Court will tell the jury in its charge to the jury that they should not consider that, or hold that against you in any way. And in fact, they should not even discuss it in the jury room, because you have a constitutional right to remain silent. And do you understand that, sir?

MR. TONEY: Yes, sir.

THE COURT: And is what I just told you about your right to remain silent, the same thing your lawyer, Mr. Swilley, has told you?

MR. TONEY: Yes, sir.

THE COURT: All right. And by the other hand though you have a right to testify, which is if you wish to take the stand, you may do so. But if you do so, you will be under oath, and subject to not only questions by your lawyer which is direct examination, but you will be cross examined by the state in the presence of the jury. And the jury may take what you say either for you or

against you as they determine the case to be, because they are the judge of the facts.

Additionally, if you take the stand, if you have some prior charges on your record, criminal charges on your record, it may indicate credibility or believability. Those may come in against you as well. And do you understand that, sir?

MR. TONEY: Yes, sir.

THE COURT: All right. Now, is what I just told you about your right to testify the same thing Mr. Swilley told you?

MR. TONEY: Yes, sir.

THE COURT: Do you have any questions of the Court about your right to remain silent, or your right to testify?

MR. TONEY: No, sir.

THE COURT: And have you understood the things that I have explained to you today?

MR. TONEY: Yes, sir.

THE COURT: Okay. But just to make sure, I realize that you are in custody. But do you have any alcohol or illegal drugs in your system?

MR. TONEY: No, sir.

THE COURT: And do you have any medications that you take?

MR. TONEY: No, sir.

THE COURT: And how far did you go in school, sir?

MR. TONEY: Eleventh grade.

THE COURT: And do you have a GED?

MR. TONEY: No, sir.

THE COURT: Did you complete the eleventh grade?

MR. TONEY: No, sir.

THE COURT: Now, Mr. Swilley, is there anything further that you would have me ask Mr. Toney about his right to remain silent or his right to testify?

MR. SWILLEY: There is not, Your Honor.

THE COURT: All right. For the state, is there anything further that you would have me ask Mr. Toney about his rights?

MR. HOLT: No, sir, Your Honor.

THE COURT: All right. Mr. Toney, let me ask you, sir. Have you made a decision as to whether you are going to testify?

MR. TONEY: No, sir.

THE COURT: I will leave that with you to discuss with your attorney then. And at the appropriate time -- - No, you haven't made a decision, or no you are not going to testify?

MR. TONEY: No, sir. I have not made the decision.

THE COURT: Okay. Well, you don't have to give me that decision now. We will let you talk with your attorney further about it, and you may return to your seat.

All right. Mr. Swilley, are you ready to call your first witness?

MR. SWILLEY: I am, Your Honor. The defense will call Tiffany Huggins.

THE COURT: All right. We will wait until the jury comes in, and we will let you do that same thing again.

MS. PARKER: Your Honor, we also just got a date of birth, and we are going to run the rap sheet.

THE COURT: All right. We are going to have direct examination, so that can be accomplished while direct is going on. And if there is some issue that you need to take up with the Court, you may take it up at the appropriate time.

Please bring in the jury.

(Whereupon, the jury enters the courtroom at 10:46 a.m.)

THE COURT: All right. Welcome back, ladies and gentlemen. And as you will recall the state has rested, and we now move to the defense.

And, Mr. Swilley, do you intend to call witnesses?

MR. SWILLEY: Yes, Your Honor.

THE COURT: Please call your first witness.

MR. SWILLEY: Thank you, Your Honor. The defense calls Tiffany Huggins to the stand.

THE COURT: Please come forward and take the oath of a witness.

WHEREUPON, TIFFANY KAYE HUGGINS

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MS. HUGGINS: Yes.

THE COURT: Go ahead.

DIRECT EXAMINATION BY MR. SWILLEY

Q. Ms. Huggins, where do you currently reside?

A. Hartsville.

Q. Ms. Huggins, where did you grow up?

A. South Carolina.

Q. Was that in Darlington County?

A. Yes.

Q. And how old are you?

A. Nineteen.

Q. Okay.

THE COURT: Ma'am, let's start with your full name, please.

MS. HUGGINS: Tiffany Huggins.

THE COURT: Do you have a middle name?

MS. HUGGINS: Kaye.

THE COURT: Is that short for anything, or is that your name?

MS. HUGGINS: It is my name. K-A-Y-E.

THE COURT: All right. Thank you. Go ahead, Mr. Swilley.

Q. Ms. Huggins, how long, or when did you move to New York?

A. 2009.

Q. Okay. On March 23, and 24, of 2009, and prior to that, did you live in Darlington County?

A. Yes.

Q. And Ms. Huggins, did you know Mr. James Jimmy Tucker?

A. Yes.

Q. Did you know Mr. Breyon Toney?

A. Yes.

Q. Were you, well acquainted with them?

A. Yes.

Q. Okay. Tiffany, were you aware of an ongoing dispute between these two men?

A. Yes.

Q. Can you make sure you answer yes or no so the Court Reporter will get that? Can you elaborate to me the facts surrounding that dispute?

A. Yes.

Q. Okay. Would you please proceed?
A. Do you mean about the argument?
Q. What was the dispute over?
A. Sexual intercourse with Jimmy's girlfriend.
Q. I'm sorry, who was this young lady? What was her name?
A. India.
Q. Okay. Particularly, what was Mr. Tucker angry --- who was Mr. Tucker angry at in relation to someone having relations with his girlfriend?
A. Breezo.
Q. Who is also known by his given name?
A. Breyon.
Q. And is that Mr. Toney sitting here?
A. Yes.
Q. Tiffany, did you have a chance to be in the presence of Mr. Toney the day before his death?
A. Yes.
Q. Did you have a chance to observe --- I'm sorry. Did you have a chance to be around Mr. Tucker the day before his death?
A. Yes.
Q. Okay. Was Mr. Tucker angry about something?
A. Yes.
Q. What was he angry about?

MR. HOLT: Objection, Your Honor.

THE COURT: All right. Counsel, first of all, I don't know what she is going to say, but that was a leading question. Was he angry? There is your answer right there. So, let's go back and rephrase that question not to lead. Now, go ahead.

MR. HOLT: I am also worried about hearsay, Judge. I don't think she can go into what somebody told her.

THE COURT: All right. Let's be aware of the hearsay rules.

MR. SWILLEY: I understand, Your Honor.

THE COURT: All right. Good. You may proceed.

Q. Ms. Huggins, from your observations what was Mr. Tucker's state of mind?

A. Mad, angry, like --

Q. Okay. And what did you perceive him to be angry about at that time?

A. The simple fact that Breezo had sexual intercourse with India, and he was upset about that.

Q. Okay. As to his intentions and his state of mind, what was Mr. Tucker's first remark pertaining to this?

THE COURT: All right. Just a moment. Is there an objection?

MR. HOLT: There is an objection, Your Honor. Just my previous hearsay objection.

THE COURT: Tell me how you get around the hearsay rule with that?

MR. SWILLEY: Your Honor, this is an unavailable declarant, and it would be a statement against interest.

Also, I think it falls under the state of mind exception, as to the state of mind the decedent is in, what he planned on doing, and I think that falls within both of those hearsay exceptions.

THE COURT: Okay. Response?

MR. HOLT: Your Honor, I don't think it falls within either one of those exceptions. Specifically, the state of mind, if she heard someone say something, how does that prove what state of mind they were in? But, I will have Rule 804 here in just a second.

THE COURT: All right. Ladies and gentlemen, let's just talk for a moment. We talked about the hearsay rule a little bit ago, maybe yesterday. But, let's first of all just stop and think about this. When we were all children we all probably played a game where you sat in a circle and someone whispered something, it came back around, and by the time it got to the other side of that circle it was totally different. The

reason for the hearsay rule is to attempt to provide credibility and reliability for evidence that comes into the Court. It is not an effort to hide anything. But, if you think it, if someone can come in and testify about someone saying they said anything, you can imagine what they could say someone else said. So, the general rule is, let's bring that other person in here and let them say what they said. Well, when you have a deceased individual, the declarant, that is the speaker is obviously unavailable. So, then you have to balance whether the rules will permit, and they do have certain exceptions to the rule, that is to permit some testimony to come in and exclude certain testimony. So, we are going to have to take a moment and review that, and please be patient.

Now, do you have a response to it?

MR. HOLT: I do, Your Honor. Under 804(b), you have four exceptions to a declarant being unavailable. It is certainly not any of the other three, but I think what Mr. Swilley is trying to get in is 804(b)(3), a statement against interest. And just reading the definition of that, I don't believe that anything a young man said earlier in the day would be a statement against interest. I don't think it falls within that. A statement in which at the time of its making was so

far contrary to the declarant's pecuniary or proprietary interest, and I just --

THE COURT: Very good. And bearing in mind your answer, I am going to sustain that objection on the issue of statement against interest. Because, again, the defendant would not have known at the moment it was being said that it would somehow be against interest, and thus, for that reason the Court is going to exclude it.

Now, what was your other point that it could be admissible?

MR. SWILLEY: Your Honor, I think I was referring to Rule 803, subsection 3, which from my recollection would be a state of mind. There was testimony about what the decedent said earlier about state of mind at the time of the incident. I think this would be an extension of that for complete purposes would go to the state of mind as well.

THE COURT: And this alleged comment occurred the day before?

MR. SWILLEY: Some hours before the alleged incident, Your Honor.

THE COURT: Do you want to be heard on that?

MR. HOLT: You know, I think if it happened at the incident it would matter. But, where do you draw

the line on what can come in and what can't? Are we going to talk about Mr. Tucker's state of mind four days ago? Are we going to talk about his state of mind eight days ago? You know, the existing state of mind goes to what was then existing when the incident occurred. If he had anything that mattered on Marion Avenue and East Chaplin Circle, I think then existing state of mind allows it to come in. I don't think the existing state of mind applies to any of the seventeen years previous in Mr. Tucker's life.

THE COURT: And, counsel, step up just one moment, please.

(Whereupon, a bench conference was held in the presence of the jury, but out of their hearing range.)

THE COURT: All right. Again as I mentioned to you yesterday, there is a series of rules which we rely upon. One of the exceptions to the hearsay rule is if it would intend to present the declarant's then existing state of mind, or emotion, or sensation, or intent, plan, motive or design. The Court is going to overrule the objection. I am going to let you proceed and let you put the testimony in.

Ma'am, please answer your lawyer's question. Go ahead, Mr. Swilley.

Q. Ms. Huggins, what did you hear Mr. Tucker remark as to what he intended on doing to Mr. Toney?

A. Well, I heard him threaten him saying he was going to mess him up, and was going to get his --- what was coming to him for messing around with India and everything, and stuff like that.

Q. Tiffany, would you say that you were acquainted with Mr. Toney and Mr. Tucker fairly well?

A. At the time.

Q. Well, I mean, yes at the time. No? Okay. You did --- but is there any question about as to you knew them or not?

A. I knew them both.

Q. Okay. And as an ongoing dispute, can you elaborate on the allegations of whether or not the decedent bought diapers for Mr. Toney's girlfriend?

A. No.

Q. Do you know anything about that?

A. No.

Q. Okay. Do you know if there was any other subject matter of a dispute that existed between Mr. Toney and Mr. Tucker?

A. No.

Q. Okay. And, when Mr. Tucker made these intentional verbal --- when he expressed verbal intentions

where were you?

A. In front of him that day that everything happened. We was like in front of each other.

Q. Okay. What was Mr. Tucker doing at the time?

A. Talking to him on the phone.

Q. Talking to who on the phone?

A. Breezo, Breyon, on the phone.

Q. Okay. While he was saying these things?

A. Yes.

Q. Okay. Tiffany, what was the last --- when was the last time you saw James Tucker alive?

A. At the Boys and Girls Club that day.

Q. And about what time was that?

A. That would have to be about 1:00, 1:30, 2:00, because that is when kids get out of school.

Q. Okay. And were you present --- were you ever present when each of these two boys were both at a location in that general vicinity and time?

A. Like face to face?

Q. Yeah.

A. No.

MR. SWILLEY: Beg the Court's indulgence.

(PAUSE.)

MR. SWILLEY: I have no further questions, Your Honor. Please answer any questions Mr. Holt may have.

THE COURT: All right. Cross examination.

MR. HOLT: Yes, sir, Your Honor.

CROSS EXAMINATION BY MR. HOLT

Q. Hey, your name is Ms. Huggins?

A. Yes.

Q. And how old are you?

A. Nineteen.

Q. Nineteen? All right. And is it correct or incorrect that Breyon and James Tucker were friends?

A. Correct.

Q. Okay. And you knew and liked both of them; is that correct or incorrect?

A. Liked as in?

Q. Were friendly with, not romantically with them.

A. Correct.

Q. That's correct. Okay. And, the only reason that you know that anybody may or may not have had sex with anybody is because you heard it from somebody; is that correct or incorrect?

A. Correct.

Q. Did you see Breyon have sex with the Griggs girl?

A. No.

Q. Did you see Jimmy have sex with the Griggs girl?

A. No. So pretty much everything you know is just

what people told you, correct?

A. Yes.

Q. Okay. Now, were you in high school with these two young men when this happened?

A. No.

Q. But y'all were young people; correct or incorrect?

A. Correct.

Q. Have you ever heard of a young person claiming to have sex with another young person and it wasn't true?

MR. SWILLEY: Objection, Your Honor.

THE COURT: Overruled.

Q. Have you ever known anybody to lie about having sex with another person? Say, for instance, let me provide you with an example. Yeah, I did that, but they didn't. Have you ever known that to happen?

A. Yes.

Q. Okay. So that does happen in the world; correct?

A. Yes.

Q. Now, when you heard Jimmy saying, he's gonna get what's coming to him, was your mind thinking that Jimmy was going to kill Breyon Toney?

A. Ah -- No, not really.

Q. Yeah. It was and correct me if I'm wrong, but it was probably just teenagers just talking trash

wasn't it?

MR. SWILLEY: Objection, Your Honor. Calls for speculation.

THE COURT: Overruled.

A. No.

Q. Well, have you ever heard any teenagers like they say they had sex with people when they don't; have you ever heard teenagers to talk trash and then not follow through with it?

A. Sometimes.

Q. Okay. So it does happen?

A. Yes.

Q. I promise I am not trying to trick you. Now, were you there that night on Marion Circle and East Chaplin Street when Breyon killed Jimmy?

A. No.

Q. So you don't know anything about what happened that night do you?

A. No.

Q. Were you there at Pride Park earlier in the day on March 23rd, when there was another altercation between these young men?

A. No.

Q. Okay. Did you hear anyone say that James Tucker is going around buying Breyon's baby some Pampers,

because Breyon didn't do it. Did you hear anybody say that?

MR. SWILLEY: Objection, Your Honor.

THE COURT: Objection, on what?

MR. SWILLEY: Hearsay. He said, has anyone?

THE COURT: I am going to sustain that counsel. It is clearly asking for a hearsay response. Please move to your next question.

Q. Okay. You said you heard Breyon --- I mean you said you heard James Tucker talking on the phone with Breyon?

A. Yes.

Q. How did you know it was Breyon on the other line?

A. I was there when he called him.

Q. You were there when who called who?

A. I was there when Jimmy called Breezo.

Q. But what I want to know is this, did you hear Breezo on the other line?

A. Yes.

Q. You did. Answer me this. Say Jimmy just called somebody else and just told you it was Breezo, could that have been possible?

A. No.

Q. And explain to me how you know that?

A. Because I saw the number, and I also heard him on

the phone.

Q. How do you know it wasn't somebody else on the other line like Breezo's brother, who sounds like him?

A. I'm not dumb like, I heard him talking, because I did talk to him more than one time.

Q. Ms. Huggins, I promise you, I would never think you were dumb. And I would never try to trick you. What I want to know is on a scale of one to a hundred percent, how sure are you?

A. I am a hundred percent sure.

Q. There is no way anyone can trick you?

A. No.

Q. You have never been tricked before?

A. Yes, I have.

Q. That's all I wanted to know.

MR. HOLT: Thank you very much.

THE COURT: Now, redirect?

MR. SWILLEY: Briefly, Your Honor.

REDIRECT EXAMINATION BY MR. SWILLEY

Q. Ms. Huggins, on whose phone was Mr. Tucker using to call Breyon Toney?

A. My cell phone.

Q. Okay. Your cell phone.

MR. SWILLEY: Nothing further, Your Honor.

THE COURT: Very good. Ma'am, you may step down. You are free to leave if you wish, or you may remain.

And defense, please call your next witness.

MR. SWILLEY: Beg the Court's indulgence.

(PAUSE.)

MR. SWILLEY: Your Honor, the state calls Breyon Toney. I'm sorry, the defense calls Breyon Toney.

THE COURT: Very good. Then Mr. Toney, please come forward and take the oath of a witness.

WHEREUPON, BREYON TONEY

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MR. TONEY: Yes, ma'am.

DIRECT EXAMINATION BY MR. SWILLEY

Q. State your full name for the record, please.

A. Breyon Toney.

Q. Breyon, how old are you?

A. Nineteen.

Q. And where are you from?

A. Hartsville, South Carolina.

Q. Breyon, how long had you known James Jimmy Tucker?

A. My whole life.

Q. Were you friends?

A. Yes, sir.

Q. Had you and --- On or about March 23rd, 24th was there an ongoing dispute between you Jimmy?

A. Yes, sir.
Q. Can you elaborate on the facts surrounding this dispute between you and Mr. Tucker?
A. Yes, sir.
Q. Go ahead, please.
A. It happened like --- he was talking to India Grimes.
Q. When you say talking to --
A. He was in a relationship with India Grimes then me and her started having relations. So from my understanding is he heard about it. So on March 23rd, I was in Pride Park, so if I was in Pride Park I walked across the Street and through the path that goes to Jin Jin Chinese Restaurant. So, I was walking to the Chinese Restaurant, I was walking through a path of trees. You can barely see but you can hear. So I heard voices before I saw who it was. So as I --- as I walked up closer getting around the bend to the car to go to Jin Jin, I heard voices and I heard my name. And the voice what I heard was James Tucker saying, well Breezo don't think I know --- he talking to India and they got something on, but I'm gonna do something about it. And when I seen him it was him and Demetrious Sowell. When we saw each other I

said well if you have anything to say about me say it to me and not anyone else. So that is when Demetrious Sowell told us --- it was like man y'all should have let that go because it ain't worth it over a female. So, James Tucker, was like, oh, don't worry about it. Something will happen about it. So I walked off when I should have waited.

Q. All right.

A. So, when I was there --

Q. I'm sorry. After that where did you go?

A. I went and got my food.

Q. Okay. Then where did you go?

A. I went back to Pride Park.

Q. Please continue.

A. All right. When I got to Pride Park I started eating my food. So I got a phone call while I was eating my food with India Grimes. So she called and she asked why did I just tell James that me and her had sex. So I said that I didn't tell James that. So, she had me on three way with him, and he came on the line and he told her that I was lying, and to hang the phone up. All right. So, she is on the phone and I tried to call her back. She didn't answer the phone. So, like an hour later Tiffany Huggins texted my phone with a text

message, and the text message stated that someone is talking about you right now.

Q. Okay.

A. So, instead of sending a text message back to her I called her. I asked her, I say what is going on, and who is talking about me? She gave James Tucker the phone. He said a couple of things, and he hung up. So I called her back and I was like --

Q. Is this the same James Tucker that Ms. Huggins just testified?

A. Yes, sir.

Q. Okay. Please continue.

A. So, I asked her what's going on? I called her and I asked her what was going on. She explained to me that he was angry about his girlfriend, me having relations with his girlfriend. So, we talked about that. And I tried to get her to give the phone back to him, but he wouldn't take the phone so she hung up. Later on that night, I got a text message saying meet me on Marion Street.

Q. Who was that text message from?

A. The text message was from James Tucker.

Q. Okay. And did you have James Tucker --- did you have his number saved in your phone?

A. Yes, sir.

Q. Okay.

A. So, like after I got the text message I texted back ten minutes later, and I said I been to a Myrtle Street, but I saw no one. But I really didn't go to Myrtle Street. So, we started texting back and forth, having an argument through the text messaging. So, I went home. So I went home, and when I got home my mother was home. So my mother told me to get my daughter, because she had to work that day and couldn't get --

Q. How old was your daughter at the time?

A. Ten months.

Q. Okay.

A. So I took my daughter, and put my daughter to sleep. I got a phone call from James Tucker but it was Phillip Franklin. Phillip Franklin was telling me --- trying to get me to come to where they was at. They were trying to get me to come to where they were. So that is when Marcus Brunson got involved, and he told them that I'm not going to let anything happen. You just come out here, and I'm going to let y'all talk about it, and do whatever y'all got to do. And that is when Phillip got the phone and was just trying to get me to come. He kept trying to get me to come. So, I was

like I ain't coming. I've got my daughter. So, that is when they hung up, and texted my phone. James Tucker texted my phone and said, I'm on Marion, come on Marion. So, I texted back, okay. So then he was like another text message came, and it was like okay you had better come because I'm coming your way anyway.

Q. What did you perceive this to mean?

A. That he was coming to my house, because he know where I stayed. So when it said that, that is when I took my daughter back to my mother and I left. So when I left home, on my way to Marion, I called back. And when I called back and tried to talk about it, I asked him what was going on? Is this like going to be over a girl? Are we going to fight over a girl really? So he was like I don't want to talk. That is when Marcus called my phone back and was like now you come on so y'all can talk about this. So, when I got there when I was coming up the Street I seen two figures in the middle of the road. One figure was jumping around and moving around. When I got up closer I saw the two figures was Phillip Franklin and James Tucker. So when I walked --- when I walked up I saw Marcus Brunson and Crystal Robinson get out of the car. They got

out of the car so Phillip Franklin, he grabbed James Tucker's CD player from his hand, and James put his jacket on the ground. So when he put his jacket on the ground, Marcus walked up, and that is when I walked up to James and we at first started talking. So he was like I was trying to talk to and he didn't want to talk. He said he didn't want to talk. So when he said he didn't want to talk he threw his hands up like his guard up. So when he threw his guard up I threw my guard up so we were squaring off, moving around. As we were moving around he picked --- he went for his jacket, and that is when I picked my jacket up and got --- it is like a key ring knife. I got the knife and I had it --

Q. Do you carry this item all of the time?

A. Yes, sir.

Q. All right. Go ahead.

A. So, I had the knife. So when I had the knife he was like oh, so you got a knife. And I was like put your jacket down. And he was like put the knife down. That is when he backed up to the yard across the Street from where he was --- he backed up in the yard and grabbed the two bottles out of the recycling bin. One of them was a whole bottle

and one of them was a half of a broken bottle. So when he grabbed the bottle he came back to where he was and he pulled me and he was like now put the knife down, and I was like put the bottles down. So he was like --- When he say that, Phillip Franklin and Marcus Brunson started saying, well, if y'all gonna to do anything like y'all got us out here for nothing. So when they said that, that is when he threw the first bottle. He threw the first bottle at me. So when he threw the first bottle I ducked and it fell in the middle of the Street. So when the bottle fell, he still had the broken bottle. That is when --- they was like --- they was like, do something, do something, y'all ain't gonna do nothing. Late at night and y'all ain't gonna do nothing?

Q. Was Marcus and Phillip saying that?

A. Yes, sir. So, when they came back and they kept walking back and forth to the car. Crystal and Marcus kept walking back and forth to the car. So when they came back, James had the broken bottle in his hand, and we were still in the middle of the Street like standing in front of each other, like moving around. So he came at me with the other bottle, like came running with the other bottle,

and he tried to grab me by my shirt. And when he grabbed on my shirt that is when I backed up and moved the knife towards him, and he backed up and he fell. And he jumped straight back up and the other bottle had broken in the middle, and then he threw it, and I guess that is when he felt that he was cut, because he lifted his shirt up and he said oh, I'm cut. So he walked passed me.

Q. Did you assault James Tucker any more after that?

A. No, sir.

Q. Did you ever mean to hurt James Tucker?

A. No, sir.

Q. Okay. Please continue.

A. So, he walked passed me, he walked to Marcus Brunson. I walked to the top of the Street also where he was. He said I'm cut. So Marcus said that looks like --- it looked like a small cut, you might need stitches, so let Crystal take you to the hospital. So, he was walking to the car with Crystal, and they told him to jog to the car, so he started jogging to the car. They got in the car. They left. And I was still --- we were still standing around. Me, Marcus Brunson and Phillip Franklin was still standing around.

Q. Okay. About how long after that did you go home?

A. Probably about ten or fifteen minutes.
Q. What did you believe to be the condition of Jimmy at the time you left that area?
A. I was just thinking he had a cut and had to go to the hospital and get it treated.
Q. Okay. Breyon, please list the individuals who were present at this scene.
A. Myself, Marcus Brunson, Phillip Franklin, and Crystal Robinson.
Q. Okay. All right. Now later on, are you --- at the time did you know who LaVincent Quintell Hankins was?
A. No, sir.
Q. Okay. And do you know who he is now?
A. Yes, sir.
Q. Okay. In your own words, can you describe to me the altercation from when --- the altercation between you and Mr. Hankins recently?
A. We were at Pride Park on March the 2nd --
THE COURT: I am going to get you to back just a little off that microphone, please, sir.
A. We were at Pride Park on March 2nd, so when I was walking up to the park, when I was walking in the park he was sitting under the hut with his girlfriend, and a couple of other people. So, when

I walked up I started playing with a girl who I knew, daughter. So I started playing with her daughter.

Q. Who was this girl?

A. This girl is Michelle King.

Q. Okay.

A. So, as we --- as we --- I was playing with her, his girlfriend was like asked me like --- like when did I get out of jail. So I told her, and she asked me --- she was like well I heard you wanted to fight my boyfriend, Quintell, because he wrote a statement on you. And I told her that if I wanted to fight him I'd be fighting him now. So that is when she said, well, okay, if you want to fight him, just let me know, if you fight him then I have something to do with it. She told me she would have something to do with it if I fight him. So, we kind of got in an argument --- he be like --- don't be talking to her like that.

MR. HOLT: Objection, Your Honor. Hearsay.

THE COURT: It has been a running hearsay dialog. I am going to sustain it, absolutely.

Ladies and gentlemen, of course you heard a lot of hearsay coming through. The Court --- it is not my job to self-start. I let the lawyers try their cases. If

they object, then I rule on the objection. If they don't object then it comes in.

So, now that there is an objection, sustained. Please move to your next area.

Q. Breyon, without telling me what anybody said, did you and Mr. --- let's cut to the chase. Did you and Mr. Hankins get into a physical altercation --

A. -- Yes, sir --

Q. -- That day? Did it go down the way he described it?

A. No, sir.

Q. All right. In your own words, without telling me what anybody said, or without --- tell me what really happened in this altercation? Okay? As to who hit who and how it ended.

A. All right. When he walked up, I pushed --- when he walked up talking, I pushed him.

Q. Did you feel threatened at that time?

A. Yes, sir.

Q. Okay. You did?

A. When I pushed him he swung, but when he swung he missed and I started swinging. So when I started swinging, that is when people started getting involved and taking us apart from each other. That was that.

Q. Was Mr. Hankins, did he get hurt from what you saw?
A. No, sir.
Q. Okay. From what you observed were Mr. Hankins and Mr. Tucker, were they friends?
A. Not that I know of.
Q. Okay. All right. When you left, going back to Marion Avenue, at any time when you went to Marion Avenue, did you intend to fight James Tucker?
A. No, sir.
Q. Okay.

MR. SWILLEY: Beg the Court's indulgence.

(PAUSE.)

Q. Breyon, when Mr. Tucker charged you with that broken bottle, did you fear for your life at that time?
A. Yes, sir.
Q. Okay.

THE COURT: Counsel, don't lead your witness.

Q. Breyon, did you ---

MR. SWILLEY: Your Honor, I have nothing further. Please answer questions that Mr. Holt may have.

THE COURT: Cross examination.

MR. HOLT: Thank you, Your Honor.

CROSS EXAMINATION BY MR. HOLT

Q. Mr. Toney, you are nineteen years old; correct?

A. Yes, sir.
Q. All right. And you grew up and lived all of your life in Hartsville; is that correct?
A. Yes, sir.
Q. And you and James Tucker were good friends; correct?
A. Yes, sir.
Q. Okay. And you have a young child by a woman named Kendra Williams; correct?
A. Yes, sir.
Q. Okay. And on the afternoon of March 23, 2009, you and James Tucker were together with some friends in Pride Park, correct?
A. No, sir.
Q. So, you understand that it is that same day that the incidence happened that night earlier, that day you were in Pride Park?
A. Yes, sir. I was in Pride Park.
Q. And James Tucker was in Pride Park as well?
A. No, sir.
Q. So you never saw James Tucker there?
A. No, sir.
Q. Okay. So he never shamed you publicly that day?
A. No, sir.
Q. So, it is your testimony that he never once said,

he was going to buy your baby some Pampers, and that you couldn't do it?

A. Yes, sir. It is my testimony that he did not say those words.

Q. He never said that?

A. No, sir.

Q. Okay. Now, at that time your baby was staying with you?

A. No, sir.

Q. Where was your baby staying?

A. With her mother. With her mamma.

Q. Were you buying the baby's Pampers?

A. Yes, sir.

Q. Okay. You said, you were in Pride Park all day that day, and your mamma had the baby?

A. Yes, sir.

Q. Why didn't you have your own baby?

A. Because I was out and my mother had my baby. That is her granddaughter.

Q. Well what were you doing in Pride Park that was so important that you couldn't be raising your child?

MR. SWILLEY: Objection, Your Honor. I think it is outside the scope of relevance.

THE COURT: Overruled.

Q. What were you tending to in Pride Park that was so

important that day that you couldn't be at home with your child?

A. Hanging out.

Q. Just hanging out. All right. Now, were you and Ms. Williams in a relationship?

A. Yes, sir.

Q. And what was y'all's relationship?

A. My daughter's mother.

Q. But were you still romantically involved?

A. No, sir.

Q. Y'all were no longer seeing each other?

A. No, sir.

Q. You were sleeping with India Grimes?

A. Yes, sir.

Q. Even though James Tucker was your friend?

A. Yes, sir.

Q. You were sleeping with his girlfriend?

A. Yes, sir.

Q. And that didn't bother you?

A. No, sir.

Q. You didn't feel any reason why that would not be right?

A. No, sir.

Q. Okay. Now, did you talk to --- and Kendra's nickname is Keke, [sic] correct?

A. Yes, sir.
Q. Did you talk to Keke about any of this?
A. No, sir.
Q. So you never called Keke and told her that she --- that Jimmy had said he was going to buy her some Pampers; you never called her and said that?
A. No, sir.
Q. Okay. All right. Now, did you know an individual who went by the street name Ox?
A. Yes, sir.
Q. And who was that?
A. My friend.
Q. What was his name?
A. Forrest Royal.
Q. All right. Now on March 23, 2009, Pride Park, earlier that day, Ox, Forrest Royal did not get in between you and James Tucker and say you are not going to fight about a woman in this park?
MR. SWILLEY: Objection, Your Honor.
A. No, sir.
MR. SWILLEY: Objection, Your Honor.
Q. That never happened?
THE COURT: Excuse me. Excuse me. On what grounds?
MR. SWILLEY: Under the strike I don't think that

was a question. I just think Mr. Holt just made a statement.

THE COURT: Overruled. He is given latitude on cross, and he is on cross examination. You may lead on cross. Go ahead.

Q. So, nobody got in between y'all in the Park and said y'all two aren't going to fight about a girl?

A. No, sir.

Q. Okay. Let's go to the night in question. Let's get to that. March 24th, early in the morning but was the night of the 23rd. Okay? It is true that you went down to Marion Avenue and Chaplin Circle, right?

A. Could you repeat that question, sir?

Q. You went down to Marion Avenue and East Chaplin Circle, that's correct?

A. Yes, sir.

MR. HOLT: Permission to approach, Your Honor?

THE COURT: You may.

Q. And I am going to show you --- you were over there. Did you witness all the other witnesses testifying about this board right here?

A. Yes, sir.

Q. Do you realize that that is the old abandoned church that is torn down now?

A. Yes, sir.
Q. And that is where Crystal Robinson's car would be, and this would be the path right there, in that large open space?
A. Yes, sir.
Q. Okay. So, did you or did you not go down there on your own free will and go to meet Jimmy and Keke?
A. Yes, sir. Because I thought we were about to go and talk about it.
Q. Well, if you were going to talk about it, why did you bring a knife?
A. Because it is always in my coat pocket.
Q. Why do you carry that knife?
A. Because I know how Hartsville is.
Q. So you carry the knife in case you have to use it on a person?
A. In case I have to protect myself.
Q. You don't have the knife for your job?
A. No, sir.
Q. Have you ever used that knife to cut drugs with?
MR. SWILLEY: Objection, Your Honor.
THE COURT: Sustained.
MR. SWILLEY: I move to strike.
THE COURT: I am going to ask the jury to disregard that. That is a reference to an illegal

activity. There is no basis or evidence for that question. Please disregard the question. Move forward to your next issue.

Q. All right. So, can you show me, using this, where you first met Jimmy and started talking?

A. Right there.

Q. All right. Now, can you explain to me or can you show me where you cut Jimmy at?

A. It was right here.

Q. That is where you cut him?

A. Yes, sir.

Q. First of all, can you explain to me why the blood is all the way up here?

A. I don't know, sir.

Q. All right. Well, let me ask you this. Can you explain to me how y'all got --- you say it started here. You say you cut him here. Can you tell me how you got him from here to here?

A. Because we was going in circles, sir.

Q. But what I'm saying is if you were going in circles, you would be just staying in the same place, just go in circles, correct or incorrect?

A. Yes, sir.

Q. Why did you get all the way over here?

A. Because we was moving. Because we backed up --- we

backed up from right here to here.

Q. There we go. That's --- You are absolutely right. Tell me and the jury why you backed up that far?

A. I couldn't even tell you that, sir.

Q. Is it correct or incorrect that you backed up that far because you had a knife on him?

A. No, sir.

Q. Okay. Let me ask you this. Were you mad that night?

A. No, sir.

Q. How about when you beat LaVincent up at the park, were you mad then?

A. No, sir.

Q. Well you say Jimmy never shamed you. If Jimmy had shamed you in public like everybody else said, would that have made you mad?

A. No, sir.

Q. So, it is your testimony today that you have been in two fights, the one with Jimmy and the one with LaVincent Hankins?

A. No, sir.

Q. But that was a fight that night with Jimmy; correct?

A. Yes, sir.

Q. And did you say that you ended up throwing licks

and exchanging licks with LaVincent Hankins March 2nd in Pride Park? That was a fight too; right?

A. Yes, sir.

Q. So two fights; right?

A. Yes, sir.

Q. That you are talking about here today. Okay. And you have never been mad at anyone?

A. No, sir.

Q. So, how can you get in fights without being mad?

A. Because I am not an angry person.

Q. Okay. But you stabbed Jimmy, and you hit LaVincent in the fact, and it is your testimony that you weren't angry, not even a little bit?

A. No, sir.

Q. Okay. All right. Now when you were walking down Marion Avenue to get there that night, were you yelling anything?

A. No, sir.

Q. Okay. You heard LaVincent say you were yelling?

A. Yes, sir.

Q. Okay. Now, how about when Phillip Franklin called you from the hospital, and told you he was bleeding out, he's dying, what did you say?

A. He never called me, sir.

Q. Did you call Jimmy's phone?

A. No, sir.
Q. So what Phillip Franklin said was untrue?
A. Yes, sir.
Q. All right. Now, James Tucker never went to your house that night did he?
A. No, sir.
Q. Okay. So you were protecting your mother, and you weren't protecting your daughter from anybody were you?
A. Yes, sir. That's the reason I left home.
Q. But this is the point that I want to make to you. What was the threat against him?
A. It wasn't a threat against them. I'm coming your way which is my house.
Q. Well, if you are in your yard, would that have been better or worse than on Marion Street?

MR. SWILLEY: Objection, Your Honor. I think that calls for speculation.

THE COURT: Well, I'm going to ask you to rephrase your question counsel. Better in what way?

Q. Are you familiar with the castle doctrine of self-defense?
A. No, sir.
Q. Have you ever heard the saying that every man's home is his castle?

A. No, sir.
Q. Never? Now, let me ask you this. When you went out there that night, you say James Tucker was your friend, and you were just going to settle an argument, maybe even have a little teenage scuffle, is that correct or incorrect?
A. No, sir.
Q. All right. Now, let me ask you this. Did you hear the statement that you made on the jail tapes, when they played the jail tapes in here?
A. Yes, sir.
Q. Okay. Now, isn't it true that on those statements you imply that you had the knife out before he ever picked the bottles up?
A. To be honest with you, sir, I cannot be sure. That was two years ago.
Q. That is exactly what I'm trying --- that is the point I'm trying to make. But your story was so detailed, how is it that you can pay attention to everything that you testified about here about today from two years ago? How do you remember who was there? How do you remember what they said to the detail when it has faded? How do you remember all of that from two years ago, but now you can't tell me what I'm asking you? Why is that?

A. Because those are the most important things that I need to remember.

Q. Okay. Well, let me ask you this.

MR. HOLT: And permission to approach, Your Honor?

THE COURT: Yes, sir.

Q. If you backed him up from here to here, isn't it possible --- you can't remember this. Isn't it possible that that is probably because you had a knife on him, and he didn't have a weapon, so he had to back up all the way over there?

A. I didn't back him up over there.

Q. What I am trying to say is you weren't mad. I am sure you were perfectly calm. Why did he go from here to here? That is all I want to know.

A. Because he went that way. He was right across the Street with the recycling bin, with the bottles.

Q. But --- okay --- well, let me --- You are not going to help me here, so let me ask you this. Does it -- hypothetically, doesn't it make sense if somebody had a weapon, and another person doesn't have a weapon, that the person without the weapon would run away? Isn't that probably how life would work?

A. (No response.)

Q. Do you see what I'm saying? Is that probably more correct or less correct?
A. I don't understand --- I don't understand you, sir.
Q. Okay. If, --- We will start with your testimony that Jimmy went from here where the fight started to all the way back here.
A. Yes, sir.
Q. All right. Now, it is also your testimony, or what we heard from the jailhouse tapes, okay, that you weren't going to do nothing with the knife until he threw the bottle at you. Is that correct or incorrect?
A. Yes, sir.
Q. Okay. So, here is my point. Did you have the knife out before he got the bottles out?
A. Yes, sir.
Q. Okay. That is all I was asking you five questions ago. Okay. Now, you said that you went out there that night boosting it up?
A. Yes, sir.
Q. Can you explain to the jury what you think boosting it up means?
A. Instigating that fight.
Q. Now, let me ask you this. Do you and your kind believe that the fact that they may or may not have

been instigating it, does that make them culpable or you culpable?

A. What do you mean by culpable, sir?

Q. Who stabbed Jimmy?

A. (No response.)

Q. Can you tell me, was it the people that was there or was it you? Which one stabbed Jimmy?

A. What are you getting to?

Q. Did Marcus Brunson stab Jimmy?

A. No, sir.

Q. Did Phillip Franklin stab Jimmy?

A. No, sir.

Q. Did Crystal Robinson stab Jimmy?

A. No, sir.

Q. Did LaVincent Hankins stab Jimmy?

A. No, sir.

Q. Did you stab Jimmy?

A. No, sir.

Q. Well, how did Jimmy get cut if you didn't stab him?

A. Cuz, a stab is like I just intentionally just stabbed him.

Q. But you intentionally had that knife in your hand didn't you?

A. Yes, sir.

Q. Okay. And you were intentionally in a fight with

Jimmy; correct?

A. No, sir. We didn't fight.

Q. You had --- you had a knife on him. Okay? Now, if somebody comes up to you with knife, and you get into a scuffle, would you say that is a fight?

A. No, sir.

Q. All right. Okay. Let's just get to the end, alright? At the end of the fight after James Tucker had ran and tried to make it to the hospital to stop from bleeding to death, did you speak with Phillip Franklin?

A. No, sir. Yes, sir. All of us spoke with each other.

Q. Okay. Now, when Phillip Franklin told you, you cut that man, what did you tell him?

A. He never stated that I cut that man. He stated that both of y'all are scared, and neither of y'all want to do anything.

Q. Now did he say that before you cut him or after you cut him?

A. After, after he went to the hospital.

Q. And what did you say?

A. I ain't said nothing.

Q. So when he testified that you said you didn't give a fuck that was untrue?

A. Yes, sir.
Q. But you were never mad at him that night were you?
A. No, sir.
Q. Okay. Now, well, and here is the next question. You never spoke to anybody else on the phone about this that night?
A. No, sir.
Q. Okay. And is it true or untrue that you said you were going to kill that bitch?
A. No, sir.
Q. You never spoke to anybody, you never said that? All right. Let's get away from the events at Pride Park that night, because you weren't mad. Let's talk about another time you weren't mad and didn't do anything wrong, and that is Pride Park, March 2nd, with LaVincent Hankins. You claimed he wasn't there, is that correct or incorrect?
A. Yes, sir.
Q. Okay. So you can't remember anything about that night that makes you look bad, but you do remember that the person who testified the best against you wasn't there?
A. Yes, sir.
Q. Okay. Now, do you think that that might seem a little self-serving; do you?

A. No, sir.
Q. Okay. You don't think that sounds self-serving. Answer me this. What does LaVincent Hankins have to profit --
MR. SWILLEY: Objection.
THE COURT: On what basis?
MR. SWILLEY: Calls for speculation.
THE COURT: Overruled.
Q. What was LaVincent Hankins, somebody who admitted that he had just moved from Darlington to Hartsville, and didn't know anybody, what would he have to profit from making up this elaborate lie about you, and then going through the trouble of getting beat up to testify? Why would he make that up, put his life in danger, because you beat him up because he was going to testify? Why would he do all of that?
A. Do you want me to tell you what I know?
Q. Yeah, that is exactly what I want you to tell me.
A. All right. Phillip Franklin stayed with Quentill the night this happened. Phillip Franklin thinking that I am going to say and tell what happened on his behalf that he will get in more trouble if he don't have someone else to say, go along with his story. Because he is like I'm going to tell ---

well y'all boost it up and call me to the scene.

Q. Okay. Now, you are talking about peer pressure. Okay? Do you or do you not understand that if you boost a fight up, you don't go to jail for that?

A. But you can go to jail for accessory.

Q. But not for saying do it, do it, do it, that --- accessory --- do you understand that that is not accessory? Accessory is somebody who would hand somebody a knife. Do you understand that, yes or no?

MR. SWILLEY: Objection, Your Honor. I think this line of questioning is misleading, and not within the scope of relevance.

THE COURT: I am going to overrule that objection, counselor. You may pursue this if you wish.

Q. Let me ask it to you another way. How long has it been since the murder?

A. Two years.

Q. Have you heard about any charges being filed against Phillip Franklin?

A. No, sir.

Q. Okay. That is all I wanted to know. Have you heard about any charges being filed against LaVincent Hankins?

A. No, sir.

Q. Have you heard about any charges being filed against Marcus Brunson?

A. No, sir.

Q. Okay. So, do you think they are probably going to get charged with this or probably not going to get charged with this?

A. I don't know, sir.

Q. All right. So, let's talk about this. March 2nd, the day that you beat up LaVincent Hankins, okay? Had you spoken with your lawyer that day?

MR. SWILLEY: Objection, Your Honor. That is attorney client privilege.

THE COURT: The fact that he spoke would not be counsel, it depends on what the next question is. I'm going to overrule your objection. Please proceed.

MR. HOLT: Your Honor, I would ask that we approach, and handle that question at the bench.

THE COURT: You can tell me now what you intend to illicit. Go ahead.

MR. HOLT: I want to ask him did he get the statement of LaVincent Hankins that day from his attorney? I don't want to ask him what was on the statement, or what they talked about. I want to know if his attorney put the statement in his hand.

THE COURT: What do you say to that?

MR. SWILLEY: Your Honor, I think he has a right to assert his attorney/client privilege as to this question. I think Mr. Holt should move on.

THE COURT: How is that attorney/client privilege?

MR. SWILLEY: About what he and I conversated about substantial matters within this case.

THE COURT: All right. Ladies and gentlemen, one of the privileges that we have in our society, and of course there is a physician/patient privilege, you may have heard of. That you would have privacy what happens between a physician and a patient. And the same thing with a lawyer which is called attorney/client privilege.

However, that goes to discussions and what theories or ideas may have been talked about as opposed to whether some document may have been transferred between the parties.

I am going to overrule the objection. And you may answer the question. Ask it again though so there will not be confusion. Go ahead.

Q. Did you meet with your attorney that day that you got in the fight with LaVincent?

A. No, sir.

Q. You just said, yes.

A. No, did I speak with my attorney that day.
Q. Did you speak with him?
A. Yes, sir.
Q. All right. Let me ask you this. Did he talk about LaVincent Hankins's statement with you?
A. No, sir.

MR. SWILLEY: Objection, Your Honor. Same grounds, same question. I make a motion to strike the question and answer.

THE COURT: Again, the question was not what was the substance of the discussion but was the issue broached. That is not a violation of the privilege. I am going to overrule your objection. The question was asked and answered, you got an answer. You can ask it again, if you wish.

Q. If I were to ask your attorney if he spoke with you about that statement, or gave you that statement a few hours before the fight with LaVincent, what would your attorney say if he told the truth?
A. That he did not give me the statement.
Q. Well, you are not answering the question. How about what would he say if I asked him if he spoke with you about LaVincent Hankins's statement two hours before you got in this fight that was his fault?

A. He spoke with me about LaVincent Hankins, not his statement.

Q. Okay. Now, you are playing semantics with me. He talked with you about Lavincent Hankins, you and your attorney talked about Lavincent Hankins, correct or incorrect?

A. Yes, sir.

Q. A few hours later, you got in a fight with Lavincent Hankins, correct or incorrect?

A. Cuz we ended up in the same neighborhood.

Q. What does the neighborhood, or boosting it up got to do with anything? You heard about his statement, and then a few hours later you were punching him in the face; is that correct or incorrect?

A. I already know about the statement, sir.

Q. That ain't what I asked you. I asked you, did you talk about Lavincent Hankins with your lawyer and then a few hours later if you were punching him in the face; is that correct or incorrect?

A. No, sir.

Q. Okay. Did you have a watch on that day?

A. Yes, sir.

Q. Do you still have that watch?

A. No, sir.

Q. What happened to that watch?
A. I don't know, sir.
Q. Do you think that watch fell off in his car when you were beating him in the face?
A. No, sir.
Q. Did you have the watch after you went to fight LaVincent?
A. No, sir.
Q. Did you have it before?
A. No, sir.
Q. If I were to produce that watch, and a witness that said it came out of that car, what would you say?
A. No, sir. Because I took my watch off and gave it to the person that broke the fight up.
Q. Oh. So, let's get to that. So this was a fight that LaVincent started, you never got mad about, and it happened in the heat of passion? That is what you said when you give your direct testimony. But now come to find out, you took your watch and everything that you had on off, then you went up to LaVincent?
A. Yes, sir. I already had everything.
Q. But what I'm saying is, during your direct testimony, your testimony was that LaVincent pushed you and came at you all of a sudden while you were

playing with a child, peacefully at the waters of the river. But now it is your statement, okay, that you took all of your stuff off, then went and got in front of LaVincent. Which one is true?

A. No, sir. I didn't say I took my stuff off and then fought with LaVincent. I said I took my stuff off and gave it to the person who broke the fight up.

Q. The person that was with you?

A. No, the person that broke the fight up.

Q. Who broke the fight up?

A. Harry Goodson.

Q. And is he your friend or not your friend?

A. No, sir. He is not my friend.

Q. Well, why did you give him your watch?

A. Because, so nobody could take my stuff and put it on the picnic table so somebody could have took it.

Q. Well, if you gave it to somebody who was not your friend, they could have took it.

A. But it was somebody I know.

Q. How many boys did you have with you that day?

A. Zero.

Q. How many boys did Harry Goodson have with him?

A. Sir, I couldn't tell you.

Q. So you are telling me that there was a group of boys that went with you to talk to LaVincent a few

hours after you heard about his statement from your attorney?

MR. SWILLEY: Objection, Your Honor. The question has already been asked and answered. Cumulative.

MR. HOLT: Now we are finding out about additional people who he took with him, Your Honor.

MR. SWILLEY: He just denied that question.

THE COURT: Counsel, I am going to overrule the objection.

Q. How many people were in your entourage when you went to the park?

A. Zero.

Q. So Harry Goodson wasn't your friend, he was just some guy you gave your watch to. Nobody is with you, and Lavincent started a fight which you took your jewelry off before, and that is your testimony?

A. No, sir. He didn't start a fight. It was between me and his girlfriend.

Q. But I am sure you weren't mad were you?

A. No, sir.

Q. You were completely calm?

A. Yes, sir.

Q. How about the other times you talked with LaVincent

on Jasper Street? Do you remember that time?

A. Yes, sir.

Q. What did you do? What did you say to him?

A. Do you mean --

Q. What did you say to him?

A. What he said to me?

Q. No, and I am sure you are not getting mad now. What I am saying is what did you say to LaVincent?

A. A reply to his question.

Q. Just tell us how you want to tell it then.

A. Tell it how I want to tell it?

Q. Tell it how you want to tell it, how you met LaVincent on Jasper Street the first time that you got into it. Tell that story how you want to tell it.

A. My brother stayed at the house where he came to. He came and knocked on the door, I came outside, and he asked me, did anybody take a statement on you? And I told --- yes, somebody told me that.

Q. What else did you tell him?

A. That he wasn't going to court.

Q. Did that make you happy or sad?

A. No, sir. It didn't have nothing to do with me. He just asked me a question, and I answered his question, and he left.

Q. All right. That sounds about right. Now, let me ask you about after the fight in Pride Park. Okay? How many times did you make phone calls regarding that fight?

A. None.

Q. Did you ever try to call LaVincent's girlfriend's sister and get in touch with him and tell him not to tell anybody?

A. No, sir.

Q. Did you ever call --- now, did you ever call anybody's cell phone and leave voice messages about, don't tell anybody about that fight?

A. No, sir.

Q. What did you say if I had a phone with those messages on it?

A. That it wasn't me.

Q. Now, is it completely untrue that you saw LaVincent on Jasper Street and that you told him, what you gonna do about that court shit, and he told you he wasn't going?

A. No, sir.

Q. So when LaVincent later on that day as per his testimony went and got Mike Anderson, and said, I'm scared, LaVincent was just making a story up?

A. Yes, sir.

Q. So LaVincent has dealt with the cops on at least three occasions that he testified about, and has been intimidated by you twice, saw the incident that you claimed he wasn't there, all to help out Phillip Franklin so that he doesn't go to jail for boosting up y'all's fight; is that the story or is that not your story?

A. That's my story.

MR. HOLT: No further questions, Your Honor.

THE COURT: All right. Now, redirect?

REDIRECT MR. SWILLEY

Q. That day Breyon, where did you encounter Mr. Tucker?

A. Walking through like across the street to Pride Park.

Q. But not in Pride Park?

A. No, sir. Not in Pride Park.

Q. All right. That night on Marion Avenue, which direction would somebody have to go from here to get bottles --- to get beer bottles out of the trash box?

A. Could you repeat that question, sir?

Q. Which direction from here would someone have to go to get bottles?

A. The bottles was right here.

Q. Okay.
A. They got this further than it really is, because this right here is about right here.
Q. So the trash bin belonged to this house?
A. Yes, sir.
Q. Okay. All right. And would he have to go this way to get the bottles?
A. Yes, sir.
Q. Okay. Now, Mr. Holt asked you about anybody picking up any charges since then. Has any friends picked up any charges since then?
A. No, sir.
Q. Okay. Did you believe Phillip was scared that he was going to get in trouble for this incident?
A. Yes, sir.
Q. Okay.

MR. SWILLEY: Beg the Court's indulgence.

(PAUSE.)

Q. Just to be clear, did you and Lavincent Hankins live in the same neighborhood or in the same general area?
A. Yes, sir.
Q. Okay. How close is that area to Pride Park?
A. Not two blocks.
Q. So not far?

A. No, sir.

Q. Okay. So, the chances --- would it be common or uncommon to run into somebody from your neighborhood at Pride Park?

MR. HOLT: Objection, Your Honor, he is leading his witness.

THE COURT: Overruled.

A. Yes, sir. It is common.

Q. Common. Okay. Is Pride Park where a lot of youths hang out?

A. That's where the neighborhood at.

Q. The neighborhood being people?

A. Yeah, everybody in the neighborhood.

Q. Okay. At any time did you ever harbor any malice towards Lavincent Hankins?

A. No, sir.

Q. Okay. Did you ever want to hurt Lavincent Hankins?

A. No, sir.

Q. Okay.

MR. SWILLEY: Nothing further, Your Honor.

THE COURT: Very good. Then sir, you may step down. Please watch your step as you exit the witness box.

All right. Defense, please call your next witness.

MR. SWILLEY: Defense rests, Your Honor.

THE COURT: Defense rests. All right. Is there reply testimony?

MR. HOLT: None from the state, Your Honor.

THE COURT: Very good. Then that means the testimonial phase of this case is completed.

Counsel, step up a moment, and let's talk a little bit about scheduling.

(Whereupon, a bench conference was held in the presence of the jury, but out of their hearing range.)

THE COURT: All right. Ladies and gentlemen, in talking about scheduling, what we do now is we have a little charge conference to discuss the charge, make sure the evidence is in order. It takes a little bit of time to do that. And also we are running into the lunch hour. So what we are going to do now is we are going to stand down now for lunch and let you go and have your lunch. Again, lunch will be on your own today. But whomever you have lunch with, please don't discuss the case, as you still haven't heard the arguments of counsel, nor the charge on the law. But, be back at 1:30, and that will give us time to complete everything and be ready at 1:30. So we will just adjourn at this time. We are going to remain where we are out of respect for you as we depart. Have a nice lunch. And

we will see you at 1:30.

(Whereupon, the jury exits the courtroom at 11:53 a.m.)

MOTION FOR A DIRECTED VERDICT

THE COURT: All right. Now the jury is clear. At the close of all of the evidence, are there any Motions from either side for the defense?

MR. SWILLEY: I renew my Motion for a Directed Verdict, Your Honor.

THE COURT: Very good. For the same reasons previously given, the Court is going to deny the Motion.

Then counsel, let's go ahead and stand down. But let's go back in the back and have our charge conference. It doesn't need to be on the record.

But we will be in recess now until 1:30, ladies and gentlemen. Thank you.

(Whereupon, a recess was taken from 11:54 a.m. until 1:32 p.m.)

THE COURT: All right. Counsel, our record should reflect that we have previously had a charge conference, and in the charge conference an issue arose as to whether the Court could charge involuntary manslaughter. The Court intends to charge murder, which of course is what the Indictment was faced. But also the lesser included offense of involuntary manslaughter.

South Carolina law says, that in order to prove involuntary manslaughter, the state must prove beyond a reasonable doubt that the defendant unintentionally killed a victim, without malice while engaged in an unlawful activity, not naturally tending to cause death or great bodily harm. Or, that the defendant unintentionally killed the victim while engaged in a lawful activity. Well, this is clearly not a lawful activity, what was happening. So, we are dealing with an unlawful activity. So, tell me, what evidence is there in the record that the defendant unintentionally killed the victim without malice while engaged in an unlawful activity not naturally tending to cause death or great bodily harm? In other words, what is the evidence of accident in this case?

MR. SWILLEY: Your Honor, there was evidence in the record in the tapes the state played as well as in the testimony of the defendant that he stuck the knife out and began poking it like get away, as he stated verbatim, like get away. I don't think it was really -- - that could be interpreted to mean an actual stab. And whether or not that is an unlawful activity is I guess would be depending on the facts. If you consider it an unlawful activity, holding out a knife in and of itself does not tend to cause death or great bodily injury. I

think that there is evidence in the record that a reasonable individual could see it as an involuntary manslaughter. And, I think the Court should charge the jury accordingly.

THE COURT: All right. Mr. Holt, do you want to be heard after that argument?

MR. HOLT: Yes, sir, Your Honor. Obviously the second does not apply. But I think what we are really talking about here is the first prong of that which is unlawful activity, which could naturally tend to cause death or great bodily injury. I don't think I am saying it quite right. But a knife fight, or a knife versus a broken bottle fight, which the testimony tends to show in this case does tend to cause injury in any event. I think if two individuals are going at it in such a way that one of them has a knife, regardless of circumstances. If you have got a knife and somebody else has a beer bottle that is the type of fight where somebody is going to die. That is the type where somebody is going to get hurt badly. And I don't think that that law reads so we can use that law here.

THE COURT: Okay. Very good. The Court is prepared to rule.

What happened here was a fight Mr. Swilley. This was not some outing or some event not likely to cause

injury. A fight between two persons where the defendant was armed with a knife. That is something that would tend to cause death or great bodily harm.

And I simply do not find, there is any evidence for which the Court should under these facts and circumstances charge involuntary manslaughter. So, I respectfully decline to charge involuntary manslaughter.

Meaning we will go to the jury on murder, with a lesser included offense of voluntary manslaughter. So, I respectfully decline to charge involuntary manslaughter. Meaning, we will go to the jury on murder with a lesser included offense of voluntary manslaughter.

Now, is there anything else that you wish to put on the record at this point, prior to arguing with the jury?

MR. SWILLEY: There is, Your Honor. I would object to the wording in your proposed reasonable doubt charge on page 7 of the jury charges, I take it. Reasons follows that, there is a reasonable doubt that it is not an imaginary or fanciful doubt, it is a substantial doubt. Your Honor, I would object to the usage of the word substantial. I think that it quantifies reasonable doubt, and I think reasonable

doubt is something that is not quantifiable. I think to a regular layperson the words substantial would suggest large, resilient, or more like large and conspicuous. And I think it is misleading. I think it doesn't term substantial doubt and reasonable doubt are not simultaneous, and I would therefore respectfully request the Court not to use that term, or place substantial doubt with an actual doubt in lieu of substantial.

THE COURT: Very good. Briefly, from the state. Do you want to be heard?

MR. HOLT: Your Honor, just that the state agrees with the charge the way it is. The state feels like substantial means anything with substance. It has got to have some value in it. And we think that the jury can understand that.

THE COURT: Very good. Mr. Swilley, I am going to deny your request that I take out the word substantial. The record should reflect that I actually gave a copy of the charge to the attorneys yesterday, so they would have a chance to review it.

In this court's opinion --- and I should say that this is a standard charge that all the judges use. It is one that I have used consistently throughout twelve years presiding over criminal court. And, of course, that doesn't make it right. But my understanding of it

that when I say it is a substantial doubt, what that means is, a doubt that has substance, which is stated in the next line. A doubt for which you can give or assign a reason based on the testimony. Substantial doesn't mean overwhelming. It just means that it is substantiated by what is in the evidence. It is a doubt that has substance to it.

So, for those reasons the Court declines to amend the charge. And your objection is noted on the record.

All right. Anything further?

MR. SWILLEY: There is, Your Honor. I think Mr. Holt and I may be in agreement. I would request that the Court charge the jury with the bad blood, ill will charge in the Anderson's Request to Charge as well as the charge on prior difficulties. I can let the Court have this book.

THE COURT: If you would please. And if you would open it to the right page, I would be appreciative.

(PAUSE.)

THE COURT: And while you are looking at that, let me also approach this issue with counsel. I always offer to charge first and let the lawyers argue after me. I don't demand it, nor require it. I simply offer that if everyone is in agreement. What says the state with the Court charging first?

MR. HOLT: Your Honor, obviously the state is in agreement with that. And before I forget, the possession of a weapon charge that you gave is missing knife. I think it should be gun or knife. And before we get started, I would like to have the opportunity to go to the bathroom.

THE COURT: All right. Go ahead. Mr. Swilley, do you want the Court to charge first, or do you want the lawyers to argue first?

MR. SWILLEY: Your Honor, I --- would you like for Mr. Holt to be back in here?

THE COURT: He has already said he wishes for the Court to go first. It is your preference.

MR. SWILLEY: Your Honor, I would ask that the Court charge last.

THE COURT: Very good. That is all we need. I only do it if there is a consent on both sides. When Mr. Holt comes back we will bring in the jury and get started.

MR. JONES: Mr. Holt and Mr. Swilley are in agreement to that, so we may want to wait until he comes back.

THE COURT: Certainly.

(Whereupon, a brief recess was given.)

MR. HOLT: Your Honor, I was in agreement with Mr.

Swilley that the prior bad acts was charged under the threats or whatever, and the victims we have discussed in our charge. That is what I was in agreement to. But I am sure that the prior bad acts, if Mr. Swilley wants to get that in that's fine with me.

THE COURT: All right. I will review that, and give that charge along with my regular charge.

Counsel, Mr. Swilley tells me Mr. Holt that he does not want the Court to go first, which means that the lawyers go first. So, do you want to open and close?

MR. HOLT: No, sir, Your Honor, just close.

THE COURT: What says defense? Any objection?

MR. SWILLEY: Your Honor, I think Mr. Holt --- I'm sorry? What was that?

THE COURT: He is waiving his opening. Do you object?

MR. SWILLEY: I do not.

THE COURT: Okay. Very good. So we will proceed with the defense, and then prosecution.

How long do you believe your closing will be Mr. Swilley?

MR. SWILLEY: Your Honor, I can't see it being any more than thirty minutes.

THE COURT: Okay. And Mr. Holt?

MR. HOLT: The same, judge.

THE COURT: Very good. Please bring in the jury.

(Whereupon, the jury enters the courtroom at 1:44 p.m.)

THE COURT: All right. Ladies and gentlemen, welcome back. I trust you had a nice lunch. We are now at the close of the case, as mentioned when we began. You would at the end of the case hear from the lawyers in closing arguments, which is when they may express an opinion as to what the evidence has or has not shown. But you have heard the evidence. You will have the exhibits with you in the jury room when you retire to deliberate. And then I will give you the charge on the law. So, we are going to go in the following order: defense, prosecution, and then the Court. Are you ready? All right. Our order will be, defense, prosecution, and then the Court giving the charge on the law.

And now I recognize Mr. Swilley for closing argument.

MR. SWILLEY: Thank you, Your Honor. May it please The Court?

THE COURT: Yes, sir.

CLOSING ARGUMENT BY MR. SWILLEY

MR. SWILLEY: Good afternoon, ladies and gentlemen. I know you have been here all week pretty

much. And I am sure you are ready to get back to your lives. So I will try to be as brief as possible, first for your sake, and secondly because it is important to remember what I say, and what Mr. Holt says right now isn't evidence. What is evidence is what you have heard up there, what you saw in those pictures, and anything that the state has entered in by way of tangible evidence. Not what we say up here. And I always like to remind people of that. You know, tv sometimes shows closing arguments. And I am sure everybody watches Law and Order, and has seen movies based on John Gresham books and whatnot. They really are not big of a deal. And I am not just saying that because I'm not that good at it, I promise.

But, I would like to start out --- I try to think of something unrelated that actually I can relate into the situation in the case. I haven't done a whole lot in my life thus far except for graduate from schools, from undergrad and law school. I haven't accomplished a whole lot by way of my career. But, I remember back when I was back in undergrad school I did take the most boring class in the history of the world. And that class was philosophy. Okay? I got nothing out of that. And I think I might have even gotten a "C" and it was worthless. But I remember there was one guy who we read

about and his name was Frederick Nietzsche. And he was this German philosopher, and we had to read a book full of his quotes. Which are kind of like Proverbs of the Bible, but just stuff that he came up with that people were insightful, that he thought was insightful. And, I didn't think it was that insightful except for one quote, and that quote was: No one is such a liar at the indignant man. And I can assume that that applies to indignant woman as well. And what indignant means is indignance is anger because one has been wronged, pretty much. Okay? And I think that is what we have seen this week during the course of this trial, people that are angry because they feel like they have been wronged. They have lost someone who they like. A friend. Someone they were better friends with than Mr. Toney.

Now, as you will recall we have heard four witnesses this week who claimed they saw what went on, three of which did, and one of which did not. Okay? On Tuesday, first thing, Ms. Crystal Robinson sat up there. Okay. And Ms. Crystal Robinson who was the one that took Mr. Tucker to the hospital. She is the one that testified to what she saw happening to Mr. Tucker. And you have to remember Crystal Robinson alone took Mr. Tucker to the hospital. That is what happened. Okay? Now you heard that she got up and she claimed that there

was five to ten people present at the scene of Marion Avenue and Chapman Circle in Hartsville, the only one who said that. She claimed that she heard Jimmy say, put the knife down and fight like a real man, or something to that effect. Now, remember she didn't say that at the time she gave her statement to law enforcement. She claimed that Breyon swung the knife in a downward motion, like something out of a horror movie. A downward motion. All right. Why, because that was more vicious. Right? In a downward motion. Think about that for a second.

Then she tried to promulgate, if you will, the conflict behind this incident, or the reason for which this incident arose that Mr. Tucker bought diapers for Mr. Toney's child. Okay? That is when we first heard that. All right? Then, she goes on to say that during the fight they showed up, and then she said something --- Breyon put on the knife and that Mr. Tucker ran, stopped --- he claims that he stopped running while being chased with a knife. Okay? Bent over, picked up bottles, and that is when he threw it at him. She claims --- and I want you to think about this in the sense that this could really be true, or this is something that you really believe, that if somebody is being chased by a knife, and stops running only a few

feet originally from where he originally stopped running to pick up bottles out of the recycling bin. Think about that for a second. Okay? Because remember, you are the judge of the facts here. You judge what really happened. Okay? And it is your job to see what the state has proven. Okay? You are the judge of the facts. Okay? And then she goes on to say, oh, I really can't really remember what was heard or said in the car on the way there, even though she did concede that he was the only person to die in her car. All right? You have got to decide on the witness. You have to decide -- -- And I am going to go through all four people's statements. I am going to try very briefly. But, you have to decide, this is probably the scariest thing, or one of the most important things that could ever happen to anybody. Okay? They saw --- the witness firsthand saw somebody pass away. Do you think you would have trouble with the details? And do you think you would have trouble getting consistent statements after witnessing something like that? You wouldn't. I'll go ahead and answer it for you. Okay? Then after she got up and said her thing where she couldn't really match what she said the actual day what happened to what she said up here.

The state called Marcus Branson, okay. Marcus was

a little bit older, hanging out with some younger folks. Probably looked up to by all the kids over there in Hartsville. I think he testified that he is twenty-seven, my age, hanging out with some teens. Marcus, you know, turned barber, turned his life around, and that's great. But, remember he claimed that he had been in the neighborhood for a while. He knew Breyon Toney, he had known him for years. Known James Tucker for years too. But in his original statement to law enforcement, remember again, when he decided to write something down, whose name did he not even mention? Whose nickname did he not even mention? Breyon Toney. Okay? Not one time --- and again claims --- all four claim that Breyon Toney wanted to meet at this place; okay? But they really couldn't come up with an excuse as to why they were there before that. Okay? A random street --- not a random neighborhood, but a random street, a residential street where houses are around, and they said they were just there chilling. Okay. Are you sitting on a random street where there are houses and no businesses at 4:00 in the morning on a Monday night --- okay --- unless you have some kind of prior knowledge that something is going to go on? I think not. Okay?

Now, I think one of Marcus's explanations as to why he was there is that his friend, who he calls homebro

who lived across the Street, and couldn't really explain as to why he was there still. And then I asked him, if you will recall, why didn't you tell who all was there? Why couldn't you give a more in-depth explanation as to who was there? They said, why do we want to do the police's job for them? Okay? They didn't want to do the police's job for them, which you would have had to say something in the first place. Okay. Reasonable doubt as to his story being true, which it is not.

Another thing is Marcus would have really thought that he was not at fault in this situation, alright, if he didn't have some kind of guilty conscious. Would he have not ridden with his friend to the hospital? Okay. He got his woman to take him to the hospital. Couldn't even ride in the car with him. And he said well I didn't want to bend the seat back and get in with her. He was hurt. He was already hurt. Okay? Well, and that is why he said he didn't go. He had to go and get his friend to drive him there a little while later while his woman took him to --- his friend to the hospital. It just doesn't add up. Remember, his story at first, and his story up there don't match up. Mr. Holt asked him is your story at the time true? He said, yeah. Is your story now true? He said, yeah. I want you to think about why they are different. Okay? Now he went

on to say, is Crystal there? He wanted to say was Phillip there? He wanted to say there was Quintell there, Mr. Hankins, remember. Okay? How convenient that those four testified against Mr. Toney, but at the time all he mentioned in his initial statement to law enforcement was that it was him and Crystal. Okay?

Now, it is also important to remember this, and this is of the utmost importance, because this was also by law enforcement. At the hospital, okay, when Jimmy Tucker got there, Marcus and Crystal lodged the police in the first place. Okay? To Officer Cheryl McCall, the lady who got up from the City of Hartsville. They said, eventually Tucker stumbled upon them, stabbed, asked for a ride to the hospital, and that was it. Okay? And they tried --- and she tried to say well they didn't give the whole story. But that is a lie. All right. Knowing that somebody got into an altercation, somebody got hurt, is not the same as you just stumbled up. We don't know where it was or what happened. Or we don't know who it might have been with. But, he just came and wanted a ride because he had gotten stabbed. That is a lie. All right. They lied to law enforcement the first time, isn't it reasonable to assume you are going to lie the second time, and lie the third time? All right. And they are all different. That is of the

utmost importance. They couldn't keep it together. I want you to think about the time of the initial lie until the time they decide to get these statements how much time elapsed. I think one of the first officers said it was about ten to fifteen minutes. What could they have done in that ten to fifteen minutes? Do you think they were talking about what had happened? Do you think they were trying to hash out, alright what happened here? What happened here on --- Jimmy's dead now. All right. We have got to make sure, you know, that Breezo pays for what happened. So we have got to say you know he came up and stabbed him, without Jimmy doing anything. Think about that, alright?

Now, two other people that claim --- remember Phillip Franklin, his two little cohorts --- all right --- Phillip Franklin who was there --- all right --- again, Phillip gets up and says, he claims Breyon was texting him. He claims that he said meet me on Marion Street. Okay? I think he said --- he claims he said something else to him. He was texting him. We didn't see any kind of text message from Breyon presented before us. Remember, the testimony from the officer, Marcus who had James's coat and phone gave it to law enforcement. We didn't see any text messages. We didn't see anything that corroborated that. And there

is a good reason for that, because they didn't. There was none. There were none in there. If there were, you would have seen them. All right. And then the biggest lie that Phillip told was that he claims that he was the one that had Jimmy's phone, and that Breyon called it while Phillip was at the hospital, answered it, and then said something along the lines that he was glad that he killed that "B." The "B" word, I don't want to say it. He never had Jimmy's phone. He wasn't even at the hospital after that. He went home, because he was scared. He went home with his little buddy Quintell. That is where he went. He went home. All right. And that is what happened. He never came to hospital. He never got a phone call from Breyon. He just wrote that statement seven days later. If he had been at the hospital, wouldn't you talk to law enforcement? If you had been a fact witness, or somebody claiming to be there at the hospital wouldn't the Hartsville Police Department have met him and made contact with him then? You know, they do a good job. They are not that slack, as to like not find people who claim to be fact witnesses at the scene. They found Marcus and Crystal. If Phillip had been there, he had been at the hospital, they would have found him. They would have found him and either noted it in the report, or got him to write a

statement, or both, and it didn't happen, because he wasn't there. Well, Phillip never came to the hospital, because he was scared.

Then you move on to Quintell Hankins, the young man, sixteen at the time. Okay? The most articulate of anybody, of any of the laypeople who are not police officers and doctors who got up there. He spoke the best of everybody. Okay? But the biggest liar of all. He was never there, alright? The only person that he even tried to say that Quintell was there was Phillip seven days after it happened. Quintell was never there. Phillip wanted Quintell to back him up, because for some reason --- and Mr. Holt scoffed at this, it is easy to imagine that if you were there encouraging on a fight, encouraging two people to fight, and somebody dies, it is probably reasonable to think that we might be in a little bit of hot water. Okay? They are not lawyers. Just like they hadn't graduated high school yet. They have reason to fabricate. And Mr. Holt laughed at that, and said you know if you could have had them at your house. Nobody knows that. I don't have a good grasp, and I am a lawyer. Albeit, some people may even tell you not a very good one. But it is reasonable to think that, and it makes sense. Okay?

And then, after Phillip gets in the lie and says he

is there, remember. He is sixteen at the time, he is out at 4:00 in the morning on a Monday. That is a sophomore in high school. All right. Now later on remember in Quintell's testimony, he tried to emphasize and focus on this later altercation they had prior in the park in broad daylight in front of other people. All right. Mr. Holt tried to emphasize on that as much as he could, because it makes Breyon look bad. Okay? And yeah, you know, he probably shouldn't have gotten into that petty little scuffle at a park where kids play. It shouldn't have happened. But it has nothing to do with what happened on Marion Avenue and Chaplin Circle as far as whether or not he is guilty of these crimes or not. It doesn't have anything to do with that. It makes him look bad. All right. And it does. I wish you didn't hear about it, and I wish he hadn't gotten in this altercation with Quintell. And it may not have been all Breyon's fault, and it may not have been all of Quintell's fault, but he shouldn't have been there. We all know that. All right? But we know he didn't go looking for trouble at Pride Park. Breyon testified that he got into an argument, the guys were all friends, and they stepped in, and Graham got mad and pushed him. All right. Kind of stupid. He shouldn't have been there. All right? But it doesn't have

anything to do with the actual core facts of what happened here. All right? And that is a big deal. That is something that you have got to take into consideration. All right?

Also again, remember what Quintell said in his testimony. I saw him swing in a downward motion. It was on the way down, like Freddy Kruger, or something like that. But then, another important witness statement came when a little middle aged lady from Newberry. A Forensic Pathologist, Dr. Janice Ross. She was in the body. Remember what she had to say? It came from up. It was a wound to the chest and it came up from right to left. All right. It came up, not down, up. Back up. Not I'm gonna kill ya. Get away from me with those bottles. That says it all right there. Nobody can say that she lies. She is a doctor, a witness for the state. What she says which is awfully more credible than what they say is different. You have to assess credibility in your determination of the facts. She also testified, as you remember, she couldn't identify the blunt edge, the dull edge of the knife. All right? This ain't no --- like I said, this ain't no butcher knife, as they might have you believe, some Freddie Kruger, Jason Voorhees butcher knife. This is a piddle pocket knife. You might even be able to

sneak it through the metal detector here at this courthouse. It doesn't have but the one edge. It is just one of those puny four-inch metal knifes. Okay? And that is the reason for that.

Now, Mr. Holt may get up and ask you, what reason do these four people have to lie. They weren't that darn friends with James Tucker. They got no dog in this fight. Why are they going to get up there and lie? Like I said, it really doesn't matter why they got up here and lied. It is easy to deduce a friend is dead, and they told lies prior to this, and once you tell one lie, in order to keep that first lie alive, you keep lying, keep lying, and keep lying. You might dig yourself into a whole.

The reason why they probably lied in the beginning is that they were mad that Jimmy was dead. Okay? They are mad at Breyon. Afraid themselves were going to get in trouble. Or more importantly, they probably didn't ever think they were going to have to get up here and testify before twelve or thirteen people from Darlington County. They probably never thought that was going to happen. All right.

Then you saw the state put up Cheryl Roberts --- I'm sorry, I said Crystal Robinson was first. Mike Anderson was first. He did the investigation. He went

out there and did a good job, and drew pictures of the scene, and went on about what he was told, which is all he had, was what he was told by Crystal Robinson at the time. He worked with what he had. And then he got up here and testified and said everything that he could remember. Okay? And then you saw them come in with the toxicologist from SLED. Even tried to go as far as to say Jimmy wasn't under the influence of anything, which he wasn't. Nobody was under the influence. Nobody was using any kind of drugs. Like I said before, this isn't gang related violence. These kids aren't a gang. Drug related? It was a silly fight over a girl. Okay? It was a silly fight that Breyon Toney wanted to avoid. It was a silly fight that he never planned on having. It was a silly incident that he had to go to because he knew if he didn't it was going to come to him. That is what happened. Okay?

There were two witnesses who testified on our behalf. Number one, Tiffany Huggins. If you want to talk about people with no dog in the fight, if you want to talk about somebody who really doesn't really know either one very well, who doesn't live in Hartsville, and lives in the Bronx who came all the way down here to testify to show that James Tucker was mad. It was not about Breyon Toney's twist if you will --- who harbored

a massive amount of ill will towards him. All right. What reason does she have to lie? She is not lying. And I am not going to go into as much as what she said about his intentions, because there was profanity involved. You heard it, and I know you remembered it. And I know you were paying attention. Stood, crossed his hands with Mr. Holt and got down. No reason to lie. None whatsoever.

Then finally, Breyon Toney took the stand. A teenager, on trial for murder. Didn't have to, got up there and told his side of the story, because he has nothing to hide. Okay. Sat up there and withstood some of the toughest questioning you will see by somebody better educated, and more sophisticated than he is. Mr. Holt got up there and asked him a bunch of tough questions that he had to sit there and think about. Still a teenager, still more of a boy than a man. Okay? Did the best he could. He told the truth. You got to see Mr. Holt interject some of his little comments trying to confuse him, which he did, and he succeeded a little bit. Even going so far as to laugh at him. Okay? He got up there, told his side of the story. Told what happened. That is because he didn't have anything to hide. He didn't have to, but he did it anyway.

Also, the state also went so far as to ease drop on calls he made from the jail, trying to get in what happened. As you will recall, the state submitted calls made by him. He didn't know anybody was listening to the set. He took them two bottles, didn't have to do it, told them those big bottles came at me man. And he had two beer bottles and he was coming close, so, I'm saying, I was like man, get back. You talking about --- you talking about putting the knife down. Hey, not when he threw one of those bottles and I ducked and it busted in the middle of the Street. Same thing he said up here. And then he ran up the street a little bit, had another bottle there. Picked it up, broken, he started coming at me broken, so I just started poking, man like get back. The same thing he said up here, but a little more coherent. A little less mumbled, because I told him to. Same thing, same thing that they ease dropped and heard him from is the same thing he said up there. Okay?

Now, the best thing that they can get proves the point that he acted in self-defense. He never went there to hurt James Tucker. He never had any intention of hurting James Tucker. This is not an intentional killing with malice aforethought. This is an act in self-defense that resulted in someone's death. By and

by a lawful killing. A lawful homicide. A tragedy, like I said before, but not a crime. All right?

Now, the judge will charge you on the law of self-defense. And exactly what he says is what you should go by in deciding what self-defense is. But the first element that you have to remember is that the defendant is without fault --- bring on the danger. I would like to kind of go on that for a while. The defendant cannot be at fault for bringing on the danger. Okay? If you will recall, through Breyon's testimony, that he went out there because he had to. He had no intention of fighting James Tucker that night. He thought it was going to get talked out. Marcus Branson told him they were going to talk it out, and he wasn't going to get hurt. Okay. He didn't bring on the danger. Mr. Holt might even go as far to say, he had a knife with him. He had a knife with him when he went out there. He intended to kill him. He had hate in his heart when he stabbed him. Okay. A knife that he carries around all the time, a pocket knife. He didn't go out there with no machete, a stupid little pocket knife that he carried around probably in his --- alright his stupid stuff looked like you know --- whatever a little pocket knife. But he did say he used it to carry around for protection, because he lives in a rough part of

Hartsville. Okay? Plain and simple. It wasn't no horrible, you know, you get from some sleazy Army Navy Store. It is just a little pocketknife. Not something that you would use to kill somebody, if you planned on killing somebody. Okay? If this were an intentional killing would it have been done around a bunch of other people? If he went there planning to kill James Tucker, or if at any time he wanted to kill James Tucker, would he have done it in front of people, on a residential street, in a neighborhood in which he lived? No. Absolutely not. No way. You might think, well, wait a second. He was sleeping with this girl Indiana Grimes. That is bringing on the danger. That's not bringing on any danger. That does not naturally tend to bring on danger when you have relations with someone who may be connected with someone else. That is not bringing on the danger, and that is something that I would really like to pinpoint.

Now, after I sit down, Mr. Holt is going to get up there with his power point presentation, and try to sell you some story about Breyon angry about --- Jimmy humiliated --- angered about him buying Pampers, and he went to kill him on Marion Avenue. Okay? Think about this --- think about this underlying story. The state says that Breyon was mad because he bought his baby's

mother Pampers. Okay? And I don't mean to laugh, because this is a serious thing --- this is a serious situation that I'm in. But, is that a reason to be mad at somebody, to fight them, let alone kill them, let alone fight them? If somebody buys your kid Pampers, you are not going to be mad. Those things are expensive. Why is that a reason to harm somebody? Okay? What makes more sense, that or the fact that there was a fight over a girl, and somebody is obviously in love with and obviously angry about her infidelity. What makes more sense? All right? It is something to think about.

Reasonable doubt. Mr. Holt might even get up there and say, you know, he had hate in his heart --- he had hate in his heart when he went there. Malice is implied or expressed. At no time here has Breyon Toney had any malice towards anybody. He may have exercised some poor judgment at one time or another, but there is no malice aforethought in this situation at all when you get down and assess the facts. Okay. What this is, is a situation in which there is reasonable doubt as to the guilt of somebody for the crimes for which they are charged, because he is not guilty. Because these crimes didn't occur. It is not a murder. It is somebody that died unfortunately because of a bad decision themself.

Now, I really didn't want to tell this story, because I don't know --- it is not --- it is not that really --- it is not that related, but I didn't --- I didn't ever have anybody that got killed by anybody that I was close to or that I even knew coming up. When somebody dies, it always hits close to home, because death is the most serious thing that can happen to you, or anybody else. And it is hard --- it is hard to lay blame on somebody who has already passed away. But I had this friend growing up who was kind of wild, one you could only take in small doses. And, he liked to party a lot. And about a year or two ago, he is my age, about twenty-six, twenty-seven, had a little too much fun one night, and used some substances that he shouldn't have been using, drinking too much, fell down the stairs of a parking garage, hit his head, and had a brain hemorrhage and died. Okay? Well, what does that have to do with this situation? Well, how it reminds me of this situation is the people that testified on behalf of the state have that same mentality that everybody else that I knew had the mentality about my friend falling down the stairs is that it was such a tragedy that we can't ever put any kind of blame on somebody who has passed away, but it is really undeniable. Okay? James Tucker was the one who picked up those bottles. Okay. James

Tucker was the one who grabbed his jacket like he had some kind of weapon there like Breyon said. James Tucker was the one who threw the broken bottle. James Tucker was the one who had the broken bottle in his hand and charged toward Breyon and made Breyon take the knife out. He was the one who ran into the knife, and Breyon poked the knife out, and he was the one that ran into the knife or he would have harmed him with the broken bottle. It is undeniable. Just like it is undeniable that my friend consumed all of that foreign substance that caused him to trip and fall down those stairs. It is hard to swallow, but it is true. You can't deny it. It is a tough pill to swallow.

Now, some questions that I would like for you to ask yourself when you get back in the jury room are; do I want to live in a Darlington County, or in South Carolina, or the United States in which the state can put somebody into prison for murder, or voluntary manslaughter off of the evidence which I have just seen? Do I feel comfortable putting somebody into prison based on what I have just heard? Is that the Darlington County you want to live in? Okay? I.e., is there a reasonable doubt? That is the point of beyond a reasonable doubt, it is a high burden because somebody has lost their life or a substantial part of it, when it

is proven. That is why the burden of proof has to be so high. That is why the state has the burden of proof beyond a reasonable doubt.

You will get a charge from Judge Baxley what actually is a reasonable doubt, and how the state must prove that. Okay.

Another important thing that I would like for you to take into consideration is that Mr. Toney, my client, acted in self-defense. Okay. Why is this important? Why is our right to defend ourselves important? Here in America, and especially here in the south, people get criticized that we are more cantankerous bunch when it comes to we resort to violence too quickly. Europe has said that about the United States. I think other parts of the country have said that about us here in the south. But really what we value here a lot here in America is the right to defend yourself. Okay? And that is evident in our State Constitution and our Federal Constitution. After the Constitution was written, and people started putting in Amendments, the first ten are the Bill of Rights, the rights we have, just after they put in the right to be able to elect our own leaders, they put in the right --- the second amendment, the right to bear arms. And there is a lot argument about what that act exactly means, but the

heart of that, I submit to you, is the right to defend yourself against whomever may want to harm you. And that is of the utmost importance. That is something that we value very strongly in this country, and very strongly here in Darlington County no doubt. It is extremely important to be able to defend yourself in the face of impending death or great bodily injury. And that is something that I hope we always have. Okay? That is why it is the state's burden to disprove that Mr. Toney acted in self-defense. It is their burden to prove him guilty of the crimes for which he is charged. It is that important.

Again, I just want to emphasize the three bedrock principles that I went over at the beginning in my opening argument.

Number one. The defendant is always presumed innocent here in this courtroom, or any other courtroom in the United States.

Number two. The burden of proof always rests upon the state. Remember, we did put up evidence, we put up testimony. We didn't have to do that. Anything that has to be proven, has to be proven by the state. That is why they sit at this table. That is why this table is closest to you, because they have the burden of proof. That is not something that we say, that is the

truth. Anything that has to be proven, anything you have to decide happened, they have the burden to prove that.

And number three, and most importantly. The burden, as I said before, probably a thousand times, is beyond a reasonable doubt. Not more likely than not, okay. Not clear and convincing. But beyond a reasonable doubt. Any reasonable doubt. And there is so much reasonable doubt in this case, you have seen so far, and they have not met that burden. Okay.

Lastly, and I always want to do this, because I mean it. If there has been anything that has been said by myself throughout the course of this trial that has been offensive to any of you, or has irritated you, if I have been obnoxious, if I have come across as rude, and I may have on some of my cross examinations, let me apologize now. I did not mean that. I did not mean to insult anybody. I did what I had to do to best represent my client. Okay. So, if there is anything that anybody heard that is offensive, please don't take that out on my client; this is too important. Okay. I'll shoulder the blame for that.

I am going to sit down now and yield to Mr. Holt. But again I would just like to thank you for being here. Thank you for your attention. Thank you for realizing

how important this is.

THE COURT: And now for closing argument from the state.

MR. HOLT: Thank you, Your Honor. May it please The Court?

THE COURT: Yes, sir. Mr. Holt.

MR. HOLT: Mr. Swilley, Mr. Jones, Ms. Gibson.

CLOSING ARGUMENT BY MR. HOLT

MR. HOLT: Y'all, I don't think the facts are in much dispute in this case. I think Mr. Toney had a knife. He put it inside of the body of James Tucker. James Tucker ain't here no more, he is dead, because of that. And I don't think either side is really fussing about that. All right. I think what we are really talking about in this case is the facts. And I think that they are a sad miss, if I can call them that. You've got a young man over here, all of his tomorrow's gone over something that --- and let's be honest, is stupid. A stupid reason to be out there in the street that night. What is just as sad is that you've got the young man who did it. Mr. Toney was up there, and he doesn't seem like an evil guy. He don't seem like a bad guy. All right. I know for a fact that Mr. Swilley is a good guy, but he is wrong on just about everything that he came up here and said. But he is right about

it, and I'll explain that to you later. But we are not up here, sitting up here arguing that Mr. Toney is an evil person who went and got a gun and was out to kill somebody, out to do evil. We are talking about the law. Okay? The law says he is a murderer. The law says what happened is a murder. That is how the law is going to classify him.

Now, I am going to go through everything that happened here, and everything that you have seen, and I am going to explain to you how the state has proved that. Okay?

Now, I've been here in August will be two years. Two years I will have been an attorney who spends --- probably you know the biggest thing going on in my life. But I've learned so much. And in the last several days I want you to think about everything that you have learned. What the clerk does. What the judge does. What the defense counsel does. It ain't like in the movies. Okay. It's certainly not exciting, and it certainly isn't something that you would look forward to doing. Okay. It is the real world. All right. And you are going to ask yourself, court reporter went to school to get trained, defense counsel, myself, the judge, everybody has a training and a lifetime of experience that prepares them to do their job. What do

y'all have, and what do y'all bring to the table? And what y'all have and what y'all bring is something that I like to call your collective common sense. Okay. The founders said in America we are going to put in front of the people, and we are going to let the people decide what happened here. And do you know why they did that, because people had the ability to look through all --- you know --- I guess we can call it "BS", all the "BS" that is out there. Okay? You have the ability to look at somebody, and tell well I think this person is telling the truth because of what they have to gain, what they have got to loose. I think this person is not telling the truth, because your whole life you have been lied to, and you have been told the truth. You know what is right, and you know what is wrong. Okay? And you can't go about getting mad and chasing somebody up the street with a knife, and taking their life, okay, and there not be something that is wrong. Okay? You just can't do it. What if we all settled our fights like that. Okay? And I don't care what the fight was about, and I ain't saying Jimmy wasn't mad about something. Okay? Don't think for a second that I'm up here going, James Tucker was a saint. He was sober as a judge. Okay? You know, he is a nice guy. All right? I am not saying all those things. I ain't saying he is

without fault. And I am not saying that Mr. Toney is somebody evil. You can't think like that. Okay? This isn't a this or that issue, it is the law. The law says murder, and no matter how sad it is, okay, the twelve of y'all have got to go back in there, and you have got to find that. All right.

Now, Mr. Swilley came up here and he talked a lot about what my job was, the burden of proof, all of this, and all of that. Well, let me tell you something about defense lawyers. I've only been here two years, but they like to do a few things. The first thing they like to do is muddy the waters. All right? Let me tell you how Mr. Swilley has muddied the waters, and see if you can remember, and look back on these last couple of days and think about them. Okay.

Say one of my witnesses is up there. Mr. Swilley can't come out and go, liar, liar, you are a liar. This is what he does. You know you are under oath. You know you are under oath. You know you are under oath. And makes you think, okay. He puts it in your mind that these people are a liar. He says, the state is not going to prove that these people weren't here. One person wasn't there. Well, you heard from four people who said he was there. Okay? Four people who didn't have no reason to lie. Just think about these little

seeds that Mr. Swilley has planted in your head all along that you may or may not have been picking up on. How about how Mr. Swilley has one of my people up there and go ask him a whole bunch of questions real fast? And everybody tell the truth, okay. But the way he structures his questions it makes you sound like you are lying. He made a big deal over Phillip Franklin and that phone and Marcus Branson. Okay? If you had paid attention to the story, you would have heard they all gave the phone at different times. Okay? Don't be fooled by that. Phillip Franklin had the phone and he took it to the hospital. Phillip Franklin and Quintell got scared and left and gave the phone to Marcus Branson. Okay? If Marcus says he had the phone, and at one time he did, and if Phillip said he had the phone at one time, he did. It don't have to be a lie. It could be either or. Okay? But, Mr. Swilley is going to manipulate everything to make it sound like a lie.

Here's our biggest thing that Mr. Swilley has done. He has never talked about the core set of facts with you. Every time he had one of our witnesses up there; every time he had another person up there, he was looking to contradict nitpicky little things from two years ago that somebody said. Let me tell you something about the police taking you in a room. They are going

to ask you what happened. Okay? You tell them what happened. Two years later somebody goes what was "A" "B" "C" and "D" doing? And if you tell them that, then they say well that ain't what you told the police. That is because that is not what the police asked you. You saw up here a hundred times this week somebody asking somebody and you get one response, and when somebody is up on that stand you got enough common sense to know that they are nervous. They give you an answer. Okay? And it doesn't employ a lie, or a misconception, or an untruth. Don't let Mr. Swilley stretch it out and just stir up something in the water. Okay? Keep your witnesses up there for a long time. You know, just keep going and going on. All that kind of stuff that he is going to do to poke holes in your story. You can't be fooled by that. And he talked about reasonable doubt, and that is what he is laying his shoulder on --- or head on in this case on. If you could look at this, I want to read this to you.

It is not an imaginary or a fanciful doubt or a weak doubt, it is a substantial doubt. It is a doubt with which the words imply. A doubt for which you can give or assign a reason, based on the testimony and evidence in this case. Is there any doubt in your mind that Breyon Toney got mad and put a knife inside the

body of James Tucker? There ain't. Okay? It is murder y'all.

Don't let him fool you with his smoke screens, or his reasonable doubt, or some kind of outrageous story that he is going to give you about sneaking up on people in the woods and hearing magic statements. About a whole story that is so self-serving, you know it can't be true. You know what my Grandma use to say? If you hear a story and it's got some warts on it, it's probably true more than it ain't. That is where you get the saying from warts and all. All right? If you hear a story that is too good to be true, well guess what people, that is why the founding fathers put you in charge. Because when was the last time y'all heard a story that was too good to be true? Was it true? It wasn't. Okay?

Well, you make unimportant or unnecessary facts seem more important than they really are. Watch how Mr. Swilley did this. Did you --- He asked the question, with his face like this. Did you see him swing down? And then Mr. Swilley goes like this with his pin in his hand. He puts it in your mind. You don't know it's happening, but it is happening. They say, yes. Okay. There was a scuffle and there was a fight. There could have been numerous swings. Okay? It could have

happened however. Does that make Crystal Robinson a liar? No. Because you know why? Not a single one of them said that they saw a knife. Did anybody go up there and say that they saw a knife? Did I try to make it sound like they did? I didn't. Okay. All I'm saying is he gets into an altercation with Breyon Toney that he don't live through. All right. I ain't saying that and Mr. Swilley is trying to make it sound like they were claiming that he came down because it sounds so evil. But if I say did you see somebody come up, they would have said yeah. And I could have done like this. But does that mean they stabbed up? I don't know. What I'm telling you is that Breyon stabbed him. That is all I'm saying. Okay. That's it. That is the most important part.

Use your common sense. We talked about that. You know when somebody is telling you something that ain't so. And look at the evidence for what it is. Four people telling the same story, which has nothing too loose. I'm not even talking about the police. I put all of those police up there just to show you this wasn't no Andy Griffin, Barney Fife type of investigation. Okay. You've got people from SLED, you have the Pathologist from Newberry. You got officers who have been with SLED for twenty-seven years, and now

work with HPD. You've got people that know what they are doing looking into this. All right.

Think about another thing with common sense. Young people out late at night, seventeen, eighteen years old, the police roll up on them. They are going to tell the police a story right from the start? No. But did they go and come back years later and change everything up? Count the amount of times that they told the truth. All right? The minute they took him to the hospital, Marcus Branson looked at Levern Davis, I'm going to give it to you straight. That time he tells the truth. They go to make a statement with Mike Anderson to tell the truth. They go to the crime scene. Tell the truth. They came to the courtroom, told the truth. Four times, four people, that is sixteen different opportunities for somebody to make a mistake, and they didn't. Okay? Marcus and Crystal together the entire time, then he separates them, still tells the same story. How are they going to sit there and corroborate and work out a story while Jimmy is dying and the police are there? Okay? You are not going to do that after you have been up for twenty-four hours. All right? You are not going to do that at 5:30 in the morning. Come up with a story at 5:30 in the morning that teenagers can hold together for two years and tell sixteen times. Use your common

sense. Would teenagers tell the same story for years and years and years? They are not going to breakdown and miss a part? Okay? It is unreasonable to believe that they are lying about this. Because you ask yourself, using your common sense, what do they stand to profit? Mr. Toney has made a huge issue this entire time about boosting it up. He believes other people are responsible. He is mad about that. Mr. Swilley talked something about an indignant man, I don't know what that means. Okay? But it is somebody that's got something to loose, or somebody who feels like they have been wrong. He is the one that feels like he has been wronged. Okay? It is the same guy whose mamma is watching his baby while he is hanging out in the park all day accomplishing nothing. Okay? What does that tell you? This ain't a man who's got any kind of responsibility that he knows about. All right? He's gonna look for anybody else to push the baby off on, and push the blame off on. Put it on those other people that were there. Boosting it up. Who cares? If I am sitting in a room full of people, and they are all going stab her, hit her, punch her, and I do that to a woman, guess what y'all, I hurt that woman, and it ain't nobody's fault but mine. This is America. You are responsible for your actions. It is murder. Okay. It

is sad, but it is murder.

Self-defense is the biggest joke of all. Y'all can pay any kind of attention, talk about it if you want to. You ought not --- you have to prove four things. Without fault in bringing on the difficulty. Okay? Do you know why I asked him about, did he come to his house? Because, if he came to his house, and that's his castle. Everybody knows that a man's home is his castle. Somebody comes up in your house and you kill 'um, this is South Carolina, all right. I'm going to be on that side of the courtroom. I am going to be screaming as loud as I can, that person ought not have come to his house. It is a righteous killing. Okay? But you can't --- and there is a reason that's the law, and it is the law where I think somebody is coming into my house, so I'm going to go outside in the community and kill 'um. That's crazy man. I could just do that for anybody. Look at Specht giving me those evil eyes. He's out to get me. I'm gonna kill him. Okay. That doesn't make any sense. Image danger. Here's the big one that I want to say.

Where is my board that I relied on this entire time? This is the biggest piece of evidence that I've got. Making it some kind of story he couldn't come up with that said when they were right here, starting this

fight, he killed him because he was in imminent danger. Maybe, maybe y'all. But listen to this. Four people with nothing to gain or profit, that didn't want to come to court. They came. Four people all said he wanted him up here. Guess what else he said to that? All the evidence that you've got right here, look at this, look at the evidence, look at the crime scene, because it tells a different story than what Mr. Toney would have you believe. He ran Jimmy Tucker all the way up here, a hundred and sixty feet with a knife. Okay. And there is something about a jacket, something about a bottle, I couldn't get the whole story when Breyon was up there. If you thought Breyon Toney was telling the truth when he was up there, you have got to use your common sense. Okay? Because he was going to fight LaVincent, but LaVincent jumped him. But before all of that he had taken his jewelry off and given it to somebody. Just a random person. He had just given it to another random guy who was with him. He is just going to hand it over to him. Run Jimmy up here, stabbed him, Jimmy gets stabbed and runs down here. They take him to the hospital. They take him. Okay? Imminent danger you ain't in if you are chasing somebody with a knife. Okay? You ain't got no reason to believe you are in imminent danger. And look right here. No other

probable means of avoiding danger. Okay. You have a duty to retreat if you ain't at your house. If you're at your house you ain't got to retreat. Here is where the murder happened. Here is Hartsville, alright. Jimmy ain't got no reason --- I mean, Breyon didn't have no reason to be there chasing him with that knife. He could have gone anywhere. Do you know what he really could have done? He could have stayed at home with his child. Okay? He could have tended to his responsibilities, but he wanted to give that child to his mamma, and he wanted to go out in the street. He wanted to do some stuff. Okay? Because Jimmy had changed him earlier. He came back and got mad.

Now, I want to talk without fault. You know, you can't claim self-defense from the bottles, because if he hadn't had the knife, he wouldn't have had the bottles. And really and truly this is what statement I got in for that thing for. I want you to know I wasn't going to do it until he threw the two bottles on me. All right. He had the knife out. All right? If you read these two statements together, he had the knife out, wasn't going to do nothing with it. But then he threw them bottles at me, he's been shaming me, now I can't look --- he can't shame me no more. All right.

Avoid the danger. A situation where he could have

just walked away. We talked about that. He went to Hartsville.

Defense tactics, we talked about that. Draw attention away from the important matters. And talk about stupid stuff, okay, here we go. The state must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought. All right.

Malice. It is hatred, ill will, or hostility towards another person. It is the --- that says international, but it should say intentional. It is the intentional doing of a wrongful act without just cause or excuse. And let me tell you something, this is why it is hard. Because when he had that knife, he intended to poke it out there. That is my intent. I ain't got to prove anything else. He intended to stab him. And what happens as a proximate cause of that, you know, the young man dies.

Aforethought. It doesn't require that it matters for any particular time before the act is committed. But malice must exist in the mind of the intent and at the end when the act is committed. And look at this y'all, I wasn't going to do it until he threw two big bottles on me. What is the implication there? That once he threw them bottles, he intended to do it. That

is all I'm saying. That is what makes this a murder. Sad as it is, okay, horrible as the facts are, murder. And I can't make it no different. If Jimmy had come to his house --- okay --- if Jimmy had come to Breyon, and come up in his house --- okay --- we wouldn't be here today. But he didn't man. He went out there on the street. Breyon went chasing him. Whatever they were mad about, I don't care. Okay? Mr. Swilley made a big deal about Breyon in the woods, and hearing some statement. He made some big deal about some Pampers. He made a big deal about India Grimes. She didn't come. He had a girl from New York come down who had heard something, had heard something, who had smelled something. I don't know. It doesn't matter. None of that is important. Okay. What matters is, Breyon got mad. And if he got mad right before he put that knife in, or he got mad earlier that day, it doesn't matter. He was mad before he did it. Okay? He pulled that knife out, and Jimmy pulled some bottles out, and it is sad. Okay?

Voluntary manslaughter. The Judge is going to charge you on that. It ain't voluntary manslaughter. There ain't no sudden heat of passion. There ain't no legal provocation. All right.

There ain't no heat of passion. You know, heat of

passion is you are walking in and your wife is with another man, okay, you know, you have a reason to be very upset. He ain't got no reason to be very upset. Okay? The only reason those bottles got thrown at him was because he had a knife, so it is his fault.

Sufficient legal provocation. Did you see anything where he became enraged, or lose control, and the law allowed it? I didn't.

I want to talk about our four witnesses, just briefly. I don't want to use up a whole bunch of time, but I want you to know that not a single one of them profited anything from coming up here. And if you know any four young people who want to talk to the police four separate times, and then come and talk in court, then you know some young people I don't know. All right? But they came, because it felt like it was the truth. Marcus told the truth, and he is in North Carolina. He came down for this. All right. And I'll tell you another thing, okay? Breyon didn't actually run into Marcus anywhere and bully him around. Do you think that is a coincidence? I don't think it is. Why do you think he didn't go after Marcus. And why do you think he went after LaVincent? Why do you think he is the one who chose to say he wasn't there? All right? I'll tell you why. Here is LaVincent and here is

Marcus. Y'all saw that. Okay? Now, we talked about Crystal Robinson. Never forget how disinterested she is. And here is another thing. Mr. Swilley said, what is Marcus and Crystal doing out on some random street? I'll tell you what Marcus was thinking. Crystal is a nice looking young lady. Y'all all saw that. What do you think Marcus was doing? Okay? Marcus was talking to Crystal. Okay? He was probably trying to talk to her. All right? What were the other two boys doing in there, I don't know. It is a busy city. Hartsville ain't no small city. People are out and about at night. All right. I don't think --- Here is the biggest thing. I don't care about those things. Mr. Swilley talked about them for a long time. This is what I'm telling you. That stuff don't matter. Okay? You can't go back there and think about if this and then that, all this other stuff, it doesn't matter. All right. She said a boy named Mouk was there. If she was lying, and telling a story without warts, like somebody in this courtroom did, okay, she would have said LaVincent Quintell Hankins was there, and he is a good friend of mine, I know him. She didn't say that. She said Marcus was there. She said five or ten people were there, and six if you count them. She is right. She wasn't right, but he made it sound like she was. She said, Phillip,

Marcus, me, and some kid named Mouk. All right. What did LaVincent say his nickname was, Mouk. What else did LaVincent say? He didn't grow up in Hartsville, he grew up in Darlington. He just went down there. He only had one friend, Phillip. LaVincent was there with his only friend. All right. Don't know none of those people. What does he got to lie? All right. What does Phillip got to lie? What trouble is Phillip in for this? None. All right. No reason to lie, but according to Breyon, she is lying. Okay? Marcus, admitted to being a former drug dealer. I thought that was crazy. He was telling the truth left and right. He don't care about nothing. Why would he lie? He lives in North Carolina now as a barber. What does he care? He said that the night he came before the bottles, just like everybody else. Told the same story. Okay? He told the same stories to everybody else. All four told the same story, man. I can't tell you that enough, how crazy rare that is. All right.

Mike Anderson, twenty-seven-years at SLED, however many years at Hartsville, did an investigation. Came up with that diagram that tells the story really and truly. To be honest with you, I don't know what I did with it.

You know, the diagram tells the story, and it is my best piece of evidence, y'all. The fight starts right

here. Every single one of them that got up there looked at this. They told the same story. It comes from this way. Get right here. The fight starts. They never said they saw a knife. They hear Jimmy go, hey man, put that knife down and fight like a man. Then they see Jimmy unable to run away, because he is scared about saving face. If either one of these boys had not worried about saving face, they would both be here right now. They would both be doing what they please.

All right. Back up, back up, backing up, a hundred and sixty feet. Look a bottle, throw it at you. Okay? I wasn't going to do nothing until you threw that bottle. Stupid, Phillip Franklin, I mean what else do you need to know. Him and Crystal, him and Marcus, him and Lavincent all the same story. All right. Y'all all heard the story. I don't have to go into it. The crime scene itself was the best evidence ever.

What about the fingerprints on the beer bottle. It matches the story perfectly. The only bit of CSI I got in there matches the story. Don't forget that. All right? The fact that Breyon attacked LaVincent Hankins, here is what I want to talk about with y'all. And I hope y'all understood this from the testimony. All right. Breyon wants you to believe that there is this whole crazy chain of events that are coincidences that

lead in here today. All this past stuff just happened to him for no reason. All right. LaVincent started a fight, and Breyon even put into it that he was playing with little children while this happened. All right? He is sitting there playing with little children, and LaVincent comes up maliciously to hurt him and be ugly to him. We all heard that story. It is a little too good to be true. Okay? But then when the truth comes out, what comes out? Two hours before that, he talked with his lawyer about LaVincent's statement. So, do you think it is a coincidence that after he learns about his statement, two hours later, he is beating him in the face? Does that sound like somebody who never gets mad? Does that sound like a coincidence? Does that go with common sense, or does that go against common sense? Does that go with every single life's lesson that y'all have ever learned, or does it go against it? All right. Don't forget about the first time apparently that he saw LaVincent, okay? LaVincent came to his house and was begging him, saying I'm not --- that ain't how LaVincent said it. LaVincent said, he walked up to me calmly, and said what about that court shit, y'all? Okay? Lavincent said, I ain't even going. Let me ask you, has anyone here been intimidated? Okay? Did it start off with a beating to your face, or did it start off like

this? Hey, why don't you not say nothing about something? Why don't you not do this, and then it ends. And then a little bit later, once they realized that ain't going on, two hours after they find out he is still doing something, then they come back and hit you. Okay? That is how intimidation works. That is how the mafia makes a living. You know, you don't want your store burned down do you? They don't burn it down that day. They make you pay first. All right. And when you quit paying, that is when they burn it down. That is a racket man. That is how intimidation works. That is common sense. Jailhouse tapes, I told you why I wanted them in. Right there. I wasn't gonna do it until he threw two big bottles on me man. Number one, the other implication of that is that he didn't do it. All right? Number two, they said he had the knife out. All right. Pull a knife out, maybe he will stop, maybe he won't throw a bottle at me. Cut him to get him up off of me, there is your intent. Get up off of me. I don't care how you call that, I don't know how he did it. Get up off of me, get up off of me, get up off of me, get up off of me. Was it multiple punches, I don't know. All my witnesses said, they didn't see the fight exactly. Mr. Swilley said, did you see him go down? All right? One time, he went down, maybe. I don't know. Yes. It

is all in how you ask the questions. Okay? Malice aforethought right there, I wasn't going to do it until he threw two big bottles on me. He made up his mind to do it, he did it, malice aforethought. Intent to put that knife where he put it. Jimmy died, man. Does that make Breyon even? I ain't the judge on that. Does it make him a murderer under the laws of this state? Man, it does. And it is sad. You know, I hate it. But you can't go running around stabbing people when you angry. All right? I don't care about them Pampers. I don't care about that girl from New York. I don't care about some girl named India. I just don't care. All right? Whatever the reason was, if both of them were mad, I can't say nothing about that. If it had worked out different, it might be Jimmy over there, y'all. And I'd still be doing my job. All right? But it didn't work out there, because Jimmy didn't go there with no knife. Maybe Jimmy wanted to get in a little scuffle. Maybe he was like that. Okay? But you are taking it up a level when you bring a knife into it, an unnecessary level. Children should not be bringing weapons. All right.

Boosting it up, I told y'all, I don't care nothing about that. It ain't going nothing to do about nothing, but muddying the water.

Let's talk about Breyon's testimony, and the things

he said and I just want to tell you why it was just too self-serving. Don't see anything wrong with sleeping with my friend's girlfriend. Do you think that is the truth? Do you think there is anybody out there? You know, they do it day in and day out. All right? You know, it is bad, yeah. I mean, he didn't rape her. He was just sleeping with her. It was consensual. But you know what; it is still your friend. It is still not right. And on some level you have got to know that. But you are just trying to make your story seem so good, it makes you sick. It is just so sweet it can't be right. All right?

He turned himself in. You know, talked to a lawyer. Two hours later beat up a witness, is what he talked about. You know? Y'all, there are a hundred and twenty different things happening in this case that I will forget to bring up. Okay? And that is because really and truly they are not important. And I don't want you to feel like that I think something that it is not. But the truth of the matter is what happened here was somewhere before he put that knife in him, Breyon got that knife. All right. He walked up there, and I believe it happened just like those four people said. He walked in there. LaVincent said he was yelling, he was mad. Jimmy squared up to fight and Breyon pulled

out a knife. For whatever reason, I don't know what it is he chased him a hundred and sixty-one feet. Okay? Jimmy got a bottle to protect himself. Didn't know he was coming to a knife fight. Okay? Threw the bottles, Breyon wasn't going to do nothing with the knife. But when that bottle threw, he made up his mind, I've got to stab. And when he did that, he became a murderer. This is literally making me sick it is so sad. But it is the truth. There ain't nothing we can get around it. And whoever boosted it up doesn't matter. All right. But you have got to take responsibility for what you do. Breyon doesn't understand that, that you have got to take responsibility for what you do.

I am sorry that we've got y'all here, and you are here deciding this. It ain't --- it ain't no fun, but neither is my job here. Okay? So, y'all go back there and just use your common sense, I hope.

Thank you so much. I'm sorry I took up --- I went a little longer than thirty minutes.

Thank you, Your Honor.

THE COURT: Ladies and gentlemen, let's take a break at this time before we have the charge on the law. We will take about a fifteen minute break, and then come back.

Please don't discuss the case, because you haven't

heard the charge. But we will all remain where we are while you depart the courtroom. If you want to go outside and take a break, we will let you do that.

BAILIFF: Come this way, please.

(Whereupon, the jury exits the courtroom at 2:50 p.m.)

THE COURT: All right. Court is in recess.

(Whereupon, the Court took a recess from 2:51 p.m. until 3:04 p.m.)

THE COURT: Have y'all looked at the evidence yet?

MADAME COURT REPORTER: I have it all in order.

THE COURT: Is it in order?

MADAME COURT REPORTER: Yes, sir.

THE COURT: Why don't you all come and look at it so that when we finish, when this jury goes out, they will be ready to go.

(PAUSE.)

MR. HOLT: Everything is great.

THE COURT: All right. And gentlemen, did you all look at the verdict form? Has everyone looked at the form?

MR. SWILLEY: I did, Your Honor.

THE COURT: And Mr. Holt, do you have any problems with the verdict form?

MR. HOLT: No, sir. Your Honor.

THE COURT: Then, let's bring in the jury.

MR. SWILLEY: Your Honor, can I put on the record the bad blood charge?

THE COURT: We will let you do it after I give it. We will put it on the record afterwards. Thank you.

MR. SWILLEY: Yes, sir.

(Whereupon, the jury enters the courtroom at 3:05 p.m.)

CHARGE ON THE LAW

THE COURT: All right. Welcome back, ladies and gentlemen. And now comes the part of the trial where I give you the charge on the law. Let me ask here at the outset, are you able to hear me? Can you hear me alright in the jury box? Okay, very good.

Let me first of all say to you, you may recall when we qualified you on Monday, it seems like a long time ago now, but it really wasn't, I talked about the fact that each of you had busy lives before you ever got your jury summons, and arrived here at the courthouse here on Monday. And I want to again thank you for your level of commitment that you have given this case. Throughout the case, whenever a trial is in progress, I try without staring at you, making you feel uncomfortable, to gauge the jury for comfort level, for focus. And every time I have looked at you throughout this trial, just as you

are now, I found you sitting there listening closely, with what I call wrapped attention and close focus. I am grateful for that ladies and gentlemen, because what that tells me is, you have put aside your busy lives, and taken on this cause. You have listened closely so that in a few minutes when you retire to deliberate, you are going to be in a position to decide what the facts are, simply because you have given your best talents, to listen and focus on the evidence.

Now, as you know, the state of South Carolina has charged the defendant --- the State of South Carolina seated closest to you, defendant seated at the table furthest from you, Mr. Breyon Toney, with two charges. One is murder and the other is possession of a weapon during the commission of a violent crime. Now, Mr. Foreman and ladies and gentlemen of the jury, of course bear in mind the defendant has pled not guilty to these charges. You heard that in open court. And thus, denied the allegations that are contained in the Indictments. And that is simply exactly what the Indictments are. They are a set of allegations. They are merely accusations leveled by the state against the defendant. They are not evidence. They are not to be accepted automatically as the truth, because the evidence which you are to consider is what has come from

the trial here, right from the witness stand, as well the exhibits placed in the record during the course of the trial, which you will have back in the jury room with you as you deliberate.

The defendant comes in this courtroom clothed with a presumption of innocence, and I tell you that this presumption of innocence remains with the defendant, and continues throughout the case and it entitles the defendant to a verdict of not guilty unless and until it is dispelled by evidence that satisfies you, ladies and gentlemen of the jury, beyond a reasonable doubt that the defendant is guilty of the crimes charged. And that the state has proved each and every element of that criminal offense beyond a reasonable doubt.

Now, you will recall that I told you at the beginning of the case that you are the judges of the facts. And what that means is, in addition you are the judges of the credibility and believability of the witnesses who appeared before you. And if you have witnesses who have come in and testified and say things that seem mutually exclusive, you must determine credibility and believability. I won't go over those factors again that we talked about, but I would just simply say this as a reminder to you. Again, we do this every day. And you employ those factors that you

believe are important in determining credibility and believability that you use in everyday life. Now, in deciding the facts I will tell you ladies and gentlemen of the jury, you may believe as much or as little of any testimony, any one witness's testimony you think proper. You can believe one witness against a whole group of witnesses, or you can do just the opposite. You may believe part of what a witness says, and completely disbelieve the rest. I will tell you that the fact that certain testimony is not directly controverted doesn't mean that you must accept it is true, because you must first gauge the credibility and believability of the witness through which it comes.

Keep in mind throughout this process you have but one objective, and that is to search for and find the truth, regardless of from which witness or from which side of the case that truth may come.

Now, there are two types of evidence in cases such as these. There is direct evidence and there is circumstance. Direct evidence is testimony by a witness, usually an eyewitness who testifies about what they saw, or heard, or did. That is direct evidence.

Circumstantial evidence on the other hand is indirect. Circumstantial evidence is proof of a set or chain of facts that then indicate the existence of yet

another fact. I will tell you that the law makes absolutely no distinction between the weight to be given, or the value to be given to either direct or circumstantial evidence. Nor is a greater degree of one required over the other. You should consider all of the evidence in the case both direct and circumstantial. And after weighing all of the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

Now, you also heard testimony in this case of witnesses who had special knowledge, or skill, or experience, or training in a particular field, and they came in and gave their opinion as an expert as to matters in which that witness was skilled. In determining the weight that you give to that opinion, you should consider the qualifications and credibility of the expert and the reasons or basis given for his or her opinion. You are not bound by that opinion. You give it the weight you believe it is entitled to.

The value and effect of expert testimony is to be solely estimated by you, the jury. No mere opinion of an expert can be accepted, in and of itself as truthful and reliable, but must be weighed by you and convince you beyond a reasonable doubt, and with the same force

and effect as any other fact proved in the case before you can rely upon it as a basis for conviction.

You must consider expert testimony in the same manner you do any other testimony, and you give it the weight you believe it is entitled to. Again, I will say to you as I said when it was first given; the testimony is never given for the purpose of controlling your judgment, but for helping you, if you find it to be helpful in finding facts that are within the purview of that expert that is also before you in this case.

Now, I talked to you a moment ago about going back in the jury room, and considering the direct and the circumstantial evidence, and going back and weighing the evidence in your good judgment and your common sense. And I have been back there in your jury room before, not while you have been back there, but the first thing you will notice is that there are not a set of scales to go back there and weigh the evidence on. Well, that is obvious, because this is entirely a mental process. But I will tell this to you, the evidence that weighs with you is evidence that convinces you of its truth, again regardless of from which witness or from which side of the case that evidence may come.

Now, the same constitution that makes you the judges of the facts makes me the judge of the law here

in the courtroom. And I will tell you that there is a lot --- having lived all my life here in Darlington County, just as much as you have, there is a lot of bad information out on the street about the law; about any particular area of the law you may be discussing. So, I am going to ask you today, as you consider this case, please set aside what you may have heard before you got here and heard what the law is. Or what you and I may even think is a better idea. But accept the law as I give it to you. Apply it to the facts as you find them. And if you do that, ladies and gentlemen, then you will reach a verdict which is just and which is fair. And if you think about that, I've gone over this charge with the lawyers. We had a charge conference during the lunch hour. And also, what I am saying here in this charge is being preserved, and taken down. If I somehow gave it to you wrong, which I am not, but if I did that error would be preserved. And there would be a day and a time when it could be revisited and corrected if necessary. But, I am not giving it to you incorrectly. Please accept the law as I give it to you, and apply it to the facts as you find them. And again, you will reach a verdict which is just and true.

Now, in a criminal prosecution of this type, as I have already said to you, the prosecution, the state has

the burden of proof at all times. It doesn't shift to the defendant. The defendant has no burden of proof. He is presumed innocent. And in this state, according to our constitution, the state must prove its case to the standard of proof we call beyond a reasonable doubt before a finding of guilty may occur. If the state fails to meet this high burden, and it is a high burden, then the defendant is entitled to an acquittal.

So you say, alright, what is a reasonable doubt? Well, I am going to start by telling you what it is not. It is not an imaginary or fanciful doubt or a weak doubt; it is a substantial doubt. It is a doubt that the words imply. A doubt for which you can give or assign a reason based on the testimony and the evidence in the case. A reasonable doubt is not any sort of a doubt that you and I know from everyday life experiences. We may have doubt about any sort of matter, no matter how trivial it is, such as what tie to wear to an event, or what pair of shoes to wear. Well, that is not a reasonable doubt.

A reasonable doubt is a doubt that makes an honest, sincere, conscientious juror in search of the truth hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilty. If you have a doubt for which you

can give or assign a reason as to the guilt of the defendant, then he is entitled to a verdict of not guilty on that charge.

Reasonable doubt may arise from evidence that is in the case, or from the lack or absence of evidence in the case. You, the jury, must make the determination here as to whether or not reasonable doubt exists as to the guilt of the defendant in regard to these charges.

I will tell you though that the very fact that the jury goes back into the jury room, and engages in a full and free discussion of the issue of guilt or not-guilty in these cases, with the ebb and flow of that conversation does not automatically mean that reasonable doubt exists in this case, or in any other case for that matter.

Now, I also charge you that criminal intent is a necessary element of each crime that must be proved by the state beyond a reasonable doubt.

Criminal intent is always a matter that must be determined by the jury from the circumstances that surround a situation. There is no way to prove intent to some mathematical certainty. And you and I know that there is no way medical science will allow us to dissect someone's brain, and look in and determine what a person had in mind at a particular time. So, the law says that

criminal intent may be inferred from circumstances shown to have existed, both before and after the fact. This is how you, the jury, make the determination as to whether or not requiring proof of criminal intent is present. Criminal intent is a state of mind that operates jointly with an act or an omission in the commission of a crime. Criminal intent is a mental state of conscious wrongdoing. So, it is up to you the jury to determine what the defendant intended to do based on the circumstances shown to have existed.

I tell you the state must prove criminal intent beyond a reasonable doubt just as the state must prove every element beyond a reasonable doubt, as I previously explained.

All right. Let's talk about the charge of murder. The defendant is charged with murder, as you are aware. In order to prove this charge, the state must prove that the defendant killed another person with malice aforethought.

Malice is hatred, or ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent.

Malice aforethought does not require that malice

exists for any particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act itself.

Malice aforethought may be expressed or it may be inferred. Now, these terms express and inferred do not mean different kinds of malice, but merely the manner in which it may be shown to exist. That is either by direct evidence, or by inference from the facts and circumstances which are shown to have existed and which are proved here by the state. Express malice is shown when a person speaks words which express hatred or ill will for another person, or when the person prepares beforehand to do some act which was later accomplished; for example, lying in wait for someone, or some other act of preparation going to show that the deed was within the defendant's mind. That would be expressed malice.

Malice may also be inferred from conduct that shows a total disregard for human life. And ladies and gentlemen, that is the charge of murder.

Now, let's talk a little bit further, because under our law --- and murder is what we call a greater offense. Many greater offenses also include a lesser

offense. Now that sounds a little bit complicated, but what it really means is the charge of murder also includes the lesser offense of voluntary manslaughter. So you have murder and then voluntary manslaughter. Even though the lesser charge is not listed in the Indictment, you may consider it if you find that those facts fit the charges rather than the greater charge of murder. In other words, the defendant who is indicted for murder may be convicted of voluntary manslaughter if the evidence warrants it. So, let me define voluntary manslaughter for you.

If you find that the state has failed to prove the greater offense of murder beyond a reasonable doubt, you must then consider whether the state has proved beyond a reasonable doubt that the defendant committed voluntary manslaughter. To prove voluntary manslaughter the state must prove beyond a reasonable doubt that the defendant took the life of another person in the sudden heat of passion based on sufficient legal provocation. Both heat of passion and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter.

Sudden heat of passion may, for a time, affect a person's self-control and temporarily disturb a person's reason. The sudden heat of passion must be the type

that would make an ordinary person unable to cooley reflect on his actions and would produce an uncontrollable impulse to do violence.

Sufficient legal provocation must be the type that would make a person of ordinary reason and caution become enraged or lose control temporarily. The provocation needed for voluntary manslaughter must come from some act or related to the victim.

Words alone, however vulgar or insulting, they may be not enough to be legal provocation under South Carolina law. Where death is caused by the use of a deadly weapon, the words must be accompanied by some overt, threatening act which could have produced the heat of passion.

The exercise of a legal right, no matter how offensive it is to another, is never sufficient legal provocation for voluntary manslaughter.

If the heat of passion had cooled, or if there was enough time between the provocation, if any, and the killing for the passion of a reasonable person to have cooled, the killing would not be voluntary manslaughter. In deciding whether a reasonable person would have had enough time to cool off, you should consider all the circumstances that surround the killing. You may consider the nature of the provocation, if any; the

defendant's mental and physical state; and the circumstances and relationships between the parties.

All right. The defendant is also charged with the possession of a weapon during the commission of or the attempt to commit a violent crime. The state must prove beyond a reasonable doubt that the defendant was in possession of a firearm, or knife, or visibly displayed what appeared to be a firearm or a knife during the commission of a violent crime.

I will tell you that in order to find the defendant guilty of the possession of a weapon during the commission of a violent crime you must also find the defendant guilty of committing a violent crime, or attempting to commit a violent crime. And under South Carolina law, both murder and voluntary manslaughter are considered violent crimes.

Now, the defendant has raised the defense of self-defense in this proceeding, and let's talk about that. Self-defense is a complete defense. And if it is established, you must find the defendant not guilty of all charges. The state has the burden of disproving self-defense beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant not

guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant guilty.

All right. The following elements are required to establish self-defense. Please listen carefully.

The following elements are required to establish self-defense.

Number one. Without fault. First, the defendant must be without fault in bringing on the difficulty. If the defendant's conduct was the type which was reasonably calculated to, and did, provoke a deadly assault, the defendant would be at fault in bringing on the difficulty and would not be entitled to an acquittal based on self-defense.

Self-defense is not available to a person who uses language which is so contemptuous that a reasonable person would expect it to bring on a physical encounter, and which did actually contribute to the physical encounter.

All right, secondly, imminent danger. The second element of self-defense is that the defendant was actually in imminent danger of death or serious bodily harm or that the defendant actually believed he was in imminent danger of death or serious bodily harm.

If the defendant was actually in imminent danger, it must be shown that the circumstances would have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or to prevent his own serious injury. If the defendant believed he was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would have had the same belief in those circumstances.

In deciding whether the defendant actually was, or believed he was, in imminent danger of death, or serious bodily harm, you should consider all the facts and circumstances that surround the incident including the physical condition and characteristics of the defendant and of the victim.

Now the defendant does not have to show that he was actually in danger. It is enough if the defendant believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief under those same circumstances. The defendant has the right to act on appearances even though the defendant's beliefs may have been mistaken. It is for you to decide whether the defendant's fear of immediate danger of death or serious bodily injury was reasonable and would have been felt by an ordinary

person in that same situation.

I will also tell you that words accompanied by some hostile act may, depending on the circumstances, establish self-defense.

Furthermore, the relative size, ages, and weights of the defendant and the victim may be considered an apparent or actual need for force in self-defense and the amount of force that was needed.

Furthermore, I charge you that threats made by the victim, should you find that in the evidence, may be considered in determining whether the defendant actually was, or believed he was, in imminent danger.

And further, the final element of self-defense is that the defendant had no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in a particular instance. This is known as a duty to retreat.

However, the defendant had no duty to retreat if, by doing so, the danger of being killed or suffering serious bodily injury would increase.

Now, a person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily injury. Therefore, in self-defense, the defendant has the right to use the force needed to avoid death or serious harm.

The force used in self-defense does not have to be limited to the degree or amount of force used by the victim. The defendant has the right to use so much force as appeared to be necessary for complete self-protection in which a person of ordinary reason and firmness would have believed to be needed to prevent death or serious bodily harm under the circumstances.

In this case, if you find that there was evidence of prior difficulties between the parties, you may consider these prior difficulties in assessing the reasonableness of the defendant's actions. These prior difficulties are relevant in showing defendant's state of mind on this particular occasion. Evidence of prior difficulties may be considered by you as showing the animus or attitude of the parties toward each other, to assist you in determining who was the aggressor. However, this evidence may be considered by you for that purpose only.

All right. Ladies and gentlemen, also during the course of this trial you saw that the defendant took the stand, and testified, and made certain explanations. But, I charge you that it is not incumbent upon the defendant to prove his explanations or anything else for that matter. The defendant's plea of not guilty placed the burden upon the state to prove his or her guilt

beyond a reasonable doubt before the defendant can be found guilty. You must gauge the credibility and believability of the defendant as you would any other witness.

I further charge you that under South Carolina law, mere presence at the scene of some incident or crime is insufficient to prove somebody guilty of that crime. The burden of proof is upon the state to prove every element of the crime charged. If you find, after you review all of the evidence, that the state has proved that the defendant was present at the scene, and that they had not proved, beyond a reasonable doubt, any other participation in a crime, then you must find the defendant not guilt. The law is that mere presence at the scene of a crime, or incident, is not sufficient to find someone guilty of a crime.

Now, Mr. Foreman, and ladies and gentlemen of the jury, in just a few moments, you are going to retire to deliberate. And as you do that, as we do that, I want to make sure, and I know you are that you are mindful of your importance of your responsibility in being called upon as jurors. You may recall that we talked about on Monday; you can't be required to serve more than one time in three years in the same court. And you have an exemption for three years. And there is a reason for

that, and that is because it is difficult. It is because it requires you and I to free our minds of all outside influences, because we are acting for the community in seeing to it that every trial here is fair and that every verdict is just.

I am sure you have noticed that throughout the trial that the presiding officer, which is me, is referred to as Your Honor. And I know you know that is not some title given to me personally. That is a title that is assigned to the position that I am privileged to hold. That is because this court is entrusted with the honor of this community, this county, this state, and indeed this nation to see to it that every trial here is fair and that every verdict here is just.

Now, in a few moments you are going to take the preservation of the honor of this community, county, state and nation with you in the jury room when you retire to deliberate. When I say that to you, please understand that I am not telling you how you should decide this case. I am just simply saying this. As the presiding officer of this courtroom, it is of vital importance to me that whatever verdict you reach be the result of your going back into the jury room, confining your considerations to the evidence put forth in this courtroom, weighing that evidence fairly and

impartially, and apply it to the law that I have given you here in this charge.

If you do that, I have every belief that your verdict will represent justice and fairness to all the parties here in this case. I will tell you that everyone in this case is entitled to justice, nothing more and nothing less. We owe no support to any party. We owe no sympathy to any party.

Now, Mr. Foreman, let me say to you, and Ladies and gentlemen of the jury, your verdict must be unanimous. And I've been, as I say, back in the jury room. It is a large room. There are walls, and there are windows, and there is a big table. And Mr. Foreman, there may be some people over at the wall, some at the table, some by the window, wherever they may be. If they wish to express an opinion on a particular issue, please make sure that they are heard, so that this verdict is not only a conscience verdict, but indeed in the end it is a unanimous verdict that is consented to by all. Because, at the bottom of the verdict form, is a statement, right before your name. And it says, I certify that this is the unanimous decision of the jury. So, when you sign here, and return to the jury room, all of you with this verdict form filled out, you are certifying that this is a unanimous verdict.

Now, the jury verdict form has three questions on it. And what the questions are, and you can't see it, but you will have this with you in the jury room, the first has to do with the issue of murder. The second has to do with the lesser included offense of voluntary manslaughter. And the third question, which actually the first one is called 1 and 1-A, and the third question which we denominated number 2, asked about the possession of a weapon during the commission of a violent crime.

And the form is somewhat self-directing. Because, the first question to you is this. As to the charge of murder, we the jury unanimously, and beyond a reasonable doubt, find the defendant Breyon Toney --- and then ladies and gentlemen, there are two choices. Now, just think about this. When I have two choices to you I can't give them to you at the same place on a piece of paper. One must be in front of the other. But there is no preference. There is no priority here. It is simply the first choice is not guilty, if you unanimously decide that the defendant is not guilty, you check that. And the second choice is guilty. And if you unanimously decide he is guilty of murder, you check that.

And then after each one of these it directs you as to where to go. Because, if you find the defendant not

guilty of the greater charge of murder, then you must consider the lesser included offense. And it directs you to do so. But, if you find him guilty of murder you don't consider the lesser included offense, because you found him guilty of the greater offense.

And then, you go to the second question, which has to do with the use of a weapon during the commission of a violent crime. And I would say to you, and you are directed to do so on the verdict form, if you find the defendant not guilty of both murder and voluntary manslaughter, it tells you to skip question two, because there has been no violent crime for which a possession of a weapon would be a crime.

So, what I would ask you to do now, ladies and gentlemen --- and actually, before we do this, let me do one more thing. I want to thank Mr. Lucas in your presence. He is your alternate juror, and of course, you all know that. And a lot of times we get to the end of the case, and our alternate juror says, well, you know, I have wasted my time, because I have sat here three days now, and I am not getting ready to deliberate. But that is actually not true, because in fact we had it happen, we had two alternates. South Carolina law requires twelve jurors. If someone should get sick, and let's hope your jurors hold their health

here for the next minute or two, but if they had to leave, or had an emergency and had to leave even now, and I didn't have an alternate, I would have to declare a mistrial. This case would have to be tried all over again sometime. So, your presence here, Mr. Lucas, has prevented that. What I am going to let you do is go back to the jury room for just a moment, say your goodbyes to your colleagues. And then we are going to let you come out when we send the evidence in, and the jury will begin their deliberations. And I will talk with you a little further at that time.

Now, ladies and gentlemen, just like you have waited on us all this week, now we are going to wait on you. There is no hurry. There is no time pressure here. But if you need to take a break, please knock on the door. We will make that available to you. So if someone wishes to go outside, and some remain that is fine. We will accommodate you. But, if you do that, please stop your deliberations until you are all back together. Because, it is possible that two different groups at two places may reach an inconsistent decision at the same time. So, to avoid that, just wait until you are all back together.

If you have a question, then please write it down, knock on the door, someone will bring that question. We

will respond to you in writing so that there will be a record made of communications that may occur.

Now, we will all remain where we are, ladies and gentlemen, please go back and take a brief break if you wish. Don't begin deliberations. When we send the evidence and exhibits in, then you may begin.

Thank you.

(Whereupon, the jury exits the courtroom at 3:34 p.m.)

THE COURT: All right. The jury is out. Now, are there exceptions or objections to the charges given by the Court by the state?

MR. HOLT: None from the state, Your Honor.

THE COURT: Now from the defense?

MR. SWILLEY: There are, Your Honor. Your Honor, I would request that the Court charge the jury on bad blood, Section 66-18 in the Ralph King Anderson book. I think there was evidence in this case regarding ill feelings between the parties. And I think there was evidence about adolescent threats between them. And I think that was sufficient evidence for the Court to charge that particular charge.

THE COURT: All right. Just a moment, please.

(PAUSE.)

THE COURT: All right. Mr. Swilley, at your

request, I did charge from Judge Anderson's charge book, Section 6-9 on self-defense, which is prior difficulties. That talks about ill-will. I also used my standard charge from the Charge Book, which talks about whether or not there had been threats previously between the parties. I felt like the charge that you gave me on "bad blood" was actually cumulative, if not duplicative. And for that reason, the Court felt that the issues were well covered in the ill-will charge.

I will decline to amend my charge at this time.

MR. SWILLEY: Thank you, Your Honor.

THE COURT: All right. Anything further now?

MR. HOLT: Nothing, Your Honor.

THE COURT: All right. Counsel, please come take a last look at the verdict form, and the evidence, and let's make sure we have it together.

And everyone, let's remain in session, because we are going to bring the alternate juror back out.

(Whereupon, the attorneys review the evidence and the verdict form.)

THE COURT: Mr. Medlin, when you come back out from taking the exhibits in I will explain to Mr. Lucas that he is going to be sequestered.

(Whereupon, the jury begins deliberations at 3:39 p.m.)

(PAUSE.)

THE COURT: Mr. Lucas, welcome back. What we are going to do sir, we are going to ask you if you would kindly --- we are going to let you sit in a backroom, if you don't mind, in the event one of the jurors becomes ill during the deliberations. Then we would seat you with the twelve, and they would begin again with your deliberations. We are going to make you comfortable with some refreshments. When the verdict comes back, when we learn of that, we will definitely come and get you, and you will join us. Thank you for that. I have enjoyed working with you, sir. And please go with Mr. Medlin, he will take you right where you need to be.

All right. Ladies and gentlemen, we have some other civil matters, and some other cases that will be starting at 4:00 this afternoon, with lawyers from out of town. So, you are welcome to just make yourself at ease. Please don't leave --- if you do leave the fifth floor, please let us know either where you are, give us a cell number, so we can get to you immediately in the event of a question.

And this case will be in recess now until such time as we hear back from our jury.

(Whereupon, this court stands in recess awaiting a verdict from the jury from 3:39 p.m. until

5:00 p.m.)

THE COURT: Mr. Holt, we will wait on Ms. Parker.

MR. HOLT: We can go ahead and go, Your Honor. Ms. Parker is on the way up. She is printing out the sentencing sheets just in case.

THE COURT: Then ladies and gentlemen, I realize that we have folks here on both sides of this case.

Please, out of respect for the jury, let's maintain the decorum of this court, so that whatever the verdict is, there is not some large reaction to it in such a way that the jury may somehow be uncomfortable in the decisions they have had to make.

So, please bring in the jury. Please bring our alternate as well.

BAILIFF: Yes, sir.

(Whereupon, the jury enters the courtroom at 5:01 p.m.)

THE COURT: All right. Ladies and gentlemen, welcome back to the courtroom. And as you notice, Mr. Lucas has been waiting in another room, and is back with you as well. Mr. Sims, Mr. Foreman, I understand the jury has reached a verdict; is that correct?

MR. FOREMAN: Yes, sir.

THE COURT: Would you please give your verdict sheet to our Clerk?

(PAUSE.)

THE COURT: Let's let the record reflect that the verdict form is appropriately filled out, and it is signed by the foreperson.

And now, the Defendant, please rise. And Mr. Clerk, please publish the verdict.

PUBLICATION OF THE VERDICT

CLERK OF COURT: Yes, sir, Your Honor. This is case number 2010-GS-16-077, and 078, The State of South Carolina versus Breyon Toney, the Defendant.

The verdict, question one. As to the charge of murder, we the jury, unanimously and beyond a reasonable doubt find the defendant, Breyon Toney, guilty.

If this is your verdict, would you so signify by raising your right hand, please?

All twelve jurors have responded positively.

If guilty, if chosen, please skip to question 1-A, and go to question 2.

Question 2. As to the charge of possession during the commission of a violent crime, we the jury unanimously and beyond a reasonable doubt find the defendant, Breyon Toney, guilty.

If this is your verdict, would you so signify by raising your right hand?

All twelve jurors have responded that they do. And

this is signed by the Foreperson, Darius Sims, dated May 18, 2011.

THE COURT: Thank you. And the defendant may be seated. Counsel, you may be seated as well.

Now, while we are in the presence of the jury, are there any Motions or requests for which a jury response would be necessary, first from the defense?

MR. SWILLEY: Yes, Your Honor. We would request a poll of the jury.

THE COURT: All right. Ladies and gentlemen, the defense has requested that the jury be polled. And what that means is, each of you individually will be asked two questions by the clerk. The first question will be something to the effect of, was this your verdict, and then you answer. And then the question number two, is this still your verdict? So, when your name is called, if you will please stand, and respond to those questions one at a time, to the clerk? Are you ready Mr. Clerk?

CLERK OF COURT: Yes, sir.

THE COURT: All right. Please proceed.

POLLING OF THE JURY

CLERK OF COURT: Mr. Foreman, if you will stand? Darius Sims, the verdict I just published was the verdict you reached in the jury room. Was it your verdict then?

MR. SIMS: Yes, sir.

CLERK OF COURT: Is this your verdict now?

MR. SIMS: Yes, sir.

CLERK OF COURT: Margie Brown, was it your verdict then?

MS. BROWN: Yes.

CLERK OF COURT: And is it your verdict now?

MS. BROWN: Yes, sir.

CLERK OF COURT: Thank you. Kendra Clifton, was it your verdict then?

MS. CLIFTON: Yes.

CLERK OF COURT: And is it your verdict now?

MS. CLIFTON: Yes, sir.

CLERK OF COURT: Thank you. Julie Flinchum, was it your verdict then?

MS. FLINCHUM: Yes, sir.

CLERK OF COURT: And is it your verdict now?

MS. FLINCHUM: Yes, sir.

CLERK OF COURT: Thank you. Bernard Gee, was it your verdict then?

MR. GEE: Yes, sir.

CLERK OF COURT: And is it your verdict now?

MR. GEE: Yes, sir.

CLERK OF COURT: Thank you. Rachel James, was it your verdict then?

MS. JAMES: Yes, sir.

CLERK OF COURT: And is it your verdict now?

MS. JAMES: Yes, sir.

CLERK OF COURT: Thank you. James Johnson, was it your verdict then?

MR. JOHNSON: Yes, sir.

CLERK OF COURT: And is it your verdict now?

MR. JOHNSON: Yes, sir.

CLERK OF COURT: Thank you. Milda Kersten, was it your verdict then?

MS. KERSTEN: Yes, sir.

CLERK OF COURT: And is it your verdict now?

MS. KERSTEN: Yes, sir.

CLERK OF COURT: Thank you. Shirley Mingo, was it your verdict then?

MS. MINGO: Yes, sir.

CLERK OF COURT: And is it your verdict now?

MS. MINGO: Yes, sir.

CLERK OF COURT: Thank you. Travis Russell, was it your verdict then?

MR. RUSSELL: Yes, sir.

CLERK OF COURT: And is it your verdict now?

MR. RUSSELL: Yes, sir.

CLERK OF COURT: Thank you. Winnie Tedford, was it your verdict then?

MS. TEDFORD: Yes, sir.

CLERK OF COURT: And is it your verdict now?

MS. TEDFORD: Yes, sir.

CLERK OF COURT: Thank you. Sonya King, was it your verdict then?

MS. KING: Yes.

CLERK OF COURT: And is it your verdict now?

MS. KING: Yes, sir.

CLERK OF COURT: Is there any one of the twelve jurors whose name was not called?

That is all twelve, Your Honor.

THE COURT: Thank you, Mr. Clerk. And Mr. Swilley, all of the jurors have responded in the affirmative to both questions. Now, are there further Motions for which a jury response would be necessary at this time?

MR. SWILLEY: There is not.

THE COURT: Now, from the state?

MR. HOLT: No, sir, Your Honor.

THE COURT: Then ladies and gentlemen, what we are going to do now is we are going to have a sentencing proceeding. Rather than defer that till tomorrow, while we are all here, we are going to go ahead and do that now. But, I don't require the jury to stay for that. You are certainly not required to stay. But we will

give you the opportunity to come back into the back of the courtroom, or come back into the seating area of the courtroom, and be seated if you wish to observe it. It will probably be about fifteen minutes in duration, and we will give you time to go back to the jury room, speak with the Clerk for a moment, and come back into the courtroom, if you wish. I don't require that. I do this so that the jurors can see it if they wish. But, you are not required to, and I certainly do not demand it. Some jurors just wish to go home.

I will say this about sentencing. In our system, it is the Court's responsibility, the judge's responsibility, who is familiar with sentences, with statutes which require minimum, and set maximum sentences. Also what would be norms or averages of sentences. And also just more familiar with what is appropriate under the facts of a given case. The jury should never take responsibility for whether you believe a sentence is too high or too low. It is certainly not the fault of the jury. The jury is the judges of the facts, and the Court is the judge of the law. So, please, take no inference or response to whatever the Court may decide in sentencing.

In a few days, in fact, I think in a few minutes the clerk has a small check for you, which is certainly

not enough to retire on. But it is the county's expression of gratitude for your service. But as you leave the jury box, I am going to come and shake your hand as my expression of gratitude for your service. Being a juror is a difficult task. I thank you for the capable way that you have discharged that responsibility, and the fair and just verdict that you have reached.

Just one moment.

(PAUSE.)

THE COURT: All right. Mr. Holt, do you have someone who wishes to speak on behalf of the victim in these proceedings?

MR. HOLT: It is my understanding that they didn't, Your Honor. But I would like the opportunity to check.

THE COURT: They do not. All right. Very good.

(PAUSE.)

THE COURT: Are we ready?

MR. HOLT: Yes, sir, Your Honor.

THE COURT: All right. I am advised that none of the jurors wish to return to the courtroom.

Now, Mr. Swilley, we are outside of the presence of the jury. Are there any motions for which a court response would be necessary?

MOTION FOR A NEW TRIAL

MR. SWILLEY: Your Honor, I would make a Motion for a New Trial due to lack of competent evidence preferred against the defendant.

THE COURT: All right. I am going to respectfully, without taking argument from the other side, I am going to deny your Motion.

The question really before the Court at this point is was there evidence before this jury that would support the decision of the jury.

I find that there is admissible, computable, sufficient evidence. And the Court declines to disturb the decision of the jury. For that reason, your Motion is denied.

Anything further now, before we go into sentencing, from the defense with regard to post-trial Motions?

MR. SWILLEY: There is not.

THE COURT: And state?

SENTENCING HEARING

MR. HOLT: Your Honor, one member of the family has elected to speak for the entire family. And whenever you would like to hear, the state will offer them.

THE COURT: All right. Very good. What I would like to do first, and tell me who is coming forward to

speak, please?

MR. HOLT: Your Honor, to be honest, I know that he is Jimmy's cousin. She will have to introduce herself.

THE COURT: All right. Ma'am, please give us your full name.

MS. WILLIAMS: Tarnieka Williams.

THE COURT: All right.

MR. HOLT: Tarnieka Williams.

THE COURT: All right. How do you spell your first name?

MS. WILLIAMS: T-A-R-N-I-E-K-A.

THE COURT: All right. And that is Ms. Williams?

MS. WILLIAMS: Yes, sir.

THE COURT: All right. Ms. Williams, thank you for coming forward to speak.

What we are going to do is I am going to hear from the defendant's lawyer, as well as from the defendant. I am going to hear from the state as well. And before sentence is imposed, give you an opportunity to speak.

Tell me, what other family members do you have here with you ma'am?

MS. WILLIAMS: His mamma, Bobbie Tucker, my Grandmother which is her sister, Wedella Carter, [sic] and Latisha Mallory, which is a cousin.

THE COURT: And I was taking those names down. The last name you gave me was Latisha --

MS. WILLIAMS: Ms. Latisha Mallory.

THE COURT: All right. Thank you, Ms. Williams. And we will let you be seated.

Let me say to those who are here for the victims, not only Ms. Williams, but also Ms. Tucker, Ms. Carter, and Mallory, victims of crimes have numerous rights in this process. You have sat silently while this trial has been in progress, which has really been about the protection of the defendant's rights. I don't want you to believe therefore that those rights are more important than yours. They are not. It is simply best first for the defendant to exercise his right to a trial, the protection of his civil rights, as well as his constitutional rights. And now that we have accomplished that, we turn to the victim's rights, including the right to be heard, which we will hear from Ms. Williams in this process.

Let me say that this happened, you know, well over two years ago. And, now to come back, to relive it, when it has been put out of memory to the best extent possible takes courage. And I thank you for your courage in seeing to it that justice is done.

All right. Mr. Swilley, do you have something you

wish to say for your client?

STATEMENT BY MR. SWILLEY ON BEHALF OF THE DEFENDANT

MR. SWILLEY: Your Honor, Mr. Toney was seventeen at the time of this incident. Has no convictions as a juvenile. Well, he has one conviction for driving under suspension while he was seventeen. He has no convictions in the Family Court. Also none in General Sessions. He has expressed great remorse to me over the death of Mr. Tucker. They were friends. He fully acknowledges that --- He fully acknowledges the gravity of the situation. I would just ask the Court to take into consideration those mitigating factors in sentencing.

THE COURT: All right. Mr. Toney, do you have something you wish to say, sir? If so, we will be glad to hear from you at this time.

Please remember, you remain under oath.

STATEMENT BY BREYON TONEY

MR. TONEY: Yes, sir. I would like to apologize to Ms. Tucker for everything that happened to her son, and this whole situation.

THE COURT: All right, sir. Thank you. We will let you be seated.

All right. Mr. Holt, do you have something you wish to say?

STATEMENT BY MR. HOLT

MR. HOLT: Your Honor, I think you are going to handle the sentencing. I think you know all of the pertinent information, their ages, the circumstances on both sides. I think this office and this Solicitor very much wanted this to be an involuntary. Pursued that offer with much vigor, and was turned down repeatedly. If you would just take that into consideration.

The young man did not have any convictions. He was in Drug Court numerous times. He had a lot of people trying to get him to make the right decisions. Responsibility is just a thing with him. And this Solicitor fully supports your ability to make that decision without him.

But we would like for you to hear from Ms. Williams.

THE COURT: And tell me, Mr. Holt, what offer did you make to a voluntary manslaughter charge?

MR. HOLT: It started as twenty-two, numerous times. And then, I think just the other day, we went to nineteen after I had spent three days trying it.

You know, I will say this, I don't think he is an evil fellow. Okay? I will say that on the record. You know, I hate --- I hate to see what happened to Jimmy and his family, but I don't think they are of a

vindictive lot. And I think they know he ain't coming back, judge. But, I will definitely let Ms. Williams talk now.

THE COURT: Ms. Williams, please follow our Clerk's instructions ma'am. We are going to place you under oath. And just where you are will be fine, if you would just stand up and please speak loudly so we can hear you.

WHEREUPON, TARNIEKA WILLIAMS

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

MS. WILLIAMS: I do.

CLERK OF COURT: You have to speak loud enough so she can hear you.

THE COURT: You might better come to the microphone, because it is hard to hear you, ma'am. Thank you.

STATEMENT BY TARNIEKA WILLIAMS

MS. WILLIAMS: On behalf of our family, I mean, we are still feeling the loss, because at the end of the day his mom can't go visit him, and we can't replace Jimmy. And, Your Honor, it hurts, because two boys that were close friends, friendship ruined over something so simply, can fuss over a girl. But at the end of the day, Breyon, that was supposed to be your best friend. And now we can't bring him back. And, you know, it

hurts all of us. It hurts my aunt. It hurts --- nobody can bring him back. But we have just got to remember everything, the memories that we have of Jimmy. We love him. We miss him. And, it still does hurt us. But finally, we reached our verdict. And nobody wants you to be gone that long Breyon. Everything could have been avoided if you would have stayed home and watched the baby. He would have stayed home at Daddy's. And that's it.

THE COURT: All right. Ms. Williams, thank you, ma'am, for your courage. Ms. Tucker, Ms. Mallory, Ms. Carter, thank you for being here throughout this process.

To avoid confusion at a later time, can you tell me how many days is Mr. Toney entitled to, correctly?

MR. SWILLEY: It was over two years, Your Honor. Although I don't have that figure exactly how many days, I think Ms. Carter might have that capability.

THE COURT: All right. We will let Ms. Carter give it to us.

MR. SWILLEY: I know it was three days this week.

(PAUSE.)

MR. SWILLEY: Your Honor, Mr. Jones has informed me, he reminded me that he currently has a bench warrant that may cause some difficulties when he gets to

corrections. So I would ask that you lift that bench warrant.

THE COURT: Very good. So lifted.

(PAUSE.)

SENTENCE OF THE COURT

THE COURT: We calculate seven hundred days.

All right. Mr. Toney, based upon South Carolina law, the Court has no discretion as to the minimum sentence.

Sir, I am going to agree with one thing Mr. Holt said. Sometimes you just have to take responsibility and do the right thing, such as not taking a knife to a street fight, not engaging in this type of behavior which ultimately led to what happened here.

Based upon the finding of the jury; I find, that it is appropriate to sentence you --- I am going to let you stand while I sentence you please, sir. And we are going to take you into custody at this time.

(Whereupon, Mr. Toney was taken into custody.)

THE COURT: I sentence you to thirty years in The Department of Corrections. I am further going to sentence you an additional but in concurrent fashion, five years; that is five concurrent years for possession of a weapon. Meaning, you will have a total of thirty

years in prison.

I am going to credit you for seven hundred days you have already served against that thirty years.

And that is the sentence of the Court. Good luck to you, sir.

Is there anything further now before we conclude this proceeding, in this trial? Anything from the defense?

MR. SWILLEY: There is not, Your Honor.

THE COURT: From the state?

MR. HOLT: No, thank you, Your Honor.

THE COURT: All right. Then again, ladies and gentlemen, best wishes to you, to your family as you move forward and close this chapter as best you can.

This case is now adjourned. Court will reconvene tomorrow morning at 9:30.

MR. HOLT: Thank you, Your Honor.

MS. PARKER: Thank you, Judge.

(Whereupon, this trial was completed at 5:23 p.m. on Wednesday, May 18, 2011.)

-- END OF TRANSCRIPT --

CERTIFICATE OF REPORTER 488

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF DARLINGTON	)	
The State	)	May 18, 2011
Plaintiff,	)	
Versus	)	
	)	2010-GS-16-00077
Breyon Toney,	)	2010-GS-16-00078
Defendant.	)	

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the trial of the above captioned case, relative to appeal, in The Court of General Sessions in Darlington County, South Carolina, on the 16th, 17th, and 18th days of May 2011.

I do further certify that am neither, of kin, counsel, nor interest of any party hereto.

September 28, 2011

Pamela Ozment-Cartee
Circuit Court Reporter

489

STATE OF SOUTH CAROLINA)
COUNTY OF Darlington)
STATE VS.)
Breyon Toney)
AKA:)
Race: Sex: M Age: 19)
DOB: [redacted]1991 SS#:)
Address: [redacted])
City,State,Zip: Hartsville, SC 29550)
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-16-0077
A/W#: J652889
Date of Offense: 3/24/2009
S.C. Code § : 16-03-0010; 16-03-0020
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐PLEADS
TO: Murder / Murder

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☑ VIOLENT ☐SERIOUS ☑MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45

The charge is: ☐ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____ 7495 _____ _____ _____
~~Baugh, Sherrie C~~ SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 ~~days/months/years~~ or ☐ under the Youthful Offender Act not to exceed ~~\~~ years
and/or to pay a fine of $ ~~\~~; provided that upon the service of ~~\~~ days/months/years and/or payment
of $ ~~\~~; plus costs and assessments as applicable*; the balance is suspended with probation for ~~\~~
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____ _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 760 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ ~~\~~
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ ~~\~~
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ ~~\~~
3% to County (if paid in installments)		$
TOTAL		$

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
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: _____

CLERK OF COURT
DARLINGTON COUNTY, SC

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Tonna Carter
Court Reporter: Pamela Carter
Presiding Judge _____
Judge Code: 2121
Sentence Date: 05/18/11

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

INDICTMENT FOR

Murder / Murder

§16-03-0010; 16-03-0020

At a Court of General Sessions, convened on January 18, 2010, the Grand Jurors of Darlington County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Breyon Toney did in Darlington County, on or about March 24, 2009, willfully, feloniously, and intentionally kill the victim, James Tucker, with malice aforethought, either express or implied, by means of Stabbing, and the victim did die as a proximate result thereof on or about March 24, 2009 in Darlington County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Mike Anderson

Hartsville Police Department

Law Enforcement Case #: 2009-03-326

863

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J652889

ARRESTED ON: 2009-03-24

ACTION OF GRAND JURY

Grand Jury Foreperson

Date JAN 19 2010

VERDICT

TRUE BILL

Petit Jury Foreperson

Date

DOCKET NUMBER:
2010-GS-16-0077

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
January 2010

THE STATE

vs.

Breyon Toney

INDICTMENT FOR

Murder / Murder

§16-03-0010; 16-03-0020

CDR Code: 0116

TRUE CERTIFIED COPY,
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF Darlington)
STATE VS.)
Breyon Toney)
AKA:)
Race: B Sex: M Age: 19)
DOB: [redacted]1991 SS#: [redacted])
Address: [redacted])
City,State,Zip: Hartsville, SC 29550)
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-16-0078
A/W#: J652891
Date of Offense: 3/26/2009
S.C. Code § : 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐PLEADS
TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☐ NON-VIOLENT ☐ VIOLENT ☐SERIOUS ☐MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45

The charge is: ☐ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: RWM HDM
Baugh, Sherrie C — 77495 — Defendant — Attorney for Defendant — SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 ~~days/months/years~~ or ☐ under the Youthful Offender Act not to exceed ~~\~~ years
and/or to pay a fine of $ ~~\~~; provided that upon the service of ~~\~~ days/months/years and/or payment
of $ ~~\~~; plus costs and assessments as applicable*; the balance is suspended with probation for ~~\~~
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10-GS-16-077
☒ 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. 700 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
_____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ ~~\~~
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ ~~\~~
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ ~~\~~
3% to County (if paid in installments)		$
TOTAL		$

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
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: _____

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CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Donna Carter
Court Reporter: ~~Pamela Bartee~~
Presiding Judge _____
Judge Code: 2.21
Sentence Date: 05/18/11

SCCA/217 (03/2011)

493

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	
COUNTY OF DARLINGTON	)	Weapons / Poss. weapon during violent crime
		§16-23-0490

At a Court of General Sessions, convened on January 18, 2010, the Grand Jurors of Darlington County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Breyon Toney did in Darlington County, on or about March 24, 2009, possess a firearm, or visibly display what appeared to be a knife, during the commission or attempted commission of a violent crime, to wit: Murder, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

THIS IS A TRUE COPY

CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Mike Anderson

Hartsville Police Department

Law Enforcement Case #: 2009-03-326

Mcbia Boyd 863

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

_____

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

_____

_____

Defendant

ARREST WARRANT NUMBER
J652891

ARRESTED ON: 2009-03-26

ACTION OF GRAND JURY

Ryan Shyk

Grand Jury Foreperson

Date JAN 19 2010

VERDICT

TRUE BILL

Petit Jury Foreperson

Date

DOCKET NUMBER:
2010-GS-16-0078

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
January 2010

THE STATE

vs.

Breyon Toney

INDICTMENT FOR

Weapons / Poss. weapon during violent crime

§16-23-0490

CDR Code: 0549

William B. Rogers, Jr., Solicitor

495

2010-GS-16-

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF DARLINGTON	)	FOURTH JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	Indictment Nos.: 2010-GS-16-00077
	)	2010-GS-16-00078
Plaintiff,	)	
	)	ORDER DENYING MOTION
v.	)	FOR RECONSIDERATION
	)	
Breyon Toney,	)	
	)	
Defendant.	)	

Defendant Breyon Toney was convicted of murder by a Darlington County jury on May 18, 2011. Immediately after the verdict was received, Defendant's Attorney Matthew S. Swilley moved for a new trial on various grounds. That motion was denied at that time by the Court. Subsequently, Attorney Swilled timely filed a motion to reconsider the denial of his previous motion for a new trial, which the Court took under advisement. After further consideration, the Court now denies Defendant's motion to reconsider the denial of the motion for a new trial, and confirms the jury verdict of guilty of murder.

IT IS SO ORDERED.

J. Michael Baxley, Presiding Judge

June 3, 2011

This judgment was entered on the ____ day of June 2011, and a copy mailed first class this _____ day of June, 2011 to attorneys of record or to parties as follows:

Attorney for Plaintiff
John W. Holt, IV, Esquire
1 Public Square, Room 410
Darlington, SC 29532

Attorney for Defendant
Matthew S. Swilley, Esquire
Post Office Box 648
Darlington, SC 29540

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

CLERK OF COURT

2011 JUN -6 AM 10:07

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	**MOTION FOR REHEARING ON DEFENDANT'S REQUEST FOR NEW TRIAL**
	)	
vs.	)	
	)	
	)	
BREYON TONEY	)	2010-GS-16-0077, 2010-GS-16-0078
Defendant.	)	

The Defendant, by and through counsel, requests this Honorable Court for a rehearing on the Defendant's Motion for a New Trial pursuant to Rule 29 S.C. R. Crim. P. This motion was previously denied subsequent to the Defendant's conviction on both above captioned indictments on May 18, 2011.

Respectfully Submitted,

Matthew S. Swilley
Attorney for Defendant
300 Russell Street, Suite 113
Darlington, SC 29532
Phone: 843-398-4069

Darlington, South Carolina

May 23, 2011

2011 MAY 23 PM 2:28

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	**MOTION TO SUPRESS**
	)	
vs.	)	
	)	2010-GS-16-0077, 2010-GS-16-0078
BREYON TONEY,	)	
Defendant.	)	

The Defendant, by and through counsel, moves this Honorable Court for an order suppressing the introduction of recordings of conversations of Defendant and other individuals while in the Darlington County Detention Center on March 24, 2009 for pre-trial detention.

This motion will be supplemented by a forthcoming memorandum of law.

Respectfully Submitted

Matt Swilley
Attorney for Defendant
300 Russell Street, Suite 113
Darlington, SC 29532
Phone: 843-398-4069

Darlington, South Carolina

May __, 2011

TRUE CERTIFIED COPY,
Scott B. Singleton
CLERK OF COURT
DARLINGTON SC

2011 MAY 12 PM 2:15

STATE OF SOUTH CAROLINA	IN THE COURT OF GENERAL SESSIONS
	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	
THE STATE OF SOUTH CAROLINA,	**MOTION TO EXCLUDE TESTIMONY**
vs.	
	2010-GS-16-0077, 2010-GS-16-0078
BREYON TONEY, Defendant.	

The Defendant, by and through counsel, moves this Honorable Court for an order excluding testimony involving an incident between and a state's witness. The Defendant and Lavincent Quintell Hankins were involved in a physical altercation subsequent to the current charges being brought against the defendant and precedent to trial. Law enforcement was involved in this incident and the facts are disputed between parties.

The Defendant contends that any testimony or evidence relating to this incident would be irrelevant. SCRE 402. The Defendant also contends that if any testimony or other evidence were deemed relevant, any probative value it may have would be substantially outweighed by the danger of unfair prejudice to the Defendant. SCRE 403.

Respectfully Submitted

Matt Swilley
Attorney for Defendant
300 Russell Street, Suite 113
Darlington, SC 29532
Phone: 843-398-4069

Darlington, South Carolina

May __, 2011

TRUE CERTIFIED COPY
CLERK OF COURT
DARLINGTON

499

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	WARRANT NOS: J652891, J652889
	)	
The State of South Carolina,	)	
	)	ORDER PURSUANT TO VIOLATION
-vs-	)	OF AMENDED ORDER FOR BOND
	)	DATED 21 APRIL 2011
Breyon Toney,	)	
Defendant.	)	
	)	

This Order comes to me by virtue of the fact that the above-captioned Defendant has failed to comply with my Amended Order dated 21 April 2011 wherein he was required to have electronic monitoring as a condition of his bond.

Further, the Clerk of Court is authorized to issue a bench warrant for defendant's arrest based on his non-compliance with my previous Amended Order dated 21 April 2011.

AND IT IS SO ORDERED!

Howard P. King

Howard P. King, Chief Administrative Judge for the 4th Judicial Circuit

11 May 2011
Florence, SC

2011 MAY 12 AM 10:04

131

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

FILED

2011 APR 25 AM 10:25

CLERK OF COURT
DARLINGTON, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)
)
State of South Carolina)
)
-vs-)
)
Breyon Toney)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE FOURTH JUDICIAL CIRCUIT
WARRANT NUMBERS: J-652891
J-652889

AMENDED ORDER FOR BOND

This matter was heard before the Honorable Howard P. King on April 11, 2011 at the request of the Solicitor's Office. The State sought to have the bond for warrant numbers J652891 and J652889 revoked. The State was represented by Assistant Solicitor Patti Parker. The defendant was present and represented by William Grove, Assistant Public Defender.

The Court heard testimony regarding the allegations that the Defendant was not currently abiding by the conditions of his bond, specifically the curfew restrictions. The Court determined that the information was insufficient to revoke the Defendant's bond at this time. The Court Ordered the Defendant's bond will remain in effect with the following modifications:

1. The Defendant is to comply with electronic monitoring. This is to be arranged and in operation within ten (10) days from the date of this order.
2. The Defendant is to provide a correct address *in writing* to the Court. This address is also to be provided to his electronic monitoring company and his lawyer. Any changes are to be reported promptly to all parties.
3. The Defendant is to reside with his mother and abide by an 8:00pm – 6:00am curfew.
4. The Defendant can be picked up by law enforcement for failure to abide by these conditions and held at the detention center until a hearing can be scheduled before a Circuit Court Judge.

Therefore the Court denies the State's Motion for revocation of the Defendant's bond. Defendant's bond conditions are Modified as indicated above.

IT IS SO ORDERED.

/s/ Howard P. King
Honorable Howard P. King
Chief Administrative Judge for the Fourth Circuit

April 21, 2011

THIS IS A TRUE COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.