

RECEIVED

NOV 14 2018

S.C. SUPREME COURT

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Hampton County

Honorable Thomas A. Russo, Circuit Court Judge

BRANDON GREENE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000557

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street
Columbia, SC 292101

ATTORNEYS FOR RESPONDENT

PAGES 1-500

INDEX

INDEX	i
TRIAL TRANSCRIPT (SEPTEMBER 4-5, 2012)	1
APPLICATION FOR POST-CONVICTION RELIEF (MARCH 4, 2015).....	432
RETURN (OCTOBER 28, 2015)	447
POST-CONVICTION RELIEF HEARING TRANSCRIPT (OCTOBER 9, 2017)	453
ORDER OF DISMISSAL (NOVEMBER 20, 2017).....	530
INDICTMENTS	542

STATE OF SOUTH CAROLINA)

COUNTY OF HAMPTON)

) COURT OF GENERAL SESSIONS
) IND. NO.: 2009-GS-25-00515
2009-GS-25-00567

STATE OF SOUTH CAROLINA,)

vs.)

BRANDON GREENE,)

DEFENDANT.)

TRANSCRIPT OF RECORD

September 4 - 5, 2012

Hampton, South Carolina

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JUDGE.

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

RANDOLPH MURDAUGH, III, ESQ.

TAMEAKA LEGETTE, ESQ.

Attorneys for the State of South Carolina

BYRON E. GIPSON, ESQ.

Attorney for the Defendant

RONDA T. CUMMINGS, CVR
Official Court Reporter
P.O. Box 2082
Walterboro, SC 29488

INDEX

Jury Strike Sheet	7
Voir Dire	8
Jury Selection	30
Jury Sworn	54
Opening Statements	
By Mr. Murdaugh	61
By Mr. Gipson	67

STATE'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
ALFRED A. FENNELL				
By Mr. Murdaugh	78			
By Mr. Gipson		83		
ANTHONY A. BADGER				
By Mr. Murdaugh	87		121	
By Mr. Gipson		101		
DEXTER BOZEMAN				
By Mr. Murdaugh	124		145	
By Mr. Gipson		131		
DONNA L. SMITH				
By Ms. Legette	154			
By Mr. Gipson		163		
DAWN N. HUNT				
By Ms. Legette	164			
ARTHUR DAVID COOK, JR.				
By Ms. Legette	167			
MARY K. MCCALLISTER				
By Ms. Legette	177			
By Mr. Gipson		183		
CHARLES PEEPLES				
By Mr. Murdaugh	204			
By Mr. Gipson		204		
SABRINA FELLERS				
By Ms. Legette	206			
By Mr. Gipson		218		

STATE'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
NICOLE A. DUVIGNEAUD				
By Mr. Murdaugh	221			
By Mr. Gipson		227		
CHARLES E. BELL				
By Mr. Murdaugh	229			
By Mr. Gipson		231		
KEITH KING				
By Mr. Murdaugh	233			
By Mr. Gipson		238		
BERNARD BADGER				
By Mr. Murdaugh	244			
By Mr. Gipson		248		
FRANK DAN DEFREESE				
By Mr. Murdaugh	254			
S. ERIN PRESNELL				
By Mr. Murdaugh	273			
By Mr. Gipson		284		
Motion for Directed Verdict				286
DEFENDANT'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
BRANDON GREENE				
By Mr. Gipson	290		343	
By Mr. Murdaugh		326		
REPLY WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
CHAUNCEY SOLOMON				
By Mr. Murdaugh	347			
By Mr. Gipson		349		
PERRY SINGLETON, SR.				
By Mr. Murdaugh	353			
By Mr. Gipson		354		
Renewed Motion for Directed Verdict				355

Charge Conference	355
Closing Arguments	
By Mr. Murdaugh	362
By Mr. Gipson	366
By Mr. Murdaugh	386
Jury Charge	394
Verdict	419
Post-Trial Motions	422
Sentencing	426
Certificate of Reporter	433

STATE'S EXHIBITS

	ID	EV
1. PHOTOGRAPH OF PISTOL	91	
2. 911 DVD	83	83
3. (WITHDRAWN)		
4. (WITHDRAWN)		
5. (WITHDRAWN)		
6. (WITHDRAWN)		
7. SKETCH OF SCENE	180	181
8. SKETCH OF SCENE	210	211
9. CARTRIDGE CASING	214	215
10. CARTRIDGE CASING	214	216
11. CARTRIDGE CASING	214	216
12. BULLET FRAGMENT	217	217
13. BULLET FRAGMENT	217	217
14. GUN APPLICATION	225	226

DEFENDANT'S EXHIBITS

	ID	EV
1. STATEMENT OF ANTHONY BADGER	103	
2. PHOTOGRAPH	108	115
3. PHOTOGRAPH	109	360
4. PHOTOGRAPH	109	
5. WRITTEN STATEMENT OF DEXTER BOZEMAN	134	134
6. CD OF AUDIO STATEMENT OF DEXTER BOZEMAN	138	143
7. WRITTEN STATEMENT OF BERNARD BADGER	249	251
8(A) SKETCH BY DEFENDANT	303	305
8(B) COPY OF DEFENDANT'S EXHIBIT 8(A)	305	

COURT'S EXHIBITS

1. QUESTION FROM JURY	416

State v. Brandon Greene
Hampton County Clerk of Court
RANDOM STRIKE SHEET

Ronda Cummings

9/4/12

JUDGE NAME :

TRIAL TYPE :

PANEL ID : 09/03/12

COURTROOM CTRM

DESCRIPTION : SEPTEMBER 3, 2012

Sorted by: Random Nbr

Appearance

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	GRT	REMARKS
1 Hiers, Terry L SR	74	W	M	()	()	()	1
2 Goodman, Cedrick D	59	B	M	()	()	()	2
3 Tuten, Ernestine R	154	W	F	()	(1)	()	
4 Dobson, Dajon D	44	B	M	(1)	()	()	
5 Moore, Eric J	105	B	M	(2)	()	()	
6 Winn, Jonathan D	169	W	M	()	()	()	3
7 Ashley, Teresa L	4	W	F	()	(2)	()	
8 Cook, Dianne H	32	W	F	()	()	()	4
9 Jarrell, Linda Z	82	W	F	()	(3)	()	
10 Capps, Johnathan L	23	W	M	()	()	()	5
11 Altman, Lawrence B	2	W	M	()	()	()	6
12 Steadman, Barbara J	142	W	F	()	()	()	7
13 Strickland, Caleb D	143	W	M	()	()	()	8
14 Taylor, Jonathan D	146	B	M	(3)	()	()	
15 Curtis, Paul A	40	W	M	()	()	()	9
6 Gill, Theodore E	55	W	M	()	()	()	10
7 Platts, Carl T JR	114	W	M	()	(4)	()	
8 Segars, Rachel L	128	W	F	()	(5)	()	
9 Labar, Sharon J	94	W	F	()	(6)	()	
0 Youmans, Darren S	172	W	M	()	()	()	11
1 Tuten, Patricia K	155	W	F	()	()	()	12
2 Jenkins, Cecil J	83	B	M	()	()	()	1 ALT
3 Solomon, William JR	140	B	M	()	(1)	()	
4 Stanley, Scott C	141	W	M	()	()	()	2 ALT

1 **THE COURT:** Ladies and gentlemen, if I could have
2 your attention, please? We're ready to start with the
3 first case.

4 Solicitor?

5 **MR. MURDAUGH:** Your Honor, please? The State is
6 ready in Indictment 2009-GS-25-515, State against Brandon
7 Greene, charged with murder; also Indictment Number
8 2009-GS-25-567, Brandon Greene, charged with assault and
9 battery with intent to kill.

10 **THE COURT:** Thank you, Solicitor.

11 Ladies and gentlemen, the dispute that has just been
12 announced involves two parties, the State of South
13 Carolina and Mr. Brandon Greene. Mr. Greene has been
14 accused in these two documents that I hold in my hand for
15 committing the offenses of murder and assault and battery
16 with intent to kill.

17 Mr. Greene is seated at the table to my left --
18 excuse me, to my right. Mr. Greene, if you would please
19 stand and face the jury panel for me?

20 (WHEREUPON, THE DEFENDANT STOOD AND FACED THE JURY
21 PANEL.)

22 **THE COURT:** Thank you, sir. You may take your seat,
23 sir.

24 (WHEREUPON, THE DEFENDANT SAT DOWN.)

25 **THE COURT:** Are there any members of the jury panel

1 related by blood or marriage, have any business dealings
2 with, socially or casually acquainted with, have any
3 connection with Mr. Greene? If so, please stand.

4 Yes, sir?

5 **JUROR:** Yes, sir. I know Mr. Greene. I don't think
6 I could serve, sir.

7 **THE COURT:** Very well. And your name and number,
8 please?

9 **JUROR:** Ernie Washington, 159.

10 **THE COURT:** And the fact that you know him, you
11 believe would affect your ability to be fair and
12 impartial?

13 **JUROR:** Yes, sir.

14 **JUROR:** Same here.

15 **THE COURT:** All right, hold on just one second.

16 I'll excuse you, sir, from participation in this
17 dispute. Please call the number after 6:00 tonight and
18 follow the instructions concerning the jury.

19 **JUROR:** Yes, sir.

20 **THE COURT:** Thank you.

21 Your name, please?

22 **JUROR:** Same here.

23 **THE COURT:** What is your name and number?

24 **JUROR:** 60, Jeremie Gordon.

25 **THE COURT:** And you know him and it would affect your

1 ability to be fair and impartial?

2 JUROR: Yes, sir.

3 THE COURT: All right. You are excused, sir. Call
4 the number after 6:00 tonight.

5 JUROR: All right.

6 THE COURT: Yes, sir?

7 JUROR: 69, Calvin Hamilton. I know him. We are
8 right in the same neighborhood just about. We're about
9 three miles apart. I'm very familiar with this case.

10 THE COURT: So would it affect your ability to be
11 fair and impartial?

12 JUROR: No, because I'm a minister, and I'm going to
13 do the right thing.

14 THE COURT: Well, then you -- you would base your
15 decision on the evidence and the law and you wouldn't be
16 influenced by your knowledge of the parties in this case?

17 JUROR: All right.

18 THE COURT: No, would you be?

19 JUROR: No, no.

20 THE COURT: You would not be? You would not be
21 influenced by it?

22 JUROR: No.

23 THE COURT: All right. Your number again?

24 JUROR: 69.

25 THE COURT: Number 69 will remain. Thank you.

1 Yes, sir?

2 JUROR: 151. I know him. He's a friend of the
3 family.

4 THE COURT: And that would affect your ability to be
5 fair and impartial?

6 JUROR: Yes, sir.

7 THE COURT: Your number, please?

8 JUROR: 151.

9 THE COURT: 151 is excused. Call the number after
10 6:00 tonight.

11 Yes? Yes, ma'am?

12 JUROR: Mahalia White, 164. I know all both of the
13 parties.

14 THE COURT: I'm sorry?

15 JUROR: I know all of them.

16 THE COURT: Would that affect your decision in this
17 case?

18 JUROR: Yes.

19 THE COURT: Your number again?

20 JUROR: 164.

21 THE COURT: 164 is excused. Call the number tonight.
22 Thank you.

23 Yes, ma'am?

24 JUROR: My juror number is 92, and I know both
25 parties.

1 **THE COURT:** Would it influence your ability to be
2 fair and impartial?

3 **JUROR:** Yes, sir.

4 **THE COURT:** You are excused. Number 92. Thank you.
5 Yes, sir?

6 **JUROR:** I believe my number is 71, and I know both
7 parties.

8 **THE COURT:** Would that affect you, sir?

9 **JUROR:** Yes, sir.

10 **THE COURT:** Number 71 is excused.

11 Thank you, sir.

12 Yes, sir?

13 **JUROR:** Number 91. I know both parties.

14 **THE COURT:** Would that affect or influence you?

15 **JUROR:** Yes, sir.

16 **THE COURT:** You are excused.

17 Yes, sir?

18 **JUROR:** I know them.

19 **THE COURT:** What's your name?

20 **JUROR:** Brandon Holman.

21 **THE COURT:** Holmes?

22 **JUROR:** Holman.

23 **THE COURT:** You know -- you know the parties?

24 **JUROR:** Yeah, I know them both.

25 **THE COURT:** Would that affect you, sir?

1 JUROR: Yes.

2 THE COURT: You're excused.

3 Yes?

4 JUROR: Number 72.

5 THE COURT: All right, sir.

6 JUROR: I know both parties.

7 THE COURT: Would that affect you, sir?

8 JUROR: Yes.

9 THE COURT: You are excused.

10 Yes, ma'am.

11 JUROR: Number 1. I knew the -- the -- one party.

12 THE COURT: Would that affect you?

13 JUROR: It definitely would.

14 THE COURT: You're excused.

15 JUROR: Thank you.

16 THE COURT: Are there others?

17 (NO RESPONSE.)

18 THE COURT: Thank you. There appear to be none.

19 Mr. Greene is represented by Mr. Gipson. If you
20 would identify yourself and your law firm, please, sir?

21 MR. GIPSON: Yes, sir.

22 Good morning. My name is Byron Gipson. I'm with the
23 law firm of Johnson, Toal, and Battiste. The lawyers in
24 our office are I.S. Levy Johnson, Luther Battiste, Bill
25 Toal, George Johnson, and Yvonne Murray-Boyles.

1 **THE COURT:** Thank you, Mr. Gipson.

2 **MR. GIPSON:** Yes, sir.

3 **THE COURT:** Are there any members of the jury panel
4 related by blood or marriage, have any business dealings
5 with, socially or casually acquainted with, ever been
6 represented by Mr. Gipson or his law firm or any of the
7 members of his firm? If so, please stand.

8 (NO RESPONSE.)

9 **THE COURT:** Thank you. There appear to be none.

10 The solicitor for this circuit is Mr. Duffie Stone.
11 Are there any members of the jury panel related by blood
12 or marriage, have any business dealings with, socially or
13 casually acquainted with, ever been represented by your
14 solicitor, Mr. Stone? If so, please stand.

15 (NO RESPONSE.)

16 **THE COURT:** Thank you. There appear to be none.

17 He has assistants, assistant solicitors who assist
18 him. Mr. Murdaugh will be handling this.

19 If you will identify yourself and anyone who will be
20 assisting you, sir?

21 **MR. MURDAUGH:** I am Randolph Murdaugh. Tameaka
22 Legette is an assistant solicitor and will be assisting
23 the State to prosecute this case.

24 **THE COURT:** Thank you, Mr. Murdaugh.

25 Are there any members of the jury panel related by

1 blood or marriage, have any business dealings with,
2 socially or casually acquainted with, ever been
3 represented by Mr. Murdaugh or Ms. Legette? If so, please
4 stand.

5 JUROR: I know Mr. Murdaugh.

6 THE COURT: Would that affect you in this case?

7 JUROR: No, sir.

8 THE COURT: Would you base your decision on the
9 evidence and the law? Will you be fair to both sides?

10 JUROR: Yes, sir.

11 THE COURT: Your name and number, please?

12 JUROR: Um, 74 -- no, 94, Sharon Labar.

13 THE COURT: Thank you, ma'am.

14 Yes, sir?

15 JUROR: Mr. Murdaugh handled my father's -- my father
16 got shot and he prosecuted that case.

17 THE COURT: How long ago was that?

18 JUROR: It happened in 2005. I think the case was in
19 2006.

20 THE COURT: Would that affect you?

21 JUROR: (NO RESPONSE.)

22 THE COURT: Your number again, sir?

23 JUROR: 69.

24 THE COURT: I'm going to do you a favor. I'm going
25 to excuse you, sir. Thank you very much.

1 **JUROR:** All right.

2 **THE COURT:** Out of an abundance of caution.

3 Yes, sir?

4 **JUROR:** 74, Terry Hiers. I've know Mr. Murdaugh all
5 my life. It wouldn't affect my decision.

6 **THE COURT:** You'll base your decision on the evidence
7 and the law and be fair to both sides, sir?

8 **JUROR:** Yes.

9 **THE COURT:** Thank you, sir. You may be seated.
10 Are there any others?

11 (NO RESPONSE.)

12 **THE COURT:** Thank you. There appear to be none.

13 I'm going to identify a number of persons, ladies and
14 gentlemen, and if you're related by blood or marriage,
15 have any business dealings with, socially or casually
16 acquainted with any of these individuals, you need to
17 stand and share the information, please, with the Court.
18 The following persons who are employed with the South
19 Carolina Law Enforcement Division, commonly known as
20 S.L.E.D.: Agent Sabrina Fellers, Agent Ricardo Prince,
21 Agent Dan DeFreese.

22 The following persons are with the Hampton County
23 Sheriff's Office: Deputy Charles Peebles, Lieutenant
24 Perry Singleton, Sergeant Halbert Mungin, Lieutenant
25 Chauncey Solomon, Captain Anthony Russell, Detective James

1 Freeman, Deputy Katie McCallister.

2 Dr. Erin Presnell with M.U.S.C. Donna Smith and
3 David Cook with the Hampton County E.M.S. Alfred Fennell,
4 Dexter Bozeman, Joshua Habersham, Bernard Badger, Nicole
5 Duvigneaud, Anthony Badger, Keith King, Dawn Hunt, Tinish
6 Smith, Charles Bell, Suzanne Peoples, who is also with the
7 Hampton County E.M.S., Shane Weber, Almonzo Loftis,
8 Maurice Hunt, with the Hampton County Sheriff's Office.

9 Any of those?

10 Yes?

11 **JUROR:** I don't feel comfortable with this case
12 because I know both sides.

13 **THE COURT:** You know both sides?

14 **JUROR:** Yes.

15 **THE COURT:** Your name and number, please?

16 **JUROR:** 46. 46.

17 **THE COURT:** Number 46 is excused.

18 Thank you, ma'am.

19 Yes, ma'am?

20 **JUROR:** I know quite a few of them, but it won't
21 affect my ability.

22 **THE COURT:** If any of the persons that you know
23 should testify, would you be able to consider those
24 persons' testimony the same as anybody that testified?

25 **JUROR:** Yes, sir.

1 **THE COURT:** And you would base your decision on the
2 evidence and the law and would be fair to both sides?

3 **JUROR:** Yes, sir.

4 **THE COURT:** Your name and number, please?

5 **JUROR:** Linda Jarrell, 82.

6 **THE COURT:** Thank you.

7 Yes?

8 **JUROR:** Again, I know a few of those people. Number
9 94.

10 **THE COURT:** Would -- if any of the persons that you
11 know should testify, would you be able to consider those
12 persons' testimony the same as anyone who testifies?

13 **JUROR:** Yes, sir.

14 **THE COURT:** And you would base your decision on the
15 evidence and the law and would be fair to both sides?

16 **JUROR:** Yes, sir.

17 **THE COURT:** Thank you, ma'am.

18 Yes, sir?

19 **JUROR:** Anthony Russell is my cousin.

20 **THE COURT:** Would that affect you in this case? Sir?

21 **JUROR:** Yes.

22 **THE COURT:** It will?

23 **JUROR:** Yes.

24 **THE COURT:** Your number, please?

25 **JUROR:** 130.

1 **THE COURT:** I'll excuse 130 from participation. He
2 is excused.

3 Thank you. Call the number after 6:00.

4 Yes, sir?

5 **JUROR:** Yeah, I know quite a few of them. I know
6 about most all of them.

7 **THE COURT:** Would that affect you, sir?

8 **JUROR:** Yes, sir.

9 **THE COURT:** And your number, please?

10 **JUROR:** 61.

11 **THE COURT:** Number 61 is excused.

12 Yes, ma'am? Yes, ma'am?

13 **JUROR:** Ernestine Tuten, 154. Dawn Hunt, I'm her
14 landlord. She rents from me, but I don't think it will
15 have anything to do with anything, but I just wanted to
16 tell you.

17 **THE COURT:** Would that affect you?

18 **JUROR:** No.

19 **THE COURT:** And if she should testify, would you
20 consider her testimony the same as anybody who testifies?

21 **JUROR:** Yes.

22 **THE COURT:** And your decision would be based on the
23 evidence and the law and fair to both sides?

24 **JUROR:** Yes.

25 **THE COURT:** Thank you. You may be seated.

1 Are there any others?

2 Yes, ma'am?

3 **JUROR:** I know a couple of those people that were
4 listed.

5 **THE COURT:** Would that affect you, ma'am?

6 **JUROR:** No, sir.

7 **THE COURT:** And if any of the persons that you know
8 should testify, would you consider their testimony the
9 same as anyone who testifies?

10 **JUROR:** Yes, sir.

11 **THE COURT:** And your decision would be based on the
12 evidence and the law and fair to both sides?

13 **JUROR:** Yes, sir.

14 **THE COURT:** Your number again?

15 **JUROR:** 142.

16 **THE COURT:** 142. Thank you, ma'am.

17 Are there others?

18 Yes, sir?

19 **JUROR:** Yes, sir. I know several of the deputies. I
20 know Mr. Murdaugh, and I'm also a former police officer of
21 Estille and Brunson, former South Carolina deputy.

22 **THE COURT:** Would that affect you, sir?

23 **JUROR:** No, sir.

24 **THE COURT:** Will you base your decision on the
25 evidence and the law, and will your decision be fair to

1 all parties?

2 **JUROR:** Yes, sir.

3 **THE COURT:** Your number again?

4 **JUROR:** 55.

5 **THE COURT:** Thank you, sir.

6 Anyone else?

7 (NO RESPONSE.)

8 **THE COURT:** There appear to be none.

9 I'm going to share with you what has been alleged.
10 It's alleged. It's not evidence what I'm going to share.
11 I need to ask you some questions about it, but it's
12 alleged in the two indictments that Mr. Greene did on
13 October the 2nd, 2009, as it pertains to the indictment
14 charging him with murder with malice aforethought, did
15 kill Dominick Badger by shooting him twice with a .45
16 caliber handgun and that he did die as a result of the
17 shooting on October 2nd, 2009.

18 It's also alleged that on October 2nd, 2009, Mr.
19 Greene, with malice aforethought, did commit the unlawful
20 act of violent nature upon the victim Anthony Antonio
21 Badger, in that he shot Mr. Badger in the abdomen or the
22 stomach area with a handgun, which was in violation of the
23 common law and statutory law of the State of South
24 Carolina. I share that with you -- he therefore committed
25 the -- allegedly committed the offense of assault and

1 battery with intent to kill.

2 I share that with you to find out if any member of
3 the jury panel has heard anything, read anything, you have
4 any knowledge of this dispute. If so, please stand.

5 (NO RESPONSE.)

6 **THE COURT:** Thank you. There appear to be none.

7 Is there anything about the nature of the dispute,
8 ladies and gentlemen, that you, because of some strong
9 feelings you have, something that may have happened in
10 your life, something -- some philosophy that you have,
11 anything that's happened to a family member or a close,
12 personal friend that you believe would affect or influence
13 in any way your mental process, that is how you apply your
14 common sense and your sense of logic and reason and
15 therefore, would affect your ability to fairly and
16 impartially analyze the evidence, and then once deciding
17 the true facts from that evidence, it would affect or
18 influence your ability to fairly and impartially apply the
19 law? If you feel there is something in your past or your
20 philosophy that would, please stand.

21 (NO RESPONSE.)

22 **THE COURT:** Thank you. There appear to be none.

23 Are there any members of the jury panel, member of
24 your immediate family that have ever been involved in a
25 criminal dispute in any fashion? Either you were the

1 alleged victim, you were a witness for the victim, you
2 were accused of the crime, you were a witness for the
3 person accused of a crime, you had any connection with a
4 criminal dispute? If so, please stand.

5 All right, I would ask you to come forward, please,
6 sir.

7 The attorneys may approach as well.

8 (WHEREUPON, THE FOLLOWING WAS HELD ON THE RECORD BUT
9 OUT OF THE HEARING OF THE JURY PANEL:)

10 **THE COURT:** I'll just ask you to stand right there.
11 Because of your past work experience; is that what it is?

12 **JUROR:** No, um ---

13 **THE COURT:** You were also a victim of a crime?

14 **JUROR:** Yes. I was charged with assault and battery
15 with intent to kill.

16 **THE COURT:** You were what?

17 **JUROR:** I was charged with assault and battery with
18 intent to kill.

19 **THE COURT:** Has that matter been resolved?

20 **JUROR:** Oh, yeah. Mr. Murdaugh got it expunged and
21 everything.

22 **THE COURT:** Okay. Would that affect or influence you
23 in this dispute?

24 **JUROR:** No, sir.

25 **THE COURT:** Would you, again, apply your common sense

1 fair and impartial?

2 JUROR: Yes, sir.

3 THE COURT: And base your decision on the evidence
4 and the law?

5 JUROR: Yes, sir.

6 THE COURT: Your number again?

7 JUROR: 55.

8 THE COURT: Number 55 will remain.

9 Yes ma'am?

10 JUROR: 156.

11 THE COURT: 156? All right.

12 JUROR: I was involved in a federal court case where
13 I was the victim.

14 THE COURT: So you were a victim?

15 JUROR: Yes.

16 THE COURT: Would that affect you in any way?

17 JUROR: No, it wouldn't.

18 THE COURT: Will you base your decision on the
19 evidence and the law?

20 JUROR: Yes.

21 THE COURT: And be fair to both sides?

22 JUROR: Yes.

23 THE COURT: 156 will remain.

24 Yes, ma'am?

25 JUROR: Yes. My husband was killed by a drunk

1 driver.

2 **THE COURT:** Okay. And was that prosecuted, ma'am?

3 **JUROR:** Yes, it was.

4 **THE COURT:** And was it ---

5 **JUROR:** This was in 2000.

6 **THE COURT:** So it's been resolved?

7 **JUROR:** Yes.

8 **THE COURT:** Your number, please?

9 **JUROR:** 94.

10 **THE COURT:** Would that affect you in any way in this
11 dispute?

12 **JUROR:** No, it would not.

13 **THE COURT:** Can you base your decision as you
14 previously stated on the evidence and the law?

15 **JUROR:** Yes.

16 **THE COURT:** Thank you, ma'am.

17 94 will remain.

18 Yes ma'am?

19 **JUROR:** Your name and number, please?

20 **JUROR:** I'm 128, Rachel Segars.

21 **THE COURT:** Okay.

22 **JUROR:** I think it was '99 or 2000 that I was robbed
23 at gun point at a store I worked at.

24 **THE COURT:** Okay.

25 **JUROR:** But I don't think it will affect me.

1 **THE COURT:** Was that prosecuted by this solicitor?

2 **JUROR:** They never found him.

3 **THE COURT:** They never found him. Would that affect
4 you in any way?

5 **JUROR:** No.

6 **THE COURT:** Will you base your decision on the
7 evidence and the law, and will you be fair to both sides?

8 **JUROR:** Yes.

9 **THE COURT:** Number 128 will remain.
10 Are there any others?

11 (NO RESPONSE.)

12 **THE COURT:** Thank you. There appear to be none.

13 Part of the law, ladies and gentlemen, and excuse me
14 for turning my back to you, part of the law that I will
15 charge you in this dispute applies to this dispute and
16 really every dispute in this country when persons are
17 accused of criminal offenses, such as Mr. Greene today.
18 The law says that the party who makes that accusation, and
19 in this case it is the State of South Carolina, has the
20 sole responsibility to prove its case. Mr. Greene,
21 persons who are accused, have no responsibility whatsoever
22 to prove or disprove anything at all.

23 And that -- in fact, they are presumed innocent.
24 That means that you have to maintain an active presumption
25 that they are innocent of the offense, and that can only

1 be changed, when after considering the evidence, you
2 become convinced that the State has established each
3 element of the crime to the standard that I will tell you
4 beyond a reasonable doubt. And I'll explain that standard
5 to you and what has to be achieved, but you have to reach
6 that conclusion as to each element before you can change
7 that presumption.

8 Is there anything about your philosophy or anything
9 about your past experience that would give you any concern
10 about your ability to apply that law fairly and
11 impartially? If so, please stand.

12 (NO RESPONSE.)

13 **THE COURT:** Thank you, there appear to be none.

14 The fact that the State is the only party that has to
15 prove -- and reasonable doubt is a doubt that would make
16 an honest, sincere, conscientious juror who is searching
17 for the truth to hesitate to act or take some action. Any
18 problem applying that law fairly and impartially?

19 (NO RESPONSE.)

20 **THE COURT:** And when I say applying it, I mean this:
21 If you're on that jury and you're analyzing the evidence
22 and you reach a point where you think, well, you know, the
23 State may have reached that point, I'm -- I'm -- I'm -- I
24 believe it might be possible, I believe it might be
25 probable. That wouldn't be sufficient. You have to

1 believe it beyond a reasonable doubt.

2 And if you don't reach that conclusion, then you
3 would be instructed to return a verdict of not guilty.
4 Because why? Because the State would have failed to meet
5 its burden of proof.

6 On the other hand, if you're -- after each question
7 as to the elements of that particular crime your
8 conclusion is, yes, I'm convinced beyond a reasonable
9 doubt as to that element, based on the evidence, then you
10 must return a verdict of guilty.

11 Anything about your past or your philosophy that
12 would give you any problems applying that law?

13 (NO RESPONSE.)

14 **THE COURT:** Thank you. There appear to be none.

15 Are there any members of the jury panel who are
16 members or associated with, made contributions to any
17 groups affiliated with primarily for enforcing crime or
18 criminal activity, such as CAVE, SADD, MADD, or similar
19 organizations? If so, please stand.

20 (NO RESPONSE.)

21 **THE COURT:** Thank you. There appear to be none.

22 Any other specific questions from the State, Mr.
23 Murdaugh?

24 **MR. MURDAUGH:** None from the State.

25 **THE COURT:** Mr. Gipson, any other specific questions

1 from the defendant?

2 **MR. GIPSON:** No, sir.

3 **THE COURT:** The last question that I have for you is
4 this: Based on what you've heard involved in this
5 dispute, is there anything that you've heard that would
6 give you any concern about your ability to raise your hand
7 and take an oath, as I mentioned to you when I qualified
8 you, and promise the State and Mr. Greene and their
9 attorneys and the Court that you will at the appropriate
10 time apply your commons sense, your sense of logic and
11 reason, fairly and impartially in analyzing the evidence,
12 and once you make that decision, then you will fairly and
13 impartially -- further promise to fairly and impartially
14 apply the law that I give to you and reach a decision
15 which is fair to both sides? If you feel you could not
16 make that commitment for any reason, please stand.

17 (NO RESPONSE.)

18 **THE COURT:** Thank you very much. There are none.

19 What's going to happen now, ladies and gentlemen -- I
20 assume you want them to come and stand here? Is that what
21 you have them do?

22 **CLERK:** Yes, sir.

23 **THE COURT:** When your name is called by Mrs. Nettles,
24 you will come forward. Bring with you your personal
25 effects and take a stand here.

1 Each side can excuse jurors. The State in this case
2 will have five opportunities. Mr. Greene has ten.

3 And we'll -- they'll first -- they'll first say:
4 What says the State?

5 And they'll either say: Seat the juror, excuse the
6 juror, or something similar.

7 Then we'll go to Mr. Greene. He will have the same
8 opportunity.

9 And we'll go through that process until we identify
10 our twelve jurors and one alternate, and then we will have
11 completed the process. So bear with us.

12 I'll turn it over now to your clerk. Thank you very
13 much.

14 **CLERK:** It'll take just a few minutes.

15 **THE COURT:** She's going to draw a full list. Your
16 list -- the list is scrambling everybody. It won't be --
17 we're not calling in order of your numbers. You're placed
18 on a list and then we'll call from that number. It's a
19 random selection. So bear with us just for a moment.

20 **CLERK:** As I call your name, please come forward.

21 Number 74, Terry Hiers. Come forward and just turn
22 around and face like that. Thank you.

23 What says the State?

24 **MR. MURDAUGH:** Present the juror.

25 **THE COURT:** What says the defense?

1 **MR. GIPSON:** Please swear the juror.

2 **CLERK:** Okay, Mr. Hiers, you can have a seat in the
3 jury box.

4 Number 59, Cedric Goodman.

5 What says the State?

6 **MR. MURDAUGH:** Present the juror.

7 **CLERK:** What says the defense?

8 **MR. GIPSON:** Please swear the juror.

9 **CLERK:** Please have a seat.

10 154, Ernestine Tuten.

11 What says the State?

12 **MR. MURDAUGH:** Present the juror.

13 **CLERK:** What says the defense?

14 **MR. GIPSON:** Court's indulgence?

15 **THE COURT:** Sure. Take your time.

16 **MR. GIPSON:** Please excuse the juror from service in
17 this case.

18 **CLERK:** Number 44, Dajon Dobson. 44.

19 What says the State?

20 **MR. MURDAUGH:** Excuse the juror.

21 **CLERK:** Number 105, Eric Moore.

22 What says the State?

23 **MR. MURDAUGH:** Excuse the juror.

24 **CLERK:** 169, Jonathan Winn.

25 What says the State?

1 **MR. MURDAUGH:** Present the juror.

2 **CLERK:** What says the defense?

3 **MR. GIPSON:** Please swear the juror.

4 **CLERK:** Number 4, Teresa Ashley.

5 What says the State?

6 **MR. MURDAUGH:** Present the juror.

7 **CLERK:** What says the defense?

8 **MR. GIPSON:** Please excuse the juror from this case.

9 **CLERK:** Number 32, Dianne Cooke.

10 What says the State?

11 **MR. MURDAUGH:** Present the juror.

12 **CLERK:** What says the defense?

13 **MR. GIPSON:** Please swear the juror.

14 **CLERK:** Number 82, Linda Jarrell.

15 What says the State?

16 **MR. MURDAUGH:** Present the juror.

17 **CLERK:** What says the defense?

18 **MR. GIPSON:** Please excuse the juror.

19 **CLERK:** Number 23, Johnathan Capps.

20 What says the State?

21 **MR. MURDAUGH:** Present the juror.

22 **CLERK:** What says the defense?

23 **MR. GIPSON:** Please swear the juror.

24 **CLERK:** Number 2, Lawrence Altman.

25 What says the State?

1 **MR. MURDAUGH:** Present the juror.
2 **CLERK:** What says the defense?
3 **MR. GIPSON:** Please swear the juror.
4 **CLERK:** Number 142, Barabara Steadman.
5 What says the State?
6 **MR. MURDAUGH:** Present the juror.
7 **CLERK:** What says the defense?
8 **MR. GIPSON:** Swear the juror, please.
9 **CLERK:** Number 143, Caleb Strickland.
10 What says the State?
11 **MR. MURDAUGH:** Present the juror.
12 **CLERK:** What says the defense?
13 **MR. GIPSON:** Please swear the juror.
14 **CLERK:** Number 146, Jonathan Taylor.
15 What says the State?
16 **MR. MURDAUGH:** Excuse the juror.
17 **CLERK:** Number 40, Paul Curtis.
18 What says the State?
19 **MR. MURDAUGH:** Present the juror.
20 **CLERK:** What says the defense?
21 **MR. GIPSON:** Please swear the juror.
22 **CLERK:** Number 55, Theodore Gill.
23 What says the State?
24 **MR. MURDAUGH:** Present the juror.
25 **CLERK:** What says the defense?

1 **MR. GIPSON:** Court's indulgence?
2 **THE COURT:** Yes, sir.
3 **MR. GIPSON:** Please swear the juror.
4 **CLERK:** Number 114, Carl Platts.
5 What says the State?
6 **MR. MURDAUGH:** Present the juror.
7 **CLERK:** What says the defense?
8 **MR. GIPSON:** Court's indulgence, please?
9 **THE COURT:** Yes, sir.
10 **MR. GIPSON:** Please excuse the juror.
11 **CLERK:** Number 128, Rachel Segars.
12 What says the State?
13 **MR. MURDAUGH:** Present the juror.
14 **CLERK:** What says the defense?
15 **MR. GIPSON:** Please excuse the juror.
16 **CLERK:** Number 94, Sharon Labar.
17 What says the State?
18 **MR. MURDAUGH:** Present the juror.
19 **CLERK:** What says the defense?
20 **MR. GIPSON:** Please excuse the juror.
21 **CLERK:** Number 172, Darren Youmans.
22 What says the State?
23 **MR. MURDAUGH:** Present the juror.
24 **CLERK:** What says the defense?
25 **MR. GIPSON:** Please swear the juror.

1 **CLERK:** Number 155, Patricia Tuten.

2 What says the State?

3 **MR. MURDAUGH:** Present the juror.

4 **CLERK:** What says the defense?

5 **MR. GIPSON:** Please swear the juror.

6 **CLERK:** Number 83, Cecil Jenkins.

7 **MR. MURDAUGH:** This is the alternate?

8 **THE COURT:** This is the alternate. Strikes will be
9 one and two. Yes.

10 **CLERK:** What says the State?

11 **MR. MURDAUGH:** Present the juror.

12 **CLERK:** What says the defense?

13 **MR. GIPSON:** Please swear the juror.

14 **THE COURT:** That's our jury.

15 Any motions from the State regarding the selection?

16 **MR. MURDAUGH:** None, sir.

17 **THE COURT:** Any motions from the defendant?

18 **MR. GIPSON:** May we approach for a brief moment?

19 **THE COURT:** Sure.

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
21 RECORD. THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD
22 ON THE RECORD.)

23 **THE COURT:** All right. We're going to select one
24 more alternate.

25 **CLERK:** Okay.

1 **THE COURT:** Thank you.

2 **CLERK:** Number 140, William Solomon, Jr.

3 What says the State?

4 **MR. MURDAUGH:** Present the juror.

5 **CLERK:** What says the defense?

6 **MR. GIPSON:** Please excuse the juror.

7 **CLERK:** Number 141, Scott Stanley.

8 What says the State?

9 **MR. MURDAUGH:** Present the juror.

10 **CLERK:** What says the defense?

11 **MR. GIPSON:** Please swear the juror.

12 **THE COURT:** Thank you, Mrs. Nettles.

13 Any motions from the State?

14 **MR. MURDAUGH:** None, sir.

15 **THE COURT:** Any motions from the defendant?

16 **MR. GIPSON:** No motions, Your Honor.

17 **THE COURT:** Thank you, very much.

18 Ladies and gentlemen, those of you that were not
19 selected, thank you for your patience. If you will call
20 the number after 6:00 tonight, follow the instructions. I
21 doubt that I will see you again, so it's been a pleasure
22 to be with you. Have a great day. Thank you.

23 (WHEREUPON, REMAINING JURY PANEL LEAVES THE
24 COURTROOM.)

25 **THE COURT:** Now, ladies and gentlemen, those of you

1 that were selected, thank you for your patience as well.
2 There are some matters that I have scheduled at 1:30 today
3 unrelated to this case that I understand will take about
4 an hour to accomplish what we need to do. So I'm going to
5 let you take a little bit longer for lunch than we will
6 customarily take. So I would ask you in just a moment
7 when I excuse you, they will show you -- will you show
8 them the jury room?

9 **BAILIFF:** Yes, sir.

10 **THE COURT:** Come directly to the jury room. Do not
11 come back in the courtroom after lunch.

12 I'd ask you to report to your jury room by 2:45. At
13 that time we should be finished with the first -- with
14 that matter at 1:30. If for some reason we -- we'll be
15 with you as quickly as we can, but I anticipate that we
16 will be finished.

17 Please remember something. You haven't heard
18 anything about this case. You haven't heard any evidence,
19 of course. And you're going to hear me say this
20 frequently, so bear with me, but you're not at liberty to
21 talk about this case with anyone, talk among yourselves
22 about it, don't speculate about the case. Certainly don't
23 allow anybody to talk with you about it or talk about it
24 in your presence when you're away from the courtroom.

25 Have a good lunch, and I will see you at 2:45. Thank

1 you.

2 (SEPTEMBER 4, 2012, 12:32 WHEREUPON, THE JURY RETIRES
3 FROM THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
4 WERE HELD OUT OF THEIR PRESENCE.)

5 **THE COURT:** Are there any matters of law from the
6 State at this point, Solicitor?

7 **MR. MURDAUGH:** No, sir.

8 **THE COURT:** Mr. Gipson?

9 **MR. GIPSON:** No matters of law, Your Honor.

10 **THE COURT:** How about motions in limine?

11 **MR. GIPSON:** Yes, sir. I have several of those, Your
12 Honor.

13 **THE COURT:** All right. We'll hear those.

14 **MR. GIPSON:** And it may require also a Jackson v.
15 Denno that we may need.

16 **THE COURT:** I wish you would have told me about that.
17 I didn't even know there was a Jackson v. Denno. I mean,
18 why -- why wouldn't you tell me that?

19 **MR. GIPSON:** I apologize, Your Honor. I ---

20 **THE COURT:** If we've got to hear a Jackson v. Denno
21 hearing before we swear the jury, then that jury doesn't
22 need to be coming back this afternoon; do they?

23 **MR. GIPSON:** Well, I suspect all of it is going to
24 move pretty quickly, Your Honor.

25 **THE COURT:** Well, I understand that, but I've got a

1 matter at 1:30 that is supposed to take an hour, ---

2 **MR. GIPSON:** Yes, sir.

3 **THE COURT:** --- and I just excused the jury until
4 2:45, so now we've got to do everything in fifteen
5 minutes? Think about that, please. Help me with that,
6 because I don't know anything about this case.

7 **MR. MURDAUGH:** If Your Honor, please? It very well
8 may be that I do not -- a Jackson v. Denno may not be
9 necessary, sir.

10 **THE COURT:** Okay. All right. Well, y'all think
11 about that at lunch and we'll -- we'll deal with that, but
12 if we do, we'll take it up when we get back, but I want to
13 hear -- let me hear everything but the Jackson v. Denno
14 hearing.

15 **MR. GIPSON:** Yes, sir, and I apologize, Your Honor.

16 **THE COURT:** No, it's no problem. Apparently you did
17 and I just didn't understand you probably. How about
18 that? It was my mistake. We didn't communicate well, but
19 it's not your fault. It's my fault.

20 **MR. GIPSON:** I appreciate it, but I'll make sure I'm
21 clear in the future.

22 **THE COURT:** No problem.

23 **MR. GIPSON:** All right, Your Honor, I guess first is
24 I would like to have witnesses sequestered. And even as
25 we do pretrials, I'd still ask if the Court would consider

1 that at this point because there are going to be some
2 matters that may be sensitive to the testimony that
3 obviously they would be privy to.

4 **THE COURT:** Any objection, Solicitor?

5 **MR. MURDAUGH:** I -- I ---

6 **THE COURT:** He wants to sequester the witnesses, both
7 sides.

8 **MR. MURDAUGH:** Oh, no, sir. I have no problem with
9 that.

10 **THE COURT:** All right. Obviously, the victim can be
11 present throughout. I'm not going to excuse the victim
12 from this proceeding.

13 **MR. GIPSON:** Yes, sir.

14 **THE COURT:** You can designate a chief investigating
15 officer.

16 **MR. MURDAUGH:** Actually, I have two of them, sir.

17 **THE COURT:** Two different things? That's fine. I'll
18 let you designate two.

19 **MR. MURDAUGH:** Okay, sir.

20 **THE COURT:** All right. Those persons, for the
21 record, are who? Who are you designating?

22 **MR. MURDAUGH:** Perry Singleton and Anthony Russell,
23 sir.

24 **THE COURT:** Thank you, sir. They may remain.

25 **MR. GIPSON:** Yes, sir.

1 **THE COURT:** All right. All other witnesses, anybody
2 subpoenaed in this case, needs to go ahead and exit the
3 courtroom now, and you will not be permitted in the
4 courtroom until you are called to testify.

5 Are there any witnesses present?

6 All right. I believe all witnesses now have been
7 removed from the courtroom.

8 Are there any other motions, Mr. Gipson?

9 **MR. GIPSON:** Yes, Your Honor, the first motion in
10 limine, I think I've labeled it as Number One, Your Honor,
11 ---

12 **THE COURT:** Yes, sir.

13 **MR. GIPSON:** --- is just -- it's really more of a
14 cautionary thing, Your Honor. In reading through all of
15 the materials and all the discovery that's been provided
16 thus far, Your Honor, there are some mentionings in the
17 police reports about past dealings, and that's why I put
18 it in quotation marks. And I just want to make sure the
19 witnesses are aware not to be talking about past dealings,
20 unless the Court instructs them that it's all right.

21 **THE COURT:** I appreciate it. I will not instruct --
22 I will enforce the Rules of Evidence.

23 **MR. GIPSON:** Yes, sir.

24 **THE COURT:** And -- and will rule on matters that they
25 be careful, because obviously, we've gone thus far, but be

1 careful not to jeopardize this trial going forward. So,

2 ---

3 **MR. GIPSON:** Yes, sir.

4 **THE COURT:** Thank you, sir.

5 **MR. GIPSON:** And to that end, Mr. Greene does have a
6 prior record, and I think it would be appropriate if -- I
7 don't know if he's going to testify at this point, but if
8 so, for the solicitor to divulge what information they
9 believe he would be impeached upon.

10 **THE COURT:** Do you have it now? If you don't, we can
11 do that at a later date, Mr. Murdaugh.

12 **MR. MURDAUGH:** I have it. If we can go on with the
13 motions, I can give you that.

14 **THE COURT:** That's fine. We'll disclose that to you,
15 Mr. Gipson.

16 **MR. GIPSON:** Yes, sir. Secondly, Your Honor, motion
17 in limine Number Two that I have listed, Your Honor, and I
18 frequently ask for this request. I'm asking that the
19 Court consider not referring to Mr. Badger and the
20 decedent and his brother as victims in the case. My only
21 rationale is ---

22 **THE COURT:** I've heard it before. That seems to be
23 the new trend now.

24 Do you intend to use the word victim?

25 **MR. MURDAUGH:** No, sir, but I can very well see it

1 coming out.

2 **THE COURT:** I understand that. I'm going to deal
3 with that. I understand what you're talking about.

4 **MR. GIPSON:** Yes, sir.

5 **THE COURT:** We just had an hour and forty-five minute
6 presentation from a professor in the field of law in Maine
7 talking about implicit or inherent bias. There's no
8 question that that word triggers that.

9 **MR. GIPSON:** Yes, sir.

10 **THE COURT:** I understand that.

11 **MR. GIPSON:** Yes, sir.

12 **THE COURT:** If it becomes overused, ---

13 **MR. GIPSON:** Yes, sir.

14 **THE COURT:** --- you make the call.

15 **MR. GIPSON:** Yes, sir.

16 **THE COURT:** I'm not -- I'm not going to instruct
17 people to talk about something, because the term doesn't
18 mean that he's -- that he's the perpetrator.

19 **MR. GIPSON:** Yes, sir.

20 **THE COURT:** It means that's what they are.

21 **MR. GIPSON:** Right.

22 **THE COURT:** That is -- that is a descriptive term.

23 **MR. GIPSON:** Yes, sir.

24 **THE COURT:** It's not a negative term. They are
25 victims.

1 **MR. GIPSON:** Yes, sir.

2 **THE COURT:** I mean, no question about that. A crime
3 was committed. The question is whether your -- whether
4 Mr. Greene committed that crime.

5 **MR. GIPSON:** Yes, sir.

6 **THE COURT:** So I don't have any problem with it. I
7 don't think it implies anything against Mr. Greene. It
8 implies -- it tries to evoke sympathy as well, and I
9 understand that. I'll -- we're going to minimize that to
10 the extent that I think it's reasonable, but I'm not going
11 to instruct them -- I'm going to caution them about
12 overuse of that word.

13 **MR. GIPSON:** Yes, sir.

14 **THE COURT:** Okay?

15 **MR. GIPSON:** Thank you, Your Honor.

16 **THE COURT:** Yes, sir.

17 **MR. GIPSON:** And Number Three, we've kind of dealt
18 with. And I would just -- I think it's lastly at this
19 point, Your Honor, but I always like to inform the Court,
20 you know, this case is almost three years old, Judge, and
21 we filed discovery motions very early in this process, and
22 we think that we've received all of the information. I
23 would suggest to the Court, though, I'm uneasy, because
24 there are just a couple of matters.

25 And I'm not throwing any stones at the Solicitor's

1 Office. I don't cast any aspersions towards them. I hold
2 Mr. Murdaugh in the highest regards, but we've begun to
3 receive information at this point in time that we
4 requested some time ago.

5 I'm not asking for a continuance. So I'm just
6 letting the Court know that I'm not asking for that.

7 I would suggest that there is an audio and videotape
8 that we requested years ago that we received this past
9 Friday around noon-time that is material to this case.

10 And there are witnesses who have not been available
11 who have now all of a sudden shown up on a witness list,
12 who I have not had a chance to speak to or have any kind
13 of colloquy with at this point. And I'm asking for that
14 reasonable opportunity, since they -- I was told they were
15 unavailable or not even coming. And I would just like to
16 have that opportunity to do those things, out of an
17 abundance of caution, you know, to -- to Mr. Greene.

18 And I'd also just like to make sure that there's not
19 going to be any -- that we've received everything and any
20 law enforcement agency is not going to come in and just
21 start ambushing us with additional information that we
22 could have had over the last three years. And because
23 again, we've been asking ---

24 **THE COURT:** Listen. You're preaching now to the
25 choir.

1 **MR. GIPSON:** Yes, sir.

2 **THE COURT:** I understand. I was a lawyer for
3 twenty-one years. I understand that, but you also have to
4 understand something else. There's an obligation, in
5 fact, generally it has arisen because we haven't had a
6 whole lot of discovery in criminal cases. I think that's
7 about to change, majorly, in this state just by the
8 discussions that the Chief has had with us. And I think
9 we're about to embark on a new venture, and I think it's
10 -- I think it's needed.

11 **MR. GIPSON:** Yes, sir.

12 **THE COURT:** One of the things that we do in civil
13 cases that are beyond a year, we issue something called a
14 scheduling order. And scheduling orders don't prevent
15 lawyers from calling witnesses or finding them, because as
16 you know, Mr. Murdaugh has the responsibility to continue
17 his investigation, and as he discovers things, it's not
18 uncommon to do that.

19 **MR. GIPSON:** Yes, sir.

20 **THE COURT:** There are a number of cases in the civil
21 forum where information has been provided the weekend
22 before. One of my first cases which I was involved
23 actually made it to the Supreme Court. I was peripherally
24 involved, but we had a doctor see our client on Friday
25 afternoon. The case started on Monday.

1 We gave that name to the lawyers on Monday morning.
2 They objected. I don't blame them for objecting.

3 The Supreme Court said: No, there's nothing wrong
4 with that. That's fine. You were given the name. You
5 can talk to the doctor, if he wants to talk to you.

6 **MR. GIPSON:** Yes, sir.

7 **THE COURT:** I'll give you an opportunity to talk to
8 anyone. If the State doesn't allow it, let me know and
9 I'll -- I'll order it if it's a name that has recently
10 been given to you. I'm not going to make anybody talk to
11 you, though.

12 **MR. GIPSON:** Yes, sir.

13 **THE COURT:** If they choose not to talk to you, that's
14 their business.

15 **MR. GIPSON:** I understand.

16 **THE COURT:** Okay?

17 **MR. GIPSON:** Yes, sir.

18 **THE COURT:** But I understand what you're saying. And
19 you mentioned a couple of things. If it's some egregious
20 mishandling of it, ---

21 **MR. GIPSON:** Yes, sir.

22 **THE COURT:** --- I've denied it before, ---

23 **MR. GIPSON:** Yes, sir.

24 **THE COURT:** --- I'll do it again.

25 **MR. GIPSON:** Yes, sir.

1 **MR. GIPSON:** Not for the record.

2 **THE COURT:** Other than the fact that we're going to
3 talk -- y'all are going to talk among yourselves, and
4 we'll work out that. And when we do determine that, we'll
5 place that on the record to protect you and your client.

6 **MR. GIPSON:** Yes, sir.

7 **THE COURT:** That is his prior record.

8 **MR. MURDAUGH:** The prior record, yes, sir.

9 **THE COURT:** And I'll be happy to hear anything else.
10 Can we have the Jackson v. Denno, if we do go forward, can
11 we have those witnesses present at 2:45, please?

12 **MR. MURDAUGH:** Yes, sir.

13 **THE COURT:** Thank you so much, sir.

14 All right. Anything else?

15 **MR. GIPSON:** Not for the record. I'll speak to Mr.
16 Murdaugh, and we can speak about it after lunch.

17 **THE COURT:** Well, let me -- let me chat with you all
18 just for a minute. We can talk back in chambers.

19 **MR. GIPSON:** Sure.

20 **THE COURT:** Because I don't -- I want the court
21 personnel to have a lunch hour, reasonable lunch hour.
22 And I'm sorry, ladies and gentlemen, I'm shorting you a
23 little bit. And, Ronda, I'm sorry for you, too. But
24 we'll be at ease until 1:30.

25 (WHEREUPON, THIS CASE WAS RECESSED AT 12:45 P.M.)

1 THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE
2 RECORD AT 2:43 P.M.:)

3 **THE COURT:** All right. Let the record reflect Mr.
4 Greene is present.

5 Are you ready to proceed?

6 **MR. MURDAUGH:** The State is, sir.

7 **THE COURT:** All right. Do we need to have a Jackson
8 v. Denno?

9 **MR. MURDAUGH:** No, sir. I have told Mr. Gipson that
10 it is not my intention to use it, unless it becomes
11 necessary in rebuttal.

12 **THE COURT:** That'll be fine.

13 **MR. MURDAUGH:** Reply.

14 **THE COURT:** We'll have an opportunity to have a
15 hearing before that, then.

16 **MR. MURDAUGH:** Yes, sir.

17 **THE COURT:** Okay.

18 And that's your understanding, as well?

19 **MR. GIPSON:** That's my understanding, Your Honor.
20 And that's why I thought it may be a very brief matter.

21 **THE COURT:** No problem. And, again, I apologize to
22 you, Mr. Gipson. You had communicated that, and I -- I
23 just missed -- I didn't understand. My law clerk told me
24 some things, and it just didn't register. So I apologize
25 to you, sir.

1 **MR. GIPSON:** No, I -- I ---

2 **THE COURT:** And she did everything she's supposed to
3 do, so.

4 All right. Any other matters before we bring back
5 the jury?

6 **MR. MURDAUGH:** I'm not aware of any, sir.

7 **THE COURT:** All right. Is the jury present?

8 **BAILIFF:** Yes, sir.

9 **THE COURT:** Okay.

10 **MR. MURDAUGH:** Any witnesses in here?

11 (NO RESPONSE.)

12 **THE COURT:** All right. Bring them in.

13 **MR. MURDAUGH:** If Your Honor, please?

14 **THE COURT:** Yes, sir.

15 **CLERK:** Wait a minute.

16 **THE COURT:** Hold on.

17 **MR. MURDAUGH:** There is one more witness on our list
18 that we do not intend to call, Number Twenty.

19 **THE COURT:** Okay.

20 **MS. LEGETTE:** She's not on there.

21 **THE COURT:** Okay.

22 **MS. LEGETTE:** She's not on there.

23 **MR. MURDAUGH:** Okay.

24 **THE COURT:** She's not on there. That makes it easy.

25 **CLERK:** You ready for them?

1 **THE COURT:** Yes, ma'am.

2 **CLERK:** Okay, they can come on.

3 (SEPTEMBER 4, 2012, 2:45 P.M., WHEREUPON, THE JURY
4 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
5 WERE HELD IN THEIR PRESENCE.)

6 **THE COURT:** Thank you, ladies and gentlemen. Hope
7 you had a good lunch.

8 The seating, as you know -- and I commend your law
9 clerk -- not your law clerk, your clerk. Your law clerk.
10 Mrs. Nettles and I were talking about, and I thought about
11 it, and I guess there was a time when there maybe was a
12 need to have a grand jury box and a petit jury box, but it
13 has made no sense to me why we have two different jury
14 boxes, because very seldom is the petit jury here when the
15 grand jury is here, and vice versa.

16 And that's why in some courtrooms you've seen it, but
17 the reason there's more than enough chairs is that box
18 serves for both. There are eighteen grand jurors. So
19 that's why there are multiple chairs, which makes it nice,
20 because you don't have to worry about where you're seated.

21 There are only two assigned seats, and I think you
22 all use the two end seats for the alternate. An alternate
23 really doesn't mean a whole lot at this point. That term
24 really will only have significance at the end of the
25 trial. At the end of the trial, if the first twelve

1 jurors are able to continue, then neither of you gentlemen
2 will participate in the final deliberations.

3 But since neither one of us know the status of the
4 jurors, you're very much a part of the jury. The only
5 thing it prevents you from doing is being selected as what
6 I call the presiding juror. It's a foreperson, forelady,
7 foreman.

8 Someone has to be selected. The statute allows me to
9 appoint that person or you to select your presiding juror.
10 I let the jury pick their presiding juror. It doesn't
11 have to be done right away.

12 Any of the first twelve of you are certainly
13 eligible. You're very capable of serving in that
14 capacity.

15 The only two persons that are not eligible to serve
16 in that capacity would be Mr. Stanley or Mr. Jenkins.
17 They are the two alternates, and you would not be
18 eligible, unless if not selected and some juror has to be
19 excused and you move into the body, then you would be
20 eligible to serve.

21 Once you've selected that person, I would simply ask
22 that that individual occupy the chair on the first row
23 here. But until that is done, you may sit in any seat you
24 want, including that chair.

25 The only two seats that are not open to you are the

1 two end seats. Those are our alternates' chairs for as
2 long as they are the alternates.

3 If you would now give your attention to Mrs. Nettles
4 as she administers your oath?

5 (WHEREUPON, THE JURY WAS SWORN AT 2:48 P.M.)

6 **THE COURT:** Thank you, Mrs. Nettles.

7 Thank you, ladies and gentlemen. You now have become
8 a judge with me. And as I mentioned to you when we were
9 qualifying you, the two of us now will work together to
10 resolve this dispute.

11 We have very well-defined responsibilities under the
12 law. You have nothing to do with any legal issue. That's
13 my job. That means I have to preside over the trial. It
14 means that I have to make rulings on matters of law that
15 may arise from time to time during the trial.

16 It also means at the conclusion of the trial, I must
17 give you the law which you have promised to accept and
18 apply fairly and impartially to the facts that you will
19 determine when you are instructed to begin your
20 deliberations. As I mentioned to you this morning, there
21 is no one in the world really more qualified than you are
22 to perform the task that you just accepted, because all
23 that you will do is apply your common sense, your sense of
24 logic and reason, when instructed to do so.

25 And you will do something that I hate to guess how

1 many times we perform this task in a given day. We hear
2 something, somebody tells us something, and we decide
3 whether we believe it or not. And if so, how strongly do
4 we believe it?

5 Or we read something, and we say: Oh, I'm not sure I
6 believe that.

7 Or sometimes it's almost instantaneous. You can
8 perform the task, no question about it. You brought with
9 you your common sense, your sense of logic and reason and
10 your life's experiences. And everybody in this courtroom
11 expects that you will use it when instructed to begin your
12 deliberations.

13 You also brought something else, and you probably got
14 tired of hearing me ask over and over: Will that
15 influence you? Will you base your decision on the
16 evidence and the law? Will your decision be fair to both
17 sides?

18 That's, in essence, what you just promised to do, if
19 you think about it. So you -- and each of you either said
20 it would not influence you, if you answered the question,
21 or you said -- you didn't respond at all, which means
22 there was nothing about this case.

23 Because you think about the last question. The last
24 question said: Was there anything about the case that
25 would give you any concern about taking the oath that you

1 just took?

2 And nobody stood for that. So what you've said in a
3 nutshell is this: I haven't made any decisions. I have
4 an open mind.

5 You must, in honoring that oath, maintain that open
6 mind throughout this proceeding. You cannot change that
7 position until you're instructed to begin your
8 deliberations. And if you do, even slightly, then you
9 have violated the oath.

10 And it's important for a number of reasons. Number
11 one, your decision has to be based on the law, and that's
12 the part of the law that I will give you. That is when
13 you may begin the process of deciding this case.

14 Number two, there are four distinct parts of this
15 process of dispute resolution, and each one is important.
16 So you certainly shouldn't prematurely decide anything
17 until you've gone through each phase of the process.

18 In just a moment, the attorneys will have their first
19 opportunity to address you. They speak to you before you
20 hear the evidence and after you've heard the evidence.

21 In the first, we call it opening statements, they're
22 going to give you an overview of the dispute. You haven't
23 heard any evidence, and I will tell you now and remind you
24 that what they say, what I say, should never be considered
25 evidence. The evidence will come through the testimony of

1 witnesses, and that's the testimony that you will
2 ultimately analyze when you begin your deliberations.

3 But their remarks will be helpful. Certainly my
4 remarks when giving you the law is important, because
5 you're going to accept the law and apply it fairly and
6 impartially.

7 But they will speak to you and talk about the case in
8 a broad sense, and it'll give you an overview of the
9 dispute. It will help you as we move through the
10 evidentiary portion.

11 After you hear the evidence, then they speak to you
12 again. The difference is that now you've heard the
13 evidence, and it's helpful for them to discuss with you
14 that evidence and suggest reasonable inferences that you
15 may draw from that evidence. And I'm very confident that
16 you'll find those remarks extremely beneficial when you
17 begin the process of resolving this case.

18 They are officers of this court. As I mentioned to
19 you, they have a very important responsibility in
20 presenting the evidence and the law in a fashion that will
21 assist us in making the decisions that we are called upon
22 to make. So please give them your attention.

23 After the opening statements, we'll start with the
24 evidence. The State will go first. Why is that? Because
25 as I mentioned to you, in a criminal dispute such as this,

1 the State of South Carolina makes the accusations or
2 allegations. Because the law says that the party bringing
3 this case, that party has the burden of proof.

4 And in a criminal dispute, I will tell you there is
5 never any situation, unlike a civil dispute, I tried one
6 last week and there was something that occurred, and I
7 told the jury very similar to what I'm telling you, the
8 defendant doesn't have anything to prove. And the
9 defendant in this case absolutely has nothing to prove.

10 But in a civil case, if the defendant raises
11 something called an affirmative defense, then it has that
12 limited burden of proof as to that issue. If you've ever
13 been in a civil case or ever sat as a juror, then that was
14 the law, but it doesn't apply here, because Mr. Greene
15 doesn't have anything to prove.

16 He doesn't have to explain anything. He doesn't have
17 to say anything. He doesn't have to present any evidence.
18 And that can never, ever be used against him. If you do,
19 you've violated the oath that you took.

20 The only party that has any burden is the State, and
21 they will present the witnesses for your consideration.
22 And they will go forward, and you will at the -- be
23 instructed at the end of this case, and I will talk about
24 the two charges; assault and battery with intent to kill
25 and I'll talk about murder. I'll give you the elements of

1 each of those. And when you begin your deliberations,
2 what you will be doing is simply analyzing the evidence
3 and deciding whether or not you're convinced as to the --
4 if the State has met its burden of proof as to that
5 particular element.

6 As I mentioned when I was qualifying you, if your
7 conclusion is: Well, I'm not satisfied as to that
8 standard, beyond a reasonable doubt -- the proceedings --
9 the case I talked about last week was a civil case.
10 Similar format, same four parts. The difference in that,
11 of course in limited situations in a civil case, the
12 defendant may have a burden of proof, very restricted, not
13 so in a criminal case. But the major difference is the
14 burden of proof.

15 In a civil case, the burden of proof is a probability
16 standard. It's called the preponderance of the evidence.
17 Well, in a criminal case, it's much greater than that.
18 It's more than somebody being probably guilty. It's proof
19 beyond a reasonable doubt, which is proof that leaves you
20 firmly convinced of the truth of what's being asserted.
21 And basically, the doubt is simply that doubt that would
22 cause an honest, sincere, conscience juror searching for
23 the truth to hesitate to take some action. And that's the
24 standard that you will be applying.

25 If you answer it in each case and each element is,

1 "I'm convinced of that standard," then you must return a
2 verdict of guilty as to that particular charge. Why?
3 Because the State met its burden of proof. It established
4 each element to the requisite standard.

5 If, however, in your analysis your conclusion is,
6 "Well, I'm not convinced of that particular one," then you
7 must return a verdict of not guilty. Why? Because the
8 State failed to meet its burden of proof.

9 And that's precisely what a verdict says in a
10 criminal dispute. Guilty means the State met it's burden
11 of proof. Not guilty means the State failed to meet its
12 burden of proof in establishing each element. And that's
13 what we'll be about. That's the whole process.

14 At the conclusion of the State's case, while the
15 defendant has absolutely nothing to prove or disprove, not
16 required to present any evidence, he still has the right
17 if he chooses to, to present some additional evidence for
18 your consideration. Another very logical reason why you
19 don't want to make a decision prematurely, because you
20 need to hear all of the evidence before you certainly
21 consider and make any decision.

22 But more importantly than that, much more
23 importantly, there still remains two very important parts:
24 The closing arguments, where the attorneys again speak to
25 you, and then finally, the Charge where I will give you

1 the law.

2 And we'll talk about the charges. We'll talk about
3 other principles that you will be applying in this
4 process.

5 And then, and only then, you will retire. And the
6 last instruction that I give to you before you commence
7 your deliberations is when those deliberations may start.

8 So until then, please remember the oath that you just
9 took and the promise that you just made to the State of
10 South Carolina and to Mr. Greene, in that you're going to
11 be that fair and impartial judge, not making any decisions
12 prematurely and apply your common sense, your sense of
13 logic and reason, fairly and impartially in analyzing the
14 evidence.

15 I look forward to trying the case with you. It's an
16 honor to serve with each one of you. Thank you for your
17 attention to my remarks, and I ask you now to give that
18 same attention to the attorneys as they give their opening
19 statements on behalf of their party.

20 Solicitor?

21 **MR. MURDAUGH:** May it please the Court?

22 **THE COURT:** Yes, sir.

23 **MR. MURDAUGH:** Ladies and gentlemen of the jury, His
24 Honor has explained to you what's going to happen.

25 Judge?

1 **THE COURT:** Sir?

2 **MR. MURDAUGH:** We have a sweater for one of the
3 jurors.

4 **THE COURT:** Certainly.

5 **MR. MURDAUGH:** I say "we." They do.

6 **THE COURT:** Well, that's good.

7 **JUROR:** Thank you.

8 **THE COURT:** That's service with a smile.

9 **JUROR:** It feels good, too.

10 **THE COURT:** Absolutely. I'm sorry. It's because I
11 have to wear this dress.

12 **MR. MURDAUGH:** My opening statement is sort of going
13 to be like a road map. I'm going to tell y'all what I
14 think is going to happen, and y'all follow it through.
15 You will hear it from the testimony that comes from that
16 witness stand and any evidence that is introduced in the
17 trial.

18 We are trying two cases: Murder and assault and
19 battery with intent to kill. And I want to give you lay
20 definitions of what those two charges are.

21 Murder is the unlawful killing of another person with
22 malice aforethought. His Honor will charge you
23 specifically what you have to look at for murder.

24 Unlawful killing of another person with malice
25 aforethought. Malice is defined sometimes as a person

1 bent on evil or with a black heart, just something that's
2 bad, doing something that results in a death.

3 Assault and battery with intent to kill is the same
4 thing as murder, except the person doesn't die, in
5 essence. So, it's relatively simple.

6 Assault is the putting in force an action to injure
7 somebody, such as if I were to take a swing at one of you
8 jurors and miss you, that is an assault. If I hit you,
9 that's a battery. Okay?

10 On October the 2nd, 2009, on Tulifinny Road down out
11 in Yemassee, a group of people were out on a Friday
12 afternoon, having a good time. They were partying,
13 drinking some liquor and were hooping it up.

14 The defendant, Brandon Greene, the young man in the
15 brown suit over there, came to Dominick Badger's trailer
16 on that road. Alfred Fennell lived right next to him. He
17 came up there, and I think they drank some liquor and
18 maybe some beer.

19 At one point, Brandon Greene looked at Tony, the
20 fellow in the green shirt right here, he's the fellow
21 that's assault and battery, looked at him and says: You
22 can't go to the party.

23 Apparently, there was a party going on somewhere, and
24 I don't know where it was, because I never did ask him
25 that. I wasn't really interested. But anyhow, he said:

1 You can't go to the party.

2 And he said: How come I can't go to the party?

3 He said: You're too drunk.

4 They hem-hawed about that for a little while, and
5 that got over with. And at some point, Tony, his brother,
6 Dominick, and a boy by the name of Dexter Bozeman, I
7 believe his name was, everybody else had left to go get
8 changed up to go to the party.

9 Brandon Greene, Dexter Bozeman, Tony Badger, and
10 Dominick Badger were in the yard. And you will hear
11 testimony from Anthony as to what happened. You will hear
12 testimony from Dexter Bozeman as to what happened. You
13 will not hear testimony from Dominick Badger, because he's
14 dead. He was shot twice in the body by Brandon Greene.

15 So the testimony that you will hear, ladies and
16 gentlemen of the jury, is that Brandon Greene had a
17 pistol, a .45 caliber pistol, an automatic. He had it in
18 his hand, and they are standing up talking, Anthony Badger
19 right here, Dexter Bozeman right here, and Dominick Badger
20 right here. And he shot twice into the ground, and he
21 pulled the gun up and he shot Tony in I think the right,
22 lower stomach, but you'll hear testimony from E.M.S.
23 personnel about that.

24 Tony ran to Alfred Fennell's house, which is a
25 trailer next door to him. Called out. Alfred came and

1 saw what happened and called 911, and hopefully you'll get
2 to hear the 911 tape.

3 After he ran off to Alfred's trailer, Dominick was
4 extremely upset because his brother had just been shot by
5 Brandon Greene, and I can understand that. So what does
6 he do? He shoots him twice in the chest and kills him.

7 (WHEREUPON, A LOUD NOISE COMES FROM THE AUDIENCE.)

8 **THE COURT:** No.

9 **MR. MURDAUGH:** He shoots him twice in the chest and
10 kills him because he was upset because his brother had
11 gotten killed.

12 Now he probably is going to claim self-defense. His
13 Honor will charge you the definition of self-defense, and
14 that is that you have a right to use whatever force is
15 necessary to prevent injury from occurring to you. But he
16 will also charge you that if you are not at your home, you
17 have a duty to retreat. In other words, if you're going
18 to cut my behind, or you, or you, ma'am, or any one of you
19 ladies and gentlemen, are going to cut my behind and I'm
20 at your house, I can't pull a gun out and shoot you. I've
21 got -- my first duty is to retreat. Doesn't that make
22 sense? That's the way it ought to be.

23 Now if you're at your home, it's a different
24 situation. If you are at your home, you've got a right to
25 defend yourself, but when you come to another man's house,

1 you have a duty to retreat.

2 Not only that, even though he's not charged with it,
3 there's a law in South Carolina that you can't possess a
4 gun. So right there, Brandon Greene is breaking the law
5 by possessing that gun.

6 You will hear testimony from some of the forensic
7 people, that's the people that investigate with S.L.E.D.,
8 crime scenes and that sort of stuff. They found three
9 spent cartridge shells at the scene. You will hear
10 testimony that those three spent cartridge shells came
11 from a .45 pistol, an automatic pistol.

12 You will hear testimony that from Dominick Badger's
13 body, they removed two slugs, and that those two slugs
14 were .45 caliber slugs.

15 You will hear testimony that a lady by the name of
16 Nicole Duvigneaud, and please don't hold me to that
17 pronunciation, bought a gun some time prior to this and
18 that she and Brandon Greene were boyfriend and girlfriend.
19 Then after this thing occurred, she went looking for her
20 guns and couldn't find them. They had been stored in the
21 trunk of her car.

22 And she asked Brandon Greene and says: What about my
23 guns?

24 He says: I took them and threw them -- threw them --
25 threw it away.

1 Ladies and gentlemen, from this testimony, you must
2 reach a decision, a verdict. Verdict is derived from the
3 Latin word *veridicto*, which means to speak the truth. And
4 whatever your verdict be, let it speak the truth in this
5 case.

6 There will be other testimony that I haven't told you
7 about, and you will hear it as it comes along. The main
8 thing, if he claims self-defense, you've got a duty to
9 retreat. You can't be the one that brought on the row
10 that caused the death.

11 So listen closely to what His Honor will charge you
12 at the conclusion of this case. Thank you.

13 **THE COURT:** Mr. Gipson?

14 **MR. GIPSON:** Please the Court, Your Honor?

15 **THE COURT:** Yes, sir.

16 **MR. MURDAUGH:** Excuse me. Get Alfred Fennell.

17 I'm trying to hurry things up. We'll get the witness
18 outside the room, sir.

19 **THE COURT:** All right, sir.

20 **MR. GIPSON:** Solicitor Murdaugh, Ms. Legette, Your
21 Honor?

22 Ladies and gentlemen of the jury, there is a proverb
23 that says that a witness who speaks first seems correct
24 until someone tells the other side of the story and sets
25 the record straight. The witness who speaks first seems

1 correct until someone tells the other side of the story
2 and sets the record straight.

3 Folks, we're here today to set the record straight,
4 but before I go any further, let me just make one thing
5 abundantly clear. It is always a tragic situation anytime
6 that a young person loses his or her life, and what we're
7 here in court for today is a tragedy. It's tragic as well
8 when somebody is injured in a situation. We're here for
9 that today in court as well. That is a tragedy.

10 For the loss of Dominick Badger, I know Mr. Greene
11 and his family's heart goes out to their family, and my
12 heart goes out to their family, because it is a tragic
13 situation. But I submit to you that it's equally tragic
14 to charge a man with murder or assault and battery with
15 intent to kill when he was defending himself.

16 The witness who speaks first seems correct until
17 someone tells the other side of the story and sets the
18 record straight. Folks, self-defense is a far cry from
19 murder, and it is a right that each one of us enjoys and
20 pray that we never have to use.

21 As mentioned before, my name is Byron Gipson, and I
22 represent Brandon Greene in this matter that has brought
23 us here today, wherein he's been charged with murder and
24 assault and battery with intent to kill. And similar what
25 was just mentioned, what Solicitor Murdaugh has mentioned,

1 I'm going to give you just a brief roadmap about where
2 we're going today and for the next couple of days and what
3 you can expect and what you should expect from the State
4 when they bring a case charging Mr. Greene with murder and
5 assault and battery with intent to kill.

6 First and foremost, Mr. Murdaugh and Ms. Legette, who
7 is seated here as well at this table, have brought a
8 series of charges against Mr. Greene. And we know what
9 those charges are; they are murder and assault and battery
10 with intent to kill.

11 What you have to realize is what they brought him in
12 on this case for are indictments. They use these
13 indictments. They are essentially tickets that bring you
14 into court.

15 Indictments are not evidence. They are not proof.
16 They are allegations. They are allegations from somebody
17 saying that something happened. And they mean absolutely
18 nothing, unless you, the jurors, all twelve of you, and
19 that's no disrespect to our alternates, but the twelve of
20 you must make a decision about these indictments, these
21 allegations that they've brought, and you have to make
22 that decision beyond a reasonable doubt.

23 Then and only then is there going to be truth to
24 those allegations, if you determine that the State, who is
25 seated at this table, has proven this case beyond a

1 reasonable doubt. Now our courts in South Carolina have
2 defined reasonable doubt in a couple of manners. The
3 first is reasonable doubt is the amount of doubt that
4 causes a reasonable person to hesitate to act, to cause a
5 reasonable person to hesitate to act.

6 So maybe, as you hear the charges that have been
7 brought forth and you start to listen to the testimony
8 that comes from this witness chair and that doesn't come
9 from this witness chair, if you hear those things and you
10 start to think: Well, the things that Solicitor Murdaugh
11 just mentioned in that opening, man, they don't quite
12 match up to what I'm hearing; or as these witnesses have
13 testified and I'm hearing something different than what
14 they said on other occasions, that doesn't quite match up;
15 or now I see the full picture and I understand why this is
16 self-defense, those things may make you hesitate. And if
17 they make you hesitate; based on the oath that you took to
18 well and truly try the facts of this case, you must find
19 Mr. Greene not guilty.

20 An alternate definition of reasonable doubt is that a
21 jury must be firmly convinced of a person's guilt in order
22 to find him guilty, firmly convinced.

23 And as Judge Dennis demonstrated to you, there are
24 different standards in civil cases and criminal cases. If
25 you look at a civil case and you think of the scales of

1 justice, you've heard of the preponderance of the
2 evidence, it's a big word, but basically it means it's
3 more likely than not that something happened.

4 So, if you look at those scales of justice and you put
5 them at even, if it's tipped just a little bit, basically
6 21 to 20 in a football game, just a little bit, winning by
7 one hole in golf, just a little bit, that's the
8 preponderance of the evidence.

9 That's not the case here. This is beyond a
10 reasonable doubt. Those standards that we talked about
11 are real standards that you as the jury must consider as
12 you listen to the evidence that the solicitor's office
13 brings to you in this case.

14 Now as juries -- excuse me, as jurors, you are judges
15 of the facts of this case, and Judge Dennis is the judge
16 of the law. Ultimately, it doesn't matter what I say or
17 what Mr. Murdaugh or Ms. Legette says. It doesn't matter,
18 because Judge Dennis is going to tell you what the law is,
19 and you have to take the law that he gives you and apply
20 it to the facts of this case that you all determine, and
21 that's when you come back with your verdict.

22 The law is not what we say it is. It's what Judge
23 Dennis says that it is. So let's be clear on that.

24 Now, as judges of the facts, you may be asking
25 yourself: Well, how am I supposed to make determinations

1 about what happened that night, because I wasn't there?

2 I'll tell you that you have the ability, just as
3 Judge Dennis has been mentioning to you this morning and
4 even this afternoon for a little while, you have the
5 ability to judge a person's credibility and their
6 believability, credibility and believability. There is no
7 course in college that you can go take that or in grad
8 school or anything that you can take at any school
9 anywhere. It's what you're born with and it's what you do
10 on a daily basis.

11 It's looking at people and determining if you feel
12 like they're being truthful and honest or if they're lying
13 to you. And that's an innate gift that all of us have
14 been given. And we're asking you to use that.

15 That's why we went through this painstaking process
16 this morning about trying to pick jurors who could be fair
17 and impartial in this case, because that's what we want
18 you to do. Use those abilities that you have to determine
19 credibility and believability.

20 You can believe one witness over many, or you can
21 believe many witnesses over one. Quite frankly, it's
22 going to be up to you as you start to hear the evidence
23 how you choose to use it and apply it.

24 But just as you are judging my credibility and
25 believability right now, it's those same gifts that you'll

1 need to use as you begin to hear evidence from that
2 witness chair.

3 Now the State, through Mr. Murdaugh and Ms. Legette,
4 are going to be presenting witnesses to you. And I
5 suspect that many of those witnesses are going to be law
6 enforcement. Some will be from the Hampton County
7 Sheriff's Department. Some may be from S.L.E.D. There
8 may be some other agencies that may testify as well, but
9 the key to remember is that they put their pants on one
10 leg at a time, just like you and I. That's the bottom
11 line here.

12 You are not to give them any additional deference
13 simply because they have a badge and a gun. They are to
14 be treated as any other witness who comes in here, any lay
15 person who comes in and sits on that stand, puts their
16 hand on the Bible and swears to or affirms to tell the
17 truth, the whole truth, and nothing but the truth. You
18 treat them the same.

19 If they've made mistakes, if they're not truthful
20 with you, if they say things that aren't true, if they
21 didn't do their job correctly, you hold them to a
22 standard. Look at their credibility, their believability.
23 What are they supposed to do versus what did they do? Are
24 the things that they are telling you matching up with what
25 happened?

1 That's part of your job, but you don't give them
2 additional deference, simply because they're law
3 enforcement. Yes, they are to be respected. Yes, they
4 have a difficult job, but in this courtroom, you've got to
5 treat them as you treat everybody else.

6 Experts are a little bit different. If the judge
7 determines that a particular witness is an expert in his
8 or her craft, he'll let you know that, and they can give
9 opinions on what they see and what they hear and what
10 their knowledge is and what they've studied. They can
11 give opinions, and so they may be held to a different
12 standard; however, you still have to judge their
13 credibility and believability and their ability to know
14 the things that they testify to.

15 And as has been mentioned many times, you have to
16 just use your common sense, because sometimes it comes
17 down to common sense and really believing what a person
18 says or what they sometimes don't say. As you're
19 assessing credibility and believability, you want to
20 assess people's ability to tell the truth and whether or
21 not they're lying, as I've said.

22 Think of a couple questions: Number one, good
23 friends. Your good friend is shot. How long do you think
24 is reasonable -- reasonable -- reasonable, excuse me,
25 before coming forward to the police and telling them what

1 happened? Think about that.

2 And secondly, this age-old question: Is a person
3 allowed to defend themselves if they believe that they are
4 in threat of being seriously injured or killed?

5 Those are the two major questions that you need that
6 are going to be going on and on in this courtroom and that
7 ultimately, as jurors, you're going to have an opportunity
8 to make a decision about.

9 I suggest, as the judge mentioned, you consider that
10 speculation is not enough. Guessing at certain facts, or
11 I thought it could have been or may have been, that's not
12 enough. The question is, what happened and how it truly
13 happened.

14 And to that end, you're going to be introduced to
15 evidence, probably three major types: Direct evidence,
16 circumstantial evidence, and stipulations possibly.

17 Direct evidence is evidence that you can see, that
18 you can touch, that you can smell. Circumstantial
19 evidence is evidence that you can infer exists from a
20 series of facts.

21 For instance, as we sit in here this afternoon, I
22 know it's rained earlier, but it seems to have stopped for
23 a while. If you go out later today, 5:00 o'clock, 5:30
24 sometime and you see, you know, it's flooded outside and
25 there are branches all over the place, you can surmise,

1 you can infer, that it rained and it stormed again, even
2 though you may not have seen it. The blinds may have been
3 closed. You can figure that out, based on the evidence
4 that's out there. That's circumstantial evidence, and
5 it's just as good as direct evidence.

6 Third, you have stipulations, and stipulations are
7 simple. If the State, Solicitor Murdaugh, Ms. Legette, or
8 myself have agreed to a certain type of facts or a series
9 of facts and we say we have a stipulation, you as the jury
10 would just take that as being true, because there is no
11 argument about that fact. And we'll let you know if there
12 is a stipulation. We'll let you know. The judge will
13 inform you of that stipulation, and you're to take that as
14 an uncontradicted fact.

15 But as you look at the witnesses who come in here and
16 testify and you hear the information that comes from that
17 chair or maybe doesn't come from that chair, you want to
18 think about the pieces of the puzzle like a jigsaw puzzle.

19 I always wear these cufflinks just to kind of remind
20 me, because I wasn't all that good at them as a kid, but I
21 understand them better now. With jigsaw puzzles, there
22 are pieces of a puzzle that you start to put in place, and
23 after a while, you'll start to get to see the big picture
24 if you stay at it for a while. Sometimes you'll get in a
25 situation where pieces are missing from that puzzle, and

1 you can never quite get the whole picture.

2 These folks at this table are in charge of those
3 pieces. They're bringing them to you, but as you start to
4 look at those pieces, if certain pieces are left out or
5 certain pieces just don't make sense or certain pieces
6 don't exist or you don't believe certain pieces, then
7 based on the oath that you took to well and truly try the
8 facts of this case, it demands a verdict of not guilty.

9 I'll ask you again to listen to the witnesses, to
10 think critically, because this is the most important
11 situation for either of these families right now. This
12 moment right here is an extremely important moment because
13 of what happened.

14 It is our contention that Mr. Greene defended
15 himself. You'll have an opportunity to listen to the
16 evidence and make a decision about that.

17 We ask that you remember that he came into this
18 courtroom today cloaked in innocence. Please don't make
19 your mind up about anything that you've heard until you've
20 heard all of the evidence, and then you can make a
21 decision about whether or not you believe that a person is
22 able to defend himself if he believes he is in dire
23 straights, if he is in danger of losing his life or being
24 seriously injured. Thank you.

25 **THE COURT:** Thank you, Mr. Gipson.

DIRECT EXAMINATION OF ALFRED FENNELL BY MR. MURDAUGH

78

1 **MR. GIPSON:** Yes, sir.

2 **THE COURT:** Call your first witness, Solicitor.

3 **MR. MURDAUGH:** Alfred Fennell.

4 Tell them to bring Dexter Bozeman next.

5 If you will, Mr. Fennell, put your left hand on the
6 Bible and hold up your right hand to be sworn.

7 ALFRED A. FENNELL, after being duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MURDAUGH:

11 **Q** Would you give us your full name, please, sir?

12 **A** It's Alfred Alonzo Fennell.

13 **Q** Okay. Mr. Fennell, if you will, don't lean up too
14 close to that mic. It makes it come over sort of hazy.

15 **A** Yes, sir.

16 **Q** I think you're all right where you are right now.

17 **A** Fair enough.

18 **Q** Where do you live, sir?

19 **A** At [REDACTED] Tulifinny Road at Yemassee, South Carolina.

20 **Q** Okay. And do you live next to the -- or did you --
21 did Dominick-Badger live next door to you?

22 **A** That's correct, sir.

23 **Q** Okay, sir. Will you tell the ladies and gentlemen on
24 this jury, in your own words, what transpired on the night
25 or afternoon or night of October the 2nd, 2009?

1 **A** Yes, sir. I arrived at my residence at approximately
2 8:00 to 8:15 coming back in from deer hunting. Recognized
3 Mr. Dominick Badger and a couple of other guests at his
4 residence next door.

5 Generally the gentlemen would come over and see if I
6 had bagged an animal on that particular -- when they saw
7 me return from hunting. On that particular night, they
8 did not.

9 I recognized the car that I had seen earlier in that
10 -- on that particular day that Mr. Brandon Greene had been
11 driving. And so I decided not to go over to say hello, as
12 I normally would have done so, and neither did the young
13 men come over.

14 Entered into the house. Within five minutes or so,
15 picked the telephone up, called a neighbor that's two
16 doors down, a Mr. Donnell Lester, had a conversation about
17 ---

18 **Q** Don't tell me what the conversation was about.

19 **A** Okay. Fair enough.

20 As I was on the telephone with Mr. Lester, my dog
21 continued to bark. I excused myself on two, perhaps
22 three, occasions from the telephone conversation while he
23 was still there on the telephone to ask to see what the
24 dog was barking about.

25 Generally when my dog barks, there's either someone

1 that's come into the yard or there is some -- someone that
2 has made some noise to arouse the senses, if you would.

3 On the first occasion, I went to the door, said to
4 the dog, Cymba: Cymba, there's no one out there.

5 He stopped barking for a moment. Went back into the
6 conversation.

7 The dog started barking immediately again. I went
8 back to the door, looked the second occasion, did not see
9 anyone. And on that occasion, I said to the dog again to
10 please stop barking, but I could tell from the way that he
11 was acting that there was something more.

12 I reentered the conversation for the third time, and
13 at this time Cymba would not stop barking. By the time I
14 got to the door, there was a -- may I demonstrate?

15 Q Certainly.

16 A (WITNESS KNOCKED ON TABLE FOUR TIMES.)

17 I looked through the door, and ---

18 (WITNESS BEGAN TO CRY.)

19 I apologize. I looked through the shade and I saw a
20 face that I didn't recognize at that moment, but I noticed
21 on the shirt what appeared to be a sheriff's badge. And
22 so I opened the door, because I assumed that it was a law
23 enforcement individual.

24 But immediately upon opening the door, I recognized
25 that it was Mr. Anthony Badger, and he was perspiring.

1 His shirt was unbuttoned, hand on his stomach, and he says
2 to me in these words, he says: Al, or Mr. Al, as he calls
3 me, I've been shot.

4 I couldn't -- it didn't register. It didn't -- it
5 just didn't. It was inconceivable for me to understand
6 that someone had been shot, and so I asked him again: Say
7 what?

8 And he repeated. He said to me: Brandon Greene shot
9 me in the stomach.

10 And at that time, he removed his hand from the
11 stomach, from his stomach. Blood spilled over onto the
12 rest of his clothing, onto the steps. I braced for the
13 door. Tony fell to the -- to the concrete.

14 I went back onto the phone, asked -- told Mr. Lester
15 what it is that Tony had told me, asked for his support,
16 told him at that time I was going to call 911. Concluded
17 our conversation, and from that point, I -- I ---

18 Q Did you call 911?

19 A I did, sir.

20 Q Okay, sir. Now, Mr. Fennell, I ask you if on one day
21 in the last several days I asked you to listen to a tape?

22 A You did, sir.

23 Q Okay, sir. And is this the tape that I asked you to
24 listen to?

25 A Yes, sir.

1 Q How do you know that, sir?

2 A I initialed it on the day that you asked me to review
3 it.

4 Q Is that the 911 call that you made, a recording of
5 it?

6 A It is, sir.

7 Q Thank you, sir. Did later, after making the call to
8 911, did members of E.M.S. come?

9 A Yes, sir.

10 Q To that area?

11 A They did, sir.

12 Q And did a number of law enforcement officers come to
13 that area?

14 A Yes, absolutely.

15 Q Sir?

16 A Absolutely. Yes, sir, they did.

17 Q Okay. And did they put yellow tape around it to keep
18 people from going into the area?

19 A Absolutely. Immediately.

20 MR. MURDAUGH: If Your Honor please? I would offer
21 this tape as an exhibit.

22 THE COURT: Any objection?

23 MR. GIPSON: No objection.

24 THE COURT: Without objection, State's -- has it been
25 marked?

1 (WHEREUPON, State's Exhibit No. 2 was marked for
2 identification only.)

3 MR. MURDAUGH: Yes, sir. It has been marked State's
4 Exhibit Number Two.

5 THE COURT: State's Exhibit Two is admitted.

6 (WHEREUPON, State's Exhibit No. 2 was admitted into
7 evidence.)

8 MR. MURDAUGH: How are we going to play it?
9 May we play it to the jury, sir?

10 THE COURT: You may publish.

11 MR. MURDAUGH: Somebody with more knowledge than I've
12 got has got to do it, sir. I never have learned to use a
13 computer. I see you up there doing it.

14 (WHEREUPON, STATE'S EXHIBIT NUMBER TWO WAS PUBLISHED
15 TO THE JURY.)

16 Q Mr. Fennell, was that the extent of the 911 call?

17 A Yes, sir.

18 Q Thank you. Answer any question that Mr. Gipson may
19 have.

20 A Yes, sir.

21 THE COURT: You may cross-examine.

22 MR. GIPSON: Thank you.

23 CROSS-EXAMINATION

24 BY MR. GIPSON:

25 Q Good afternoon, Mr. Fennell.

- 1 **A** Good afternoon, sir.
- 2 **Q** You've been neighbors with the Badger family for
3 about how many years?
- 4 **A** With respect to Dominick and Bernard?
- 5 **Q** Yes, sir.
- 6 **A** I think that they've lived there for may two or three
7 years. I may be off by some months, sir, but they --
8 however, it's not a large community.
- 9 **Q** Right.
- 10 **A** I knew those boys prior to their birth and from their
11 birth on through adulthood.
- 12 **Q** Right. And -- and obviously, this is not an easy
13 situation for you to be in to make that call, but as you
14 said, you did your civic duty; correct?
- 15 **A** I -- I could have done more, sir.
- 16 **Q** All right. But you did what -- you called 911.
- 17 **A** Yes.
- 18 **Q** And alerted police, and they came. And as a result
19 of your call, the choppers came out and did the best they
20 could at that point; correct?
- 21 **A** Yes, sir.
- 22 **Q** Okay. Now, you mentioned that they're always out
23 there shooting. What -- you said that on that tape.
- 24 **A** I -- sir, to be clear with you, I didn't hear clearly
25 the words or the language that I used.

1 Q Right.

2 A My response -- my response is that the emotions of
3 the evening came back to me, and so I do apologize.

4 Q Sure.

5 A If I referenced shooting, I referenced shooting, sir,
6 respectfully, with respect to Mr. Greene who had a habit
7 of driving ---

8 Q Well, excuse me.

9 A --- through the neighborhood shooting, if I may
10 answer your question.

11 MR. GIPSON: Your Honor?

12 THE COURT: You asked the question, and he's
13 explaining his answer. Yes, sir. Thank you.

14 Q You said ---

15 THE COURT: Mr. Gipson, ask another question, sir.

16 MR. GIPSON: Yes, sir.

17 THE COURT: Thank you, sir.

18 MR. GIPSON: Yes, sir.

19 Q You said you told those boys to stop that. Did you
20 say that on that tape? That's all I'm asking.

21 A Sir, once again ---

22 THE COURT: No, sir. Answer the question first, and
23 then you can explain the answer, sir.

24 WITNESS: He's asked ---

25 THE COURT: Answer the question, if you can. Then

1 you can explain the answer, if necessary.

2 **A** Mr. Gipson, I'm sorry. I did not hear the language
3 that I used on the tape just then, so I cannot give you a
4 definitive response ---

5 **Q** Okay.

6 **A** --- about -- yes, sir.

7 **Q** That's fine. So we'll just resort to what the tape
8 says. Is that fair?

9 **A** (NO RESPONSE.)

10 **Q** You don't remember what you said on the tape, and you
11 couldn't hear it clearly, so is it fair to just resort to
12 what the tape says?

13 **A** Mr. Gipson, my comments are these, that ---

14 **THE COURT:** Sir, the question was -- the question
15 really does not require an answer. It's an argumentative
16 question. Move on to something else, Mr. Gipson.

17 **MR. GIPSON:** All right.

18 **Q** You gave statements that were recorded on that tape;
19 is that correct?

20 **A** I did sir. Yes, sir.

21 **Q** Okay. All right.

22 **MR. GIPSON:** That's all my questions, Your Honor.

23 **THE COURT:** Redirect, Solicitor?

24 **MR. MURDAUGH:** You -- you -- I have no question.

25 You may come down.

1 May Mr. Fennell be excused?

2 **THE COURT:** Any objection?

3 **MR. GIPSON:** No objection.

4 **THE COURT:** You're free to step down and free to
5 leave, sir. Thank you.

6 **MR. MURDAUGH:** I'd call Anthony Badger.

7 ANTHONY A. BADGER, after being duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MURDAUGH:

11 **Q** Give us your full name, please, sir.

12 **A** Anthony Antonio Badger.

13 **Q** I'm going to ask you to get a little closer to the
14 microphone, please. Pull it down to you.

15 Your name?

16 **A** Anthony Antonio Badger.

17 **Q** Where do you live -- do they call you Tony?

18 **A** Yes, sir.

19 **Q** Do you mind if I call you Tony?

20 **A** Yes, sir.

21 **Q** Tony, where do you live?

22 **A** ■ Wise Road.

23 **Q** Right there is a good place to be. And where is
24 that?

25 **A** Across the street from Tulifinny.

- 1 Q Okay. Close to where this incident occurred?
- 2 A Yes, sir.
- 3 Q Okay. On October the 2nd, 2009, were you at
- 4 Dominick's house?
- 5 A Yes, sir.
- 6 Q Was Dominick living there, or you and Dominick?
- 7 A Dominick and my other brother was living there.
- 8 Q Dominick and Bernard were living there?
- 9 A Yes, sir.
- 10 Q Okay. And you lived?
- 11 A Yes, sir. ■ Wise Road.
- 12 Q Okay. Did you have an occasion at some time on that
- 13 day, the 2nd of October, to go to Dominick's trailer?
- 14 A Yes, sir.
- 15 Q And is it located right next to Alfred Fennell, the
- 16 fellow that just testified?
- 17 A Yes, sir.
- 18 Q Okay. What time did you get there?
- 19 A I'd say about -- I must have left my house around
- 20 about 7:45.
- 21 Q At night?
- 22 A Yes, sir.
- 23 Q In the afternoon?
- 24 A Yes, sir, that afternoon.
- 25 Q Okay. And when you got to Dominick's house, who was

1 there?

2 **A** It was me, Dominick, Brandon Greene came, and Dexter
3 Bozeman was in the yard.

4 **Q** Okay. How about Keith King?

5 **A** He -- he's the one that took me home earlier, and
6 then he -- I called Dominick back, and he picked me up.

7 **Q** Okay. So you had been to Dominick's earlier that
8 day.

9 **A** Yes, sir.

10 **Q** What time did you get there earlier?

11 **A** I'd say around about 12:00 o'clock that evening.

12 **Q** 12:00 o'clock in the afternoon?

13 **A** Yes, sir, afternoon.

14 **Q** Okay. And you stayed there for how long?

15 **A** I'd say about 5:30 or 6:00 o'clock.

16 **Q** Okay. And you left there at 5:00 or 6:00?

17 **A** I left there around about 6:00, about 5:30 or 6:00
18 o'clock. I went home, took me a shower, and I realized
19 that I didn't have to work, so ---

20 **Q** Okay. Who took you home?

21 **A** Keith King.

22 **Q** Okay. Did Keith -- how did you get back to Dexter's
23 house? I mean to Dominick's house?

24 **A** Dominick came and picked me up.

25 **Q** Dominick came and picked you up. Did you see Keith

DIRECT EXAMINATION OF ANTHONY BADGER BY MR. MURDAUGH

90

1 King again that day?

2 A No, sir.

3 Q Did anything happen before you left at 5:30 or 6:00
4 o'clock with Keith King?

5 A Yes, sir. Him and Brandon Greene got into a little
6 argument, and Brandon Greene told him then that he would
7 shoot him. And I told him -- me and Dominick told him,
8 don't, you know, we're all family, please don't do that.

9 Q Okay. What did Keith King tell him?

10 A Keith King told Brandon Greene that he would hit him
11 in the head with a block.

12 Q Okay. Did he -- did he have a brick?

13 A It was close beside where he was parked at.

14 Q Okay. Did Brandon have a gun at that time?

15 A Yes, sir, he did.

16 Q Where was the gun?

17 A On the side on the inside of the door, the driver's
18 side door down in the little console on the door. Where
19 you open the door up, there's a little cubbyhole down
20 there. He was toting the gun down in there.

21 Q Did he take it out of the car?

22 A He had his hand on it, but he never did pull it out.

23 Q Okay. Is that because Keith was going to hit him in
24 the head with the brick?

25 A Me and my brother, Dominick, come around. You know,

1 we defused it.

2 Q Did you see the gun?

3 A It was a chrome .45.

4 Q I show you a picture and ask you if you can recognize

5 this?

6 A Yes, sir. That's it.

7 Q That looks like the one that you saw?

8 A Yes, sir.

9 MR. MURDAUGH: If Your Honor please? I would offer

10 this as State's Exhibit One.

11 THE COURT: Any objection?

12 MR. GIPSON: May we approach one moment, Your Honor?

13 Yeah, I object.

14 MR. MURDAUGH: Okay. I offer it for identification,

15 sir.

16 THE COURT: All right. State's Exhibit One for ID

17 only. Okay.

18 (WHEREUPON, State's Exhibit No. 1 was marked for

19 identification only.)

20 Q Okay. Describe the gun for me, please, Tony.

21 A It was chrome and black.

22 Q Chrome?

23 A And black.

24 Q And black.

25 A Yes, sir.

1 Q Okay. Now, when you left at 6:00 o'clock, ---

2 A Yes, sir.

3 Q --- you and Keith, did anybody else go with you?

4 A No, sir.

5 Q Did -- who was there at Dominick's house when you
6 left?

7 A When I left Dominick there, because he asked me to
8 stay with him, I told him, you know, I thought I had to go
9 to work. And I left, and he asked me, please, brother,
10 stay with me ---

11 MR. GIPSON: I object, Your Honor.

12 THE COURT: Sustained.

13 Q Just tell me who was there when you left?

14 A I left Dominick there by himself.

15 Q You left Dominick and he was there by himself.

16 A Yes, sir.

17 Q How about Brandon Greene?

18 A No, he wasn't there at the time. Before I left, he
19 wasn't there.

20 Q Okay. He left before you did.

21 A Yes, sir.

22 Q Okay. So just Dominick was at the house.

23 A Yes, sir.

24 Q You came back at what time?

25 A It was a little after 7:00, about 7:40, when I came

1 back over there.

2 Q And Dominick had gone and gotten you and brought you
3 back to his house.

4 A Yes, sir.

5 Q When you got to Dominick's house, who was there?

6 A Me and Dominick at first, and then they pulled up in
7 the yard.

8 Q Who?

9 A Brandon Greene pulled up in the yard, and then Dexter
10 and came around after Brandon Greene had pulled up.

11 Q Okay. So you and Dominick are there. Brandon Greene
12 pulls up in the yard.

13 A Yes, sir.

14 Q Then Dexter Bozeman?

15 A Yes, sir.

16 Q Anybody else?

17 A That's it.

18 Q Okay. Tell me what happened to you that night. Tell
19 these ladies and gentlemen on the jury what happened to
20 you.

21 A Okay. I got there.

22 I said: Dominick -- he said, Tony, I've got to go in
23 the house and change my shirt and change my shoes. We're
24 going to the party.

25 So I said: Okay.

1 Brandon Greene got out of the car and said: Man,
2 y'all don't need to go to no party. Y'all drunk already.

3 So I told Brandon Greene then, I said: Man, look,
4 I'm grown. I go where I want to go at.

5 I started walking off. By the time -- by the time I
6 started walking off, he called me a bitch. So when he
7 called me a bitch, I turned around and I throw my hand up.
8 And at the same time I throw my hand up, he started
9 firing.

10 Q He fired?

11 A He started firing the gun.

12 Q Where did he shoot?

13 A He shot at me from the side of the car, and started,
14 you know, just started firing.

15 Q Okay. He didn't shoot into the ground to start off
16 with?

17 A No, sir. I didn't recall him shooting at the ground.
18 I know I was moving. I was dancing.

19 Q When he shot the gun, what did you do?

20 A Moving around trying to avoid from getting hit.

21 Q When you say you were moving around, sideways,
22 backwards?

23 A Backwards, sideways, any way I could to avoid from
24 getting hit with the bullet.

25 Q Okay. And where did -- how far were you from him

1 when you got hit by the bullet?

2 **A** I was about from here ---

3 **Q** You stop me when I get close as you were.

4 **A** Right there.

5 **Q** You were that far from him?

6 **A** Yes, sir.

7 **Q** Okay. After you were shot, what happened?

8 **A** I just yelled out and said he shot me in my stomach,
9 and I went and got me some help.

10 **Q** Was Dexter Bozeman present when you got shot?

11 **A** Yes, sir.

12 **Q** Was Dominick present?

13 **MR. GIPSON:** Object to the leading, Your Honor.

14 **THE COURT:** Sustained.

15 **Q** Who was present when you got shot?

16 **A** Dexter Bozeman, Dominick was, and Brandon Greene.

17 **Q** Okay. And where did you go after being shot?

18 **A** To Mr. Al Fennell's house.

19 **Q** Mr. Alfred Fennell?

20 **A** Yes, sir.

21 **Q** And did you bam on the porch?

22 **A** I knocked on the door and told him exactly what
23 happened to me.

24 **Q** And did ultimately some police -- policemen come
25 around there and the E.M.S. come around there?

1 **A** Yes, sir. I know I was laying there for a long time,
2 though.

3 **Q** Okay. Were you taken anywhere, and how were you
4 taken?

5 **A** They took me on the ambulance first, and then I was
6 transported to Yemassee baseball field and airlifted to
7 Savannah Memorial.

8 **Q** On a helicopter?

9 **A** Yes, sir.

10 **Q** How long were you in the hospital in Savannah?

11 **A** Probably about three weeks and a half.

12 **Q** About three and a half weeks?

13 **A** Yes, sir.

14 **Q** Tell me what happened when you were shot. Where were
15 you shot?

16 **A** In the abdomen.

17 **Q** If you will, point out to the jury on me where you
18 were shot.

19 **A** I was shot there.

20 **Q** Put an X mark there. You were shot there?

21 **A** Yes, sir.

22 **Q** Okay. Did it cause any injuries after it entered
23 your stomach?

24 **A** Yes, sir.

25 **Q** What did it injure?

1. A My intestine.
2. Q Excuse me?
3. A My intestine.
4. Q Okay.
5. A My groin area and my leg.
6. Q So it went in and came -- which leg?
7. A My left leg.
8. Q So it came to your left leg.
9. A Yes, sir.
10. Q Okay. Are you having any problems now from it?
11. A Yes, sir.
12. Q What are your problems?
13. A I've got to take blood thinners, and I've got to take
14. ---
15. Q Why do you have to take blood thinners?
16. A Because I have blood clots.
17. Q Okay. You have to take blood thinners and what else?
18. A I have to take Lomotil to keep my bowels from me
19. messing my clothes up, and I take multiple pain medicines.
20. Q I'm sorry, what?
21. A I take multiple pain medicines.
22. Q Okay. Do you have to have anything to help you walk?
23. A Yes, sir.
24. Q What?
25. A A cane.

1 Q Tony, did you do anything to cause Greene, Brandon
2 Greene, to shoot you?

3 A I don't think so, sir.

4 Q Was Brandon Greene drinking that night?

5 A Yes, sir, he was.

6 Q How -- how much was he drinking, if you know? How
7 did it affect him, is what I want to know?

8 A I know he drank a pint -- a half a pint to hisself,
9 and he gave -- he bought us a pint. He bought two bottles
10 of liquor that day. He drunk a half pint by hisself, and
11 me, Dominick, and Keith had to share one.

12 Q Okay. Did he act like he was under the influence or
13 not?

14 MR. GIPSON: I just object to the leading, Your
15 Honor.

16 THE COURT: Sustained.
17 Rephrase your question.

18 Q How did he appear? How was he acting?

19 A I guess that one bottle probably had him pretty
20 tipsy, I guess.

21 MR. GIPSON: Object to the speculation, Your Honor.

22 THE COURT: I'll allow the answer.

23 Q Tony, what -- the place where this thing happened is
24 on Tulifinny Road?

25 A Yes, sir.

DIRECT EXAMINATION OF ANTHONY BADGER BY MR. MURDAUGH

99

1 Q What county is that in?

2 A Hampton County.

3 Q Okay. Now I asked you earlier who was present and
4 you named some people.

5 A Yes, sir.

6 Q Was Bernard, your brother, there?

7 A Yes, sir. He was -- he was there earlier before I
8 left.

9 Q Okay. So he was there before you left at 6:00
10 o'clock, 5:30 or 6:00?

11 A Yes, sir.

12 Q Was Josh Habersham there?

13 A Yes, sir.

14 Q And when was he there?

15 A All of them was there before I left.

16 Q Okay.

17 A By the time I called him back to say we wanted to go
18 to the party, they had done left before we got there.

19 Q Okay. So you got there earlier.

20 A Yes.

21 Q And when you got there around 12:00 o'clock?

22 A Yes, sir.

23 Q Dominick, Brandon Greene ---

24 A No, Brandon Greene came later.

25 Q Brandon came later. What time did he come?

1 **A** That must be after he got off from work.

2 **Q** What time?

3 **A** It must have been probably around about 4:00.

4 **Q** Okay. About 4:00 o'clock he got there. Josh
5 Habersham was there.

6 **A** And Bernard was there.

7 **Q** Bernard was there.

8 **A** Yes, sir.

9 **Q** Okay. And Keith King.

10 **A** Keith King.

11 **Q** Okay. Tell the ladies and gentlemen on the jury who
12 shot you.

13 **A** Brandon Greene.

14 **Q** Do you see him in the courtroom?

15 **A** Yes, sir.

16 **Q** I can't hear you.

17 **A** Yes, sir.

18 **Q** Where is he?

19 **A** Right there.

20 **Q** Describe what he's wearing.

21 **A** Brown church -- brown suit and some glasses.

22 **Q** Okay. That's this fellow I'm now putting my hand on
23 his shoulder?

24 **A** Yes, sir.

25 **MR. MURDAUGH:** Judge, just one second, sir?

1 **THE COURT:** Certainly.

2 **Q** One thing I neglected to ask you. You said that you
3 were shot in the abdomen.

4 **A** Yes, sir.

5 **Q** What happened to the bullet? Did it come out?

6 **A** It's still in my leg. I'm walking with it.

7 **Q** Okay. It's still in your body.

8 **A** Yes, sir.

9 **Q** Okay. Thank you. Answer any questions Mr. Gipson
10 may have.

11 **THE COURT:** You may cross-examine.

12 **MR. GIPSON:** Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. GIPSON:

15 **Q** Good afternoon. And if you would, I'm just going to
16 ask you to speak up just a little bit.

17 **A** Yes, sir.

18 **Q** And I'm going to ask you a series of questions, and
19 if you don't understand the question, you can ask me to
20 repeat it. I'm not trying to trick you or anything like
21 that. If you don't understand the question, I will repeat
22 it. But if you would, answer the question yes or no, then
23 you'll have an opportunity to explain your answer, if you
24 choose to. All right? Is that fair enough?

25 **A** Yes, sir.

1 Q And one thing, if you say uh-huh or uh-uh, it can be
2 difficult for the court reporter to pick up. So if I ask
3 you is that a yes or a no, I'm just doing that for
4 clarification for the record. Is that fair enough?

5 A Yes, sir.

6 Q All right. Now you just testified just a couple
7 moments ago when Mr. Murdaugh asked you a few questions,
8 and you told the jury a good bit of stuff; didn't you?

9 A Yes, sir, I did.

10 Q Okay. I just want to show you something, and just
11 tell us if you recognize this.

12 A Yes, sir.

13 Q May I have it back one second, please? Thank you.

14 And can you tell us generally what this is, without
15 getting into the content of it, that I just showed you?

16 A Yes, sir.

17 Q Okay. What is this?

18 A A statement.

19 Q Okay. Could you speak into the microphone?

20 A A statement.

21 Q Okay. And what type of statement is it? Is it a
22 statement that you gave?

23 A Yes, sir.

24 Q And a statement that you gave to the Hampton County
25 Police Department, excuse me, Sheriff's Department;

1 correct?

2 **A** Yes, sir.

3 **Q** And if would look at that one more time, it looks
4 like Lieutenant Perry Singleton witnessed that statement;
5 is that correct?

6 **A** Yes, sir.

7 **Q** Okay. May I have that back for one moment, please?

8 **MR. GIPSON:** Your Honor, may I have this marked for
9 ID purposes, please?

10 **THE COURT:** Yes, sir.

11 **MR. GIPSON:** Thank you.

12 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
13 identification only.)

14 **Q** Now it looks like you gave a statement to Lieutenant
15 Perry Singleton; correct?

16 **A** Yes, sir.

17 **Q** All right. Would you take a look at that? Take a
18 moment to refamiliarize yourself with that.

19 **MR. MURDAUGH:** I have no objection to him introducing
20 the statement, Your Honor.

21 **THE COURT:** No, sir. Thank you very much. It hasn't
22 been offered yet, but thank you, sir.

23 **MR. GIPSON:** Thank you.

24 **Q** Have you had enough time to look at it, sir?

25 **A** Yes, sir.

CROSS-EXAMINATION OF ANTHONY BADGER BY MR. GIPSON

104

1 Q All right. Now can you tell the jury where in here
2 you talk about Keith King and a gun being pulled or
3 attempted to be pulled on Keith King?

4 A No, sir.

5 Q Okay. It's not in there, is it?

6 A No, sir.

7 Q Okay. Can you tell the jury where in this entire
8 altercation about being hit with the brick and a gun being
9 pulled from the car and all that stuff is in there? It's
10 not in any place in this statement that you gave; is it?

11 A No, sir.

12 Q It's not in there; is it?

13 A No, sir.

14 Q All right. Now what time did you say this incident
15 with Keith King and all occurred that's not in this
16 statement that you gave?

17 A That happened at about 5:30 or 6:00 o'clock.

18 Q Okay. And where did all of this take place?

19 A In Dominick's backyard.

20 Q Okay. In Dominick's backyard. All right. So
21 present at that point in time there was Keith King;
22 correct?

23 A Yes, sir.

24 Q And he's what relation to you?

25 A Stepfather.

- 1 Q Okay. So your stepfather. He's about how old?
- 2 A About forty-two, forty-three.
- 3 Q Okay. So he was there. Joshua Habersham was there;
- 4 correct?
- 5 A Yes, sir.
- 6 Q And what relationship is he to you?
- 7 A Nothing.
- 8 Q Okay. Good friend of yours?
- 9 A Yes.
- 10 Q Y'all have been hanging out together for a long time;
- 11 right?
- 12 A Yes, sir.
- 13 Q Good friends.
- 14 A Yes, sir.
- 15 Q And let's see. So we have Keith King, Joshua
- 16 Habersham, and your brother, Dominick was there; correct?
- 17 A Yes, sir.
- 18 Q Bernard Badger was there; correct?
- 19 A Yes, sir.
- 20 Q Your brother as well; correct?
- 21 A Yes, sir.
- 22 Q All right. And he's about how old?
- 23 A Bernard?
- 24 Q Yes, sir.
- 25 A Bernard is about twenty-three now.

1 Q Okay. So he was about twenty or so back then?

2 A Oh, yes, sir. About nineteen or twenty then.

3 Q Okay. Okay. And it's your testimony that at around
4 5:30 or so that Brandon Greene pulled a gun on him on your
5 family property or said he was going to pull a gun, and
6 y'all saw this; right?

7 A Yes, sir.

8 Q Okay. So after -- hold on, was Dexter Bozeman there,
9 too?

10 A No, sir, not at the time.

11 Q All right. So all of this goes down, and you never
12 asked him to leave?

13 A Well, I couldn't say. It wasn't my yard. I had told
14 my brother prior to the time to keep him out of the yard.

15 Q Okay. This particular day, it was cool after a
16 couple of minutes, and y'all just kept drinking and
17 hanging out.

18 A Yes, sir.

19 Q And it was okay for this man to try to pull a gun on
20 your stepfather, and then all of a sudden everybody is
21 just okay, just laughing it up and drinking some more;
22 right?

23 A Yes, sir.

24 Q Okay. And, again, there's nothing that's referenced
25 at any point in time in this statement; correct?

- 1 **A** Yes, sir.
- 2 **Q** Okay. Now you had been drinking too that day; right?
- 3 **A** Yes, sir.
- 4 **Q** And y'all had a bunch of Ice House; didn't you?
- 5 **A** Yes, sir.
- 6 **Q** And had a couple of cases of twenty-four packs of Ice
- 7 House; right?
- 8 **A** Yes, sir.
- 9 **Q** And you had several of them?
- 10 **A** Yes, sir.
- 11 **Q** Okay. And Joshua had a few?
- 12 **A** He don't drink beer.
- 13 **Q** Okay. Well, what was he drinking then?
- 14 **A** He drank liquor.
- 15 **Q** Okay. Was your brother drinking at all?
- 16 **A** Which one?
- 17 **Q** Bernard and Dominick, were either one of them
- 18 drinking?
- 19 **A** Yes, sir. Me, Dominick, and Bernard.
- 20 **Q** And y'all started drinking around 12:00 o'clock that
- 21 day.
- 22 **A** Just me and Dominick.
- 23 **Q** Okay. Just you and Dominick.
- 24 **A** Yes, sir.
- 25 **Q** And then as the others came, they drank if they chose

1 to?

2 **A** Yes.

3 **Q** All right. Do you know anything about a bike chain
4 or a chain to a four wheeler?

5 **A** No, sir.

6 **Q** Okay. Now, what kind of car was your brother driving
7 at that point in time, or vehicle?

8 **A** Green suburban.

9 **Q** Okay. Does this look familiar?

10 **A** Yes, sir.

11 **MR. GIPSON:** For identification purposes, Your Honor,
12 I'd like to have this marked.

13 **THE COURT:** Defendant's Two, for ID only.

14 **MR. GIPSON:** Thank you, Your Honor.

15 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
16 identification only.)

17 **Q** And is this a fair and accurate representation of the
18 vehicle that y'all would have been a part of -- driving?

19 **A** Yes, sir.

20 **Q** Which is Defense Exhibit Two for ID purposes; right?

21 **A** Yes, sir.

22 **Q** And it's a green, Chevy Suburban; right?

23 **A** Yes, sir.

24 **Q** Okay. Now tell me about -- well, you all -- you went
25 away and came back for a while?

1 **A** He came and picked me up.

2 **Q** Okay. He came and picked you up back from the house.
3 When you got back, was it dark?

4 **A** Yes, sir.

5 **Q** Okay. And it gets pretty dark out there; doesn't it?

6 **A** No, we got a big light out in the backyard.

7 **Q** Okay. So that light lights up the entire yard?

8 **A** Yes, sir.

9 **Q** Okay. Does this ring a bell to you with that yard?

10 **A** Yes, sir.

11 **Q** Okay. What about that?

12 **A** Yes, sir.

13 **Q** Okay.

14 **MR. GIPSON:** May I mark them for identification, Your
15 Honor?

16 **THE COURT:** Defendant's Three and Four for ID only.

17 **MR. GIPSON:** Thank you, Your Honor.

18 (WHEREUPON, Defendant's Exhibit No. 3 was marked for
19 identification only.)

20 (WHEREUPON, Defendant's Exhibit No. 4 was marked for
21 identification only.)

22 **Q** All right. Now, I'm going to hand this statement
23 back to you, which has been marked as Defense Exhibit One
24 in just a couple minutes. Now, isn't it true that in this
25 statement that you wrote, you mention that y'all were in

1 the backyard; correct?

2 A Yes, sir.

3 Q And that Brandon said that, you know, aren't you too
4 drunk or ain't you too drunk to go to this party; correct?

5 A Yes, sir.

6 Q And you said you started walking towards him; right?

7 A Yes, sir.

8 Q Okay. And walking towards him to do what?

9 A I was smoking me a Black and Mild.

10 Q Okay. Did you ever say to him that you would burn
11 him?

12 A No, sir. I didn't even have no gun.

13 Q What does burn mean?

14 A I don't even know what that means.

15 Q You -- well, I just asked did you say that you would
16 burn him?

17 And you said: No, sir. I don't have no gun.

18 Then I asked you what burn meant, and you said that
19 you don't know.

20 A Yes, sir.

21 Q You don't know what burn means?

22 A Yes, I do.

23 Q Okay. So what does burn mean?

24 A A gun, I guess.

25 Q Do what with a gun? What does burn mean? If you're

1 going to burn somebody, what does that mean?

2 A I don't know.

3 Q So you're telling us if somebody came up to you and
4 said they were going to burn you, you would take that as a
5 compliment?

6 A Yes, sir.

7 Q All right. So, let me ask you, what does burn and
8 gun have to do with one another, since when I asked you
9 the first time, you said burn -- you said ---

10 THE COURT: He's already said he can't answer the
11 question. He doesn't know.

12 MR. GIPSON: Okay.

13 THE COURT: So I'm not going to allow you to -- allow
14 you to ask the question under 602.

15 (WHEREUPON, THERE WERE SOUNDS FROM THE AUDIENCE IN
16 THE COURTROOM.)

17 THE COURT: All right. Let me instruct the audience.
18 We're not going to have anymore outbursts in this
19 courtroom. If you can't maintain proper decorum, you need
20 to leave, because any further outburst is going to result
21 in my dealing with you as soon as the jury goes out. So
22 keep that in mind, please.

23 Excuse me, Mr. Gipson.

24 MR. GIPSON: Yes, sir. Yes, sir.

25 Q You said you didn't have a gun.

CROSS-EXAMINATION OF ANTHONY BADGER BY MR. GIPSON

112

1 **A** (NO RESPONSE.)

2 **Q** I wasn't -- you didn't have a gun with you?

3 **A** No, sir.

4 **Q** Okay. Can you scoot up just a little bit so we can
5 hear you? So you didn't have a gun with you. Did any of
6 your friends have a gun with them, that you're aware of?

7 **A** No, sir.

8 **Q** Did Joshua Habersham have a gun, to your knowledge?

9 **A** No, sir.

10 **Q** Did Bernard have a gun, to your knowledge?

11 **A** No, sir.

12 **Q** Did you ask any of them for a gun that evening?

13 **A** No, sir.

14 **Q** Did you ask your brother for a shotgun that evening?

15 **A** No, sir.

16 **Q** Did you ask your guy, Joshua Habersham, for a gun
17 that evening?

18 **A** No, sir.

19 **Q** Did you, while you were by the trampoline, ever go to
20 him and motion for a gun that evening?

21 **A** No, sir.

22 **Q** Did you ever threaten Brandon Greene that evening?

23 **A** No, sir.

24 **Q** Did you ever tell him that you were going to burn him
25 that evening?

1 **A** No, sir.

2 **Q** Did you tell him that you were going to shoot him
3 that evening?

4 **A** No, sir.

5 **Q** Did you tell him you were going to beat his behind
6 that evening?

7 **A** No, sir.

8 **Q** Did you cuss him out that evening?

9 **A** No, sir.

10 **Q** Did you make any affirmative move towards him in any
11 way, shape, or form that evening?

12 **A** No, sir.

13 **Q** Okay. So when you said you walked towards him, what
14 is that?

15 **A** Sir?

16 **Q** You said you didn't make any moves towards him. Then
17 you said just now when I asked you that question, in your
18 statement, you said you started walking towards him.

19 **A** Okay. Yes, sir. I was walking back towards him, but
20 my brother's house is over here.

21 **Q** Uh-huh.

22 **A** I was -- I been walking back towards the house.

23 **Q** You said you were walking back towards him in your
24 statement.

25 **A** Okay. I had to pass him, sir.

CROSS-EXAMINATION OF ANTHONY BADGER BY MR. GIPSON

114

1 Q To do what?

2 A To go to my brother's -- to go to my brother's,
3 because I was about -- just about to go ask him if he was
4 ready to go.

5 Q Uh-hmm. Okay.

6 And so you didn't get a chance to ask him?

7 A No, sir.

8 Q Did you ever get a chance to go in the car and go
9 anywhere?

10 A No, sir.

11 Q You never made it to the car?

12 A No, sir.

13 Q Your brother didn't go to the car?

14 A No, sir.

15 Q Okay. If your brother never made it to the car, can
16 you explain how -- can you explain that photo at all that
17 I'm showing you as Defense Exhibit Number Two for ID
18 purposes?

19 THE COURT: No, sir. I'm not going to allow that.
20 That's not admitted.

21 MR. GIPSON: I'll submit it into evidence, Your
22 Honor.

23 THE COURT: You want to admit it?

24 MR. GIPSON: Yes, sir.

25 THE COURT: Then you can do so.

1 **MR. GIPSON:** I apologize, Your Honor.

2 **THE COURT:** That's all right. What exhibit number?

3 **MR. GIPSON:** This is two for identification purposes,
4 it was prior, but this will now be ---

5 **THE COURT:** Any objection?

6 **MR. MURDAUGH:** No objection, sir.

7 **THE COURT:** Without objection, Defendant's Two is
8 admitted.

9 (WHEREUPON, Defendant's Exhibit No. 2 was admitted
10 into evidence.)

11 **Q** You said that you never made it to the car and never
12 got in the car, any of those types of things. Can you
13 explain why those doors to that car are open?

14 **A** Yes, sir.

15 **Q** Okay.

16 **A** Because when we got in the yard, we opened the doors
17 to go to the party.

18 **Q** Okay. And that's it?

19 **A** Yes, sir.

20 **Q** Okay. Fair enough.

21 Now, at some point in time, did you ever chase Mr.
22 Greene?

23 **A** No, sir.

24 **Q** Okay. And you never came at him to try to hurt him
25 in any way, shape, or form?

1 **A** No, sir.

2 **Q** Did you ever tell him you wanted to fight him, box
3 him, wrestle him?

4 **A** No, sir.

5 **Q** Slam him?

6 **A** No, sir.

7 **Q** Beat him up?

8 **A** No, sir.

9 **Q** Never at any point in time?

10 **A** No, sir.

11 **Q** Okay. Now, after the shooting occurred, you went
12 over directly to Mr. Fennell's house; correct?

13 **A** Yes, sir.

14 **Q** All right. And at some point in time, you were
15 transported to the hospital.

16 **A** Yes, sir.

17 **Q** All right. Now when you -- at the hospital, did you
18 have a chance to visit with family members after the
19 operation?

20 **A** I was in a coma for a while, sir.

21 **Q** But after the operation, after you came to, did you
22 have a chance to visit with people?

23 **A** Yes, sir.

24 **Q** Okay. Mr. Habersham?

25 **A** No, sir.

1 Q Did he come to see you? What about -- Bernard came
2 to see you?

3 A Yes, sir.

4 Q Keith King?

5 A Yes, sir.

6 Q Dexter Bozeman?

7 A No, sir.

8 Q Okay. And you discussed some of the things that
9 happened with them at that time; didn't you?

10 A Sir?

11 Q Some of the things that happened that evening, you
12 discussed some of those things at that point in time;
13 didn't you?

14 A Mmm, no, sir.

15 Q Never?

16 A No, sir.

17 Q Okay. Have you discussed this matter with them, your
18 testimony, or what you wrote, what they wrote, between the
19 time that you entered the hospital until this point in
20 time?

21 A No, sir.

22 Q Never? You never talked about it at all?

23 A No, sir.

24 Q With anybody. And you've met with the solicitor's
25 office multiple times; haven't you?

1 **A** Yes, sir.

2 **Q** And they were there some of those times, too, weren't
3 they?

4 **A** Yes, sir.

5 **Q** And you all never talked about this together?

6 **A** I talked about it sometimes to the solicitor, but
7 other people, no, sir.

8 **Q** Okay. Were you drunk that night?

9 **A** Yes, sir, I was buzzing.

10 **Q** Okay. Now what's the difference between drunk and
11 buzzing?

12 **A** You got a buzz, that's a difference between being
13 drunk and buzzing.

14 **Q** And what is that difference? Can you kind of explain
15 that? Is buzzing higher than drunk or lower than drunk?

16 **A** Lower.

17 **Q** Okay. That just means you were feeling good.

18 **A** Yes, sir.

19 **Q** Okay. Having a good time; correct?

20 **A** Yes, sir.

21 **Q** Okay. Was there ever any point in time where you
22 would consider yourself to be out-of-control?

23 **A** No, sir.

24 **Q** Acting crazy?

25 **A** No, sir.

1 Q Any -- acting -- threatening people?

2 A No, sir.

3 Q Any of that kind of stuff? Never?

4 A No, sir.

5 Q All right. When you got ready to approach Brandon,
6 were you -- what were you saying? You said he call you a
7 B-I-T-C-H?

8 A Yes, sir.

9 Q And you just decided to approach him and talk to him?
10 I mean, what were you saying to him at that point in time?

11 A I just told him he couldn't tell me where I couldn't
12 go at. That's all I said.

13 Q And he pulled out a gun and shot you?

14 A Yes, sir.

15 Q Now isn't it true that when you approached him, you
16 approached him on more than one occasion that night?

17 A No, sir.

18 Q To try to fight with him.

19 A No, sir.

20 Q Isn't it true that Dexter and Dominick tried to pull
21 you away on multiple occasions?

22 A No, sir.

23 Q Okay. Isn't it true that they tried to pull you away
24 and they tried to usher you to the car, but you wanted to
25 fight with Brandon?

1 **A** No, sir.

2 **Q** Okay. And prior to that incident where you were
3 shot, were any other gunshots fired out there?

4 **A** No, sir.

5 **MR. GIPSON:** I ask the Court's indulgence for one
6 moment, Your Honor?

7 **THE COURT:** Certainly.

8 **Q** It's your testimony that you did not have a gun?

9 **A** Yes, sir.

10 **Q** And that you did not get a gun from anyone that
11 evening?

12 **A** No, sir.

13 **Q** Okay. Do you ever remember a gunshot residue test
14 being done on you?

15 **A** No, sir.

16 **Q** Do you know what that is?

17 **A** Yes, sir.

18 **Q** Okay. Tell the jury what that is.

19 **A** That's where they take them little things and pat
20 your hands and see if there's any residue on your hands.

21 **Q** All right. And let me ask you this. Have you ever
22 told anybody that you are in a gang of any sort?

23 **A** No, sir.

24 **Q** Okay. Have you ever told anybody that you're a
25 member of the Folk Nation?

1 **A** No, sir.

2 **Q** Gangster Disciples?

3 **A** No, sir.

4 **Q** The Crypts, Bloods, any of those?

5 **A** No, sir.

6 **Q** Never told anybody those things?

7 **A** No, sir.

8 **Q** Law enforcement or otherwise?

9 **A** No, sir.

10 **Q** Okay.

11 **MR. GIPSON:** Court's indulgence, Your Honor?

12 **THE COURT:** Yes, sir.

13 **MR. GIPSON:** That's all my questions, Your Honor.

14 **THE COURT:** Redirect?

15 REDIRECT EXAMINATION

16 BY MR. MURDAUGH:

17 **Q** A question was asked you if you ever told anybody
18 that you were a member of, I assume, gangs?

19 **A** Yes, sir.

20 **Q** Are you?

21 **A** No, sir. I just told him. No, sir.

22 **Q** He asked you if you told anybody that.

23 **A** Yes, sir.

24 **Q** I'm asking you, are you a member of a gang?

25 **A** No, sir.

REDIRECT EXAMINATION OF ANTHONY BADGER BY MR. MURDAUGH

122

1 Q Okay. Thank you, Anthony.

2 MR. MURDAUGH: I have no further questions.

3 THE COURT: Recross?

4 MR. GIPSON: No, sir.

5 THE COURT: Thank you, sir. You may come down.

6 MR. MURDAUGH: I call Dexter ---

7 THE COURT: Wait just a second, Solicitor.

8 Ladies and gentlemen, at this point, we'll take a
9 break for about ten, fifteen minutes. I'll let you go to
10 your jury room. Do not begin your deliberations or
11 discuss the case among yourselves. Thank you.

12 Everyone else remain seated until the jury leaves,
13 please.

14 (SEPTEMBER 4, 2012, 4:29 P.M., WHEREUPON, THE JURY
15 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
16 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

17 THE COURT: Ladies and gentlemen, thank you very
18 much, and I appreciate and understand the emotions that
19 are in this room. I understand the feelings that everyone
20 has, but let me explain to you that I have a
21 responsibility to maintain proper decorum in this
22 courtroom, and I will do so. And this is going to be a
23 dignified proceeding, and anyone that cannot comply with
24 that, I understand that. I'm a human being, and I
25 understand how you can feel, but the best thing for you to

1 do is to stay out of the courtroom, because if you stay in
2 here, you're going to observe that.

3 And if you don't observe that, the Court will tell
4 you that is direct contempt of court. I can punish you up
5 to a year in jail. And I will punish anyone who violates
6 that order. So please understand that. And I appreciate
7 your complying with the Court's instruction.

8 Thank you. We'll be at ease for about ten minutes.

9 (WHEREUPON, A BREAK WAS TAKEN IN THIS CASE.

10 THEREAFTER, AT 4:37 P.M., THE FOLLOWING PROCEEDINGS WERE
11 HELD ON THE RECORD, OUT OF THE PRESENCE OF THE JURY:)

12 **THE COURT:** All right. Let the record reflect Mr.
13 Greene is present.

14 Is the State ready to continue?

15 **MR. MURDAUGH:** Yes, sir.

16 **THE COURT:** Is the defense ready?

17 **MR. GIPSON:** Yes, sir.

18 **THE COURT:** Let's bring in our jury, please.

19 (SEPTEMBER 4, 2012, 4:38 P.M., WHEREUPON, THE JURY
20 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
21 WERE HELD IN THEIR PRESENCE.)

22 **THE COURT:** Thank you very much, ladies and
23 gentlemen. We're ready to continue.

24 Solicitor, you may call your next witness.

25 **MR. MURDAUGH:** Dexter Bozeman.

DIRECT EXAMINATION OF DEXTER BOZEMAN BY MR. MURDAUGH

124

1 DEXTER BOZEMAN, after being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MURDAUGH:

5 Q Your name is Dexter Bozeman?

6 A Yes, sir.

7 Q If you will, pull that microphone -- help him,
8 please.

9 A Yes, sir.

10 Q Get a little tiny bit closer to it, please. What's
11 your name?

12 A Dexter Bozeman.

13 Q Where do you live, Dexter?

14 A Right now I live in North Carolina.

15 MR. MURDAUGH: Can y'all hear him?

16 THE COURT: He needs to pull up just a little bit.

17 MR. MURDAUGH: Just a little bit more.

18 THE COURT: Pull it down.

19 A I live in North Carolina right now.

20 Q Okay. Let's start over. What's your name?

21 A Dexter Bozeman.

22 Q Where do you live?

23 A In North Carolina.

24 Q What -- what do you do in North Carolina?

25 A I live there. I mean, I work.

1 Q You work and live there?

2 A Yes.

3 Q Okay. How long have you been in -- I believe you're
4 in Charlotte; are you not?

5 A About three years.

6 Q Okay. Dexter, do you know Tony Badger?

7 A Yes.

8 Q Dominick?

9 A Yes.

10 Q Brandon Greene?

11 A Yes.

12 Q Were you at Dominick's house on October the 2nd,
13 2009?

14 A Yes.

15 Q Please talk into that microphone so everybody can
16 hear everything you say clearly, and talk as loudly as I'm
17 talking. Okay?

18 A Yes.

19 Q Were you at Dominick's house?

20 A Yes, sir.

21 Q Okay. What were you doing there?

22 A Just going around -- just going around seeing
23 everybody. Just chilling out for a little while.

24 Q Okay. What time did you get to Dominick's house?

25 A Probably about 4:00 o'clock.

DIRECT EXAMINATION OF DEXTER BOZEMAN BY MR. MURDAUGH

126

1 Q Okay. When you got there, who else was there?

2 A Uh, me and Tony, Mr. King, Josh, Bernard, and um I
3 think that's about it.

4 Q Okay. Was Brandon Greene there?

5 A Brandon came -- he came later, probably around about
6 6:00 o'clock.

7 Q Okay. And after he got there, had anybody else come
8 up?

9 A No.

10 Q Okay. Tell these ladies and gentlemen on the jury
11 what happened there that day, that night.

12 A I got there about 4:00 o'clock in the afternoon. Me
13 and Tony, Dominick, Mr. King, Josh and Bernard, we was
14 just chilling, drinking, and having a good time.

15 I'd say around about 6:00 o'clock, Brandon Greene
16 came over. He pulled up and got out the car, and we were
17 having a good time, whatever. Everybody ---

18 Q I'm sorry? He what? You said he pulled up and what?

19 A Got out the car.

20 Q Oh, okay.

21 A Basically, he was chilling with us, having -- having
22 a good time.

23 And Mr. King had left, because he was going to get
24 something to eat.

25 And after that happened, Bernard and Josh, they left.

1 They left, too. So right now, it's me, Tony, and Dominick
2 and Brandon.

3 And Tony was like um: Y'all want to go to the party,
4 go to a party tonight?

5 And I said: No.

6 I said: No, because I'm going home.

7 And the next thing I know, Brandon said something to
8 Dominick, been saying like: I don't want to go out there
9 and shoot somebody over your brother, or something like
10 that.

11 Then Tony turned around and was like: Man, F that.
12 F that.

13 You know, and the next thing I know, they
14 face-to-face. So me and Dominick, we're trying -- we was
15 trying to break them up.

16 So I was like -- I was like: Well, just now we was
17 having a good time. What y'all arguing about now?

18 And um Tony um -- Tony said um: I see you got -- I
19 see you got a .45.

20 So when he said that, I looked down. I seen Brandon
21 with a gun on his side. I mean, he had it in his hand. I
22 told Brandon ---

23 Q Who had it in his hand?

24 A Brandon.

25 I told Brandon: Put the gun down.

DIRECT EXAMINATION OF DEXTER BOZEMAN BY MR. MURDAUGH

128

1 I told him he don't need it. And I told Tony that um
2 Brandon -- Brandon not going to shoot you with the gun.

3 So Tony was like: Well, if you're going to use it,
4 make sure you use it.

5 That's when Brandon had shot the gun twice on his
6 side. The third shot hit Tony.

7 When the third shot hit Tony, Tony left and went over
8 to Fennell house, the next door neighbor house. Then
9 after that, I ran. I ran behind the Trailblazer behind
10 the house.

11 Something tell me to stop, and when I stopped, I
12 looked at Dominick and Brandon. Dominick had lost it,
13 because Dominick was like: Why you shoot my brother like
14 that? Why you shoot my brother?

15 So Dominick, he was trying to get to Brandon, and
16 then Brandon had pulled out the gun and tried to, you
17 know, put -- put it out like that to try to scare him.
18 When he did that, Dominick jumped back, took his shirt off
19 and came back forward and tried to get to him.

20 He was like -- he was like um -- he said Mother -- he
21 said: MF, I ain't scared of no bullet.

22 Like that. That's when Brandon had shot him twice,
23 like boom, boom.

24 After that, I ran home. As soon as I got home, he
25 called me -- Brandon had called me on my cellphone and

1 told me not to say nothing. So after that, I hear an
2 ambulance and the police coming, so I came out there and
3 made that statement.

4 Q Okay, sir. Let me ask you a question. Going back to
5 when you say that Bernard Greene -- I mean, Brandon Greene
6 shot Tony, when he shot twice, shot two times without
7 hitting him, ---

8 A Right.

9 Q --- did -- did Tony back up?

10 A No, Tony -- Tony stayed, was still standing there.

11 Q He didn't move?

12 A Uh-uh.

13 Q Did he try to grab the gun?

14 A Nope. He didn't move at all.

15 Q He was just standing there with his hands at his
16 side?

17 A Yes.

18 Q Huh?

19 A He was just standing there.

20 Q And he shot him in the stomach?

21 A Yes.

22 Q Okay. Let's go to when Brandon Greene shot Dominick.
23 Dominick, he pulled a gun on him, and he backed off you
24 said?

25 A Dominick jumped back ---

DIRECT EXAMINATION OF DEXTER BOZEMAN BY MR. MURDAUGH

130

1 Q Huh?

2 A --- and took his shirt off.

3 Q He went backwards. How far back from him did he go?

4 A Not too far back. Just a little bit. Like -- like
5 maybe he was trying to do like -- trying to scare him,
6 trying to scare him off.

7 Q Uh-huh.

8 A So that's when -- that's when Dominick had jumped
9 back. He took his shirt off. He was like: I ain't
10 scared of no bullet, all this and that.

11 After he said that, that's when Brandon had shot him
12 twice.

13 Q Okay. At the time the shootings took place, did they
14 happen at about the same place in the yard?

15 A Yes.

16 Q Huh?

17 A Yes.

18 Q How close was that to Brandon Greene's car?

19 A It was close, but like behind the car.

20 Q I'm sorry? What?

21 A Behind the car. It was close.

22 Q So it was close to the car?

23 A Yes.

24 Q Did you see an incident that occurred earlier that
25 afternoon between ---

CROSS-EXAMINATION OF DEXTER BOZEMAN BY MR. GIPSON

131

1 **MR. GIPSON:** Object to leading, Your Honor.

2 **THE COURT:** I haven't heard the question yet.

3 **Q** --- between Brandon Greene and Keith King?

4 **THE COURT:** I overrule the objection.

5 **A** Uh, I don't know about that.

6 **Q** Okay. So you didn't see it.

7 **A** No.

8 **Q** Okay. Tell the ladies and gentlemen on the jury,
9 please, the names of everybody that was there that night
10 with a gun.

11 **A** Say what now?

12 **Q** Tell these ladies and gentlemen on the jury everybody
13 that was there that night or that afternoon that had a
14 gun.

15 **A** Brandon had a gun that night.

16 **Q** Did anybody else there have a gun?

17 **A** Nobody.

18 **Q** Thank you. Answer any questions Mr. Gipson may have.

19 **THE COURT:** You may cross-examine.

20 **MR. GIPSON:** Court's indulgence?

21 **THE COURT:** Sure.

22 CROSS-EXAMINATION

23 **BY MR. GIPSON:**

24 **Q** Good afternoon, Mr. Bozeman. Good afternoon, sir.

25 You gave a statement in this case; didn't you?

1 **A** Yes.

2 **Q** And you gave it to the police, the Hampton County
3 Sheriff's Department; didn't you?

4 **A** Right.

5 **Q** You gave it to them very soon after this incident;
6 didn't you?

7 **A** Right.

8 **Q** Was it a Deputy McCallister? Do you remember that?

9 **A** Who?

10 **Q** Deputy McCallister, a female officer who came to see
11 you.

12 **A** Yes.

13 **Q** Okay. And she recorded everything you said; didn't
14 she?

15 **A** Right.

16 **Q** All right. And she talked about -- and she recorded
17 it, and she even allowed you to make a statement that was
18 placed in writing; is that correct?

19 **A** Right.

20 **Q** Okay. Let me bring this to you. Take a look at
21 that, and let us know if that rings a bell, please.

22 **A** Okay.

23 **Q** It does?

24 **A** Okay.

25 **Q** Okay. Does that ring a bell to you? Do you remember

1 doing that?

2 **A** Everything happened so fast.

3 **Q** But do you remember writing that statement?

4 **A** Yeah, I remember writing -- well, I didn't write the
5 statement. She write the statement. She probably be
6 writing the statement everything I said.

7 **Q** So you said something a little bit different on the
8 recording?

9 **A** Right.

10 **Q** Okay. Did you authorize that particular officer to
11 actually write that for you?

12 **A** Yes.

13 **Q** And you signed it at the end; didn't you?

14 **A** Right.

15 **Q** Go ahead and -- well...

16 **MR. MURDAUGH:** I have no problem.

17 **MR. GIPSON:** Okay.

18 I'd like to mark this as a defense exhibit, Your
19 Honor.

20 **THE COURT:** Very well.

21 **MR. GIPSON:** Okay, and I'm going to enter it into
22 evidence also.

23 **THE COURT:** Defendant's what? Five?

24 **MR. GIPSON:** Defendant's Five, Your Honor.

25 **THE COURT:** Without objection, it's admitted.

1 MR. GIPSON: Okay.

2 (WHEREUPON, Defendant's Exhibit No. 5 was marked for
3 identification and received into evidence.)

4 Q How about publish that. Read that statement to the
5 jury, if you would, please, that you gave to the police
6 and tell them when you gave the statement also.

7 A I came over to Dominick's house around -- about 4:00
8 o'clock, and it was me, Tony -- Tony Badger, Mr. King. We
9 were drinking about -- no, we were drinking and having a
10 good time.

11 Brandon came over about 6:00. Another guy came over.
12 I don't know his name.

13 Tony -- Tony was telling us about a party and acting
14 crazy. Brandon didn't want to -- want Tony -- don't want
15 Tony to go to the party because he was already acting up.

16 Tony heard what Brandon was saying and said -- no,
17 Tony heard what Brandon said -- was saying. He said:
18 Fuck it.

19 And he got up -- got up in Brandon's face. And me
20 and Dominick was trying to break it -- up the fight.

21 Tony said something about seeing -- seeing Brandon's
22 gun. He said something about a .45.

23 Me and Dominick said: No, you're not going to go --
24 it's not going to be like that.

25 Brandon shot the gun -- shot two times, and the third

1 shot hit Tony. I ran over by the Trailblazer. Dominick
2 went crazy and asked Brandon why he shot Tony.

3 Dominick said he didn't give a fuck about no gun and
4 took his shirt off. That's when Brandon had pointed --
5 pointed the gun at him trying to scare him. Brandon shot
6 Dominick twice, and I ran home.

7 Q Could you tell the jury what acting -- well, let me
8 ask you that question first. Let me strike that.

9 You said that you may have said some different things
10 on the recording?

11 A I think so, yes.

12 Q Okay.

13 MR. GIPSON: Court's indulgence, Your Honor?

14 THE COURT: Certainly.

15 Q Now, you're stating, or you're telling this court
16 that you said something different. What different did you
17 say that's not in this statement that you said to the
18 police? What difference?

19 A Um what I said earlier when I was talking to him.

20 Q Uh-huh. All right. Well, what did you say earlier?
21 Tell me what you mean by that. I don't know what you mean
22 by that statement.

23 A I came over to Dominick's house at 4:00 o'clock. It
24 was me, Tony, Dominick, Mr. King, Josh, and Bernard.

25 Q Uh-huh.

1 **A** We was all -- we was all over there chilling and
2 drinking and having a good time. Brandon came over about
3 6:00 o'clock, and he was chilling with us and having a
4 good time.

5 **Q** Uh-huh.

6 **A** Mr. King left. Mr. King left, because he said he was
7 going to get something to eat.

8 After that, Bernard and Josh, they left. They left
9 too.

10 So now it's four of us. It's me, Dominick, Tony, and
11 Brandon.

12 Tony asked us: Do y'all want to go to the party?

13 And I said: No, because I'm going home.

14 And Brandon was like, well, was telling -- was
15 telling Dominick: Well, I don't want to shoot nobody over
16 Tony, because Tony was like man, F that. You know, F
17 that, you know, whatever, so ---

18 **Q** Okay. Well, I've got a question for you. Show us in
19 that statement that you authorized the sheriff's
20 department to write on your behalf where you say Brandon
21 said those things you just mentioned, about: I don't want
22 to shoot anybody over your brother.

23 Can you show us that in that statement?

24 **A** What?

25 **Q** Huh? Can you show us that in that statement? Is it

1 -- tell us where it is in that statement.

2 A No, it's not in there.

3 Q Did you tell the police that in the recorded
4 statement?

5 A Yes.

6 Q Okay. All right.

7 A I mean, I told -- I told -- I told them in the
8 statement here, too, but they didn't write it down like
9 they were supposed to.

10 Q Okay. So you're saying she wrote something different
11 than what you told her to write?

12 A Right.

13 Q All right. And what you meant to tell her, or what
14 you did tell her is that Brandon essentially threatened
15 him. You told her that; right?

16 A Brandon was threatening him?

17 Q Yes.

18 A I didn't tell her that, but I was saying that I
19 didn't know what they was arguing about.

20 Q Okay.

21 MR. GIPSON: Your Honor, I would like first of all to
22 mark this as Defense Exhibit ---

23 MR. MURDAUGH: Your Honor, please? I object, sir.

24 THE COURT: Well, he can mark it as a defense
25 exhibit.

1 **MR. MURDAUGH:** For ID, I have no problem.

2 **THE COURT:** I'm happy to hear from you, but it's
3 Defense Six, and you want to offer that?

4 (WHEREUPON, Defendant's Exhibit No. 6 was marked for
5 identification only.)

6 **MR. GIPSON:** I will at some point, Your Honor.

7 **THE COURT:** Okay.

8 **MR. GIPSON:** Yes, I will. Uh-huh.

9 **THE COURT:** All right. It's just marked at this
10 point.

11 **MR. GIPSON:** Okay.

12 **Q** Now, you gave a statement to the Hampton County
13 Sheriff's Department; didn't you?

14 **A** (NO RESPONSE.)

15 **Q** You did; right?

16 **A** Up here?

17 **Q** Yes, sir. Well, where ever it was. You gave a
18 statement to the Hampton County Sheriff's Department;
19 didn't you?

20 **A** Yes.

21 **Q** Okay. And at some point in time, they recorded a
22 statement of yours; didn't they?

23 **A** Right.

24 **Q** And you were aware that they were recording you;
25 weren't you?

1 **A** Right.

2 **Q** They told you they were recording you.

3 **A** Right.

4 **Q** Okay. And you were saying there's something
5 different that you told them during that statement and
6 it's not on this statement that was written on your
7 behalf; correct?

8 **A** Right.

9 **Q** All right. So you're saying this statement is not
10 correct; correct?

11 **A** Right.

12 **Q** Let me ask you this question for one moment. You
13 said that Tony was acting up. Tell me what that means,
14 acting crazy.

15 **A** I mean, everybody -- everybody was drinking.
16 Everybody's mind is different when you drink.

17 **Q** My question is, what does it mean when you say that
18 Tony was acting up?

19 **A** I mean, everybody -- I mean, just wilding out.
20 That's all.

21 **Q** What does wilding out mean?

22 **A** (NO RESPONSE.)

23 **Q** That's slang; isn't it?

24 **A** I mean, he was tripping out.

25 **Q** Okay. All right. So when you say wilding out,

1 tripping out, acting crazy, that means he was just acting
2 up and just doing crazy stuff; right?

3 A Right. Both of them.

4 Q I'm sorry?

5 A Right.

6 Q Right. And that's how he was acting at that point in
7 time; correct.

8 A Right.

9 Q And so when Brandon said: Don't you think you're a
10 little bit too drunk to go to that party, he started
11 acting up, tripping out, wilding out; right?

12 A Right.

13 Q To a point to where you felt it was necessary to come
14 between them; right?

15 A Right.

16 Q Okay. And so you came between them. Wasn't there a
17 point in time when Tony threatened Brandon?

18 A Well, he never really threatened him.

19 Q He never really threatened him?

20 A No.

21 Q What does that mean?

22 A I mean, ain't nobody -- I mean, he wouldn't try to --
23 he wasn't trying to jump on him. You know, even though me
24 and Dominick -- you know, they was just face-to-face.

25 Q Uh-huh.

- 1 **A** But me and Dominick just tried to break it up.
- 2 **Q** Okay. And Joshua Habersham was there, too?
- 3 **A** Who?
- 4 **Q** Joshua Habersham. Was he there? Was he out there
- 5 also?
- 6 **A** I mean, he already left.
- 7 **Q** Okay.
- 8 **A** He already left and had gone home.
- 9 **Q** At any point in time, did you hear him threaten, him
- 10 meaning Tony, threaten prior to Joshua Habersham leaving?
- 11 **A** Try to what?
- 12 **Q** Try to threaten Brandon Greene.
- 13 **A** No.
- 14 **Q** Okay. Did you ever hear anybody threaten to pull a
- 15 gun on Brandon?
- 16 **A** No.
- 17 **Q** Did you ever hear anybody ask for a gun so they could
- 18 use it on Brandon?
- 19 **A** No.
- 20 **Q** All right. Are you familiar with any gangs in the
- 21 area?
- 22 **A** No.
- 23 **Q** Are you familiar with any of the guys out there being
- 24 in gangs?
- 25 **A** No.

CROSS-EXAMINATION OF DEXTER BOZEMAN BY MR. GIPSON

142

1 Q Not Joshua Habersham?

2 A No.

3 Q Not Tony Badger?

4 A No.

5 Q Not Bernard Badger?

6 A No.

7 Q None of them are in gangs?

8 A Nobody.

9 Q Okay. That you're aware of. If they were in one,
10 would you know?

11 A Huh?

12 Q If they -- if any of those guys were in a gang, would
13 you know?

14 A No.

15 Q You wouldn't know?

16 A No.

17 Q Okay.

18 MR. GIPSON: Your Honor, I would like to offer
19 State's -- excuse me, Defendant's Exhibit Number Six.

20 THE COURT: Any objection?

21 MR. MURDAUGH: I couldn't hear what he said, sir.

22 THE COURT: He's offering the tape now.

23 MR. MURDAUGH: Objection, sir.

24 THE COURT: Based on what? What's the basis of your
25 objection?

1 **MR. MURDAUGH:** Based on he can ask him anything he
2 wants to, sir.

3 **THE COURT:** I'll allow it, subject to the objection.
4 It's admitted.

5 **MR. GIPSON:** Thank you, Your Honor.

6 (WHEREUPON, Defendant's Exhibit No. 6 was admitted
7 into evidence.)

8 **THE COURT:** Are you taking an exhibit with you?

9 **MR. GIPSON:** I'm sorry?

10 **THE COURT:** Are you taking an exhibit?

11 **MR. GIPSON:** Just the one. I won't leave with it. I
12 promise.

13 **THE COURT:** Okay. All right.

14 (WHEREUPON, DEFENDANT'S EXHIBIT NUMBER SIX WAS
15 PUBLISHED TO THE JURY. THEREAFTER, THE FOLLOWING
16 PROCEEDINGS WERE HELD ON THE RECORD:)

17 **Q** Did you hear that, Mr. Bozeman?

18 **A** Yes, I heard it.

19 **Q** That's what you told Deputy McCallister; correct?

20 **A** I heard some of it. I didn't hear all of it.

21 **Q** Okay. Why -- why weren't you able to hear all of it?

22 **THE COURT:** Mr. Gipson, we -- they heard it.

23 **MR. GIPSON:** Okay.

24 **THE COURT:** We know that there are some issues here.

25 **MR. GIPSON:** Yes, sir.

1 **THE COURT:** So let's move on to something else. It
2 speaks for itself, sir.

3 **MR. GIPSON:** Yes, sir. Thank you, Your Honor.

4 **Q** All right. Now how much had you had to drink that
5 night?

6 **A** How much to drink?

7 **Q** Yes, sir.

8 **A** Probably about two cases of beer.

9 **Q** Two cases of beer?

10 **A** Yes. Yes.

11 **Q** Okay. And you, personally, how much did you drink
12 out of those two cases?

13 **A** About three or four.

14 **Q** Okay. Only three or four?

15 **A** Yes.

16 **Q** Okay. And how were you when you got to meet with the
17 officer that night? Were you sober by that point?

18 **A** Yeah, I was good.

19 **Q** So you knew what you were talking about?

20 **A** Right.

21 **Q** Okay.

22 **MR. GIPSON:** That's all my questions, Your Honor.

23 **THE COURT:** Redirect, Solicitor?

24 REDIRECT EXAMINATION

25 **BY MR. MURDAUGH:**

1 Q Dexter, do you mind if I call you Dexter?

2 A Yes, sir.

3 Q Dexter, you said in your oral testimony, in your
4 written statement, Defense Exhibit Number Five, and in the
5 tape recording, Defendant's Exhibit Number Six, that you
6 and Dominick got -- tried to keep a fight from occurring;
7 is that correct?

8 A Right.

9 Q Okay. At the point when y'all tried to keep the
10 fight from occurring, did y'all have ahold of Tony?

11 A Had what?

12 Q Did you get between Tony and Brandon?

13 A Yes.

14 Q Huh?

15 A Yes. Yes, sir.

16 Q And that was to keep Tony from jumping on Brandon?

17 A That was to keep -- keep both of them from, you know,
18 from fighting.

19 Q Okay. And at that point, could Brandon have walked
20 away?

21 A No.

22 Q Why?

23 A Because he had a gun at his side.

24 Q I know he had the gun, but he couldn't have walked
25 away from that place?

1 **A** Nobody walked away.

2 **Q** No, I didn't ask you if he walked away. I said could
3 he have walked away when y'all got between them to keep
4 the fight from occurring?

5 **MR. GIPSON:** Your Honor, he's answered that.

6 **A** Yes.

7 **THE COURT:** No, sir. I overrule your objection.

8 **Q** Huh?

9 **A** Yes.

10 **Q** So he could have left?

11 **A** Right.

12 **Q** And if he had left, nothing would have happened to
13 him; would it.

14 **A** Right.

15 **MR. GIPSON:** Objection. Speculation.

16 **THE COURT:** Sustained.

17 **Q** If he had left, would anything have happened to him?

18 **THE COURT:** Sustained.

19 **A** No.

20 **THE COURT:** No, he's not going to answer the
21 question, Solicitor. I've sustained the objection. It's
22 speculation under 602.

23 **MR. MURDAUGH:** Okay.

24 **Q** Was there a possibility of a fight occurring when
25 y'all got between them?

1 **MR. GIPSON:** It's still speculation.

2 **THE COURT:** I'll allow that question. He's already
3 -- you've already covered that, Solicitor.

4 **MR. MURDAUGH:** I'll withdraw the question.

5 **THE COURT:** Thank you, sir.

6 **Q** How close did this altercation take place from
7 Brandon Greene's car?

8 **A** It was -- it was close right behind his car.

9 **Q** Excuse me?

10 **A** Behind the car. He was close.

11 **Q** Close enough to put your hand on it?

12 **A** Yes.

13 **Q** Okay.

14 **MR. MURDAUGH:** I have no further questions.

15 **THE COURT:** Recross?

16 **MR. GIPSON:** Court's indulgence very briefly?

17 **THE COURT:** All right.

18 **MR. GIPSON:** No questions, Your Honor.

19 **THE COURT:** Thank you.

20 You may step down, sir, Mr. Bozeman.

21 At this point, ladies and gentlemen -- you may step
22 down, sir.

23 At this point, we'll take a recess for the evening.

24 Do not begin your deliberations. Do not discuss this case
25 with anyone outside of the courtroom. Don't permit anyone

1 to talk with you about the case or talk about it in your
2 presence, and that includes anybody that might be at home
3 tonight when you return home.

4 I'm sure the first question they're going to ask is:
5 What are you doing? What's the case about?

6 You can't talk about it yet. If you do, you will
7 have violated your oath, because you will have started
8 your deliberations. You will be able to talk about it
9 when you finish your jury service, but right now, talk
10 about something else.

11 Have a good evening. I ask you to be in your jury
12 room by 9:30 in the morning. There's no need to call the
13 number. That doesn't apply to you. Just come straight to
14 the courthouse and to your jury room. Thank you.

15 (SEPTEMBER 4, 2012, 5:22 P.M., WHEREUPON, THE JURY
16 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
17 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

18 **THE COURT:** All right. Anything from the State
19 before we recess?

20 **MR. MURDAUGH:** No, sir.

21 **THE COURT:** Anything from the defendant before we
22 recess?

23 **MR. GIPSON:** And only briefly, Your Honor. I know
24 it's extremely premature at this point, but I'd just like
25 -- I'd ask the Court maybe tomorrow to give just -- to

1 explain my client's opportunity and his right to testify
2 so that he'll understand his Fifth Amendment right at some
3 point.

4 **THE COURT:** I'm not going to do that. I appreciate
5 it, Mr. Gipson. That's your job.

6 **MR. GIPSON:** Yes, sir.

7 **THE COURT:** I will talk with him when the State
8 rests.

9 **MR. GIPSON:** Yes, sir.

10 **THE COURT:** Thank you, sir.

11 **MR. GIPSON:** Okay. Thank you, Your Honor.

12 **THE COURT:** I'm sure you've done a wonderful job. I
13 have nothing but great respect for your abilities as an
14 attorney, and I'm sure he understands them fully.

15 **MR. GIPSON:** Thank you, Your Honor.

16 **THE COURT:** Uh-huh.

17 All right. We'll be at ease until in the morning at
18 9:30.

19 What's -- what's -- is the defendant out on bond?

20 **MR. MURDAUGH:** Yes, sir.

21 **THE COURT:** What's the State's position on that?

22 **MR. MURDAUGH:** If Your Honor please? Without the
23 bondsman saying that he'll -- saying that he doesn't mind
24 him staying out ---

25 **THE COURT:** Is he present? Is he here?

1 **MR. GIPSON:** He is not here, Your Honor. They are
2 from Rock Hill. He is on electronic monitoring and has
3 been.

4 I alerted them he is -- that we were starting trial
5 on Tuesday, and they did not tell me that they were not
6 willing to stay on the bond. I spoke directly with them.
7 But I have spoken with them, Your Honor, and he has been
8 on electronic monitoring.

9 **THE COURT:** Well, I understand that, but suppose the
10 bondsman says: I've delivered him to court.

11 **MR. GIPSON:** Yes, sir.

12 **THE COURT:** I'm not monitoring him anymore.

13 **MR. GIPSON:** Yes, sir.

14 **THE COURT:** That's my concern.

15 **MR. GIPSON:** I understand. I understand.

16 **THE COURT:** At this point, I'm going to ---

17 **MR. GIPSON:** Take him into custody?

18 **THE COURT:** After you talk to -- if the bondsman
19 gives me a statement -- gives me a statement of assurance
20 that he's continuing on electronic monitoring, I'll be
21 happy to ---

22 **MR. GIPSON:** Yes, sir.

23 **THE COURT:** --- to reconsider that, but at this
24 point, he's in custody.

25 **MR. GIPSON:** I understand. Would the Court require

1 that by him, rather him coming in person ---

2 **THE COURT:** No, if I get something in writing that's
3 signed by him that's sufficient that he acknowledges that
4 he has responsibility during the trial and will maintain
5 at all times until the jury has returned a verdict, then
6 I'll be happy to lift it.

7 **MR. GIPSON:** Thank you, Your Honor.

8 **THE COURT:** Thank you, sir.

9 **MR. GIPSON:** Yes, sir.

10 **THE COURT:** Thank you.

11 (WHEREUPON, THIS CASE WAS RECESSED AT 5:35 P.M.

12 THEREAFTER, ON SEPTEMBER 5, 2012, AT 9:35 A.M., THE
13 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT OF THE
14 PRESENCE OF THE JURY:)

15 **THE COURT:** Good morning.

16 Is the State ready to proceed?

17 **MR. MURDAUGH:** The State is ready to proceed. And if
18 Your Honor please? During the recess, Mr. Gipson and I
19 have entered into a stipulation.

20 **THE COURT:** Okay. Hold on just one second. Let me
21 put something on the record.

22 **MR. MURDAUGH:** Yes, sir.

23 **THE COURT:** I appreciate it.

24 Let the record reflect Mr. Greene is present. Good
25 morning, Mr. Greene.

1 **DEFENDANT, MR. GREENE:** Good morning.

2 **THE COURT:** All right. I'm sorry.

3 **MR. MURDAUGH:** If Your Honor please? The
4 stipulation, as I understand it, is that State's Exhibits
5 Ten, Eleven, -- Nine, Ten, and Eleven, are containers
6 containing spent cartridges from the scene that were
7 collected by Agent Fellers, and she will testify to that,
8 sir.

9 She took them to S.L.E.D. S.L.E.D. gave them to Dan
10 DeFreese to analyze.

11 **THE COURT:** All right.

12 Mr. Gipson, is that a correct statement?

13 **MR. GIPSON:** That is correct, Your Honor.

14 **THE COURT:** And that is stipulated to as to the chain
15 of custody?

16 **MR. GIPSON:** Yes, sir. That's correct.

17 **THE COURT:** Okay. Thank you, sir.

18 Assuming the person can identify them, then there
19 will not be an objection to the admissibility of those
20 documents -- those items.

21 **MR. GIPSON:** That is correct.

22 **THE COURT:** Very well. Thank you, sir.

23 **MR. MURDAUGH:** Okay. And if Your Honor please?
24 Exhibits Twelve and Thirteen were projectiles taken from
25 the dead body of Dominick Badger by Dr. Presnell, given to

1 Jimmy Freeman. Jimmy Freeman gave them to Ms. Fellers.
2 Ms. Fellers took them to S.I.E.D., and Dan DeFreese
3 examined them.

4 THE COURT: Very well. Dr. Presnell will identify
5 those two items?

6 MR. MURDAUGH: Yes, sir. The reason we're doing this
7 ---

8 THE COURT: Oh, I understand. I understand what it
9 does. It shortens -- you don't have to bring the chain of
10 custody witnesses.

11 MR. MURDAUGH: That's right. It eliminates about
12 seven or eight witnesses.

13 THE COURT: That's fine.

14 Is that correct, Mr. Gipson?

15 MR. GIPSON: That is correct, Your Honor.

16 THE COURT: And assuming Dr. Presnell identifies
17 those items, then there will not be any objection to them?

18 MR. GIPSON: That's correct.

19 THE COURT: Thank you so much, sir.

20 MR. GIPSON: Thank you.

21 THE COURT: Thank you, Solicitor. I appreciate that
22 very much.

23 MR. MURDAUGH: With that, sir, we are ready to
24 proceed.

25 THE COURT: Is the defendant ready to proceed, Mr.

DIRECT EXAMINATION OF DONNA SMITH BY MS. LEGETTE

154

1 Gipson?

2 **MR. GIPSON:** We are, Your Honor. Yes, sir.

3 **THE COURT:** Thank you.

4 Let's bring in our jury, please.

5 (SEPTEMBER 5, 2002, 9:38 A.M., WHEREUPON, THE JURY
6 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
7 WERE HELD IN THEIR PRESENCE.)

8 **THE COURT:** Good morning, ladies and gentlemen. Hope
9 you had a restful evening. We're ready to continue now in
10 the matter that we started yesterday, and I'd ask you to
11 give your attention, please, to the next witness.

12 Solicitor, good morning. You may call your first
13 witness for today.

14 **MS. LEGETTE:** Good morning, Your Honor.

15 **THE COURT:** Good morning, Ms. Legette.

16 **MS. LEGETTE:** May it please the Court?

17 **THE COURT:** Yes, ma'am.

18 **MS. LEGETTE:** The State calls Ms. Donna Smith.

19 DONNA L. SMITH, after being duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MS. LEGETTE:

23 **Q** Good morning, ma'am.

24 **A** Good morning.

25 **Q** I need you to speak up, please, into the microphone

1 so that we can all hear you. Okay?

2 **THE COURT:** You can pull it down.

3 **Q** Okay. What's your full name, please?

4 **A** Donna Leigh Smith.

5 **Q** Okay. And, Ms. Smith, spell your last name for us,
6 please.

7 **A** S-M-I-T-H.

8 **Q** Now, Ms. Smith, where do you work, ma'am?

9 **A** Hampton County E.M.S.

10 **Q** And how long have you worked at the Hampton County
11 E.M.S.?

12 **A** Almost five years.

13 **Q** And how long have you been in the field of E.M.S.?

14 **A** Fourteen years.

15 **Q** And what does E.M.S. stand for?

16 **A** Emergency Medical Services.

17 **Q** And as part of the Emergency Medical Services, do you
18 have a specific title?

19 **A** I'm an Intermediate.

20 **Q** So you're an E.M.T. Intermediate?

21 **A** Yes, ma'am.

22 **Q** Okay. And do you hold any other positions in Hampton
23 County?

24 **A** Um, not in Hampton County. I am a firefighter, too,
25 but I got that at another place of -- job.

1 Q So you're an E.M.T. Intermediate and you're a
2 firefighter?

3 A Yes, ma'am.

4 Q Okay. Now, Ms. Smith, tell us about your education
5 and experience that it takes to become an E.M.T.
6 Intermediate.

7 A I went to school in I think '98. It took about six
8 or eight months to get my Basic, and then a few years
9 later I went to Intermediate school.

10 Q And how long does Intermediate school last?

11 A Three to four months.

12 Q And during this period of time, did you have basic
13 classes with education, credits, and clinicals?

14 A Yes, ma'am. And then we have to do in-service every
15 month, too.

16 Q Now, how many levels of emergency medical services or
17 emergency medical technicians are there?

18 A There's Basic, Intermediate, and Paramedic.

19 Q Now, can you explain the difference between Basic,
20 Intermediate, and Paramedic?

21 A Basic is basic life support. You can splint,
22 bandage. You can put somebody on oxygen.

23 Q And what can the Intermediate do?

24 A Intermediate can start an I.V. and also can give some
25 drugs. And then a Paramedic is advanced life support.

1 They give different kind of cardiac drugs and, you know,
2 everything else that we can't do.

3 Q Okay. Now, Ms. Smith, you said that you've been in
4 the field of Emergency Medical Services for about fourteen
5 years.

6 A Yes, ma'am.

7 Q And during that period of time, where have you
8 worked, aside from Hampton County?

9 A Colleton County E.M.S. and Colleton County Fire
10 Rescue.

11 Q Now how many victims would you say you've treated
12 over the fourteen years that you've been in Emergency
13 Medical Services?

14 A Hundreds.

15 Q Okay. And how many of those victims have been
16 gunshot wounds, or have you seen gunshot wound patients
17 during that period of time?

18 A Yes, ma'am. At least ten or more, probably.

19 MS. LEGETTE: Your Honor, at this time I would offer
20 Ms. Donna Smith as an expert in the field of Emergency
21 Medical Services.

22 THE COURT: Care to examine her as to her
23 qualifications?

24 MR. GIPSON: I don't care to examine her, Your Honor.

25 THE COURT: All right. I'm not sure what opinion

1 she'll render, but she's certainly be able to testify as
2 to matters concerning E.M.S. and response and things of
3 that nature. Thank you.

4 **MS. LEGETTE:** Thank you, Your Honor.

5 **Q** Now, Ms. Smith, let's turn your attention to October
6 2nd, 2009. Do you recall that month?

7 **A** Yes, ma'am.

8 **Q** Or that night?

9 **A** Yes, ma'am.

10 **Q** Okay. And did you have an opportunity to respond to
11 a home on Tulifinny Road in Yemassee in Hampton County
12 that night?

13 **A** Yes, ma'am.

14 **Q** Can you please tell us what you found when you
15 arrived?

16 **A** We went to around the back of the house, and there
17 was a male victim laying on his side. And we discovered
18 he had a gunshot wound to the lower, right abdomen. At
19 that time, we removed his clothes and checked for an exit
20 wound. None was found.

21 We put him on a long spine board to protect, in case,
22 you know, the bullet could have hit his spine or anything
23 like that, you know, to protect his spine. And we loaded
24 him up in our ambulance, and I requested for advance life
25 support and also a helicopter to fly him out, because he

1 was a trauma patient.

2 Q Now, when you say a trauma patient, can you describe
3 for us what that means?

4 A We've got certain criteria that -- that we have for
5 somebody that we fly out, and one is a gunshot wound,
6 especially, you know, to the abdomen. That qualifies for
7 a trauma victim to fly them out.

8 Q Now, you said advance life support; can you explain
9 that to us?

10 A Um, the truck in Yemassee, it's usually just a Basic
11 and an Intermediate on it. So I requested my supervisor,
12 which was David Cook, he's the only Paramedic in the
13 county that night on that shift, to come and assist me.

14 Q Now, Ms. Smith, can you describe for us the -- first,
15 the patient's condition?

16 A He was very diaphoretic, which is real sweaty. He
17 was cool and clammy. He was combative. My opinion, he
18 was going into shock, due to where the gunshot, you know,
19 was in his belly.

20 His oxygen saturation, which is how much oxygen is in
21 the blood, was low. So I immediately applied oxygen with
22 a breathing mask, a full-face mask on his face, to give
23 him one hundred percent oxygen.

24 There really was minimal bleeding at the gun -- at
25 the site, but we did bandage that. He -- he kept

1 complaining of abdominal pain and pain to his left leg.

2 He kept stating that he couldn't move his left leg.

3 And like I say, he was real diaphoretic, sweating
4 real bad. He was complaining to being very hot.

5 Like I say, we put him on a backboard to secure him.
6 We were having trouble, you know, keeping him still and
7 all, because he was, you know, combative to us. And
8 that's a sign of shock, too.

9 I started an IV on him. We had to do several
10 attempts, because he kept pulling them out. And about
11 that time, we got to the landing zone, and David arrived
12 on the scene, the paramedic, David Cook, and assisted me.

13 Then he put him on a monitor. His vital signs were
14 -- his blood pressure was very low. His heart rate was
15 very elevated. That's signs of shock.

16 And we also noticed that his belly started getting
17 distended and rigid. That's a sign that there could be
18 bleeding in the abdomen.

19 And like I say, we did -- I did ask for a helicopter.
20 About that time, I think it was LifeNet, arrived on the
21 scene. And they did rapid sequence intubation, which they
22 give him some drugs to calm him down. And they did
23 intubate him, put a tube in to help him breathe through
24 his throat.

25 Q Okay. Ms. Smith, you told us a lot there. Thank

1 you.

2 Let me ask you this question, to educate us all.

3 What is shock? We've heard that term several times now.

4 What is shock?

5 A It's inadequate perfusion to your body.

6 Q And in layman's terms, kind of help us understand
7 what that means.

8 A Well, you -- like if you have a bleed in your stomach
9 or something, you're losing that blood in your abdomen,
10 and it's not getting to your vital organs. And
11 eventually, you know, you can die from it.

12 Q So you talked about his skin being cool and clammy.

13 A Yes, ma'am.

14 Q And you said that's a sign of shock also.

15 A Yes, ma'am.

16 Q And you talked about him being combative and pulling
17 out the IV's. What was that a sign of as well?

18 A That can be a sign of shock, too.

19 Q Now you talked earlier that -- about shock being --
20 you can die from shock.

21 A Yes, ma'am.

22 Q And based on your, I guess your experience and being
23 an expert now in the field of Emergency Medical Services,
24 to a reasonable degree of medical certainty, what was ---

25 **MR. GIPSON:** (MR. GIPSON STOOD.)

DIRECT EXAMINATION OF DONNA SMITH BY MS. LEGETTE

162

1 **THE COURT:** Hold on. I will sustain the objection.
2 You can rephrase your question. She has not been
3 qualified as a physician. You can rephrase your question.
4 So if you want to structure it under the field of
5 E.M.T., you may do so.

6 **Q** Ms. Smith, under the field of Emergency Medical
7 Services, what was the condition of the patient that you
8 found on Tulifinny Road?

9 **A** He was in ---

10 **MR. GIPSON:** Objection.

11 **THE COURT:** Excuse me.

12 Yes, sir?

13 **MR. GIPSON:** I just object. That's been -- she's
14 testified to that three times at this point, Your Honor.

15 **THE COURT:** Well, I agree with you. She's already
16 covered that, Ms. Legette.

17 **Q** Was his condition life threatening?

18 **A** Yes, ma'am.

19 **MS. LEGETTE:** Begging the Court's indulgence?

20 **THE COURT:** Certainly.

21 **MS. LEGETTE:** Ms. Smith, I have no further questions.
22 Answer any questions from Mr. Gipson, please.

23 **THE COURT:** Cross-examine?

24 **MR. GIPSON:** Court's indulgence, Your Honor?

25 **THE COURT:** Yes, sir.

CROSS-EXAMINATION

BY MR. GIPSON:

Q Ms. Smith, did the victim pass away as a result of this gunshot wound?

A Um, I flew him out. Usually we don't hear, ---

Q Okay.

A --- if um, you know, what happens.

Q Okay. Do you know or not know?

A To my knowledge, he didn't.

Q Okay. That's all my questions. Thank you.

THE COURT: Redirect?

MS. LEGETTE: None, Your Honor. May she be excused?

THE COURT: Any objection?

MR. GIPSON: No objection.

THE COURT: Thank you. You may step down, Ms. Smith, and you're free to leave.

You may call your next witness.

MS. LEGETTE: Thank you, Your Honor. The State calls Ms. Dawn Nikki Hunt.

DAWN N. HUNT, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. LEGETTE:

Q Good morning, Ms. Hunt.

A Good morning.

DIRECT EXAMINATION OF DAWN HUNT BY MS. LEGETTE

164

1 Q Ms. Hunt, please tell us your entire name.

2 A Dawn Nicole Hunt.

3 Q And spell your last name for us, please.

4 A H-U-N-T.

5 Q Now, Ms. Hunt, where do you work?

6 A At the present time, I'm unemployed.

7 Q Okay. Do you also -- well, I know you're unemployed
8 at this time. Where have you formerly worked?

9 A Hampton County E.M.S.

10 Q And do you currently volunteer as anything?

11 MR. GIPSON: Object to leading, Your Honor.

12 THE COURT: Overruled.

13 A I'm a First Responder for the county.

14 Q And is that for Hampton County?

15 A Yes, ma'am.

16 Q Now, tell us -- though you're no longer employed at
17 the Hampton County E.M.S., how long did you work at the
18 Hampton County E.M.S.?

19 A Approximately three years.

20 Q And during that period of time, what was your title?

21 A Beginning as an E.M.T. Basic, ending as an
22 Intermediate.

23 Q And briefly explain as an E.M.T. Basic, what were you
24 able to do for patients?

25 A Basic life support.

1 Q Now, Ms. Hunt, were you working for the Hampton
2 County E.M.S. on or about October 2nd, 2009?

3 A Yes, ma'am.

4 Q Did you respond to any location in the county that
5 particular night?

6 A Yes, ma'am.

7 Q Where did you respond?

8 A I responded to [REDACTED] Tulifinny Road.

9 Q And please tell us what you found when you arrived at
10 [REDACTED] Tulifinny Road.

11 A I arrived on scene and found a patient lying supine
12 on the ground.

13 MR. GIPSON: Objection. I just object. I believe
14 she's referring to notes.

15 THE COURT: I'll allow it, if she's refreshing her
16 recollection.

17 You can't read from your notes, ma'am.

18 WITNESS: Okay.

19 THE COURT: Thank you.

20 A I just found a patient laying on the ground with
21 multiple bullet holes to the chest area.

22 THE COURT: Let me just say also, at the point you
23 cross-examine, if you want to review them, I'll give you
24 an opportunity to review the notes as well.

25 MR. GIPSON: Thank you.

DIRECT EXAMINATION OF DAWN HUNT BY MS. LEGETTE

166

1 **THE COURT:** Okay.

2 **Q** Ms. Hunt, I'm sorry. Could you repeat that, please?

3 **A** I found a patient lying supine on the ground with two
4 bullet holes in the chest area.

5 **Q** Now when you say supine, what does that mean?

6 **A** Flat on his back.

7 **Q** Okay. And did you try to assist the patient lying on
8 the ground?

9 **A** The patient was pulseless and he was not breathing
10 when I arrived on scene.

11 **Q** So pulseless, meaning he didn't have a pulse?

12 **A** Right.

13 **Q** Okay. And so when you found this patient lying on
14 his back on the ground without a pulse, what did you do
15 next?

16 **A** The patient, obviously, like I said he was not
17 breathing. He had no pulse. He had obvious signs of
18 death. At that time, a Paramedic arrived.

19 **Q** So you waited for the Paramedic to arrive to assist
20 -- well, to further assist the patient.

21 **A** Well, the patient was, like I said, pulseless and not
22 breathing, obvious signs of death.

23 **Q** And did the Paramedic arrive?

24 **A** Yes.

25 **Q** And who was that Paramedic?

1 **A** Paramedic David Cook.

2 **MS. LEGETTE:** Beg the Court's indulgence?

3 **THE COURT:** Yes, ma'am.

4 **MS. LEGETTE:** Ms. Hunt, I have no further questions.

5 Answer any questions from the defense, please.

6 **MR. GIPSON:** No questions.

7 **THE COURT:** You may come down.

8 Do you wish the witness to be excused?

9 **MS. LEGETTE:** Yes, Your Honor, please.

10 **THE COURT:** Any objection?

11 **MR. GIPSON:** No objection.

12 **THE COURT:** Ms. Hunt, you're free to leave.

13 **WITNESS:** Thank you.

14 **THE COURT:** Thank you.

15 You may call your next witness.

16 **MS. LEGETTE:** Thank you, Your Honor. The State calls
17 Mr. David Cook, please.

18 **THE COURT:** Okay.

19 **MR. MURDAUGH:** Get Katie McCallister and Sabrina
20 Fellers and put them in this room, please.

21 ARTHUR DAVID COOK, JR., after being duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MS. LEGETTE:

25 **Q** Good morning, sir.

DIRECT EXAMINATION OF A. DAVID COOK BY MS. LEGETTE

168

1 **A** Good morning.

2 **Q** I need you to state your full name for the record,
3 please.

4 **A** It's Arthur David Cook, Jr. I go by David.

5 **Q** You go by David.

6 **A** Yes, ma'am.

7 **Q** And spell your last name, please.

8 **A** C-O-O-K.

9 **Q** May I call you David?

10 **A** Yes, ma'am.

11 **Q** Now, David, where do you work?

12 **A** I'm currently employed with the South Carolina
13 Highway Patrol as a trooper.

14 **Q** Okay. Do you have any other jobs or positions?

15 **A** After that, I'm a Paramedic. I work part-time with
16 both Hampton County and Allendale County E.M.S.

17 **Q** And, David, how long have you worked for the Hampton
18 County and Allendale County E.M.S. in total?

19 **A** Since 1996.

20 **Q** And during that period of time, what have your jobs
21 included?

22 **A** I've been a paramedic now since 2000. I started out
23 as an E.M.T. Basic in '96, and I moved through the ranks
24 at E.M.S.

25 **Q** And tell us what a paramedic can do that an E.M.T.

1 Basic or an E.M.T. Intermediate cannot do.

2 A A paramedic does advance cardiac life support,
3 intubation, sticking an airway tube down your throat to
4 help you breathe, cardiac monitors, pushing medications
5 through IVs, which is, you know, through the muscle or
6 pretty much give medications, that Intermediate or Basics
7 could not do.

8 Q Now, David, how long -- you said you've been in
9 Emergency Medical Services since 1996.

10 A Yes, ma'am.

11 Q How many patients would you have treated during that
12 period of time up to now?

13 A It's well in the thousands.

14 Q Okay. And of those thousands, how many would you say
15 were gunshot wound victims or patients?

16 A If I had to guess, at least fifteen or so. Maybe
17 more.

18 Q Now, David, I want to turn your attention to the
19 night of October 2nd, 2009. Were you working for the
20 Hampton County E.M.S. during that period of time?

21 A Yes, ma'am. At the time, I was actually the
22 supervisor for Hampton County E.M.S.

23 Q And on that particular night, did you have an
24 occasion to respond to a call for assistance in Yemassee,
25 South Carolina?

DIRECT EXAMINATION OF A. DAVID COOK BY MS. LEGETTE

170

1 **A** Yes, ma'am. I was actually -- the supervisor truck,
2 which is based in Hampton, they got called to a shooting
3 incident in Yemassee, which advance cardiac life support
4 was requested by the ambulance stationed in Yemassee,
5 which I responded to.

6 **Q** And when you responded, what did you find?

7 **A** I went straight to the landing zone, which is where
8 the helicopter comes in at, which is located right off of
9 Highway 68 in Yemassee, where Ms. Lemacks -- we call her
10 Lemacks, it's Donna Smith, was on staff.

11 And once I got in the back of the truck, she had a
12 male in the back that was apparently shot at least one
13 time. He was actually very combative, fighting with her,
14 giving her a hard time.

15 She started a couple of IVs, which during that
16 timeframe, you know, he kept pulling out, so I was trying
17 to regain an IV access due to his blood pressure being
18 very low. His heart rate was very high. I put him on a
19 cardiac monitor, in which I can watch the rhythm, you
20 know, of his heart rate.

21 **Q** Now, explain to us, you said that his blood pressure
22 was low and his heart rate was high.

23 **A** Yes, ma'am.

24 **Q** Explain what does that mean? What does that mean to
25 you as a paramedic?

DIRECT EXAMINATION OF A. DAVID COOK BY MS. LEGETTE

171

1 **A** The primary symptoms, when your blood pressure is
2 real low and your heart rate is high, it means that you
3 are in shock, pretty much when your blood pressure drops.
4 In this situation, I think we had a systolic, the top of
5 your blood pressure what we call systolic, was 80. His
6 heart rate was like 148.

7 It's all signs right there that this particular
8 patient was in shock, which basically what he needs is
9 advanced care, which would be in a trauma center. That's
10 one reason we was flying him out. And also basically
11 until a chopper got there, is you know, the cardiac
12 monitor to watch his heart rate and IV access.

13 **Q** Now you said that his blood pressure was 148. Is
14 that what you told us earlier?

15 **A** No, ma'am. His heart rate was 148.

16 **Q** Okay. His heart rate was 148.

17 **A** Yes, ma'am.

18 **Q** What is a normal heart rate?

19 **A** Normally, for an average adult between 60 to 100.

20 **Q** And would you say that 148, as a paramedic, would you
21 be able to say that was a high heart rate?

22 **A** It was very high.

23 **Q** And what does that mean to you, a high heart rate?

24 **A** Pretty much, in his situation, what this meant due to
25 this patient being shot, he's actually having blood loss,

1 which his heart was actually trying to compensate due to
2 the low blood pressure and loss of volume of the blood;
3 compensation. You know, trying to get that -- or maintain
4 that blood pressure he already had, which was very low
5 anyhow.

6 Q And let me ask you this question. Without treatment,
7 what would happen to this patient?

8 A More than likely, he would have died, without
9 treatment, as in fluid replacement or blood replacement.

10 Q Now you talked about the patient being combative with
11 Ms. Smith and she was trying to control the patient.

12 A Yes, ma'am.

13 Q What -- what does that tell you about the patient?

14 A The combativeness is pretty much a sign of shock.

15 MR. GIPSON: I think it's been asked and answered.

16 THE COURT: I'll allow it. Overruled.

17 MR. GIPSON: Thank you, Your Honor.

18 Q You said it's a sign of shock?

19 A Yes, ma'am.

20 Q Now you talked about -- what did you do? What steps
21 did you take as a paramedic when you arrived at the
22 location where this patient was? What steps did you take
23 to treat him?

24 A Treat him? Pretty much additional IVs that had
25 already been pulled out, and like I said, the cardiac

1 monitor to monitor his heart rate to make sure it's
2 regular or not irregular.

3 Q Now we talked about the LifeNet, the helicopter, the
4 landing zone. Why was a helicopter needed?

5 A Because this particular patient, with the situation,
6 he needed to go to a trauma center, which Hampton County
7 did not offer for advanced trauma treatment.

8 Q Were you present when -- did the helicopter arrive?

9 A Yes, ma'am.

10 Q And were you present when the helicopter arrived?

11 A Yes, ma'am.

12 Q And what did the helicopter -- do you know what they
13 do on the helicopter to treat a patient?

14 A They have a lot more -- I should say a lot more
15 equipment. They have a lot more advanced procedures, such
16 as RSI, which is rapid sequence intubation, which we did
17 request while they were still in the air.

18 Pretty much his medications, he could sedate the
19 patient to keep him from fighting. They can intubate and
20 secure the airway to make sure he has a patent airway.

21 They are also staffed with a nurse, which our regular
22 ambulance is not staffed with a nurse. The highest
23 certification with E.M.S. is a paramedic, which they come
24 with a paramedic and a nurse.

25 Q Now, David, while you were with this patient, did you

DIRECT EXAMINATION OF A. DAVID COOK BY MS. LEGETTE

174

1 notice anything about his condition? Did it become better
2 while you were with him?

3 A Actually, from the point I got in there, due to me
4 coming from Hampton until the time the Life Flight team
5 got there, or LifeNet, it actually did deteriorate. He
6 got more combative. He became more diaphoretic, which is
7 sweating of the skin.

8 His level of consciousness, actually went down,
9 deteriorated from being totally alert and talking to us to
10 pretty much verbal. You know, you had to talk to him very
11 strong for him to pay attention and do certain commands.

12 Q And so what does that tell you about his -- I mean,
13 you said his condition has deteriorated. He was becoming
14 less and less conscious. What does that tell you as a
15 paramedic?

16 A That can go with blood loss, you know, due to the
17 injury sustained to his abdomen. You know, you've got
18 organs in there that can bleed out constantly, and we
19 can't actually see physically until it's too late. You
20 know, all of the signs and symptoms were there, low blood
21 pressure, high heart rate, his deterioration as being
22 alert, going down in verbal. You know, that's all signs
23 and symptoms that he was getting worse and worse. You
24 know, that's why he needed to get to a trauma center with
25 a surgeon.

1 Q And was his condition life threatening?

2 A Yes, it was.

3 Q Now, David, at some point this patient was taken away
4 by helicopter.

5 A Yes, ma'am.

6 Q What did you do next? Did you respond to any other
7 locations?

8 A Actually I went to the original location, due to
9 another patient being found, while in the process taking
10 care of the first one.

11 Q And was that location at Tulifinny Road?

12 A Yes, ma'am.

13 Q And what did you find when you arrived at that
14 location?

15 A I found a young male who looked to be in his twenties
16 that was laying on the surface, or on the ground, I should
17 say, in between two vehicles. My initial crew member,
18 which was Ms. Hunt, responded there due to me not being
19 able to leave, because I can't abandon a first initial
20 primary patient, unless you turn over care to an equal or
21 higher grade. I was the only paramedic, so I couldn't
22 turn the first patient loose. So I sent her to check on
23 the second patient.

24 Once I got there, she -- she told me what she had.
25 You know, this young man had apparently two entrance

DIRECT EXAMINATION OF A. DAVID COOK BY MS. LEGETTE

176

1 wounds from a gunshot. He wasn't breathing, did not have
2 a pulse. So basically, I walked over there, put the
3 cardiac monitor on him, just to confirm that he did not
4 have a pulse.

5 Q And did you confirm he didn't have a pulse?

6 A Yes, ma'am. He had a asystolia, which is also known
7 as just a flat line, no activity with the heart at all.

8 Q So in layman's terms, was he dead?

9 A Yes, ma'am.

10 MS. LEGETTE: Begging the Court's indulgence?

11 Q David, did you learn the names of these patients that
12 you treated at the landing zone and at the Tulifinny Road
13 location?

14 A Yes, ma'am.

15 Q And what were the names of these patients?

16 A The one that we flew out was Antonio Badger.

17 Q Okay. And the person that you put the cardiac
18 monitor on and confirmed that he had no pulse, what was
19 his name?

20 A Dominick T. Badger.

21 Q Okay. Thank you, David. I have no further
22 questions. Answer any questions from Mr. Gipson, please.

23 A Yes, ma'am.

24 THE COURT: Cross-examine?

25 MR. GIPSON: I have no questions.

DIRECT EXAMINATION OF MARY MCCALLISTER BY MS. LEGETTE

177

1 **THE COURT:** Thank you. You may come down.

2 Do you wish this witness to be excused?

3 **MS. LEGETTE:** Yes, Your Honor, please.

4 **THE COURT:** Any objection?

5 **MR. GIPSON:** No objection, Your Honor.

6 **THE COURT:** You're also free to leave. Thank you,
7 sir.

8 Call your next witness, please.

9 **MS. LEGETTE:** Thank you, Your Honor. The State calls
10 Deputy Katie McCallister.

11 MARY K. MCCALLISTER, after being duly sworn,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MS. LEGETTE:

15 **Q** Good morning, ma'am.

16 **A** Good morning.

17 **Q** Ma'am, tell us your full name, please, and spell your
18 last name for the record.

19 **A** Mary Kathryn McCallister, M-C-C-A-L-L-I-S-T-E-R.

20 **Q** And do you go by Katie?

21 **A** Katie, yes.

22 **Q** Okay. And can I call you Katie?

23 **A** You can.

24 **Q** Okay. Now, Katie, where do you work?

25 **A** Hampton County Sheriff's Office.

DIRECT EXAMINATION OF MARY MCCALLISTER BY MS. LEGETTE

178

1 Q And for how long?

2 A Four years.

3 Q Tell us about your duties at the Hampton County
4 Sheriff's Office.

5 A I'm a Lance Corporal on the road patrol. I work a
6 twelve-hour shift, answering calls for service.

7 Q And were you working for the Hampton County Sheriff's
8 Office on or about October 2nd, 2009?

9 A I was.

10 Q And did you respond to a call for assistance at
11 Tulifinny Road in Yemassee, South Carolina?

12 A I did.

13 Q Can you tell us about what you found when you arrived
14 at that location?

15 A We were dispatched to a call. When I arrived, I
16 found a gentleman, a black male, on the back porch steps
17 of the residence where Alfred Fennell lives.

18 Q And can you describe this black male for me, or his
19 condition, or what he was doing when you found him?

20 A He appeared to have a gunshot wound to the lower
21 stomach. He was laying on his back.

22 Q And as a result of this -- well, you said you went
23 there with someone else. Who did you go with?

24 A I went with my partner, Corporal Charles Peeples.

25 Q Now as a result of finding the black male lying on

1 his back with the apparent gunshot wound, what did you do?

2 A We immediately cleared the immediate scene so that
3 E.M.S. could come to him.

4 Q Did you find anyone at the scene, anyone else at the
5 scene?

6 A We did.

7 Q And who else did you find? Who did you find?

8 A Dominick Badger.

9 Q Okay. And where did you find Dominick Badger?

10 A He was near the wood line laying between two, what I
11 assumed to be, junk cars.

12 Q And what did he -- how did he appear? What did he
13 appear to look to as you -- how did he look to you?

14 A He had two gunshot wounds to his chest. He did not
15 appear to be alive.

16 Q And as a result of finding Mr. Dominick Badger, what
17 did you do next?

18 A We immediately called for a supervisor and another
19 E.M.S. unit.

20 Q Now, as a part of clearing the scene, did you tape
21 the scene off?

22 A We did.

23 Q And part of -- did you stay around after you found
24 both patients?

25 A I did, yes.

1 Q Okay. And did you, as a result of this --

2 MR. GIPSON: I object to the leading, Your Honor.

3 THE COURT: Sustained.

4 Q As a result of going to the scene, at some point did
5 you create a diagram of what you saw?

6 A I did.

7 Q And would that diagram help you to be able to
8 describe what you found and where you found it?

9 MR. GIPSON: Object to the leading.

10 A Yes.

11 Q Would the diagram assist you?

12 A Yes.

13 (WHEREUPON, STATE'S Exhibit NO. 7 WAS marked for
14 identification only.)

15 Q Katie, I'm going to hand you in a moment what has
16 previously been marked State's Exhibit Number Seven. I
17 want you to take a moment and tell me if you recognize
18 this.

19 MS. LEGETTE: May I approach the witness, Your Honor?

20 THE COURT: You may.

21 Q And what does this appear to be, State's Exhibit
22 Number Seven?

23 A A diagram of the scene.

24 Q And is it a fair and accurate representation of the
25 scene at Tulifinny Road on October 2nd, 2009?

1 **A** Yes.

2 **MS. LEGETTE:** Your Honor, at this time I would offer
3 State's Exhibit Number Seven for admission into evidence.

4 **THE COURT:** Any objection?

5 **MR. GIPSON:** As her rendition of the scene?

6 **MS. LEGETTE:** As her rendition of the scene, yes.

7 **MR. GIPSON:** If it's her rendition, then no
8 objection.

9 **THE COURT:** Without objection, State's Exhibit Seven
10 is admitted.

11 (WHEREUPON, STATE'S Exhibit NO. 7 WAS admitted into
12 evidence.)

13 **MS. LEGETTE:** Your Honor, may Ms. McCallister come
14 down and publish to the jury the exhibit?

15 **THE COURT:** She may.

16 **Q** Ms. McCallister, would you please come down? If you
17 don't mind, ma'am, please explain to the jury what we are
18 seeing on this exhibit.

19 **A** All right.

20 **Q** And I need for you to speak up for our court reporter
21 so she can hear everything you're saying. Okay?

22 **A** All right. This was the residence, ■ Tulifinny
23 Road where we were dispatched. Upon my initial arrival,
24 this is where I located -- this is where I located Antonio
25 Badger. It's marked here by the Number One and the blue

DIRECT EXAMINATION OF MARY MCCALLISTER BY MS. LEGETTE

182

1 .dot.

2 Once we got this cleared, we noticed -- this is a
3 green SUV here. Number Five would be the light green
4 triangle. That SUV was running with the doors open and
5 the lights were on.

6 As we were approaching to clear that, we looked over
7 next to the wood line, the dark green triangle with the
8 Number Four. We observed what I appeared -- believed were
9 two junk cars. Those are the orange triangles with the
10 Number Three. And there is where we located the body of
11 Dominick Badger with the purple circle, Number Two.

12 And over here was the residence of Dominick Badger.
13 He was in between the two residences up near the wood
14 line. And this here is Tulifinny Road.

15 Q And you said the blue circle with the Number One,
16 this is the body -- well, this is where Antonio Badger,
17 the first patient, was lying?

18 A Yes.

19 Q There?

20 A At the side door and the steps.

21 Q And you also found Alfred Fennell here as well?

22 A Alfred Fennell, yes.

23 Q Okay. Thank you. You may have a seat.

24 Ms. McCallister, or Katie, did you do anything else
25 with regards to the investigation or this particular

1 incident?

2 **A** I did. I talked with several people on scene.

3 **Q** Okay. And who were those people? Do you recall who
4 those people were? Were they witnesses?

5 **A** I spoke to Dexter Bozeman.

6 **Q** Okay.

7 **A** He was a witness to what had happened. I also spoke
8 with Alfred Fennell.

9 **Q** Okay.

10 **MS. LEGETTE:** Begging the Court's indulgence?

11 **THE COURT:** Yes, ma'am.

12 **Q** Ms. McCallister, I have no further questions. Answer
13 any questions from the defense, please.

14 **THE COURT:** Cross-examine?

15 **MR. GIPSON:** Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. GIPSON:

18 **Q** Good morning, Ms. McCallister.

19 **A** Good morning, sir.

20 **Q** Deputy McCallister, I'm going to ask you just a
21 series of questions about your testimony, and just -- just
22 some other matters that you're familiar with.

23 **A** All right.

24 **Q** And if you'll do me the favor of just answering that
25 question as yes or no, and then you'll have plenty of time

CROSS-EXAMINATION OF MARY MCCALISTER BY MR. GIPSON

184

1 to explain your answer if you feel it's necessary.

2 A Okay.

3 Q Is that fair enough?

4 A Yes, sir.

5 Q All right. Now you've been in law enforcement you
6 said for about four years?

7 A Yes.

8 Q So back in '09, you were in about a year or so;
9 correct?

10 A Yes.

11 Q What was your background prior to entering law
12 enforcement?

13 A I received a Bachelor's Degree in Criminal Justice
14 from the Citadel, the military college of South Carolina.

15 Q And any -- did you spend any time in the military?

16 A I did not.

17 Q Okay. Now afterwards, obviously in order to become a
18 deputy, you had to attend -- well, right now you're a
19 Lance Corporal; correct?

20 A Yes, sir.

21 Q Okay. So you had to attend the Criminal Justice
22 Academy; correct?

23 A In Columbia, yes, sir.

24 Q In Columbia. And that was about eight to ten weeks,
25 somewhere around in there?

1 **A** Yes, sir.

2 **Q** Okay. And when you're at the Criminal Justice
3 Academy, they teach you kind of the basics of law
4 enforcement; right?

5 **A** Yes.

6 **Q** And they teach you just kind of the -- just how to
7 become a functional officer. So they teach you a little
8 bit about -- a little bit about crime scenes; right?

9 **A** Yes.

10 **Q** A little bit about the law.

11 **A** Yes.

12 **Q** And a little bit about kind of handling yourself in
13 different situations that you may encounter while you're
14 on the road or whatever area of law enforcement that
15 you're going to be in; correct?

16 **A** Yes.

17 **Q** And then once you graduate and you're certified, as
18 you are; correct?

19 **A** Yes.

20 **Q** Once you graduate and become certified, it's up to
21 you or whatever department you become aligned with to
22 continue your education; right?

23 **A** Yes.

24 **Q** And if you want to climb up the food chain, you can
25 do other things and improve yourself through your work and

1 through your capabilities and become -- go higher up the
2 food chain; right?

3 A Yes.

4 Q Okay. When they teach you about -- at the Criminal
5 Justice Academy about preserving crime scenes, they also
6 teach you to memorialize what you see; right, meaning to
7 take notes?

8 A Yes.

9 Q Okay. And one of the things you want to do is you
10 want to write down everything that you do when you're in
11 an investigation; right?

12 A Yes.

13 Q And you want to do that, quite frankly, so that if
14 you're in a situation like here today when you're in
15 court, you don't have to rely on your memory three years
16 later. You can rely on what you did on -- by looking at
17 your notes and referring to your notes; right?

18 A Yes.

19 Q Okay. And as a properly trained officer, you took
20 notes; right?

21 A I did.

22 Q And you wrote down the things that happened and the
23 things that were important in this case; right?

24 A I did.

25 Q Okay. And you even went a step further. You even

1 did some recordings in this case, too; right?

2 A Yes.

3 Q Tell the jury why you would take that additional step
4 to make those recordings.

5 A I was directed to by a supervisor.

6 Q Okay. And -- and when you record, what does that
7 help you do?

8 A It helps you recall different things.

9 Q Different things such as?

10 A Who you were talking to, what exactly had happened.
11 It just preserves it for the record.

12 Q Okay. And it also -- the thing is, a tape is not
13 going to lie or mischaracterize things. The tape is going
14 to be what it is; correct?

15 A Yes.

16 Q And you can listen to that tape and hear what a
17 person said or what they didn't say. You can make those
18 decisions about what they said based on their own
19 testimony; right?

20 A Yes.

21 Q And you did that here; right?

22 A I did.

23 Q Okay. And you did that for Mr. Bozeman, Dexter
24 Bozeman; correct?

25 A Yes.

CROSS-EXAMINATION OF MARY MCCALISTER BY MR. GIPSON

188

1 Q Okay. Now, when you got to the scene at Tulifinny
2 Road, you were considered one of the first responders;
3 correct?

4 A Yes.

5 Q And as a first responder, one of your duties, as Ms.
6 Legette mentioned, is just to kind of secure things;
7 right?

8 A Yes.

9 Q And you just want to look around and kind of see
10 what's going on and make sure that everything is the way
11 it's supposed to be; right?

12 A Yes.

13 Q Well, I won't say -- let me rephrase that.
14 Everything is safe at that point; right?

15 A Yes.

16 Q And you prepare the way for whoever else is coming;
17 right?

18 A Yes.

19 Q All right. You weren't the lead investigator in this
20 case; were you?

21 A No.

22 Q There's somebody else who was assigned as lead
23 investigator in this case; right?

24 A Yes.

25 Q Do you know who that person was?

- 1 **A** I believe it was Detective Singleton.
- 2 **Q** Okay. And to be a detective, you have to have a
- 3 whole different class of certifications; correct?
- 4 **A** Yes.
- 5 **Q** And a little bit more experience sometimes?
- 6 **A** Yes.
- 7 **Q** Okay. And so Detective Singleton was placed in
- 8 charge of this case. So you had to report to him;
- 9 correct?
- 10 **A** Yes.
- 11 **Q** All right. So basically, no matter what happens in
- 12 this case, the buck stops with who in this case?
- 13 **A** (NO RESPONSE.)
- 14 **Q** Who is ultimately in charge of how this investigation
- 15 is conducted and what happens?
- 16 **A** Detective Singleton.
- 17 **Q** All right. So once you do the things that you're
- 18 trained to do, you turn it over, and it's out of your
- 19 hands at that point; right?
- 20 **A** Yes.
- 21 **Q** And it's in Detective Singleton's hands; right?
- 22 **A** Yes.
- 23 **Q** Okay. And is he in the courtroom today?
- 24 **A** He is.
- 25 **Q** Okay. Where is he seated?

CROSS-EXAMINATION OF MARY MCCALISTER BY MR. GIPSON

190

1 **A** Behind Ms. Legette.

2 **Q** Okay. All right. And so Detective Singleton was in
3 charge. Was there anyone else who came to the crime scene
4 who would have been one of your superiors at that point in
5 time or somebody who outranked you at that time?

6 **A** There were several people who outranked me on that
7 team.

8 **Q** Okay. Can you tell us who they were -- well, Captain
9 Russell?

10 **A** He was there.

11 **Q** Okay. Corporal Peeples?

12 **A** He was there.

13 **Q** Okay. Anybody else at that time?

14 **A** Detective Solomon was on scene.

15 **Q** Okay.

16 **A** There were several -- there were several other
17 members of the sheriff's office there.

18 **Q** Okay. Is it fair to say that after you received news
19 of this -- of the shooting, that you all mobilized and
20 pretty much went down to Tulifinny Road to find everything
21 that you could?

22 **A** Yes.

23 **Q** Okay. And you, at that point, tried to just make
24 sure that you collected evidence and did everything you
25 needed to do; right?

- 1 **A** Yes.
- 2 **Q** Okay. What evidence did you personally collect, if
- 3 any?
- 4 **A** I -- I don't -- I don't recall.
- 5 **Q** Okay. Would that have been your job to collect
- 6 evidence?
- 7 **A** Not necessarily.
- 8 **Q** Okay.
- 9 **A** My job would have been to get -- hold the scene, tape
- 10 the scene off ---
- 11 **Q** Uh-huh.
- 12 **A** --- and hold it for the investigators to come.
- 13 **Q** Okay. All right. And once you got there, you
- 14 observed a few things that you testified to briefly;
- 15 correct?
- 16 **A** Yes, sir.
- 17 **Q** And I'm going to show you what's been marked as
- 18 State's Exhibit Number Seven. And you said -- well, you
- 19 recognize this as a photo that you -- or at least a
- 20 rendition that you drew of the area?
- 21 **A** Yes.
- 22 **Q** Okay. Could you come down?
- 23 **MR. GIPSON:** Your Honor, may the witness step down?
- 24 **THE COURT:** She may.
- 25 **MR. GIPSON:** Thank you.

CROSS-EXAMINATION OF MARY MCCALISTER BY MR. GIPSON

192

1 Q All right. Now this is not drawn to scale is it?

2 A It is not, no.

3 Q Okay. This is just kind of what you remembered that
4 night?

5 A Yes.

6 Q Okay. Did you -- maybe if you could step across this
7 way so the jury can see. I'll angle it this way.

8 All right. So were you trained in drawing diagrams
9 and things to scale, or this is just something that just
10 helps your recollection?

11 A I've not been trained. That's just my rendition of
12 the scene as I found it that night.

13 Q Okay. Fair enough. So you say when you arrived, you
14 found Mr. Tony Badger at Mr. Fennell's house on the steps;
15 is that correct?

16 A He -- he was not on the steps, no.

17 Q Okay. But he was in that vicinity?

18 A Yes, sir.

19 Q All right. And then you went further to secure the
20 scene, and you noticed a vehicle you mentioned, a green
21 vehicle?

22 A We did. A green SUV.

23 Q Okay. Tell us about that.

24 A Our first priority was Mr. Badger. Once E.M.S. came
25 and was handling him, we noticed the green SUV running

1 with the lights on.

2 Q Okay.

3 A We weren't sure at that time really what it had to do
4 with anything, but we proceeded to clear it and continue
5 to keep the scene safe.

6 Q Okay. Could you return to your seat for a moment,
7 please? Thank you.

8 Okay. I'm going to show you what's been marked as
9 Defendant's Exhibit Number Two.

10 Does that ring a bell? Would you take a look at
11 that, please?

12 A It does. Yes.

13 Q Okay. Tell the jury what this is.

14 A That was -- that was the green SUV with the doors
15 open.

16 Q Okay.

17 MR. GIPSON: May I publish this to the jury, Your
18 Honor?

19 THE COURT: You may.

20 Q You kept saying that it was running. At the risk of
21 asking a not smart question, can you tell us what you mean
22 by that?

23 A We believed the vehicle was on.

24 Q Okay.

25 A The lights were on.

CROSS-EXAMINATION OF MARY MCCALISTER BY MR. GIPSON

194

- 1 Q Uh-huh.
- 2 A Or that was the impression we got.
- 3 Q Okay. And the lights were ---
- 4 A We could hear a motor.
- 5 Q And the engine was running as well.
- 6 A We believed so, yes.
- 7 Q Okay. And both doors were wide open.
- 8 A Yes.
- 9 Q Okay. Did you have a chance to look inside of that
- 10 vehicle?
- 11 A I can't recall if I actually did or not.
- 12 Q Okay. Who would have been in charge of looking
- 13 inside of that vehicle to secure the vehicle?
- 14 A Sir?
- 15 Q Who would have been in charge of looking inside of
- 16 the vehicle to secure it?
- 17 A It would have been myself or Corporal Peeples.
- 18 Q Okay. And did you at some point in time actually
- 19 turn that vehicle off?
- 20 A I cannot recall if I did or not.
- 21 Q Okay. But it was done by somebody in your
- 22 department?
- 23 A That would be my assumption.
- 24 Q All right. Now after that, you were assigned to go
- 25 and take statements from folks who were out there; is that

1 correct?

2 A Yes.

3 Q Okay. And of course, you met with Mr. Fennell and
4 you also met with Mr. Bozeman, as we talked about; right?

5 A Yes.

6 Q All right. Now let me show you what's been marked as
7 Defense Exhibit Number Five. If you would take a look at
8 that, if you would, please? Does that ring a bell to you?

9 A Yes.

10 Q Okay. Can you tell the jury what Defense Exhibit
11 Number Five is, based on your recollection?

12 A This is a statement given to me by Mr. Dexter
13 Bozeman.

14 Q And you were a witness to that statement?

15 A Yes.

16 Q And Mr. Mungin was a witness to that statement as
17 well; correct?

18 A Yes.

19 Q And he's a -- is he a sergeant?

20 A Yes, sir.

21 Q Okay. So he, at that point, outranked you as well;
22 correct?

23 A Yes.

24 Q All right. And as we spoke, ---

25 MR. GIPSON: May I publish to the jury, Your Honor?

CROSS-EXAMINATION OF MARY MCCALISTER BY MR. GIPSON

196

1 **THE COURT:** The statement?

2 **MR. GIPSON:** Yes, sir.

3 **THE COURT:** There's no need to publish that at this
4 point.

5 **MR. GIPSON:** Yes, sir.

6 **THE COURT:** They'll have time to read it.

7 Ladies and gentlemen, all matters that are introduced
8 into evidence will accompany you to your jury room, and
9 you'll have an opportunity to study them and look at them
10 in detail at that time. From time to time, it's not
11 uncommon for the attorneys to pass them around so you can
12 look at them, but at this point it just would distract
13 them.

14 **MR. GIPSON:** Yes, sir.

15 **THE COURT:** Thank you, sir.

16 **MR. GIPSON:** Thank you, Your Honor.

17 **Q** But now this is the one that we talked about that you
18 recorded as well; right?

19 **A** Yes.

20 **Q** Okay. And what you wrote down -- and you did
21 actually -- this is your actual handwriting; is that
22 correct?

23 **A** It is.

24 **Q** Okay. Did he ask you to actually write this for him,
25 to actually write what he said, or you chose to do that?

- 1 **A** Yes.
- 2 **Q** Okay. He asked you to do that?
- 3 **A** He asked me to. Yes.
- 4 **Q** Okay. And when you finished, you gave him the
5 opportunity to review it; correct?
- 6 **A** I did.
- 7 **Q** All right. And this is a fair and accurate
8 representation of everything he told you; right?
- 9 **A** It is.
- 10 **Q** And you didn't add anything, take anything out. You
11 wrote it as he told you; right?
- 12 **A** Yes, sir, I did.
- 13 **Q** And all of the important things, he had a chance to
14 go through and add to it or detract from it, and you
15 recorded it; correct?
- 16 **A** Yes.
- 17 **Q** All right. So what we've got here is what he told
18 you happened; correct?
- 19 **A** Yes.
- 20 **Q** And the night -- excuse me. The night of the
21 shooting was October 2nd, 2009; correct?
- 22 **A** It was.
- 23 **Q** All right. And what's the date on that statement, if
24 you could tell us?
- 25 **A** 2 October 2009.

1 Q Okay. So that would be October 2nd, 2009?

2 A It would be.

3 Q Okay. And about what time was that taken, ma'am?

4 A There's not a time.

5 Q Okay. But it was that evening?

6 A It was.

7 Q Now as a law enforcement officer, you receive lots of
8 different types of training, as we talked about; correct?

9 A Yes.

10 Q And at some point in time, you learn -- you deal with
11 use of force; don't you?

12 A Yes.

13 Q Okay. And can you tell the jury what use of force
14 means?

15 A Use of force is what we use to subdue someone.
16 There's different factors regarding about whether or not
17 -- what level of force to use.

18 Q Okay. And when you say what level of force, just be
19 a little bit more specific when you talk about what level.
20 What levels of force exist?

21 A You can tell someone to stop. You can give them a
22 verbal command. You can use a taser, mace, what other --
23 you know, any kind of things that you have on your duty
24 belt.

25 Q Okay. And ultimately, you're also taught how to

1 protect yourself against what you perceive to be deadly
2 force; correct?

3 A Yes.

4 Q All right. And there are manners you are taught as a
5 law enforcement -- a law enforcement professional to
6 handle those things; right?

7 A Yes.

8 Q And you're allowed to carry a weapon; aren't you?

9 A Yes.

10 Q Okay. And most lay people -- most folks on the
11 street aren't -- don't have batons or tasers and things of
12 that nature; right?

13 A No.

14 Q Most people don't. All right. So in a situation,
15 what are you taught as a trained law enforcement person if
16 a person has threatened you and they come towards you at
17 night and you believe they have a weapon, what are you
18 taught?

19 A You can use -- you can defend yourself.

20 Q You can defend yourself?

21 A Yes.

22 Q All right.

23 A If the threat permits it.

24 Q If the threat is? I'm sorry?

25 A If the threat permits it.

1 **THE COURT:** Wait. Mr. Gipson?

2 **MR. GIPSON:** Yes, sir?

3 **THE COURT:** You all approach, please.

4 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
5 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING
6 OF THE JURY:)

7 **THE COURT:** On our next break we'll place the matter
8 on the record.

9 Ladies and gentlemen, from time to time we will have
10 a conference like that. There are matters of law that I
11 have to take up, and we do them out of your presence.

12 One way to accomplish that is to send you to your
13 jury room, another is to do what we just did. We had a
14 sidebar, and then at the first break I will have an
15 opportunity, if necessary, to discuss that on the record.

16 Don't place any weight or emphasis on anything that
17 happens when we have these sidebars. That's part of the
18 process. Thank you very much.

19 Thank you, Mr. Gipson. You may continue.

20 **MR. GIPSON:** Thank you, Your Honor.

21 **Q** Now, S.L.E.D. was called out to the scene at some
22 point; is that correct?

23 **A** They were.

24 **Q** All right. And what was their duty when they were
25 called to the scene?

1 **A** The crime scene unit.

2 **Q** Okay. What does the crime scene unit do from
3 S.L.E.D., if you know?

4 **A** I can't -- I can't speak on what they can or cannot
5 do.

6 **Q** Okay. Let me ask you this. Do you know where they
7 came from?

8 **A** I do not know.

9 **Q** Okay. Did you or any members of your department
10 collect evidence that particular night, to your knowledge?

11 **A** I did not. I can't speak for anyone else.

12 **Q** Okay. Did you collect gunshot residue that night?

13 **A** I did not.

14 **Q** Did you retrieve bullets or anything -- or bullet
15 fragments or shell casings, to your knowledge that night?

16 **A** I did not.

17 **Q** Did anyone from your office do that?

18 **A** I do not know.

19 **Q** Okay. Do you know if folks from your office are
20 qualified to do that?

21 **A** I do not.

22 **Q** Okay. And at this point, you're not qualified to do
23 those things, or at least back in '09 you weren't.

24 **A** No, sir.

25 **Q** Okay.

1 **MR. GIPSON:** Court's indulgence for a moment, Your
2 Honor?

3 **THE COURT:** Certainly. Take your time, sir.

4 **MR. GIPSON:** Thank you.

5 **Q** Now in -- at the sheriff's department, you have
6 different task forces that are assigned and different
7 groups that handle different types of matters; correct?

8 **A** Yes.

9 **Q** Okay. Do you have a gang activity task force that's
10 assigned here in Hampton County?

11 **A** At that time we did, yes.

12 **Q** Okay. Who was heading that task force?

13 **A** I believe it was Sergeant Mungin and Hunt.

14 **Q** Did you report to them or do anything particular for
15 them as it relates to this task force?

16 **A** Not for them, no.

17 **Q** And did you assist them in any way with this case
18 with any of those types of matters?

19 **A** No, sir.

20 **Q** Okay. All right.

21 **MR. GIPSON:** That's all my questions at this time,
22 Your Honor.

23 **THE COURT:** Redirect, Solicitor?

24 **MS. LEGETTE:** Begging -- begging the Court's
25 indulgence?

1 **THE COURT:** Certainly.

2 **MS. LEGETTE:** Your Honor, I have no further questions
3 of this witness. I ask that she be excused, please.

4 **THE COURT:** Any objection?

5 **MR. GIPSON:** I do object at this point.

6 **THE COURT:** Very well.

7 You may step down. I ask you to please remain
8 outside the courtroom.

9 **WITNESS:** Yes, sir.

10 **THE COURT:** Thank you.

11 Call your next witness.

12 **MR. MURDAUGH:** Charles Peeples.

13 If Your Honor, please? I would represent to the
14 Court that this witness would be cumulative to Ms.
15 McCallister, and I would offer him for cross-examination,
16 should Mr. Gipson care to.

17 **THE COURT:** Do you wish to ask this witness any
18 questions?

19 **MR. GIPSON:** I would like to see what he is offered
20 for, Your Honor.

21 **THE COURT:** Sure.

22 I understand it's cumulative. Briefly bring out the
23 testimony you want to, Solicitor.

24 **MR. MURDAUGH:** Yes, sir.

25 CHARLES PEEPLES, after being duly sworn,

DIRECT EXAMINATION OF CHARLES PEEPLES BY MR. MURDAUGH

204

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MURDAUGH:

4 Q Your name is Charles Peeples?

5 A Yes, sir, it is.

6 Q And you're employed by the Hampton County Sheriff's
7 Department?

8 A Twelve years.

9 Q And what's your rank?

10 A Corporal.

11 Q And on October the 2nd, 2009, were you at Tulifinny
12 Road where the subject of this case was happening?

13 A I was.

14 Q Okay, sir. Were you working with Katie McCallister?

15 A Yes, sir, I was.

16 Q And were y'all together the entire time?

17 A Yes, sir.

18 Q Okay, sir.

19 MR. MURDAUGH: That's all, if Your Honor, please?

20 CROSS-EXAMINATION

21 BY MR. GIPSON:

22 Q Briefly, sir. It's true that you all, once you got
23 to the scene and you secured the area, you came across a
24 green SUV?

25 A I don't recall what color the vehicle was.

1 Q Okay.

2 A I know there was a vehicle in the yard ---

3 Q Yes, sir.

4 A --- with the headlights on.

5 Q Okay.

6 A I remember that.

7 Q All right. The doors were open with that vehicle as
8 well, weren't they?

9 A I don't remember if the doors was open or not.

10 Q Okay. But the vehicle was running?

11 A And the headlights was on.

12 Q Okay. The engine was on?

13 A Right.

14 Q Do you know who turned it off?

15 A No, I do not.

16 Q Okay. All right.

17 MR. GIPSON: That's all my questions, Your Honor.

18 THE COURT: Any questions, Solicitor?

19 MR. MURDAUGH: No, sir. May Mr. Peeples be excused?

20 THE COURT: Any objection?

21 MR. GIPSON: No objection.

22 THE COURT: Mr. Peeples, thank you. You may step
23 down, and you're free to leave, sir.

24 WITNESS: Thank you.

25 THE COURT: Next witness.

DIRECT EXAMINATION OF SABRINA FELLERS BY MS. LEGETTE

206

1 **MS. LEGETTE:** Thank you, Your Honor. The State calls
2 Ms. Sabrina Fellers.

3 **MR. MURDAUGH:** And get Nicole ---

4 **MS. LEGETTE:** Duvigneaud.

5 **MR. MURDAUGH:** Nicole.

6 SABRINA FELLERS, after being duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MS. LEGETTE:

10 **Q** Good morning, ma'am.

11 **A** Good morning.

12 **Q** Please state your full name for the record and spell
13 your last name, please.

14 **A** Sabrina Anne Fellers. My last name is spelled
15 F-E-L-L-E-R-S.

16 **Q** Thank you, Ms. Fellers. Ms. Fellers, where do you
17 work?

18 **A** I currently am employed with the South Carolina Law
19 Enforcement Division, commonly referred to as S.L.E.D.

20 **Q** And how long have you worked at S.L.E.D.?

21 **A** Just about four years.

22 **Q** Tell us about your duties at S.L.E.D.

23 **A** I'm assigned to the Latent Print Crime Scene Unit.
24 Being part of a crime scene unit, we respond to requests
25 from local, state, and federal agencies for assistance in

1 crime scene investigation.

2 Q And, Ms. Fellers, can you tell us about your
3 education and background as it relates to what you do at
4 S.L.E.D., including crime scene investigations?

5 A I obtained a Bachelor's Degree from Youngstown State
6 University with a Major in Forensic Science. Part of that
7 degree included two internships. One was done with the
8 Allegheny County Coroner's Office in Pittsburgh, and I also
9 did an internship with the Charlotte Mecklenburg Police
10 Department's Crime Scene Unit.

11 I was hired by the Charlotte Mecklenburg Police
12 Department's Crime Scene Unit, and I worked there for
13 approximately two years, just under two years I think.
14 And I am Level One certified as a crime scene investigator
15 by the International Association for Identification.

16 I have also completed approximately five hundred
17 hours of training, different classes I went to, in the
18 areas of forensics, such as latent fingerprints,
19 photography, death investigation.

20 Q And, Ms. Fellers, or what is your title?

21 A Special Agent.

22 Q Okay. So can I call you Special Agent Fellers?

23 A That's fine.

24 Q All right. Well, Special Agent Fellers, tell us how
25 many crime scenes would you say you've worked over the

DIRECT EXAMINATION OF SABRINA FELLERS BY MS. LEGETTE

208

1 period of time since you've been in crime scene
2 investigations?

3 A Probably at least six hundred.

4 MS. LEGETTE: Your Honor, at this time I would offer
5 Ms. -- Special Agent Sabrina Fellers as an expert in the
6 field of crime scene investigations.

7 THE COURT: Care to examine as to qualifications?

8 MR. GIPSON: Your Honor, I don't have any voir dire.

9 THE COURT: Very well. I'll allow her to render
10 opinions to the extent there are opinions. We'll deal
11 with those one at a time, that would require some
12 expertise.

13 MS. LEGETTE: Thank you, Your Honor.

14 Q Special Agent Fellers, were you working for S.L.E.D.
15 in October of 2009?

16 A Yes.

17 Q Did you have an occasion to respond to a call for
18 assistance or investigations in Hampton County in October
19 of 2009?

20 A Yes.

21 Q And specifically turning your attention to October
22 2nd, 2009, did you respond to a location on Tulifinny Road
23 in Hampton County on that particular evening?

24 A Yes.

25 Q Can you tell us what you found when you arrived?

1 **A** When I arrived, there were uniformed officers on
2 scene. The scene had been secured with yellow crime scene
3 tape, and officers were standing by. There was a vehicle
4 parked behind a mobile home, a single wide mobile home,
5 and the doors on the vehicle were open.

6 **Q** Now, Special Agent Fellers, when you responded to the
7 call for assistance, who called you?

8 **A** We get contacted generally by our operations desk at
9 our dispatch center, and that is a request that the
10 sheriff's office makes to our headquarters.

11 **Q** So once you responded, you found this particular
12 vehicle with the doors open?

13 **A** Yes.

14 **Q** Okay. Can you describe what else you found at this
15 location?

16 **A** Yes. There were two additional vehicles parked in
17 the backyard of this residence. In between the two
18 vehicles there was a deceased black male covered with a
19 sheet.

20 There was also -- we did a search of the area, and we
21 found three fired cartridge cases. Those were collected,
22 and there was also a beer can on the driveway that was
23 open and partially full.

24 **Q** Now, Special Agent Fellers, as a part of your crime
25 scene investigation, is it customary for you to actually

1 create a diagram?

2 A Yes.

3 Q And did you create a diagram in this particular case?

4 A Yes.

5 Q And is the diagram that you created, is it to scale?

6 A No.

7 Q Would the diagram that you created in this particular
8 matter, would it assist you in your testimony here in
9 helping the jury understand what you found and where?

10 A Yes.

11 MS. LEGETTE: Begging the Court's indulgence?

12 (WHEREUPON, STATE'S Exhibit NO. 8 WAS marked for
13 identification only.)

14 Q Special Agent Fellers, I'm going to hand you in a
15 moment what's been previously marked as State's Exhibit
16 Number Eight. Take a moment and tell me if you recognize
17 this.

18 MS. LEGETTE: May I approach the witness, Your Honor?

19 THE COURT: Yes, you may.

20 MR. GIPSON: Your Honor, I don't object to that.

21 THE COURT: Okay. Thank you.

22 MR. GIPSON: Yes, sir.

23 Q Do you recognize it?

24 A Yes.

25 Q And, Special Agent Fellers, what is State's Exhibit

1 Number Eight?

2 **A** That is the diagram I did as part of my case file.

3 **Q** And is State's Exhibit Eight a fair and accurate
4 representation of the scene as you found it at Tulifinny
5 Road on or about October 2nd, 2009?

6 **A** Yes.

7 **MS. LEGETTE:** At this time, Your Honor, I would offer
8 for admission into evidence State's Exhibit Number Eight.

9 **THE COURT:** Admitted without objection.

10 **MS. LEGETTE:** Thank you, Your Honor.

11 (WHEREUPON, STATE'S Exhibit NO. 8 WAS admitted into
12 evidence.)

13 **MS. LEGETTE:** Your Honor, may Ms. -- Special Agent
14 Fellers come down and publish to the jury?

15 **THE COURT:** Ms. Fellers may step down, yes.

16 **MS. LEGETTE:** Thank you.

17 **Q** All right, Special Agent Fellers, I want you to speak
18 up so that the court reporter and our jury members can
19 hear what we're talking about here. Okay. Can you kind
20 of explain to the jury -- can everybody -- what we're
21 seeing?

22 **A** This is Tulifinny Road. This is the main road on
23 Tulifinny Road. This is the mobile home at [REDACTED] There
24 is a driveway area this way. Back here, this is the
25 backyard area.

1 This is the vehicle that had the doors open. This is
2 a tan Chevy S-10. This is a white vehicle. In between
3 them was a deceased black male covered with a white sheet.

4 There was a wood pile. This is a little bit not to
5 scale, so the wood pile was more in this area, but there
6 was a wood pile. Beneath the wood pile, there was one
7 fired cartridge case. That was marked as Evidence Marker
8 Number Four.

9 There were also Evidence Markers Number One and Two
10 were also fired cartridge cases. They were kind of
11 between the wood pile and the house.

12 Number Three is the beer can that was located on the
13 driveway. This is a shed area.

14 And [REDACTED] was the neighbor's house, and this is where
15 E.M.S. had picked up the second victim. And there were
16 some clothing items that I collected there.

17 Q Okay. So now, Special Agent Fellers, you talked
18 earlier about the cartridge casings. Tell us -- tell us
19 where you found those cartridge casings.

20 A Number Four was beneath the wood pile. Number Two
21 and Number One were kind of between the wood pile and the
22 house in that area in the rear yard.

23 Q And you collected those cartridge casings?

24 A Yes.

25 Q Okay. Now let's talk again about the neighbor's

1 house.

2 A Yes.

3 Q And I believe that's over to my right. Was -- you
4 said that you found clothing items at that location.

5 A Yes. There were multiple items at that location.

6 Q Did you find a patient lying there or any injured
7 person lying there?

8 A No, I did not. There was some blood that was swabbed
9 there, but I did not find a person at the time of my
10 arrival.

11 Q Okay. And did you -- did you learn where that person
12 might have gone?

13 A I was told they were transported by E.M.S.

14 Q Okay. Thank you, Special Agent Fellers. You can
15 have a seat back on the witness stand.

16 A Thank you.

17 MS. LEGETTE: Begging the Court's indulgence?

18 Q Special Agent Fellers, we talked earlier or previous
19 just moments ago about the cartridge casings that you
20 collected.

21 A Yes.

22 Q And when you collected those cartridge casings, what
23 did you do with them?

24 A I transported them to the laboratory in Columbia. I
25 also processed them for any possible evidence that they

DIRECT EXAMINATION OF SABRINA FELLERS BY MS. LEGETTE

214

1 might have on them, and then I submitted them to our lab
2 for further analysis.

3 Q Okay. And when you collected them, what did you do
4 to secure them?

5 A I took them in my custody and they were secured in
6 our lab area.

7 Q Okay. And you turned them over to S.L.E.D. for
8 processing after that?

9 A Yes.

10 (WHEREUPON, STATE'S Exhibit NO. 9 WAS marked for
11 identification only.)

12 (WHEREUPON, STATE'S Exhibit NO. 10 WAS marked for
13 identification only.)

14 (WHEREUPON, STATE'S Exhibit NO. 11 WAS marked for
15 identification only.)

16 Q Special Agent Fellers, in a moment I'm going to hand
17 you what's been previously marked State's Exhibits Number
18 Nine, Ten, and Eleven. I want you to take a moment and
19 tell me if you recognize these.

20 MS. LEGETTE: Begging the Court's indulgence? Your
21 Honor, may I approach the witness?

22 THE COURT: You may.

23 Q Special Agent Fellers, take a moment and tell me if
24 you recognize State's Exhibits Nine, Ten, and Eleven.

25 A Yes, I do.

1 Q And, Special Agent Fellers, what are State's Exhibits
2 Nine, Ten, and Eleven?

3 A Those are the containers that contain the cartridge
4 cases that I collected on scene.

5 Q And how are you able to recognize State's Nine, Ten,
6 and Eleven?

7 A I labeled them with the lab number that the lab
8 assigns for the case. I also initialed them, and I used
9 the marker numbers that I used on scene to identify each
10 one individually. I also sealed them with evidence tape
11 and dated them and used my initials on the evidence case.

12 Q And, Special Agent Fellers, are State's Exhibits
13 Nine, Ten, and Eleven in substantially the same condition
14 today as they were when you collected and turned them over
15 to S.L.E.D. originally?

16 A They appear to be.

17 MS. LEGETTE: Your Honor, at this time I would offer
18 State's Exhibits Nine, Ten, and Eleven for admission into
19 evidence.

20 MR. GIPSON: Without objection.

21 THE COURT: Without objection, they are admitted.

22 MS. LEGETTE: Thank you.

23 (WHEREUPON, STATE'S Exhibit NO. 9 WAS admitted into
24 evidence.)
25

1 (WHEREUPON, STATE'S Exhibit NO. 10 WAS admitted into
2 evidence.)

3 (WHEREUPON, STATE'S Exhibit NO. 11 WAS admitted into
4 evidence.)

5 MS. LEGETTE: Begging the Court's indulgence?

6 Q Special Agent Fellers, as a part of your
7 investigation in this matter, did you collect any other
8 evidence?

9 A I did.

10 Q Did you collect any -- did anyone from the Hampton
11 County Sheriff's Office turn over any evidence to you?

12 A Yes. I collected evidence from two people at the
13 Hampton County Sheriff's Office.

14 Q And was one of those people Detective Jimmy Freeman?

15 A Yes, ma'am.

16 Q And what did you collect from Detective Jimmy
17 Freeman?

18 A I collected some of the evidence that he had gotten
19 from autopsy that needed to be submitted to our laboratory
20 for further analysis.

21 Q And would those -- would that have included any
22 bullets?

23 A Yes.

24 Q From the autopsy?

25 A Yes.

1 (WHEREUPON, State's Exhibit No. 12 was marked for
2 identification and received into evidence.)

3 (WHEREUPON, State's Exhibit No. 13 was marked for
4 identification and received into evidence.)

5 Q Special Agent Fellers, in a moment I'm going to hand
6 you what's been previously marked State's Exhibits Twelve
7 and Thirteen. Take a moment and tell me if you recognize
8 these.

9 MS. LEGETTE: Your Honor, may I approach the witness?

10 THE COURT: Yes.

11 A Yes, I do.

12 Q And, Agent Fellers, what are State's Exhibits Twelve
13 and Thirteen?

14 A Those are the containers that contain the fired
15 bullets that I collected from Jimmy Freeman that he
16 collected from the autopsy.

17 Q And how are you able to recognize State's Exhibits
18 Twelve and Thirteen?

19 A I had them sealed with my evidence tape and my
20 initials on them. They also have information as to the
21 victim in our case. His name is on the label, and our lab
22 number is on there.

23 Q And, Agent Fellers, are State's Exhibits Twelve and
24 Thirteen, do they appear to be in substantially the same
25 condition today as they were when you collected them from

CROSS-EXAMINATION OF SABRINA FELLERS BY MR. GIPSON

218

1 Deputy Jimmy Freeman?

2 A Yes.

3 Q And upon receiving those, State's Exhibits Twelve and
4 Thirteen, from Detective Jimmy Freeman, what did you do
5 with them?

6 A I transported them to the S.L.E.D. Forensic
7 Laboratory, and they were logged in as evidence for
8 further analysis by other departments.

9 Q Thank you.

10 MS. LEGETTE: Begging the Court's indulgence?

11 THE COURT: Yes, ma'am.

12 Q Agent Fellers, I have no further questions. Answer
13 any questions from Mr. Gipson, please.

14 MR. GIPSON: Court's indulgence for a moment?

15 THE COURT: Certainly. Take your time.

16 CROSS-EXAMINATION

17 BY MR. GIPSON:

18 Q Agent Fellers, at some point in time did you collect
19 fingernail clippings from any of the folks involved in
20 this case?

21 A I collected them from Deputy Freeman also.

22 Q Okay. Now did you submit those for testing as well?

23 A Those were submitted to the laboratory, yes.

24 Q Okay. And to your knowledge, were they tested, if
25 you know?

1 **A** I would not have received those reports, ---

2 **Q** Okay.

3 **A** --- since I was just assisting as the crime scene
4 tech.

5 **Q** All right. And who would have been in charge of
6 directing that those be tested?

7 **A** That would have been somebody from Hampton County.

8 **Q** Okay. So whoever the chief case agent is or whoever
9 is handling the crime -- whoever is handling the
10 investigation in Hampton County would direct you if there
11 was something else to be tested?

12 **A** Yes.

13 **Q** Okay.

14 **MR. GIPSON:** All right. That's all of my questions,
15 Your Honor.

16 **THE COURT:** Redirect?

17 **MS. LEGETTE:** None, Your Honor.

18 **THE COURT:** Thank you. You may step down.
19 Do you wish for her to be excused?

20 **MS. LEGETTE:** Yes, please, Your Honor.

21 **THE COURT:** Any objection?

22 **MR. GIPSON:** No objection.

23 **THE COURT:** You're also free to leave. Thank you.

24 **MR. MURDAUGH:** Your Honor, please? I'm always
25 hesitant to do this, but it's near time when you normally

1 take a break.

2 **THE COURT:** Yes, sir.

3 **MR. MURDAUGH:** May we take that recess ---

4 **THE COURT:** Certainly.

5 **MR. MURDAUGH:** --- before I call my next witness?

6 **THE COURT:** Certainly.

7 Ladies and gentlemen, at this point we'll take a
8 recess. Do not begin your deliberations. Don't discuss
9 the case. We'll be with you in about ten or fifteen
10 minutes. Thank you.

11 Everyone else please remain seated until the jury
12 leaves. Thank you.

13 (SEPTEMBER 5, 2012, 10:48 A.M., WHEREUPON, THE JURY
14 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
15 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

16 **THE COURT:** Anything from the State before recessing?

17 **MR. MURDAUGH:** No, sir.

18 **THE COURT:** Anything from the defendant?

19 **MR. GIPSON:** No, sir.

20 **THE COURT:** Thank you very much.

21 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, THE
22 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT OF THE
23 PRESENCE OF THE JURY:)

24 **THE COURT:** Is the defense ready?

25 **MR. GIPSON:** Yes, sir.

1 **THE COURT:** Let the record reflect Mr. Greene is
2 present.

3 Solicitor, you may call your next -- well, let's get
4 the jury in first. Who is your next witness?

5 **MR. MURDAUGH:** Um, Nicole.

6 **THE COURT:** I understand. We're about to hear how
7 it's supposed to be pronounced.

8 (SEPTEMBER 5, 2012, 11:03 A.M., WHEREUPON, THE JURY
9 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
10 WERE HELD IN THEIR PRESENCE.)

11 **THE COURT:** All right. You may call your next
12 witness.

13 **MR. MURDAUGH:** We call Nicole ---

14 **MS. LEGETTE:** Duvigneaud.

15 **MR. MURDAUGH:** Duvigneaud. Somebody.

16 **THE COURT:** You tried.

17 NICOLE A. DUVIGNEAUD, after being duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MURDAUGH:

21 **Q** Would you give us your full name, please?

22 **A** Nicole Althea Duvigneaud.

23 **Q** If you will, get a little closer to the mic. I'm
24 having difficulty. Of course, I'm about half deaf anyhow,
25 but a little louder.

- 1 **A** Nicole Althea Duvigneaud.
- 2 **Q** Duvigneaud?
- 3 **A** Duvigneaud.
- 4 **Q** Okay. And where do you live, ma'am?
- 5 **A** In Yemassee.
- 6 **Q** Okay. I ask you whether or not prior to October the
- 7 2nd, 2009, you had an occasion to purchase a gun?
- 8 **A** Yes.
- 9 **Q** What kind of a gun was that?
- 10 **A** I purchased two guns before October.
- 11 **Q** Okay. The first one that you purchased, what kind of
- 12 gun was it?
- 13 **A** It was a Ruger.
- 14 **Q** A Ruger? And what kind of a gun was it?
- 15 **A** A .45 automatic.
- 16 **Q** A .45 automatic?
- 17 **A** Yes, sir.
- 18 **Q** Okay. When you purchased that gun, did you later
- 19 purchase another one?
- 20 **A** Yes, sir.
- 21 **Q** And what kind of a gun was it?
- 22 **A** It was a revolver, a .45.
- 23 **Q** Okay. What did you do with those two guns?
- 24 **A** I kept them in my possession.
- 25 **Q** Where in your possession?

1 **A** At first they were in my home, and then I moved them
2 to my car.

3 **Q** Okay. In what part of your car did you move them to?

4 **A** The trunk.

5 **Q** Okay, ma'am. Did you learn of the shooting of Tony
6 and Dominick Badger at some point in time?

7 **A** Yes.

8 **Q** After learning of that, did you have an occasion to
9 look in your trunk?

10 **A** Yes.

11 **Q** Were your guns in the trunk?

12 **A** No, they were not.

13 **Q** Okay. Did you learn where your guns went?

14 **A** No.

15 **Q** You never to this day learned where they went?

16 **A** No, I have no idea where they are.

17 **Q** I didn't ask you that, ma'am. I'm asking you if you
18 know where they went?

19 **A** Well, I was informed that Mr. Greene ---

20 **Q** Whoa, whoa, whoa. Don't tell me what anybody
21 informed you of, please. Did you talk to Brandon Greene?

22 **A** Yes.

23 **Q** Ma'am?

24 **A** Yes.

25 **Q** What was your relationship to Brandon Greene?

- 1 **A** He's my boyfriend.
- 2 **Q** Okay. And was on the 2nd of October of 2009?
- 3 **A** Yes, sir.
- 4 **Q** Did you talk -- when you learned the guns were
- 5 missing, did you talk with Brandon Greene?
- 6 **A** That night? Is that what you're asking?
- 7 **Q** No, ma'am. I'm asking you if you talked with him at
- 8 any time after ---
- 9 **A** I talked to him after I had known that my guns were
- 10 missing.
- 11 **Q** Okay. Did you learn where your guns had gone?
- 12 **A** One of them, yes.
- 13 **Q** Okay. And from whom did you learn that?
- 14 **A** Mr. Greene.
- 15 **Q** Okay. What did he tell you about the gun? Which one
- 16 did he tell you about?
- 17 **A** The Ruger.
- 18 **Q** The Ruger. That's the automatic.
- 19 **A** Yes, sir.
- 20 **Q** Okay. What did he tell you about the gun?
- 21 **A** That he took it when he was going fishing.
- 22 **Q** Okay. Did he tell you where the gun was?
- 23 **A** No.
- 24 **Q** Did he tell you what he had done with the gun?
- 25 **A** That it was thrown away.

1 Q Did he tell you who threw it away?

2 A He told me that he threw it away.

3 Q He told you that he, Brandon Greene, threw it away.

4 A Yes, sir.

5 Q Okay. What date did you buy that gun, the Ruger?

6 A I'm not sure. I don't have that receipt with me.

7 Q Did you buy it from a fellow by the name of Charlie
8 Bell in Beaufort?

9 A I'm not sure of his name, but I did buy it in
10 Beaufort County.

11 Q Okay, ma'am.

12 (WHEREUPON, STATE'S Exhibit NO. 14 WAS marked for
13 identification only.)

14 Q Is this the paperwork on that gun?

15 A (WHISPERING.)

16 Q Talk loud enough if you say something where the jury
17 can hear you, please.

18 A Yes, sir. Yes, sir. That's the paperwork.

19 MR. MURDAUGH: Your Honor, please? I offer these as
20 exhibits, three sheets.

21 THE COURT: Any objection?

22 MR. GIPSON: Without objection.

23 THE COURT: State's Exhibit Number?

24 COURT REPORTER: Number Fourteen, Your Honor.

25 THE COURT: State's Exhibit Fourteen ---

DIRECT EXAMINATION OF NICOLE DUVIGNEAUD BY MR. MURDAUGH

226

1 **MR. GIPSON:** No objection.

2 **THE COURT:** State's Exhibit Fourteen of three pages
3 is admitted without objection.

4 (WHEREUPON, STATE'S Exhibit NO. 14 WAS admitted into
5 evidence.)

6 **MR. MURDAUGH:** With the Court's permission, may I
7 staple these three sheets together?

8 **THE COURT:** Please do. Yes, sir.

9 **Q** Thank you. Answer any questions -- just one second.
10 Brandon Greene that you're talking about, do you see
11 him in the courtroom?

12 **A** No.

13 **Q** Well, look.

14 **A** Yes, I see him.

15 **Q** Okay. Where is he, please?

16 **A** To my right.

17 **Q** Identify the Brandon Greene that you have been
18 testifying about to the jury.

19 **A** He's to my right at the table with his lawyer.

20 **Q** Is it the fellow that I'm now putting my hand on his
21 shoulder?

22 **A** Yes, sir.

23 **Q** Thank you. Answer any questions Mr. Gipson may have.

24 **THE COURT:** You may cross-examine.

25 **MR. GIPSON:** Thank you, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION

BY MR. GIPSON:

Q Now, Ms. Duvigneaud, I'm going to show you what's been marked as State's Exhibit Number Fourteen. Is there a date on this as to when this purchase was made?

A I see a date.

Q Okay.

A It says certification date. Is that the date?

Q Okay. What date is listed as that certification date?

A 9/17/08.

Q Okay. And if you look at that last page of that state's exhibit that I handed you, is there a date that you signed your name?

A On the last page?

Q Yes. Yes, ma'am. Is there a date on that document on that last page?

A Yes. 9/17/08.

Q Okay. 9/17/08.

A Yes, sir.

Q All right. So September 17th, 2008; correct?

A Yes, sir.

Q Okay. And the incident that we're here for in court today is October of 2009; correct?

A Yes, sir.

CROSS-EXAMINATION OF NICOLE DUVIGNEAUD BY MR. GIPSON

228

1 Q Okay. Were you employed back in 2008?

2 A Yes, sir.

3 Q Where were you employed?

4 A Ridgeland Correctional Institution.

5 Q So you were a correctional officer?

6 A Yes, sir.

7 Q Okay. And you were a correctional officer when you
8 purchased these pistols.

9 A Yes, sir.

10 Q All right. And it's your testimony that Brandon told
11 you that he took the gun out of your trunk to go fishing?

12 A Yes, sir.

13 Q That's all my questions.

14 THE COURT: Redirect?

15 MR. MURDAUGH: I have no questions. You may come
16 down.

17 Call Charlie Bell.

18 May she be excused?

19 MR. GIPSON: No objection.

20 THE COURT: You are free to leave.

21 MR. MURDAUGH: Thank you.

22 Charlie Bell. My next witness after him will be
23 Keith King.

24 I apologize. I've been getting the witnesses, the
25 next one, and I forgot about doing it, so I apologize.

1 **THE COURT:** That's all right.

2 **MR. MURDAUGH:** Charlie Bell and then Keith King.

3 CHARLES E. BELL, after being duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 **BY MR. MURDAUGH:**

7 **Q** Your name is Charlie Bell?

8 **A** Charles E. Bell. Yes, sir.

9 **Q** Okay, sir. And where do you live, Mr. Bell?

10 **A** In Beaufort, South Carolina.

11 **Q** And what do you do for a living?

12 **A** I'm the owner of Port Royal Gun and Pawn.

13 **Q** Okay, sir. I ask you whether or not at some point in
14 time a lady by the name of Nicole Duvigneaud, or something
15 like that, if you sold a gun to her?

16 **A** Yes, sir, I did. My signature is on this Form 4473.

17 **Q** Okay, sir. I'm showing you State's Exhibit Number
18 Fourteen and ask you to identify that, please, three pages
19 of it.

20 **A** This is ATF Form 4473. This is the form in which
21 someone when they come to purchase a firearm, they fill
22 this form out. The top part of it is personal
23 identification. There's some questions they answer yes or
24 no to, and then they sign it and date it.

25 **Q** Okay, sir. I ask you who it is you sold -- what kind

DIRECT EXAMINATION OF CHARLES BELL BY MR. MURDAUGH

230

1 of gun was it?

2 A This was a Ruger KP-90, .45 ACP pistol.

3 Q Is that a revolver or an automatic?

4 A It's a semi-automatic handgun.

5 Q Okay, sir. I ask you who you sold it to?

6 A Nicole Althea Duvigneaud.

7 Q Okay. Spell that last name, please, sir.

8 A Can I look at mine? It's clearer.

9 THE COURT: Solicitor, it speaks for itself. It's
10 the same person.

11 A D-U-V-I-G-N-E-A-U-D.

12 Q Okay, sir. You're reading off of something. Is that
13 different than what I have?

14 A Same form, sir.

15 Q Okay, sir. What was the date that that gun was sold,
16 sir?

17 A 9/17/08.

18 Q Okay, sir. I show you State's Exhibit Number One for
19 identification and ask you if you can identify that?

20 A This is a picture of a Ruger KP-90.

21 MR. GIPSON: I would object, Your Honor.

22 THE COURT: Well, he's identified State's Exhibit One
23 as a picture of a Ruger.

24 Q Is that a fair representation of the gun you sold to
25 Nicole ---

1 **MR. GIPSON:** Objection.

2 **THE COURT:** I sustain the objection until he --
3 unless he can identify it as the gun he sold. It's a
4 picture of a Ruger. He's identified that.

5 **MR. MURDAUGH:** May we approach the bench, sir?

6 **THE COURT:** Sure.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
8 RECORD OUT OF THE HEARING OF THE JURY. THEREAFTER, THE
9 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
10 HEARING OF THE JURY:)

11 **Q** Thank you, sir. Answer any questions Mr. Gipson may
12 have.

13 **A** Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. GIPSON:

16 **Q** Just extremely briefly, Mr. Bell. State's Exhibit
17 Number Fourteen that you saw, this Firearm Transaction
18 Record, sir, ---

19 **A** Yes, sir.

20 **Q** --- this was filled out, essentially a background
21 check; right?

22 **A** Essentially a background check; correct.

23 **Q** And you have to fill these out in order to purchase a
24 firearm; right?

25 **A** From a dealer, yes, sir.

CROSS-EXAMINATION OF CHARLES BELL BY MR. GIPSON

232

1 Q From a dealer. And once you -- and you're a
2 firearm's dealer; correct?

3 A That's correct.

4 Q And once you fill this paperwork out, if you receive
5 basically an okay, you're able to sell that gun to the
6 person; is that correct?

7 A That's correct.

8 Q That's what you received in this case; correct?

9 A She went through. Yes, sir.

10 Q And you were able to sell the gun to her.

11 A That is correct.

12 MR. GIPSON: That's all my questions, Your Honor.

13 MR. MURDAUGH: You may be excused -- or may he be
14 excused from the court, sir?

15 THE COURT: Any objection?

16 MR. GIPSON: No objection, Your Honor.

17 THE COURT: You're free to step down, Mr. Bell, and
18 you're free to leave.

19 WITNESS: Thank you.

20 MR. MURDAUGH: I call Keith King. Bernard Badger
21 will be next.

22 Thank you, Mr. Bell.

23 KEITH KING, after being duly sworn, testified as
24 follows:

25 DIRECT EXAMINATION

1 BY MR. MURDAUGH:

2 Q Your name is Keith King?

3 A Yes, sir.

4 Q Mr. King, where do you live?

5 A Yemassee.

6 Q Where?

7 A Yemassee.

8 Q Okay. Whereabouts in Yemassee?

9 A ■ Wise Road.

10 Q Okay, sir. Directing your -- are you kin to Dominick
11 or Tony Badger?

12 A Tony is my stepson.

13 Q Tony is your stepson?

14 A Yes, sir.

15 Q Okay, sir. How long have you lived in Yemassee?

16 A Twenty-seven years.

17 Q Where do you work?

18 A Sun City, Del Webb, Hilton Head.

19 Q How long have you been there?

20 A Fourteen years.

21 Q Okay, sir. Mr. King, I ask you to direct your
22 attention to October the 2nd, 2009. Did you have an
23 occasion to be at the trailer on -- in which Dominick
24 Badger lived?

25 A Yes, sir.

1 Q Okay, sir. What time were you there?

2 A Um, we got off work about 11:00 o'clock, early that
3 Friday, and I got there about 12:00, between 12:00 and
4 12:30.

5 Q Okay, sir. When you got there, who was there?

6 A I met my son, Tony, Dominick, and Josh Habersham.

7 Q Josh Habersham.

8 A Yes, sir.

9 Q Okay, sir. Did anybody else come out -- come up
10 after you arrived there?

11 A No. It was just us right there during that time.
12 And his brother, Shawn was there, and we was ---

13 Q Whose brother?

14 A Tony's brother, Shawn.

15 Q Okay.

16 A And when I pulled up there -- I pulled up there, we
17 were going to change my brake pad on my truck. So, Shawn
18 helped me put the brake pad on the truck, and we were
19 sitting in the yard. So they was over there talking and
20 all that.

21 Q Is Shawn and Bernard the same person?

22 A No, Shawn is two different persons. Shawn is the
23 other brother.

24 Q Okay.

25 A So he was helping me put the brake pad on the truck.

1 So at the time we put the brake pad on my truck, we took
2 off and we went riding to see how it worked. We came
3 back, and it wasn't working right.

4 So Bernard came up. So I told Bernard: Bernard, you
5 know, I'm here and the brake pad on the truck isn't
6 working.

7 So we went and pulled the tires back off. Did it
8 again. Then after that, we sat down. We was sitting in
9 the yard talking. So we was just talking, drinking, and
10 talking about, you know, what we were going to do. It was
11 a Friday night.

12 And from there, about 4:00 o'clock, 4:00 or 5:00
13 o'clock, Brandon, he pulled up.

14 Q Brandon who?

15 A Um, Brandon Greene.

16 Q Do you see him in the courtroom?

17 A Um, no.

18 Q Well, look around and see if you can see him.

19 A That's him right there.

20 Q You're pointing with your right hand ---

21 A There. That's him right there.

22 Q Okay, sir. Are you talking about the man whose
23 shoulder I now place my hand?

24 A Yes, sir.

25 Q Okay, sir. He -- you can sit down. He came up, and

1 what happened then, Keith?

2 A All right. He passed by. He went home, and he came
3 back.

4 So we was sitting in the yard when he pulled up. You
5 know, we was in the yard talking. So he got out, and he
6 said: What's up, guys?

7 We said: What's up, man?

8 Ain't nothing.

9 He said: What y'all guys getting into?

10 I said: Nothing.

11 So, he pulled up. So, he got out the car. We
12 started talking. So, he got -- went back in the car and
13 pulled out a bottle. He handed me one, handed my son --
14 handed my son one and them other guys. We was sitting
15 around drinking, having fun.

16 So, after a while he came up and started talking. He
17 said: Hey, cuz, you a pretty big guy.

18 I said: Why?

19 He said: You know, I ain't going to fight you. I'd
20 rather shoot you first.

21 Q He said what?

22 A I said he said: You a pretty big guy.

23 And he said, right then he said: I ain't going to
24 fight you. I'd rather shoot you first.

25 I said: Why you -- why you say something like that?

1 So I went -- so he went to reach for -- inside his
2 car. I ran to my truck and grabbed a brick. I said:
3 Look here, man, I said, I don't play nothing like that.

4 I said: Don't threaten me like that.

5 I said: Well...

6 Then them guys grabbed me and said: No, Keith, don't
7 do that.

8 I said: Well, understand, you don't let nobody
9 threaten you, because you don't know what he about to pull
10 out the car.

11 So, I said: Well, what I'll do, I backed off.

12 I put the brick back in my car. Stand back. I told
13 my son: Well, I'm getting ready to go. I don't want no
14 problem.

15 I got in my -- I told them I was going to leave.

16 Q And did you leave?

17 A Yep.

18 Q Okay. Had you done anything, said anything, or made
19 any actions towards Mr. Greene ---

20 A No.

21 Q --- to cause him to say anything like that to you?

22 A Oh, no, no, no. I didn't. No, I did not.

23 Q Okay. Thank you. Answer any questions Mr. Gipson
24 may have.

25 **THE COURT:** You may cross-examine.

1 **MR. MURDAUGH:** Excuse me, sir. Let me ---

2 **THE COURT:** Hold on just a second.

3 **Q** You say that he reached inside the car. Did you see
4 what he reached for?

5 **A** No. No, he just reached in the car, and I just run
6 up to him and had the brick like this. You know?

7 **Q** Thank you, sir.

8 **THE COURT:** You may cross-examine.

9 **MR. GIPSON:** Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. GIPSON:

12 **Q** Now, Mr. King, you said that Tony is your stepson;
13 correct?

14 **A** Yes, sir.

15 **Q** All right. And you've spoken with Tony since this --
16 since this situation happened; haven't you?

17 **A** Uh-huh.

18 **THE COURT:** Is that a yes?

19 **A** Yes.

20 **Q** Okay. Multiple times?

21 **A** Yes, sir.

22 **Q** All right. And have you spoken to Mr. Habersham
23 since then?

24 **A** Mr. Habersham?

25 **Q** Josh Habersham.

- 1 **A** Yeah.
- 2 **Q** Okay. Have you spoken to Bernard Badger since then?
- 3 **A** Yeah. All of us was together that day, too.
- 4 **Q** On that day, and since that time you've been together
- 5 a good bit, too; right?
- 6 **A** Huh?
- 7 **Q** You've been together a good bit since that time, too;
- 8 haven't you?
- 9 **A** Not really, not Josh Habersham. I mean, you know,
- 10 the guys -- the brothers used to come by and we would
- 11 always get together and talk ---
- 12 **Q** Okay.
- 13 **A** --- about, you know, the situation and all that.
- 14 **Q** Right. And y'all have been talking even through this
- 15 proceeding, too; haven't you?
- 16 **A** No, not really.
- 17 **Q** You've been sitting together and talking in the room
- 18 together; right?
- 19 **A** No, we wasn't about this.
- 20 **Q** Okay. Has anybody been talking to you about what's
- 21 been going on in court so far?
- 22 **A** No.
- 23 **Q** Okay. Now what's today's date?
- 24 **A** Um, it's -- oh, Lord.
- 25 **Q** Is it fair if I tell you it's September 5th, 2012; is

1 that fair?

2 **A** (NO RESPONSE.)

3 **MR. GIPSON:** Will you take judicial notice?.

4 **THE COURT:** What's -- what's the purpose of that
5 question? It is what it is.

6 **MR. GIPSON:** Okay.

7 **THE COURT:** The witness can answer; if he knows, he
8 knows. If he doesn't, then move on.

9 **Q** Okay. But it's September 2012; right?

10 **THE COURT:** It is what it is, sir.

11 **MR. GIPSON:** Okay.

12 **THE COURT:** I mean, there's no question about that.
13 Thank you, sir. This witness doesn't need to establish
14 that.

15 **MR. GIPSON:** All right.

16 **THE COURT:** Everybody in the courtroom knows that.

17 **MR. GIPSON:** Yes, sir.

18 **THE COURT:** Thank you, sir.

19 **Q** When did this incident happen?

20 **A** October the 2nd.

21 **Q** 2009; correct?

22 **A** (NODDED AFFIRMATIVELY.)

23 **Q** Okay.

24 **THE COURT:** Was that a yes?

25 **A** Yes, sir.

1 Q Okay. Can you tell this jury when you spoke to the
2 police about this situation happening in October 2009?

3 A The police I spoke to?

4 Q That's what I'm saying. Can you tell us when you --
5 did you speak to the police in 2009 about this?

6 A No.

7 Q In December 2009?

8 A Uh-uh.

9 Q January 2010?

10 A Uh, we had a hearing up in Hampton.

11 Q Okay. But did you speak to the police about what you
12 just testified to here in court about this in ---

13 A Uh-uh. No, not at all.

14 Q In 2010? That's January, but ---

15 A January. I can't remember.

16 Q Okay. Did you ever write a statement with police
17 about what you're testifying to here in court today?

18 A Yes, I did. I wrote it -- what happened -- what I
19 talked about, that's what I was talking about happened. I
20 really, really didn't know what really went on after that
21 happened.

22 Q Okay.

23 A I was at home.

24 Q Okay. My question was, did you write a statement to
25 police talking about this specific incident that you

1 testified to here in court?

2 A Yes, sir.

3 Q Okay. Who did you write it with?

4 A Who?

5 Q Yes.

6 A Mr. um -- um -- Bruce Davis, Mr. Bruce. He had
7 talked to me.

8 Q Okay. And you wrote a statement?

9 A Yes, sir.

10 Q And you signed the statement?

11 A Yes, sir. And I didn't ---

12 Q Okay.

13 A --- and um -- I didn't say nothing else.

14 MR. GIPSON: I just have a quick matter of law to
15 take up here.

16 THE COURT: Come to the side.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
18 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THEIR
19 HEARING. THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD
20 ON THE RECORD IN THE HEARING OF THE JURY:)

21 THE COURT: You can ask him if he has a copy.

22 Q Do you have a copy?

23 A No, sir.

24 Q Okay. Do you have a copy of the statement that you
25 wrote?

1 **A** No. No, sir.

2 **Q** Okay. You said no, you don't?

3 **A** No.

4 **Q** All right. Did Brandon Greene ever shoot his gun at
5 you that night?

6 **A** No, sir.

7 **Q** Okay.

8 **MR. GIPSON:** That's all my questions, Your Honor.

9 **THE COURT:** Very well.

10 **MR. MURDAUGH:** I have no further questions. May Mr.
11 King be excused?

12 **THE COURT:** Any objection?

13 **MR. GIPSON:** No, sir.

14 **THE COURT:** You're free to step down, and you're free
15 to leave.

16 **MR. MURDAUGH:** Bernard Badger. My next witness will
17 be Dan DeFreese.

18 **THE COURT:** Just for the record, we had a sidebar
19 concerning the testimony of Mr. King. We will place
20 certain matters on the record at the first break.

21 **MR. GIPSON:** Yes, sir.

22 **THE COURT:** Thank you very much.

23 **MR. GIPSON:** Thank you, Your Honor.

24 BERNARD BADGER, after being duly sworn,
25 testified as follows:

DIRECT EXAMINATION

BY MR. MURDAUGH:

Q Your name is Bernard Badger?

A Yes, sir.

Q Please get a little closer to that microphone so we can hear you.

A Yes, sir.

Q Okay, sir. Where do you live?

A I live in Gifford, South Carolina.

Q Okay, sir. Are you originally from Yemassee?

A Yes, sir.

Q Are you the brother of Dominick and Tony Badger?

A Yes, sir.

Q Okay. I ask you whether or not on October the 2nd, 2009, you were at Dominick's house on Tulifinny Road?

A Yes, sir, I was.

Q Okay, sir. What time did you get there?

A Um, I got there after work. I can't remember the exact time.

Q Morning, afternoon?

A It was the afternoon.

Q Okay, sir. When you got there, who was present?

A It was me; my brother, Anthony; my brother, Dominick; Dexter Bozeman; that was all -- oh, and Keith King.

Q I'm sorry?

- 1 **A** I said and Keith King.
- 2 **Q** Okay. You, Tony, Dominick, Dexter Bozeman, ---
- 3 **A** Yes, sir.
- 4 **Q** --- and Keith King.
- 5 **A** Yes, sir.
- 6 **Q** Okay. Did anything -- did anybody else come up that
- 7 day?
- 8 **A** Yes, sir.
- 9 **Q** Who?
- 10 **A** Brandon Greene came a little later.
- 11 **Q** Who?
- 12 **A** Mr. Brandon Greene.
- 13 **Q** Who -- where -- is he in the courtroom?
- 14 **A** Yes, sir.
- 15 **Q** Where is he?
- 16 **A** He be right here.
- 17 **Q** You're pointing over to your right. Are you pointing
- 18 to the young man on whose shoulder I now place my hand?
- 19 **A** Yes, sir.
- 20 **Q** Okay. What time did he get there?
- 21 **A** He came in about thirty to forty-five minutes after I
- 22 was there.
- 23 **Q** Okay, sir. Did anything happen between he and Keith
- 24 King while you were there?
- 25 **A** Yes, sir.

1 Q Tell us what happened, in your own words, please.

2 A Somehow he was saying something about Mr. King ---

3 Q If you will, tell the jury when you say: He was
4 saying, ---

5 A Oh.

6 Q --- tell who was saying what.

7 A Brandon and Keith King was talking.

8 Q Okay.

9 A And I don't know what happened, but I remember, as
10 far as I can remember, he told Keith King ---

11 Q He told?

12 A Brandon told Keith King ---

13 Q Okay.

14 A --- that Keith King was a big guy, and something
15 about -- I don't know what happened, but he would shoot
16 him.

17 Q Okay.

18 A That's when Keith King grabbed a brick and told him
19 when he went to pull the gun from the car that he would
20 hit him with the brick.

21 Q Okay. Did he have a gun?

22 A Yes, sir.

23 Q Where was the gun?

24 A The gun was in the car at the time.

25 Q What kind of -- did you see it?

1 **A** Yes, sir.

2 **Q** Tell me what kind of gun it was.

3 **A** It was a silver, .45 Ruger.

4 **Q** A silver, .45 Ruger.

5 **A** Yes, sir.

6 **Q** Okay, sir. And when Keith got the brick, what
7 happened then?

8 **A** Me, my brother, Dominick and Tony, got in between the
9 two to stop the conflict.

10 **Q** Okay. Did anything else happen while you were there?

11 **A** No, sir.

12 **Q** Did you later leave?

13 **A** Yes, sir.

14 **Q** Okay. Did you later come back to Dominick's house
15 after you left?

16 **A** Yes, sir.

17 **Q** About what time did you get there?

18 **A** When I came back, it was later on at night, and
19 that's when I saw the ambulance and police cars.

20 **Q** Okay. So you didn't get there before the shooting
21 took place.

22 **A** Everyone -- I left before the shooting took place. I
23 wasn't there at the time of the shooting.

24 **Q** You came up afterwards?

25 **A** Yes, sir.

1 Q Okay. Thank you, sir. Answer any questions Mr.
2 Gipson may have.

3 THE COURT: You may cross-examine.

4 MR. GIPSON: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. GIPSON:

7 Q Good morning. I'm going to ask you -- excuse me,
8 just a series of questions, and if you can answer them
9 with a yes or a no, then you will have ample time to
10 explain your answers. Is that fair?

11 A Yes.

12 Q Okay. Now, you had an opportunity to sit down and
13 talk to the police about everything that you witnessed
14 that night; didn't you?

15 A Yes, sir.

16 Q Okay. And you did that about October 4th, 2009;
17 didn't you?

18 A I'm not exactly sure ---

19 Q Okay.

20 A --- if that's the correct date or not.

21 Q This may help refresh your recollection. Take a look
22 at that and see if you remember this.

23 A Yes, sir. I remember.

24 Q Okay.

25 MR. GIPSON: I'd like to have this marked.

1 **THE COURT:** Sure.

2 Defendant's exhibit number?

3 **COURT REPORTER:** Seven, Your Honor.

4 **THE COURT:** Seven? Defendant's Exhibit Seven for ID
5 only at this point.

6 (WHEREUPON, DEFENDANT'S Exhibit NO. 7 WAS marked for
7 identification only.)

8 **MR. GIPSON:** I'm eventually going to offer it.

9 **THE COURT:** That's fine.

10 **MR. GIPSON:** All right.

11 **Q** Can you read the date and just take a look at that
12 and just tell us what that is, if you would, please?

13 **A** The date is ---

14 **THE COURT:** Don't publish it. Just tell him what it
15 is first. What is the document?

16 **A** It's a statement I wrote.

17 **Q** Okay. Could you speak up a little?

18 **A** It's a statement that I wrote.

19 **Q** Okay. A statement that you wrote. So it bears your
20 signature?

21 **A** Yes, sir.

22 **Q** Okay. And you wrote it in the presence of whom? Who
23 witnessed it, if you can read that handwriting?

24 **A** I remember Lieutenant Singleton.

25 **Q** Okay. And he's sitting in the courtroom today;

1 right?

2 A Yes, sir.

3 Q Okay.

4 THE COURT: Are you going to offer that?

5 MR. GIPSON: Yes, sir. I'm going to offer it into
6 evidence.

7 THE COURT: Any objection?

8 MR. MURDAUGH: Your Honor, please? The witness is
9 here to testify. If there's something -- yes, sir. I
10 object.

11 THE COURT: Okay. Ask him any questions. At this
12 point, there's no need for it. It may arise. He's
13 identified it as his statement. You can ask him any
14 questions you wish.

15 MR. GIPSON: Yes, sir.

16 Q In this statement that you wrote that you've
17 acknowledged that's been marked as Defendant's Exhibit
18 Number Seven, there's a line down here ---

19 THE COURT: No, sir. Don't ---

20 MR. GIPSON: Okay.

21 THE COURT: You can ask him a question.

22 MR. GIPSON: Okay.

23 THE COURT: I don't want him publishing from the
24 statement until it's submitted.

25 MR. MURDAUGH: On second thought, sir, I -- I

1 withdraw my objection.

2 **THE COURT:** Okay.

3 **MR. MURDAUGH:** I don't mind it coming in.

4 **THE COURT:** Thank you, sir. The statement is
5 admitted, without objection. Now you can publish it.

6 **MR. GIPSON:** Thank you, Your Honor.

7 **(WHEREUPON, DEFENDANT'S Exhibit NO. 7 WAS admitted**
8 **into evidence.)**

9 **Q** Did you affirm that you were going to be honest and
10 truthful about what you told them?

11 **A** Yes, sir.

12 **Q** And you were honest and truthful that day about what
13 you told them?

14 **A** Yes, sir.

15 **Q** Okay. Tell the jury about the testimony that you
16 gave in that statement that you wrote that Brandon Greene
17 shot his gun five times in the air ---

18 **A** He did.

19 **Q** --- in front of Keith King.

20 **A** He did.

21 **Q** He did?

22 **A** Yes.

23 **Q** Okay. And then he hugged him and said: I was just
24 playing.

25 **A** Correct.

1 Q Okay. And that's your testimony here today. .

2 A Yes.

3 Q Okay. Can you explain why you didn't mention that
4 when you were asked under direct testimony from Mr.
5 Murdaugh that you didn't talk about that?

6 A No, sir.

7 Q Okay. But now you're saying that he actually --
8 first of all, you're suggesting that he threatened Mr.
9 King; right?

10 A (NO RESPONSE.)

11 Q He, meaning Brandon. You're saying that Brandon
12 threatened Mr. King; right?

13 A I'm not sure if it was a threat or not.

14 Q Okay. So you're saying that at some point in time he
15 had some words with Mr. King. Mr. King went and got a
16 brick, and he went to his car. He, meaning Brandon, went
17 to his car; correct?

18 A Yes.

19 Q And then Mr. Greene, Brandon Greene, took out a gun
20 and shot it five times in the air.

21 A Yes, he did shoot it five times in the air at this
22 same time.

23 Q Okay. Okay. And so this statement that you gave on
24 October the 4th, 2009, is the truth.

25 A Yes, sir.

1 Q And that's what happened.

2 A Yes, sir.

3 Q Okay. Now after shooting this gun in the air five
4 times, you're suggesting that he hugged Mr. King and said:
5 I was just playing?

6 A Yes, sir.

7 Q Okay. And then after that, everything was fine?

8 A Yes, sir.

9 Q All right. So five shots were fired. Mr. King gets
10 a hug and everybody is happy, and just go back to telling
11 jokes and drinking?

12 A Yes, sir.

13 Q Okay.

14 MR. GIPSON: That's all my questions, Your Honor.

15 THE COURT: Redirect?

16 MR. MURDAUGH: I have no questions on redirect, sir.
17 I ask that he be excused.

18 THE COURT: Any objection?

19 MR. GIPSON: No, sir.

20 THE COURT: Mr. Badger, you may step down. You're
21 free to leave, sir.

22 MR. MURDAUGH: Call Dan DeFreese.

23 FRANK DAN DEFREESE, after being duly sworn,
24 testified as follows:

25 DIRECT EXAMINATION

1 BY MR. MURDAUGH:

2 Q Your name, sir?

3 A It's Frank Dan DeFreese. It's capital D-E, capital
4 F-R-E-E-S-E.

5 Q Dan, we've been knowing each other for a long time;
6 have we not?

7 A We have, indeed.

8 Q Okay, sir. Where do you work?

9 A I work for the South Carolina Law Enforcement
10 Division in the Forensic Services Laboratory in Columbia.

11 Q That's better known as S.L.E.D.?

12 A It is.

13 Q Okay, sir. How long have you worked with S.L.E.D.?

14 A For about forty-six years.

15 Q Okay, sir. And in what capacity do you work for
16 them?

17 A I examine evidence in firearm and tool mark cases,
18 and usually it's trying to determine whether bullets were
19 fired by the same gun or a particular gun, and I also
20 identify tool marks made by various different tools, like
21 on physical security devices.

22 Q Okay, sir. What is your educational background?

23 A I'm a graduate of the University of South Carolina in
24 Columbia, but my principle training in firearms and tool
25 mark identification actually occurred at S.L.E.D. after my

1 **A** State's Exhibit Twelve and State's Exhibit Thirteen
2 are both fired .45 caliber bullets.

3 **Q** Okay, sir. Okay, sir. Did you also have an occasion
4 to examine State's Exhibits Nine, Ten, and Eleven, which
5 are on the desk in front of you?

6 **A** Yes, sir, I did.

7 **Q** Okay, sir. And what are those items?

8 **A** They each contain one fired .45 auto caliber
9 cartridge case.

10 **Q** Okay, sir. Did you do an examination to see whether
11 or not those items were fired by the same gun?

12 **A** I did.

13 **Q** Okay, sir. And can you tell me about Nine, Ten, and
14 Eleven, the spent casings?

15 **A** Yes, sir. I compared the three fired cartridge cases
16 in State's Exhibits Nine, Ten, and Eleven with each other.
17 I found matching breach base and firing pin impressions on
18 all three, which are placed on them by the gun in which
19 they are fired at the time that they're being fired. And
20 from that, I concluded that all three of those cartridge
21 cases were fired by one in the same firearm.

22 **Q** Okay, sir. And that was what caliber firearm?

23 **A** It was a .45 auto caliber firearm.

24 **Q** I'm sorry. I didn't hear your answer.

25 **A** It was a .45 automatic caliber firearm.

1 Q Okay, sir. Did you examine the other two? What
2 numbers are they?

3 A Exhibits Twelve and Thirteen.

4 Q And that's been identified as the projectile -- spent
5 projectiles?

6 A Yes.

7 Q Okay, sir. Did you make a determination if they came
8 from the same gun or not?

9 A I did. I compared State's Exhibit Twelve with
10 State's Exhibit Thirteen. I found the same rifling
11 characteristics, the same rifling class characteristics on
12 both of them. I found matching individual rifling
13 characteristics, which would be unique to the gun barrel
14 in which they were fired.

15 Q Okay, sir.

16 A From that I concluded that the bullet in State's
17 Exhibit Twelve and the bullet in State's Exhibit Thirteen
18 were fired by the same gun barrel.

19 Q Okay, sir. You were not able to determine whether or
20 not the two projectiles were fired from those casings,
21 were you?

22 A No, sir, I was not. They could have been, but I did
23 not -- there was no firearm submitted.

24 Q Okay. So you know that the three casings were fired
25 by the same gun.

1 **A** Correct.

2 **Q** The two projectiles were fired by the same gun.

3 **A** Correct.

4 **Q** Okay. Did you make a determination of what guns
5 could have fired the two projectiles or the casings?

6 **A** Yes, sir. I examined the rifling standards that were
7 on the two .45 caliber bullets. Both bullets were fired
8 from a gun barrel that was rifled with six grooves with
9 right twists. I measured the width of the lands and
10 grooves, and from that obtained a list of possible
11 firearms that could have fired those bullets to use as an
12 investigative aid.

13 **Q** Okay, sir. And how many of them were there? A
14 bunch?

15 **A** Actually, a fairly small number. In my report I
16 listed twelve possible makes.

17 **Q** And what are they, sir?

18 **A** They are Auto Ordinance, and Colt, Eagle Arms, a
19 Spanish company known as Fabrinor Legutiano, that's
20 F-A-B-R-I-N-O-R L-E-G-U-T-I-A-N-O, a Haskell Arms, High
21 Standard, a Llama, that's L-L-A-M-A, Ruger ---

22 **Q** I'm sorry. What?

23 **A** It's Llama.

24 **Q** No.

25 **A** Like the animal.

1 Q Right after Llama.

2 A Right after Llama is Ruger.

3 Q Ruger. Okay, sir.

4 A R-U-G-E-R. Savage, Shooters Arms Manufacturing,
5 Star, and Tanfoglio, that's T-A-N-F-O-G-L-I-O.

6 Q Okay, sir.

7 A My wife used to be a court reporter, so I know to say
8 these things.

9 Q Thank you, Mr. DeFreese. Answer any questions Mr.
10 Gipson may have.

11 THE COURT: You may cross-examine.

12 MR. GIPSON: No questions, Judge.

13 THE COURT: Thank you very much, sir.

14 MR. MURDAUGH: May Mr. DeFreese be excused?

15 THE COURT: Any objection?

16 MR. GIPSON: No, sir.

17 MR. MURDAUGH: If you will, wait and let me talk to
18 you a second.

19 THE COURT: You're free to leave, Mr. DeFreese.

20 WITNESS: Thank you, sir.

21 MR. MURDAUGH: If Your Honor please? That will
22 conclude our case, with the exception of Dr. Presnell, the
23 pathologist. Ms. Legette tells me that she talked with
24 her at around 11:00 o'clock. Was that right?

25 MS. LEGETTE: Yes, Your Honor. Yes, sir.

1 **MR. MURDAUGH:** And that she was on the way. So I
2 assume 1:00 o'clock.

3 **THE COURT:** We'll break for lunch, ladies and
4 gentlemen. Do not begin your deliberations. Don't
5 discuss the case among yourselves, and while you're out,
6 please do not allow anybody to talk with you about this
7 case or talk about it in your presence.

8 I'd ask you to return to your jury room, please, by
9 1:15, and we'll resume the trial of this case. Thank you.

10 (SEPTEMBER 5, 2012, 11:51 A.M., WHEREUPON, THE JURY
11 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
12 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

13 **THE COURT:** All right. Anything from the State at
14 this point?

15 **MR. MURDAUGH:** No, sir.

16 **THE COURT:** All right. We had a sidebar during the
17 testimony of Keith King concerning the testimony of Mr.
18 King regarding the alleged statement that was given and
19 made by him. The Solicitor advised us at the sidebar that
20 the State has never seen such a document.

21 **MR. MURDAUGH:** That is correct, sir.

22 **THE COURT:** And I understand there was nothing given
23 to you about that statement and no -- no mention made.

24 **MR. GIPSON:** That's correct, Your Honor.

25 **THE COURT:** It's fair game for argument.

1 **MR. GIPSON:** Yes, sir.

2 **THE COURT:** I don't think it's necessary for the
3 Court to instruct further concerning the existence of a
4 statement, whether he did or didn't. I don't think -- I
5 think it's evidence that somebody has testified but it has
6 not been produced, so it's fair game.

7 **MR. GIPSON:** Yes, sir.

8 **THE COURT:** Is there anything else that you wish to
9 supplement the record concerning that discussion?

10 **MR. GIPSON:** Not at this time, Your Honor.

11 **THE COURT:** Or that issue?

12 **MR. GIPSON:** No, sir.

13 **MR. MURDAUGH:** If Your Honor, please? I'd like to
14 put on the record that I have talked with Ms. Legette and
15 with Bruce Davis and with Anthony Russell and Perry
16 Singleton, and none of us are aware of a statement.

17 **THE COURT:** I understand that. I just ---

18 **MR. MURDAUGH:** I just wanted that to be on the
19 record.

20 **THE COURT:** That's fine, sir. That's covered, but
21 the witness said what he said. It's fair game for
22 argument.

23 All right. You have one more witness, then?

24 **MR. MURDAUGH:** Yes, sir.

25 **THE COURT:** At this point, let's use this opportunity

1 to discuss certain issues. Have you talked with your
2 client about his right to testify or not testify?

3 **MR. GIPSON:** I have, Your Honor.

4 **THE COURT:** And has he made a decision, at least at
5 this point?

6 **MR. GIPSON:** No, sir. We were really looking to hear
7 a little bit more of the testimony and make that decision.

8 **THE COURT:** All right. We still have the -- he's
9 heard all -- all but the pathologist, and I would assume
10 the pathologist is going to testify to basically the
11 injuries to the deceased and the bullets removed from his
12 body. Let me talk with him now.

13 **MR. GIPSON:** Yes, Your Honor.

14 **THE COURT:** Thank you, sir.

15 Mr. Greene, you can remain seated, sir. Whatever
16 your pleasure. If you want to stand, that's perfectly all
17 right, but you don't have to stand for me. Thank you very
18 much.

19 You've had a chance to talk with your lawyer about
20 your right to testify or not testify; is that correct,
21 sir?

22 **DEFENDANT, MR. GREENE:** Yes, sir, Your Honor.

23 **THE COURT:** And you're still contemplating that
24 decision; is that correct?

25 **DEFENDANT, MR. GREENE:** Yes, sir, Your Honor.

1 **THE COURT:** You understand that if you take the
2 stand, you will be subject to cross-examination? That
3 means that the State could challenge your testimony, just
4 as Mr. Gipson has challenged the witnesses that have
5 appeared on behalf of the State. You understand that?

6 **DEFENDANT, MR. GREENE:** Yes, sir, Your Honor.

7 **THE COURT:** You also understand and your lawyer has
8 explained to you that it's your right not to testify, as
9 I've already indicated to the jury in my opening remarks.
10 You don't have anything to prove or disprove, and you
11 don't even have to present evidence. You understand that?

12 **DEFENDANT, MR. GREENE:** Yes, sir, Your Honor.

13 **THE COURT:** But -- and I would further instruct the
14 jury that, in my Charge, that if you chose not to testify
15 that they could not use that against you in any way. Do
16 you realize that?

17 **DEFENDANT, MR. GREENE:** Yes, sir, Your Honor.

18 **THE COURT:** Are you under the influence of any
19 alcohol or any medication here today?

20 **DEFENDANT, MR. GREENE:** No, sir, Your Honor.

21 **THE COURT:** Have you had sufficient time to think
22 about your decision thus far, about whether to testify or
23 not testify?

24 **DEFENDANT, MR. GREENE:** Yes, sir, Your Honor.

25 **THE COURT:** And you want to await the conclusion of

1 the State's case before ultimately making that decision?

2 **DEFENDANT, MR. GREENE:** Yes, sir, Your Honor.

3 **THE COURT:** Are you satisfied with the manner in
4 which your attorney has advised you?

5 **DEFENDANT, MR. GREENE:** Yes, sir, Your Honor.

6 **THE COURT:** And you'll have an opportunity to talk to
7 him further, obviously, at the close of the State's case.

8 I'll find that he has demonstrated by his responses
9 that he truly does appreciate his rights with regards to
10 testifying or not testifying. He does not appear to be
11 suffering from any defect or any problem making such a
12 decision. He's denied consuming any alcohol or any type
13 of -- any type of medication. I will further -- we will
14 renew this conversation at the close of the State's case.

15 Another thing that I want to place on the record, in
16 our discussions in a pretrial conference, there were
17 offers made to resolve this case, as I understand. Is
18 that correct?

19 **MR. MURDAUGH:** That is correct, sir.

20 **THE COURT:** And he was offered an opportunity to
21 plead to voluntary manslaughter and for the two to run
22 concurrent, as I understand.

23 **MR. MURDAUGH:** That is correct, sir.

24 **THE COURT:** With no recommendation of time; is that
25 correct?

1 **MR. GIPSON:** That's correct, Your Honor.

2 **THE COURT:** And you've discussed that fully with him?

3 **MR. GIPSON:** I have, Your Honor.

4 **THE COURT:** And he has instructed you to reject that
5 offer?

6 **MR. GIPSON:** Court's indulgence, Your Honor?

7 **THE COURT:** I want to put that on the record.

8 **MR. GIPSON:** Yes, sir. I understand.

9 (WHEREUPON, MR. GIPSON AND THE DEFENDANT SPEAK OFF
10 THE RECORD. THEREAFTER, THE FOLLOWING PROCEEDINGS WERE
11 HELD ON THE RECORD:)

12 **MR. MURDAUGH:** I might add that the offer still is in
13 place at this point.

14 **THE COURT:** Yes, sir.

15 **MR. GIPSON:** Yes, sir. We've discussed the matter at
16 length yesterday, and we -- we -- we've discussed the
17 matter at length.

18 **THE COURT:** I understand.

19 And you've instructed your lawyer to reject the
20 offer.

21 **DEFENDANT, MR. GREENE:** Yes, sir.

22 **THE COURT:** Okay. That's fine. I just wanted to
23 place that on the record.

24 I didn't expect this to be the case, but
25 unfortunately in my career I've had testimony in a

1 subsequent proceeding where I wasn't convinced that -- it
2 really didn't make any difference, because the person who
3 came to trial and he was convicted. But it always gave me
4 some pause, because I don't know that the defendant really
5 understood or appreciated the offer that was made to him.
6 I'm not sure he had a full opportunity to reject it.

7 So as a result of that, I've started doing that in
8 cases of this nature. I want to make sure the record
9 contains that you were aware of the offer, and you
10 instructed your lawyer to reject it, because as you know,
11 the exposure is quite significantly different.

12 Thirty years on voluntary manslaughter is not the
13 same as a minimum sentence for murder. Do you understand
14 that?

15 **DEFENDANT, MR. GREENE:** Yes, sir.

16 **THE COURT:** Okay. Thank you, sir.

17 Thank you very much.

18 **MR. GIPSON:** Thank you, Your Honor.

19 **MR. MURDAUGH:** Thank you, sir.

20 **THE COURT:** We'll be at ease until 1:15.

21 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, AT 1:10
22 P.M., THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN
23 CHAMBERS AND OUT OF THE PRESENCE OF THE JURY:)

24 **THE COURT:** All right. You can bring him in, please.

25 (WHEREUPON, JUROR YOUMANS ENTERED CHAMBERS.)

1 **THE COURT:** I'll let you sit right there, please,
2 sir. Good afternoon. I appreciate it.

3 **JUROR YUMANS:** Yes, sir.

4 **THE COURT:** Your name for the record, please?

5 **JUROR YUMANS:** Darren S. Youmans.

6 **THE COURT:** Mr. Youmans, you're a juror in this case;
7 correct?

8 **JUROR YUMANS:** Yes, sir.

9 **THE COURT:** All right. It was reported to me, and
10 I'm not suggesting that anything was wrong by this but one
11 of the things when we say not to talk about it, it's
12 because -- just because of the appearance of problems.
13 It's been reported to me by a deputy that you had a
14 conversation with Mr. King, who is a witness.

15 **JUROR YUMANS:** Yes, sir. I work with him.

16 **THE COURT:** You work with him?

17 **JUROR YUMANS:** Yes, sir.

18 **THE COURT:** And what was the substance of your
19 conversation with him?

20 **JUROR YUMANS:** Just about how nervous he was on the
21 stand.

22 **THE COURT:** Okay.

23 **JUROR YUMANS:** And then we talked a little bit about
24 work.

25 **THE COURT:** Did you talk about anything else?

1 **JUROR YOUMANS:** No, sir. I told him straight-up,
2 nothing about the case.

3 **THE COURT:** Okay. All right, sir.

4 And then you left his presence? You didn't have
5 lunch or anything with him; did you?

6 **JUROR YOUMANS:** No, sir.

7 **THE COURT:** Have you talked with anyone in the jury
8 room about what you -- your conversation with Mr. King?

9 **JUROR YOUMANS:** No, sir.

10 **THE COURT:** Okay.

11 Any additional questions, Mr. Gipson?

12 **MR. GIPSON:** No, sir, Your Honor.

13 **THE COURT:** Any additional questions, Solicitor?

14 **MR. MURDAUGH:** None, sir.

15 **THE COURT:** Thank you so much, Mr. Youmans. I'm
16 going to ask that you just step out in the hall.

17 **JUROR YOUMANS:** Okay.

18 **THE COURT:** And we'll be with you in just a moment.

19 **JUROR YOUMANS:** All right.

20 **THE COURT:** I'd ask you not to go to the jury room
21 just yet.

22 **JUROR YOUMANS:** Okay.

23 **THE COURT:** Thank you, sir.

24 **JUROR YOUMANS:** Yes, sir.

25 **THE COURT:** Let him sit right in there for a second

1 until I finish.

2 (WHEREUPON, JUROR YOUMANS EXITED CHAMBERS.)

3 **THE COURT:** We called out his name. I don't recall
4 him responding. I don't remember whether he did or didn't
5 about knowing a witness. I could have asked him a
6 question about being influenced by that.

7 What's Mr. Greene's desire concerning this juror?

8 **MR. GIPSON:** May I speak to him?

9 **THE COURT:** Yes, sir. If you want to step out with
10 him, that will be fine.

11 **MR. GIPSON:** Okay. Thank you, sir.

12 (WHEREUPON, MR. GIPSON AND MR. GREENE EXITED
13 CHAMBERS. UPON RETURNING, THE FOLLOWING PROCEEDINGS WERE
14 HELD ON THE RECORD:)

15 **THE COURT:** What's his desire?

16 **MR. GIPSON:** Your Honor, just out of an abundance of
17 caution, we just ask that he be released from this case.

18 **THE COURT:** Very well.

19 Any objection?

20 **MR. MURDAUGH:** No, sir.

21 **THE COURT:** Very well. Let the record reflect that
22 Mr. Greene has been present during this entire
23 conversation with the juror.

24 Mr. Greene, just for your information, and I'm sure
25 Mr. Gipson will share that with you, this was brought to

1 the attention of the Solicitor by one of the officers.
2 And we will certainly honor your request insofar as
3 excusing him. And I appreciate that, sir. Okay?

4 Anything else, Mr. Gipson?

5 **MR. GIPSON:** No, sir, not at this time.

6 **THE COURT:** On this issue.

7 **MR. GIPSON:** No, sir, not on this issue.

8 **THE COURT:** Okay. Thank y'all very much.

9 **MR. MURDAUGH:** Do you want me, sir, to bring it up
10 when we get in the courtroom?

11 **THE COURT:** That's why we came back here.

12 **MR. MURDAUGH:** Okay, sir.

13 **THE COURT:** There's no need -- no need -- unless, do
14 you have any reason to have this publically disclosed?

15 **MR. GIPSON:** I do not.

16 **THE COURT:** Very well.

17 And, Mr. Greene, is that agreeable with you, sir?

18 **DEFENDANT, MR. GREENE:** Yes, sir.

19 **THE COURT:** That it be confined to chambers.

20 **DEFENDANT, MR. GREENE:** Yes, sir.

21 **THE COURT:** Very well. Thank you.

22 **MR. GIPSON:** Is it the Judge's pleasure to just allow
23 him sit in there and have the alternate come on in at the
24 appropriate time?

25 **THE COURT:** No, I'll excuse him now and tell him he's

1 gone, and the first alternate will take his place.

2 **MR. GIPSON:** Okay. Thank you.

3 **THE COURT:** Thank you.

4 (WHEREUPON, JUROR YOUMANS WAS EXCUSED FROM THE JURY.)

5 (WHEREUPON, AT 1:19 P.M., THE FOLLOWING PROCEEDINGS
6 WERE HELD ON THE RECORD OUT OF THE PRESENCE OF THE JURY:)

7 **THE COURT:** All right. Is the State ready?

8 **MR. MURDAUGH:** The State is ready, sir.

9 **THE COURT:** Let the record reflect Mr. Greene is
10 present.

11 Is the defense ready?

12 **MR. GIPSON:** Yes, sir.

13 **THE COURT:** All right. Let's bring in our jury,
14 please.

15 And we have had a conversation concerning the juror,
16 Mr. Youmans. Mr. Youmans, I've just excused him from
17 further participation, without objection from the State
18 and without objection from the defendant. Is that
19 correct?

20 **MR. MURDAUGH:** That is correct, sir.

21 **MR. GIPSON:** Yes, sir. That's correct, sir.

22 **THE COURT:** The alternate, the first alternate, I
23 believe is Mr. Cecil Jenkins, who will now be moved to the
24 jury.

25 Any objection from the State?

1 **MR. MURDAUGH:** None, sir.

2 **THE COURT:** Any objection from the defense?

3 **MR. GIPSON:** No, sir.

4 **THE COURT:** Okay. Thank you.

5 (SEPTEMBER 5, 2012, 1:22 P.M., WHEREUPON, THE JURY
6 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
7 WERE HELD IN THEIR PRESENCE.)

8 **THE COURT:** Thank you very much, ladies and
9 gentlemen. As we mentioned, Mr. Jenkins, you now are in
10 the jury pool, and you are now part of the jury panel that
11 will deliberate.

12 We have excused Mr. Youmans. No need for you -- you
13 all to think about why. That's -- that's a matter that
14 the Court took care of. That's why we have alternates.
15 Nothing wrong with that.

16 And so, thank you, Mr. Jenkins. I appreciate it.

17 And now, Mr. Stanley, you have the luxury of having
18 two seats. You can sit in either one of those chairs that
19 you wish, sir. And thank you very much for the role that
20 you've played as well.

21 And I hope you had a good lunch.

22 And, Mr. Gill, I think you have been selected as the
23 foreperson; is that correct?

24 **JUROR:** Yes, sir.

25 **THE COURT:** Very well. Thank you very much. And you

1 have been occupying that seat.

2 And I appreciate you, ladies and gentlemen, taking
3 care of that.

4 And you are now our presiding juror, sir. Thank you.

5 All right. Solicitor, you may call your next
6 witness.

7 **MR. MURDAUGH:** Call Dr. Erin Presnell.

8 **THE COURT:** Okay.

9 S. ERIN PRESNELL, after being duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MURDAUGH:

13 **Q** Doctor, would you give us your full name, please?

14 **A** My name is Susan Erin Presnell, P-R-E-S-N-E-L-L.

15 **Q** Okay. Ms. Presnell -- Dr. Presnell, where do you
16 live?

17 **A** In Charleston, South Carolina.

18 **Q** Okay, ma'am. And what do you do for a living?

19 **A** I'm a forensic pathologist at the Medical University
20 of South Carolina.

21 **Q** Okay, ma'am.

22 **A** In Charleston.

23 **Q** Where did you receive your schooling?

24 **A** Well, I went to Clemson for undergraduate school, and
25 then I moved to Charleston to begin medical -- my medical

1 training and career, my medical school, and I've stayed
2 there ever since.

3 That was -- let's see, I went to medical school in
4 1989, got my M.D. I chose pathology as my specialty,
5 versus like say medicine or surgery. I chose pathology,
6 which I did again there for five years in a residency
7 program.

8 And then I decided to subspecialize in not just the
9 general field of pathology, but the subspecialty of
10 forensic pathology. So that was an additional year.

11 And after that, I believe it was 1999, I was hired on
12 as faculty and have remained ever since.

13 Q Okay. Doctor, so those of us who don't know too
14 much, what is a pathologist?

15 A Well, everyone is getting a lot of information about
16 forensic pathology with all the TV shows and all, but
17 forensics is actually a subspeciality of pathology. A
18 pathologist is a wide field that merely means the study of
19 disease.

20 So most anatomic pathologists look at biopsies,
21 pieces, parts, that a clinician might take from a patient;
22 like say a breast biopsy or a skin biopsy. Or if someone
23 undergoes surgery and they remove part of the cancer, all
24 of that stuff goes to the pathologist and they look at it.
25 They look at it under a microscope, and they diagnose

1 disease. So, it's cancer or it's not. It's infection or
2 it's not.

3 The forensic pathologist kind of does it a little bit
4 differently. Of course, instead of looking at a piece of
5 tissue, we're looking at a whole, complete person who's
6 passed. The process that we examine them, of course, is
7 called an autopsy.

8 We are looking for any diseases, but we're also
9 evaluating traumas, interpreting traumas. We're also --
10 also we will put all of this together to come up with a
11 cause and manner of death and generate autopsy reports.

12 So that's the subspecialty. Forensics is the
13 subspecialty of pathology.

14 Q Okay, ma'am. Doctor, how long have you -- you said
15 this, but in number of years, how long have you been
16 messing with pathology?

17 A Well, I kind of -- you have to do the general
18 pathology training first, and that was five years. Then
19 an additional year in the forensics, just forensics. I've
20 been doing autopsies since 1995. And again, on the
21 faculty in completely, only, forensics since 1999.

22 Q Since '99?

23 A Yes.

24 Q That's thirteen years you've been a forensic
25 pathologist?

1 **A** Yes.

2 **Q** Okay, ma'am. Doctor, have you testified in court as
3 an expert in forensic pathology prior to today?

4 **A** Oh, yes. Yes, I have.

5 **Q** You said that you were now on the faculty?

6 **A** Yes. I'm on the faculty of M.U.S.C.

7 **Q** Do you teach forensic pathology?

8 **A** Yes. We have a training program that we teach those
9 interested in forensic pathology. Yes, sir.

10 **Q** Okay. Are you a member of any boards?

11 **A** Well, I'm -- it's not a member. You're board
12 certified. I'm board certified in anatomical and clinical
13 pathology, which are both the general pathology terms.
14 And then also I'm board certified in forensic pathology.

15 **Q** Okay.

16 **MR. MURDAUGH:** Your Honor, please? I offer Dr.
17 Presnell -- excuse me. Let me ask her one or two other
18 questions.

19 **Q** Are you licensed in the State of South Carolina as a
20 doctor pathologist and forensic pathologist?

21 **A** What it is, is you have a license to practice
22 medicine, and I'm licensed to practice medicine in the
23 State of South Carolina.

24 **Q** Okay, ma'am.

25 **MR. MURDAUGH:** Your Honor, please? I would offer her

1 as an expert in forensic pathology.

2 **THE COURT:** Care to examine her as to qualifications?

3 **MR. GIPSON:** No, sir. I believe she is an expert.

4 **THE COURT:** Dr. Presnell will be permitted to offer
5 opinions in the area of forensic pathology.

6 **MR. MURDAUGH:** Okay, sir.

7 **Q** Doctor, I ask you if subsequent to October the 2nd,
8 2009, you had an occasion to examine the dead body of
9 Dominick Badger?

10 **A** Yes, we examined him and performed an autopsy on
11 October 3rd, 2009.

12 **Q** Okay, ma'am. Would you tell the ladies and gentlemen
13 what you found when you -- let me rephrase that question.
14 Did you find any trauma to his body?

15 **A** Yes, we did.

16 **Q** Okay, ma'am. And what was that trauma?

17 **A** Well, what I'll do is I'll just kind of give an
18 overall, and then I'll move through the two individual
19 injuries. Mr. Badger had two gunshot wounds to his body.
20 One was through the femur, into the left chest.

21 The first -- I don't mean the first, that it came
22 first, I just mean the first one that I'm going to talk
23 about, is the one that is to the left upper chest. The
24 bullet actually went in, into the chest cavity, went
25 through the heart, kind of at a downward direction, went

1 through the liver, went through the spine, went through
2 the left adrenal gland, and into the backbone, into the
3 vertebral column. And that's where we found one of the
4 bullets.

5 The second gunshot wound is -- is close by. It's in
6 the left chest but a little bit lower. It's kind of
7 headed -- it's headed in the same general direction,
8 downward. It goes into the left chest cavity, hits the
9 left lung, hits the stomach and liver as well, hits the
10 pancreas, which is also back there, and the bullet comes
11 to rest in some soft tissue around the pancreas, which is
12 where we recovered the other bullet.

13 So both these were noted as significant findings on
14 him, and ultimately, these were what we classified as
15 causing his death; the two gunshot wounds to his chest.

16 Q Doctor, did you, in the course of the autopsy, did
17 you have an occasion to test his bodily fluids for drugs
18 or alcohol?

19 A Yes. Part -- part -- yes, sir. Part of our autopsy
20 is to obtain blood when we begin and send it off to be
21 tested for drugs and alcohol. And Mr. Badger's, his blood
22 and alcohol screen shows caffeine, and it also shows a
23 blood alcohol of one hundred and one milligrams per
24 deciliter, which is .101. Just for comparison, for -- the
25 limit for driving is .08, and this was .1.

1 Q Okay, ma'am. Any illicit drugs in his body?

2 A No, sir.

3 Q Okay. Doctor, you said that the bullet wound, the
4 one you designate number one, entered his body where?

5 A The left side, above the nipple area.

6 Q If you will ---

7 MR. MURDAUGH: May I take my coat off, sir?

8 THE COURT: You may.

9 Q If you will, how about come down here and mark on me
10 where you found that bullet hole.

11 A Write on you?

12 Q Yes, ma'am.

13 A Well, you're a little different body shape, but one
14 was to the left chest area. So it was about right there.

15 Q Okay.

16 A The other one was down further, so I would say around
17 this area.

18 Q Okay. Now, you've also testified that you traced the
19 path of the bullet.

20 A Yes, sir.

21 Q If you will, let's start with the top one here, and
22 tell the ladies and gentlemen of the jury where you
23 located the bullet.

24 A All right. The top one, remember I said that it was
25 coming at a downward direction, so it was going into the

1 front of his chest, coming through the heart, coming
2 through the stomach, the liver, the left adrenal gland,
3 and coming to rest down here in this backbone area.

4 Q Mark where for me, please.

5 Okay, ma'am. The second wound was right here, you
6 said?

7 A Yes.

8 Q And explain to the jury the path of that bullet and
9 where you found it.

10 A Okay. All right. So you're going in the same
11 general direction, which is downward and towards his back.
12 So this one goes through the left chest cavity, through
13 the left lung, through the stomach and liver, through the
14 pancreas, which is right around here, and then we get the
15 bullet around that area.

16 Q Okay, ma'am.

17 Now, Doctor, did you remove those bullets?

18 A Yes, sir, I did.

19 Q I show you State's Exhibits Number Thirteen and
20 Fourteen, I think. Look -- look at those and tell me what
21 numbers they are.

22 A State's Exhibit Thirteen and Twelve.

23 Q Twelve -- Twelve and Thirteen, and I ask you what
24 those exhibits are?

25 A They are the containers that have additional -- in

1 addition to other labels, it has our autopsy label, which
2 lists the deceased person's name. And we had handwritten
3 on there: Bullet One and Bullet Two.

4 So these -- these are the containers that contain the
5 two bullets we retrieved.

6 Q Okay. And the contents are the bullets that you
7 removed?

8 A Shall I look?

9 Q Yes, ma'am. You certainly may. Do you need gloves?

10 A Do you have any?

11 Q Yes.

12 CLERK: Yes.

13 A Yes. These appear to be the bullets that were
14 removed.

15 Q Okay. Those are the bullets you removed. Now the
16 one that you have in your hand right now belongs to which?

17 A Well, I have it labeled Bullet Number Two, but it
18 belongs to the gunshot wound to the top of the chest.

19 Q That would be which one?

20 A The one on the top, above the nipple.

21 Q Up here. Okay. And that would be number what?

22 A Two.

23 Q Two.

24 THE COURT: The number.

25 A State's Exhibit Twelve.

1 Q Okay. And State's Exhibit Thirteen?

2 A State's Exhibit Thirteen belongs to the gunshot wound
3 that's on the lower part of the left chest.

4 Q That's right on the bottom of my pocket.

5 A Yes.

6 Q Okay. Thank you, ma'am.

7 Did you determine what was the cause of Dominick
8 Badger's death?

9 A We didn't actually separate the two gunshot wounds,
10 as to which one was more fatal than the other. We grouped
11 them together and said that the perforation of his heart,
12 the liver, the pancreas, and the stomach, the left lung,
13 due to these two gunshot wounds were the cause of death.

14 Q Okay, ma'am. One other question. I notice in your
15 report you said it was a near gunshot wound, or words to
16 that effect?

17 A A close range gunshot -- close range gunshot wounds.

18 Q Okay. And will you tell the ladies and gentlemen of
19 the jury what that means?

20 A Well, interpreting the injuries, we know it has to be
21 gunshot wounds, because there are two holes and two
22 bullets, but one of the other things that we do is try to
23 give a broad estimate of range of fire. And so to
24 understand how we do that, I was just going to explain
25 what we're looking at for just a moment.

1 And I apologize if I simplify any of this too much,
2 but I assume if you have a gun and you fire it, a bullet
3 comes out the end, but the bullet is not the only thing
4 that is coming out the end. You can also get the
5 gunpowder particles. Gunpowder is what is ignited to
6 propel the bullet down the barrel.

7 Some of those gunpowder particles will actually come
8 out of the end of the barrel, too. And if the muzzle of
9 the barrel is close enough to the target, then those
10 little gunpowder particles will strike that target. And
11 on humans, on skin, when they strike that target, it makes
12 little scratches. We call that stippling.

13 So if we see a hole and it has little -- little tiny,
14 scratch-mark dots around it, that signifies that the gun
15 was close enough for it to be a close range gunshot wound.
16 Once it got further back, then the bullet may still get to
17 the target, but the gunpowder particles, which are
18 lighter, aren't going to make it.

19 Q Okay.

20 A And so for just general estimate purposes, to really
21 narrow it -- narrow down how close that close-range is,
22 you'd have to test fire the weapon with the suspected
23 ammunition. But in general, for most all handguns, by the
24 time they're out to a yard -- so it would be thirty-six to
25 forty-two inches, so a yard to a yard and six inches. By

1 the time you're out that far, the gunpowder will no longer
2 reach the skin and make those markings. So it was within
3 that -- that distance, within the thirty-six to forty-two
4 inches.

5 Q Okay. Thank you, ma'am. Just one second.

6 Thank you. I have no further questions. Answer any
7 questions Mr. Gipson may have.

8 THE COURT: You may cross-examine.

9 MR. GIPSON: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. GIPSON:

12 Q Just briefly. You testified that the bullets came
13 from seemingly a downward angle; is that correct?

14 A Yes. It was downward, backward and from his left to
15 his right.

16 Q Okay. So would that suppose that a person was either
17 -- could be above them?

18 A Yes ---

19 Q Or -- I'm sorry.

20 A No, I was going to explain.

21 Q Uh-huh.

22 A When we have the angle through the body, it's just --
23 it's really just the direction through the body. So when
24 I use this pen to demonstrate the bullet direction through
25 the body as this way, ---

1 Q Uh-huh.

2 A --- the one thing that we can't tell at autopsy is
3 what position they were in, the person was actually in,
4 when they got shot. So if the person was standing
5 straight up, then the bullet is coming from up above;
6 however, if you bend the person over, then the bullet is
7 coming from more, you know, from directly in front of them
8 type of position. If you bend them sideways, then maybe
9 it's coming from a sideways position.

10 All I can say really with trajectory is how it's
11 going through the body, and then depending on its
12 position, where the gun was actually fired from.

13 Q All right. Thank you, ma'am. That's all my
14 questions.

15 MR. MURDAUGH: I have no further questions. May Dr.
16 Presnell be excused?

17 MR. GIPSON: Without objection.

18 THE COURT: Thank you, Dr. Presnell.

19 WITNESS: Thank you.

20 THE COURT: You're free to leave.

21 MR. MURDAUGH: With that, sir, the State concludes
22 its testimony.

23 THE COURT: All right, ladies and gentlemen. There
24 are some matters of law now that I must take up out of
25 your presence. I'm going to ask that you go to your jury

1 room, but do not begin your deliberations. Do not discuss
2 this case. We'll be with you as quickly as we can.

3 (SEPTEMBER 5, 2002, 1:40 P.M., WHEREUPON, THE JURY
4 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
5 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

6 **THE COURT:** All right. Anything from the State at
7 this point?

8 **MR. MURDAUGH:** No, sir.

9 **THE COURT:** I'll be happy to -- any motions from the
10 defendant?

11 **MR. GIPSON:** Yes, sir. Just briefly, Your Honor?

12 **THE COURT:** Sure.

13 **MR. GIPSON:** And -- and I know -- I know the Court
14 understands ---

15 **THE COURT:** I understand both sides.

16 **MR. GIPSON:** Yes, sir. I know you do, Your Honor. I
17 would suggest to the Court, understanding, as I understand
18 what the burden of proof is at this point in time, Your
19 Honor, I would just suggest to the Court that after
20 hearing all of the evidence, there may not be enough
21 information to go forward to the jury, in the sense that
22 there is a credibility question about some of the
23 testimony that has been received, Your Honor.

24 Again, I understand that Mr. Greene has been charged
25 with murder and assault and battery with intent to kill,

1 Your Honor. And I would just suggest to the Court that
2 some credibility issues -- is -- is -- is in question, but
3 I do understand the charges.

4 **THE COURT:** Credibility, unfortunately -- probably
5 fortunately, though, the Court consistently has held that
6 that is a matter for a jury's determination.

7 **MR. GIPSON:** Yes, sir.

8 **THE COURT:** I don't think it gives us the powers, as
9 a matter of law, as to find what's credible. So I would
10 respectfully deny your motion.

11 I think there's enough, taken in the light most
12 favorable to the State, as I'm required to do, there's an
13 abundance of testimony to support a conviction for murder,
14 as well as assault and battery with intent to kill.

15 **MR. GIPSON:** Yes, sir. Thank you, Your Honor.

16 **THE COURT:** All right. Have you talked with Mr.
17 Greene about his right to testify and not to testify?

18 **MR. GIPSON:** I have, Your Honor.

19 **THE COURT:** Has he made a decision?

20 **MR. GIPSON:** He has, Your Honor.

21 **THE COURT:** Mr. Greene, we've had an earlier
22 conversation. You've now had an opportunity to hear Dr.
23 Presnell's testimony, and you have had a further
24 opportunity talk with your lawyer; is that correct?

25 **DEFENDANT, MR. GREENE:** Yes, sir, Your Honor.

1 **THE COURT:** And you now have made a decision for
2 yourself; is that correct?

3 **DEFENDANT, MR. GREENE:** Yes, sir, Your Honor.

4 **THE COURT:** And what is that decision?

5 **DEFENDANT, MR. GREENE:** To testify on my behalf.

6 **THE COURT:** Very well. And you understand, as you
7 demonstrated earlier, your rights with respect to
8 testifying and not testifying?

9 **DEFENDANT, MR. GREENE:** Yes, sir, Your Honor.

10 **THE COURT:** You've had sufficient time to reflect on
11 that decision?

12 **DEFENDANT, MR. GREENE:** Yes, sir, Your Honor.

13 **THE COURT:** You're comfortable with your decision?

14 **DEFENDANT, MR. GREENE:** Yes, sir, Your Honor.

15 **THE COURT:** And again, are you comfortable with the
16 manner in which your attorney has advised you concerning
17 this issue?

18 **DEFENDANT, MR. GREENE:** Yes, sir.

19 **THE COURT:** I find that Mr. Greene has made a
20 decision for himself to take the stand and testify in this
21 matter. I find that decision to be one that he makes
22 freely, voluntarily, knowingly, and intelligently and
23 without any coercion, that he's had the benefit of very
24 competent counsel with whom he's indicated he's totally
25 satisfied.

1 So we'll take -- do you intend to call any additional
2 witnesses, Mr. Gipson?

3 **MR. GIPSON:** Um ---

4 **THE COURT:** I'm not holding you to that. I'm just --
5 for planning purposes.

6 **MR. GIPSON:** There -- if I do, Your Honor, I believe
7 that they would be relatively short.

8 **THE COURT:** That's fine. No problem.

9 **MR. GIPSON:** But I'm not sure at this point.

10 **THE COURT:** Very well.

11 All right. Solicitor, anything else?

12 **MR. MURDAUGH:** No, sir.

13 **THE COURT:** We'll be at ease for about ten minutes.

14 **MR. GIPSON:** Yes, sir.

15 **THE COURT:** Thank you.

16 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, AT 1:50
17 P.M., THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD
18 OUT OF THE PRESENCE OF THE JURY:)

19 **THE COURT:** Is the State ready to proceed?

20 **MR. MURDAUGH:** Yes, Your Honor.

21 **THE COURT:** Let the record reflect the defendant is
22 present.

23 Is the defense ready to proceed?

24 **MR. GIPSON:** Yes, Your Honor.

25 **THE COURT:** Please bring in the jury.

1 (SEPTEMBER 5, 2012, 1:52 P.M., WHEREUPON, THE JURY
2 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
3 WERE HELD IN THEIR PRESENCE.)

4 **THE COURT:** Thank you very much, ladies and
5 gentlemen. If you recall when we started I mentioned to
6 you, of course, the only party in this proceeding that has
7 any burden of proof is the State of South Carolina if they
8 make a claim. As I told you, while the defendant has no
9 responsibility to prove or disprove anything the defendant
10 would still have the right, if he chooses, to present
11 evidence for your consideration.

12 Mr. Gipson, we've reached that point. Does Mr.
13 Greene wish to present any additional testimony?

14 **MR. GIPSON:** Yes, sir. He would like to testify on
15 his behalf.

16 **THE COURT:** Very well. You may call your first
17 witness.

18 **MR. GIPSON:** Thank you, Your Honor. I'd like to call
19 Mr. Brandon Greene.

20 BRANDON GREENE, after being duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GIPSON:

24 **Q** Good afternoon, Mr. Greene.

25 **A** How are you doing, sir?

1 Q All right, sir. I'd like to have you just spell your
2 name for the record, if you would, please.

3 A B-R-A-N-D-O-N.

4 Q And last name Greene?

5 A Yes, sir.

6 Q With an E? Greene with an E?

7 A Yes, sir. Correct.

8 Q All right. Now, Mr. Greene, it's obvious why we're
9 here today, and before we even get started with the
10 primary questions, I'm just going to ask you a few
11 questions that just need to be answered. Did you murder
12 Dominick Badger?

13 A No, sir, I did not.

14 Q Did you shoot Dominick Badger?

15 A Yes, sir, I did in self-defense. I will say I did
16 shoot him. I defended myself.

17 Q All right. I'm going to need for you to maybe sit a
18 little bit closer to the microphone and speak up, because
19 that last juror needs to hear everything that you say.
20 All right?

21 A Okay. Sorry.

22 Q Okay. Did you shoot Tony Badger?

23 A Yes, sir, I did.

24 Q Did you assault him with an intent to kill him?

25 A No, sir, I didn't.

1 Q Okay. Tell me why you shot him.

2 A Because he was coming at me saying he was going to
3 burn me.

4 Q And what does burn mean in the vernacular street
5 terms?

6 A In street terms, that is a street term for a shooting
7 or a shot, to shoot.

8 Q And you said he was coming at you? He said he was
9 going to burn you, and what happened?

10 A Um, I took off running from him when he came out of
11 the truck, because they had already had him in the truck.
12 And he jumped back out of the truck and started coming
13 back towards me. So I went running around the other side
14 of the vehicle that I was driving.

15 Q Uh-huh.

16 A And as I was running around the side of the vehicle
17 that I was driving, that's when I pulled my gun, and I
18 started firing back at him with the gun that I had.

19 Q Okay. How did you feel at that moment when you fired
20 that gun?

21 A I felt threatened. I felt I was going to lose my
22 life. He said he was going to burn me.

23 Q Okay. All right. Now what I want to do is just
24 briefly just speak to the jury a little bit about who you
25 are, and then we'll get more into the details of this

1 situation. Where are you from?

2 A Yemassee, South Carolina.

3 Q Essentially born and raised?

4 A Yes, sir.

5 Q Did you finish high school?

6 A Yes, sir, I did.

7 Q Where?

8 A Battery Creek High School in Beaufort.

9 Q Did you have any further studies after that?

10 A Yes, sir. I attended the Art Institute of Atlanta.

11 Q Okay. And studying what?

12 A Graphic Design Arts.

13 Q Okay. Did you finish there?

14 A No, sir, I didn't.

15 Q Okay. Did you end up moving home at some point in
16 time?

17 A Yes, sir. I ended up taking -- coming back to take
18 care of my kids.

19 Q Okay. How many children do you have?

20 A I have three right now.

21 Q How are they -- what are their ages?

22 A Thirteen, eleven, and two.

23 Q All right. Have you worked for a living?

24 A Yes, sir.

25 Q Tell us what kind of work you've done.

1 **A** At that time I was a driver, a delivery driver for a
2 plumbing distributing company called Cregger out of
3 Bluffton, South Carolina.

4 **Q** And if you could, speak up. What distributing
5 company?

6 **A** Cregger Company.

7 **Q** Okay, sir.

8 **A** Yes, it was Cregger Company out of Bluffton, South
9 Carolina. It was a plumbing distributing company.

10 **Q** Okay. And it's a plumbing distributing company?

11 **A** Yes, sir.

12 **Q** Okay. And what did you do for them?

13 **A** I was a deliver driver for them.

14 **Q** Okay. For about how long altogether?

15 **A** About six years.

16 **Q** All right. And as a delivery driver, what -- did you
17 have a territory that you had to cover?

18 **A** Yes, sir. Parts of South Carolina and parts of
19 Georgia.

20 **Q** Okay. And you would do all of those things living
21 where?

22 **A** In Yemassee, South Carolina.

23 **Q** All right. So you said it's in Bluffton?

24 **A** Yes, sir.

25 **Q** How far is Bluffton from Yemassee?

1 **A** About forty-five -- I'd say about forty-five minutes.

2 **Q** All right. So you would commute to Bluffton daily?

3 **A** Yes, sir.

4 **Q** What was your normal work schedule, generally?

5 **A** I would start from 8:00 in the morning and get off at
6 5:00.

7 **Q** All right. So you had to be in Bluffton by 8:00 in
8 the morning?

9 **A** Yes, sir.

10 **Q** Okay. And you got home around 5:00?

11 **A** Yes, sir.

12 **Q** And ---

13 **A** Well, I got off at 5:00.

14 **Q** Okay.

15 **A** I got home at around 6:00, a little after 6:00.

16 **Q** Okay.

17 **A** Close to 6:00 o'clock.

18 **Q** And that was your normal schedule?

19 **A** Yes, sir.

20 **Q** All right. Now you were convicted of assault and
21 battery of a high and aggravated nature at some point in
22 time?

23 **A** Yes, sir.

24 **Q** Was it a trial or was it a plea?

25 **A** No, I pled guilty.

1 Q Why?

2 A Because I was guilty.

3 Q All right. And that was back in what year?

4 A Uh, I believe it was 2002.

5 Q All right. Now, I want to point us directly at
6 September -- excuse me, October 2nd, 2009.

7 A Yes, sir.

8 Q All right. So let's orient ourselves to that
9 particular day and time.

10 A All right.

11 Q Did you work that day?

12 A Yes, sir, I did.

13 Q At Cregger?

14 A Yes, sir.

15 Q All right. And did you work a full day?

16 A Yes, sir, I did.

17 Q All right. And you got off approximately what time?

18 A 5:00 o'clock.

19 Q Okay. Tell us what happened after you got off.

20 A Well, after I got off at 5:00, I stopped to this area
21 called Cherry Point.

22 Q Uh-huh.

23 A Around the Okatie area. And I had stopped -- I had
24 stopped to get gas, and I went into the liquor store next
25 door to the gas station, and I bought two half-pint

1 bottles of brandy, and I left there and went home.

2 And in going home, the way I travel home, I pass -- I
3 had to pass Dominick Badger's house to get home, and I saw
4 that he was in the yard. So me and him had prior to that
5 spoke about a chain for my son's four wheeler. So I went
6 home, and I got my fishing gear and stuff like that.

7 Q Okay.

8 A And I ---

9 Q And so -- so you said -- I'm just taking you back a
10 little bit.

11 A Okay.

12 Q You said you had spoken to him prior about a chain
13 for your four wheeler.

14 A Yes, sir.

15 Q Okay. What was your plan about this chain for a four
16 wheeler?

17 A Um, I just asked him if he had got it for me yet, to
18 see if I could get it from him.

19 Q Okay. And what was your plan to try to get that
20 chain?

21 A I was going to just get the chain, like, just get it
22 and pay him for it.

23 Q Okay. And so you passed that house, and you went to
24 your home.

25 A Yes, sir, I did.

1 Q What kind of distance are we talking about between
2 the homes?

3 A Mmm, it's like a few houses, like I'd say about six
4 or ten houses in the middle from the house that my
5 grandmother and them have.

6 Q Okay. And so -- and that's on Tulifinny Road, too;
7 correct?

8 A Yes, sir, it is.

9 Q All right. So it's safe to say, meaning the Badgers'
10 home and your home, are in the same neighborhood?

11 A Yes, sir, it was.

12 Q Only several houses down from one another.

13 A Yes, sir.

14 Q Okay. Now what did you do next? When you got home
15 -- after getting home, what did you do?

16 A Well, I had went to a storage shed that my
17 grandparents have in the yard, and I got my fishing gear
18 and stuff out of there. I put it in the car. I went in
19 the house, and I had got a firearm that I had previously
20 got the night before, that Thursday night, from out of
21 Nicole's trunk.

22 Q Did she know you got it from her?

23 A No, she didn't.

24 Q All right. Why did you need a firearm?

25 A Because when I go fishing, like in the swamp areas,

1 I'm always encountering like gators and wild hogs and
2 stuff like that.

3 Q All right. So, where do you fish to find gators and
4 wild hogs?

5 A Like swamp areas, but that particular day, I was
6 going fishing off of River Road in Yemassee, and it's a
7 place called the Wildlife Refuge.

8 Q Okay.

9 A And it's a good distance you've got to walk to the
10 water.

11 Q Okay. And so you said you retrieved a firearm?

12 A Yes, sir.

13 Q Okay. Do you know what kind of a firearm it was?

14 A Um, it had on there Ruger.

15 Q Okay. And just to be blunt, is this the firearm that
16 we've been talking about for the last day and a half in
17 court?

18 A Yes, sir.

19 Q Okay. So once you got in the car, what did you do
20 with that firearm?

21 A I had placed it on my waistline.

22 Q Okay. And what did you do next?

23 A I left the house. I left the house that I was living
24 at with my grandparents, and I had went back down to
25 Dominick Badger's house. And when I got there, he walked

1 up to the car when I was driving in the yard and he was
2 like already acknowledging what I came there for.

3 Q What did you come there for?

4 A The chain for the four wheeler.

5 Q Okay.

6 A And he said that he didn't have it. So we just had
7 like a conversation. And then at that time, Dexter
8 Bozeman, he walked to the car. Then Tony Badger walked to
9 the car. Then Keith King walked to the car.

10 Q Uh-huh.

11 A And it was like -- basically all like, get out and
12 chill for a minute.

13 Q And when you say chill ---

14 A Like just hang around.

15 Q Was that ---

16 A Just hang around, conversing.

17 Q Was there any animosity that was going on at this
18 point?

19 A Oh, no, sir.

20 Q All right. Did you have words with Keith King out
21 there?

22 A No, sir, I didn't.

23 Q Did you pull out a gun and point in the air several
24 times?

25 A No, sir. It never happened.

1 Q Okay. Did you ever argue with Keith King about
2 anything?

3 A No, sir.

4 Q Okay. So what happened next?

5 A I got out. I got out of the car. I was like -- the
6 window was down when I was talking to Dominick when I rode
7 up in the yard -- when I pulled up in the yard. And I
8 rolled the window up, and all the doors were locked. So I
9 unlocked the backdoor on the passenger side. And I just
10 closed the door, because I left the keys in the ignition.

11 I left my phone in there. It was plugged up to the
12 charger in the car.

13 So once I got out, I had took the two bottles of
14 brandy that I had. And I had opened one, and I took like
15 a swig out of it, and then I passed the bottle on.

16 And then as we went to Keith King's truck, as they
17 was passing the bottle around, by the time it got back to
18 me, it was empty. So I just opened another one, took a
19 swig out and passed the bottle around.

20 Q Okay. Then what happened from there?

21 A We was just sitting on the back of the truck for a
22 while, and then them guys, they ran out of beer. So Tony
23 said he was going to the store to get some more beer. And
24 by the time he got back, it was like almost dark.

25 Q Okay.

1 **A** Because um -- as I was there and we was sitting on
2 the truck, it was like getting dark. So I was like, ain't
3 no need in going fishing, so I'll just stay on.

4 **Q** Okay. Now I'm going to show you what's been marked
5 a's State's Exhibit Number Eight. Does that ring a bell to
6 you, generally?

7 **A** Yes, sir. That is Ms. Minnie's house and the trailer
8 that Dominick Badger lived at and the white -- the white
9 pick-up truck that was in the yard, the green SUV, and I
10 guess that was an S-10.

11 **MR. GIPSON:** Judge, may I have him step down for a
12 moment?

13 **THE COURT:** Sure.

14 **MR. GIPSON:** Come on down.

15 **THE COURT:** Just keep your voice elevated, please.

16 **DEFENDANT, MR. GREENE:** All right, sir.

17 **THE COURT:** What's -- what's the exhibit number?

18 **MR. GIPSON:** This is number ---

19 **MR. MURDAUGH:** Top, left-hand side.

20 **MR. GIPSON:** Number Eight, Your Honor.

21 **THE COURT:** Thank you.

22 **Q** All right. So if you could just go back through that
23 one more time for me?

24 **A** Okay. This is ---

25 **Q** Hold on a second.

1 **MR. MURDAUGH:** Go ahead.

2 **Q** Pardon me. Go ahead.

3 **A** Okay. This is the trailer that Dominick Badger was
4 living at.

5 **Q** Excuse me?

6 **A** This is the trailer that Dominick Badger was living
7 at. This is the house that Alfred Fennell was living at.
8 And this is the tan Chevy S-10 that was in the yard. This
9 is the green SUV, a Suburban, that was in the yard. And
10 this is a white pick-up truck. I don't know what model or
11 what make it was.

12 And right here, it was a bunch of pallets or
13 something like that and a wood pile. And that's it.

14 **Q** All right. Now did you have an opportunity to um --
15 um -- well, let me show you something for a moment. Have
16 a seat, if you would?

17 (WHEREUPON, Defendant's Exhibit No. 8 (A) was marked
18 for identification only.)

19 **Q** I'm going to show you what's been premarked as
20 Defense Exhibit Eight(A), for ID purposes. Does that ring
21 a bell to you?

22 **A** Yes, sir. This is a diagram that I drew from what I
23 remembered seeing, like a photograph.

24 **Q** Of what?

25 **A** Of the yard that was there and cars and the truck and

1 things that were around the yard that night.

2 Q And this is something that you personally drew?

3 A Yes, sir.

4 Q Okay.

5 MR. MURDAUGH: Did I understand him to say that he
6 drew it from a photograph?

7 MR. GIPSON: From his memory.

8 MR. MURDAUGH: From his memory?

9 THE WITNESS: Yes, sir.

10 MR. MURDAUGH: All right.

11 MR. GIPSON: I'd like to have this introduced as
12 Defendant's 8(a), Your Honor.

13 THE COURT: Defendant's Eight(a) is admitted without
14 objection?

15 MR. MURDAUGH: Yes, sir.

16 THE COURT: Without objection.

17 (WHEREUPON, DEFENDANT'S Exhibit NO 8 (A) was admitted
18 into evidence.)

19 (WHEREUPON, DEFENDANT'S Exhibit NO. 8 (B) was marked
20 for identification only.)

21 MR. GIPSON: And -- and, Judge, we have premarked
22 8(b), one that's actually on this easel that he may mark
23 up.

24 THE COURT: All right. 8(b) is only for
25 demonstrative purposes?

1 **MR. GIPSON:** Yes, sir.

2 **THE COURT:** Sir?

3 **MR. GIPSON:** Yes, sir. Demonstrative purposes. And
4 he may need to -- he may be marking on that actual
5 exhibit, Your Honor.

6 I'm going to place 8(a) on the overhead, Your Honor.

7 **THE COURT:** Okay.

8 **MR. GIPSON:** We're ready to proceed, Your Honor.

9 **THE COURT:** Please do.

10 **MR. GIPSON:** Thank you. May I have Mr. Greene come
11 down one more time, please?

12 **THE COURT:** Sure.

13 **MR. GIPSON:** All right. Come on down, sir.

14 **Q** Will you explain to the jury what this document is
15 that you drew?

16 **A** This is a diagram that I drew of what the yards
17 looked like, and things -- things that were in the yard
18 that night. That is a three wheeler. That is a Blazer, a
19 wrecked Blazer.

20 This is the trailer that Dominick Badger was living
21 at. And this is Alfred Fennell's house. This is like a
22 grape orchard or something like that.

23 And this right here is a car shed. This is the green
24 SUV and the car that I was driving.

25 **Q** Let's point to the car that you were driving,

1 specifically.

2 A The car that I was driving is the car sitting right
3 here.

4 Q Okay. I'm going to do two things, if I can. With --
5 will you mark on this exhibit the car that you were
6 driving and color that in green, please?

7 All right. So, this particular car that I'm pointing
8 to here, is that the car that you were driving?

9 A Yes, sir. Yes, sir.

10 Q And why did you park in that particular place?

11 A Because that's the way I came into that driveway. I
12 just pulled in that driveway. This is a driveway. This
13 is a ---

14 Q And if you could, I just want to make sure that the
15 jury can -- that you don't have your back to the jury.

16 A I'm sorry.

17 Q How about use the microphone in your right hand.

18 A Okay.

19 Q As a matter of fact, why don't you come here. We'll
20 trade places. Thank you.

21 A This is -- this is a driveway to the house that
22 Alfred Fennell lives at. This is another driveway. This
23 is a driveway, and this is a driveway entrance. All these
24 are driveway entrances, and I came through this driveway
25 entrance right here. And the way I came in the yard, I

1 just pulled up on the side of the trailer and parked right
2 there.

3 Q Were the doors to this vehicle open when you got
4 there?

5 A No, sir, they weren't.

6 Q Okay. And just go back -- go through and describe
7 the things in this yard so that we can be oriented to each
8 vehicle.

9 A Okay. Like I said before, this is a three wheeler.
10 This is a Blazer. These are a few chairs that were around
11 the trampoline. This is the trampoline, like a weight
12 bench, a fire barrel, two other vehicles, a white -- a
13 white truck, the S-10 truck.

14 And all of this is like tree -- tree line and swamp
15 area like that. I just drew tree line.

16 He had like a post light out here, an outside post
17 light. A power line. These are power lines. More trees.
18 These are dog houses. There was like dog pens and stuff
19 like that, like dog pens.

20 Q So as you arrived, you came to, you know, to the
21 Badger's property, and what area did you go to?

22 A When I pulled up here, Keith King's truck should have
23 been parked like up in that area right there. So when I
24 pulled up, everybody was like just coming -- everybody was
25 in this area right here. And when I pulled up, Josh

1 Habersham was over here.

2 Q When you say this area, you mean ---

3 A Like -- like by -- everybody was around the cars when
4 I pulled up.

5 Q Okay.

6 A Everybody was around Keith King's truck when I pulled
7 up. And that's when Dominick walked towards the car. And
8 as he walked towards the car, me and him spoke. And
9 that's when Dexter Bozeman walked up to the car, and Tony
10 Badger and Keith King.

11 Q Okay. And time passes. You mentioned -- I asked you
12 the question: Was there ever an altercation or a passing
13 of words or any of that kind of thing with Keith King that
14 night?

15 A No altercation, sir.

16 Q Any passing of words?

17 A No. No passing of words.

18 Q Arguing?

19 A No, sir.

20 Q Gunshots?

21 A No, sir.

22 Q All right. So what happened of significance next?

23 A After I got out the car, I was just sitting on the
24 back of Keith King's truck. Like it was parked up in this
25 area. But like I tried to draw this a little wide so you

1 can see the cars in there so it won't be that small, but
2 my car was actually parked a little bit closer up further
3 this way. And Keith King's truck was like in this area.

4 And when I got out the car, everybody, we was all
5 like sitting on the back, on the tailgate, of Keith King's
6 truck. And that's when we just started passing around the
7 liquor bottle.

8 Q Now, what is this area right in the middle?

9 A Um, these little lines right here that's behind the
10 trailer, I just drew that like to show like a whole lot of
11 like a bunch of junk and stuff like that that was behind
12 the trailer. And these little lines right here are like
13 pallets, like pallets and a woodpile, something like that.

14 Q Is that the woodpile that if you look at State's
15 Exhibit Number Eight that we referred to, in this area?

16 A Yes, sir.

17 Q Okay. So your -- your diagram just shows a wider
18 view of the entire area?

19 A Yes, sir.

20 Q Okay. Now, what of significance after that happened
21 next?

22 A Um, Tony wanted to go to the store to get some more
23 beer, so he left. And then when he -- by the time he got
24 back, it was like kind of almost dark. So by the time he
25 finally got back, that's when Keith King left.

1 And when Keith King left, that's when all of us -- he
2 left from where the car area was, and we all came over
3 here to where the trampoline was at. So as we was by the
4 trampoline, they were already starting to chop up like the
5 wood from the pallet pile to make a fire inside the
6 barrel.

7 Q Okay.

8 A And as we were all around, like Tony was sitting on
9 the trampoline. A guy named Greg was sitting in this
10 chair right here. Josh Habersham was sitting in this
11 chair. And Bernard Badger was like standing on this side
12 in between like the fire barrel and the weight bench and
13 where the trampoline was at. And me, Dominick, and Dexter
14 was standing on this side of the trampoline and the fire
15 barrel and the chair.

16 Q Was there any sign that things were starting to take
17 a different kind of turn that night?

18 A Well, the conversations and a whole lot of other
19 things that like they was talking about, I wasn't into
20 their conversation. So as Dominick was over here, he
21 wanted to change out something on the radio or CD or
22 something like that, because it was a radio right here at
23 the backdoor. And we all walked over here. And we ended
24 up sitting -- we ended up standing over here by this blue
25 Blazer that was in the yard.

1 Q Okay. And tell us what happened from there.

2 A Well, um, that's when Tony got up and he walked over
3 there where we were at. And he just like started getting
4 into a whole other mode.

5 Q What do you mean by a whole other mode?

6 A Like you could tell like the liquor and the beer had
7 already took affect, like he was intoxicated.

8 Q Okay. And how was he acting?

9 A Um, very aggressive.

10 Q Okay.

11 A So he was getting to that aggressive point. And he
12 walked over like -- he wanted to like box or wrestle with
13 me or something like that. And I was telling him I wasn't
14 like that.

15 And his brother, Dominick, was telling me: Don't pay
16 -- don't pay no attention, because he drunk.

17 And I told Dominick: I know that. I know he drunk.

18 So then that's when Tony asked Dominick can he get
19 his gun. And Dominick said: No, I'm not going to give
20 you my gun.

21 Q Okay.

22 A So then that's when Tony left from over there where
23 we was at, and he walked back over here to where the chair
24 was at ---

25 Q Well, let me ask you a question. There was a mention

1 of a gun that was made at that point in time?

2 A Yes, sir. Tony ---

3 Q Why -- why didn't you just leave at that point in
4 time.

5 A Well, I told Tony -- I told Dominick at that time:
6 Well, I'm going to go ahead and just leave.

7 Q Right.

8 A Because I was ready to leave at the time when he
9 walked over there and was asking for a gun.

10 And Dominick was like: Man, you don't have to worry
11 about a gun. He's just drunk, man. He's just drunk.

12 So I walked over there to where the chair is where
13 Josh was sitting at. That's when he went to Josh, and he
14 was asking Josh for his gun.

15 Josh kind of like bent over. And when Josh bent
16 over, that's when they got up and they walked around this
17 side right here like where the trampoline is, like this
18 right here, but there's a big pine tree that was in the
19 yard.

20 Q Okay.

21 A And they walked around and came around. And as we
22 were walking from this side, just like we're standing over
23 here by the truck, and as we was walking ---

24 Q Why were you walking in this direction?

25 A Because I was going to the car. I was leaving.

1 Q Okay. Okay. And as you were walking in the
2 direction towards your car, what happened?

3 A That's when Tony and Josh came out from this area
4 right here, and he came this way, and he blocked us off,
5 like with the fire barrel and in front of the woodpile and
6 stuff like that, as we was walking towards the vehicle.
7 He came like coming back towards my direction.

8 Q Right.

9 A Like he wanted to get aggressive with me. So that's
10 when Dominick and Dexter jumped in. And then they started
11 walking him back towards the vehicle.

12 Q Okay. Now was there ever a point in time where a
13 conversation took place about a party?

14 A Um, the only person I heard say something about a
15 party was Dominick, and he was on the phone talking to
16 somebody about a party.

17 Q So did you make any comment about Tony at any point
18 in time regarding that party?

19 A Yes, sir. As we were walking toward the vehicles,
20 Dominick asked me was I going to the party with them. I
21 told him, naw, I wasn't going to the party because how his
22 brother was drunk and acting up.

23 And that's when like Tony -- that's what made him
24 start coming my way, I guess, because he was like: He a
25 grown man.

1 Q Uh-huh.

2 A I can take my punk-A home and all kind of stuff like
3 that.

4 Q Okay.

5 A So that's when Dexter and Dominick started walking
6 Tony back toward them. And he was like: Naw, it ain't
7 going to be like that.

8 And they started walking him back toward the vehicle.

9 Q Did you pull a gun on him at that point in time?

10 A No, sir, I did not.

11 Q Okay. What happened next?

12 A So as they got him -- as they got him close to the
13 vehicle, I started -- I kept walking, like I slowed my
14 pace down. I was walking. So when I get like ---

15 Q Why did you slow your pace down?

16 A Just to give them time enough to get him to the
17 vehicle and stuff like that. Because like I said, like he
18 was the aggressor. I wasn't the aggressor. So that's why
19 it took both of them to start walking him back.

20 Q Okay. And what happened after that?

21 A So once they got him to close like enough to the
22 vehicle, that's when Dominick went. And he went to crank
23 the truck up.

24 So when he went to crank the truck up, that's when he
25 came back out of the truck, and him and Dexter went on the

1 passenger side and they went to put Tony inside the
2 vehicle.

3 Q Okay.

4 A So when they went to put Tony inside the vehicle --
5 the vehicle, that's when the door was closed. They
6 already had the door closed and everything. And when
7 Dominick was coming back around the front side of the
8 vehicle, that's when Tony jumped back out the vehicle
9 saying he was going to burn me.

10 Q Okay. Where were you when he jumped out and said he
11 was going to burn you?

12 A I was like about in this area right here, like almost
13 to the trunk of the car.

14 Q Okay.

15 A To where the trunk of the car was at. So like where
16 he -- the way this diagram is, like I said before, I tried
17 to draw it big, but like the truck was kind of like at an
18 angle. So the way it is, he's coming around. The truck
19 was like this. So I would have been like up in this area
20 right here on the back side of the vehicle that I was
21 driving.

22 Q Why was it necessary for you to go to the back side
23 of your vehicle?

24 A Because I had locked my keys inside the car.

25 Q Uh-huh.

1 **A** And my phone and all was in the car. So I just had
2 the backdoor on the passenger side unlocked. So I was
3 going around to the back side.

4 **Q** And again, why is it that you would lock all of those
5 doors but that back, right door?

6 **A** Because once I got out, I didn't know whether I was
7 going to end up staying that long, because I had no
8 intentions of staying that long. But being that I was
9 there, I just locked the car in case I don't have my eye
10 on the car or something and they had people come around
11 there. I didn't want nobody to go inside my car or
12 anything.

13 **Q** Why not just keep your keys on you?

14 **A** I got a habit of dropping my keys and my phone,
15 because I don't like to put keys and a phone in my pocket,
16 so I always them in my lap.

17 **Q** Okay. So as you try to make your way to that back
18 door, that's when Tony jumped out and came towards you?

19 **A** Yes, sir.

20 **Q** Tell us what happened at that point.

21 **A** As he was coming at me, he was screaming like he
22 going to burn me, he going to burn me, he going to burn
23 this "N" word.

24 And that's when I pulled the gun from my waist, and I
25 started running way, and that's when I started firing back

1 in the direction that Tony was coming, because I was like
2 over here where the um -- like I say, the car was like
3 further up, so the way I was firing, I was like over here
4 in between like where the fire barrel was at, the pallets,
5 and this car right here.

6 And I went to run around this side of the car. And
7 when I ran around this side of the car, that's when
8 Dominick Badger jumped me.

9 Q Let's -- let's go back. When he said he was going to
10 burn you, why didn't you just take off and start running
11 towards the woods?

12 A I didn't want to put my back to him and he shoot me
13 in my back. He said he was going to burn me.

14 Q And, again, when somebody says they're going to burn
15 you, what does that mean?

16 A That means he's going to shoot me.

17 Q And so you didn't take off running this way towards
18 the woods?

19 A No, sir. This is the direction -- this is the
20 direction Dexter ran.

21 Q Okay.

22 A And I -- I started off in that direction he was
23 running, but it was so much open space. And I just went
24 to try to turn and come back around and take cover on that
25 side of the car.

1 Q Why did you shoot back at him?

2 A Because he said he was going to burn me. I had -- I
3 felt threatened that he was going to kill me.

4 Q After you fired the shots, where did Tony go?

5 A Um, I don't know where he went. He went running back
6 this way. So I figured that he was running for cover.

7 And that's when Dominick jumped on me right here on
8 the passenger side of the vehicle that I was driving. And
9 I was trying to get away from him. And ---

10 Q Let me ask you this. What type of timeframe are we
11 talking about? Are we talking about five or ten minutes
12 all this ---

13 A No, this was like right on top of each other. This
14 was like quick. Like soon as this happened, this
15 happened. Soon as this happened, this happened.

16 Q So as soon as he said he was going to burn you, what
17 happened from there?

18 A Like I just -- Dexter took off running. I took off
19 running, and that's when I pulled the gun from my waist,
20 and I just started shooting.

21 Q And what happened, and how quickly did Dominick --
22 did you encounter Dominick?

23 A As soon as I came around the front side of the
24 vehicle, right there between like where the mirror and the
25 fender on the passenger side of the vehicle, that's where

1 he grabbed me at.

2 So then I'm tussling, trying to get him off of me.

3 So when I break away from him, I run. He catch me again.

4 He threw me up on the white truck. Once he threw me up on

5 the white truck, I'm trying to get away from him again.

6 Then once I got away from him again, he was on me again

7 running around the back side of the vehicle. That's when

8 I started shooting behind me then.

9 Q What did you think he was going to do to you?

10 A I believed he was going to shoot me, too, or kill me.

11 Q Why is that?

12 A Because his brother had asked him for a gun earlier,
13 so I believed him to have a gun.

14 Q Did you see one at that point in time?

15 A No, sir, I didn't. Everything was moving so fast. I
16 was just trying to get out the way.

17 Q After you shot at Dominick at that point in time, did
18 you see Tony anymore at that point in time? Did you know
19 where he was?

20 A No, sir. I did not know where he was at. After the
21 incident happened between me and Dominick, I just kept on
22 running. Like at the same time, I was running. I never
23 stopped. I kept on running around this white truck. And
24 as I ran around this white truck, I came all the way
25 around, and I got -- that's when I got back to the truck,

1 because like I ran around this way, I came and got into
2 the passenger side, this door that I said I had unlocked.

3 Q Okay.

4 A I jumped in between the two front seats, and then I
5 got in the car and drove away.

6 Q Okay. Please take your seat again, if you would?

7 A All right.

8 Q What is it that you did after -- what is it that you
9 did after -- what is it that you did after leaving the
10 Badger's property?

11 A Um, I went back to the house that I was living at
12 with my grandparents, because the shirt that I had on that
13 night, it was all torn up from subsequently trying to get
14 away from Dominick Badger. So I went there and I grabbed
15 me another shirt, and I left, and I went to my cousin,
16 Ernest's, house.

17 Q Why did you go to your cousin, Ernest's, house?

18 A To get out of the area. So, because not knowing that
19 they were shot at the time, I didn't want them to come up
20 there and start trouble to my grandparents' house, or
21 shoot up my grandma's house or something like that. So I
22 just went ahead and got out of the area, so if they came
23 up and didn't see the car that I was driving, they
24 wouldn't stop.

25 Q What did you do after that?

1 **A** As I was at my cousin, Ernest's, house, I called him,
2 found out where he was, because he wasn't home at the
3 time.

4 **Q** Did you -- did you call Dexter Bozeman?

5 **A** No, sir, I didn't. At that time when I was at my
6 grandmother's house, that's when he called me asking me
7 did I shoot them guys.

8 **Q** Uh-huh.

9 **A** He asked me did I hit them.

10 **Q** And what did you tell him?

11 **A** I said I don't know. I say because I was getting
12 from around them.

13 **Q** And what did you do next?

14 **A** That's when I left and I went to Ernest's house. As
15 I was at Ernest's house -- he wasn't home. He don't have
16 a car, so I still pulled up in the driveway and knocked on
17 the door a few times. No answer. So I called him, and
18 when he answered, he told me he was at Old House, so I
19 left ---

20 **Q** Where is Old House?

21 **A** Old House is off of 462 in between Okatie and
22 Coosawhatchie.

23 **Q** Okay. So you drove to that area?

24 **A** Yes, sir.

25 **Q** Okay. And did you do anything at that point?

1 **A** Um, I went to the place where he say he was at, but
2 by the time I got there, he had already left there.

3 So I turned back around. And as I turned around,
4 that's when I was getting phonecalls from my family
5 members saying that the police wanted me to come back to
6 the house. And I told them I was headed back that
7 direction. So I was on my way back to the house.

8 **Q** Okay. Did you do anything particular with that gun?

9 **A** Yes, sir. Um, in a panic, I threw it away. I got
10 rid of it.

11 **Q** Why?

12 **A** Because it wasn't my gun, and it was Nicole's gun,
13 and I didn't want her to be in trouble for anything that I
14 caused or anything that happened with the gun while it was
15 with me.

16 **Q** In retrospect, what do you -- how do you feel about
17 that decision?

18 **A** It was a very poor decision, because for one, I
19 shouldn't have had the gun.

20 **Q** And then in terms of throwing the gun away?

21 **A** I was just in a panic. A bad choice.

22 **Q** You said the police had called and tried to get in
23 contact with you?

24 **A** Um they called -- when they called, I came right then
25 when they called. Like my parents called and told me that

1 the police was at the house and they wanted me to come
2 back. And I came. I was on the way there.

3 Q Okay. So you went and met the police?

4 A Yes, sir, I did.

5 Q Okay. And where did you meet them?

6 A At the house that I was living at with my
7 grandparents.

8 Q Okay. And after meeting them at the house, what
9 happened at that point in time?

10 A Um, they told me that um they weren't arresting me,
11 but that they were going to take me for my protection
12 because of my name being involved in the situation. And
13 that's when they had Officer Patterson take me to the Town
14 Hall in Yemassee, and that's when they did a gun powder
15 residue on me.

16 Q Okay.

17 A And when I got there, they had Josh Habersham out
18 there. I don't know why he was out there at the time.

19 Q Okay.

20 A When I got there, he was there. They did a gunpowder
21 residue on my hands. And then they took me to Hampton
22 County Jail.

23 Q All right. Now at some point in time, you had an
24 opportunity to speak with police; didn't you?

25 A Yes, sir, I did.

1 Q Okay. And you had an opportunity tell them what
2 happened; didn't you?

3 A Yes, sir, I did.

4 Q Okay. Did you tell them the entire truth when you
5 first met with them?

6 A At first I told them a partial of the truth. I told
7 them the truth about me going to my cousin, Ernest's,
8 house. I told them about Old House, but I tried not to
9 implement myself around that area at that time.

10 Q Okay. And why is that?

11 A Because I didn't want any trouble about my name being
12 with a gun.

13 Q Is there a point in time where you told them the
14 truth?

15 A Yes, sir, I did. As we were talking, the
16 conversation got -- got further down. That's when it was
17 explained to me about how -- um -- the two guys had got
18 shot.

19 Q Did you know they had been shot before that point in
20 time?

21 A No, sir, I didn't.

22 Q Okay. And what did -- after you learned that they
23 had been shot, what did you tell them?

24 A That's when I just came out and I told them what had
25 happened that night.

1 Q And is what you told them what you told us here
2 today, substantially similar?

3 A Yes, sir.

4 Q Why did you shoot Tony that night?

5 A Because Tony was coming after me saying he was going
6 shoot me, and I believed for him to have a gun. So I
7 started running, and I started shooting back. It was like
8 I didn't take no direct aim at him. I was shooting back
9 behind me as I was running.

10 Q Why didn't you leave right before that point in time?

11 A Because as I was leaving -- because as I was leaving,
12 he blocked me off from getting into the vehicle that I was
13 driving.

14 Q All right.

15 MR. GIPSON: Court's indulgence, Your Honor?

16 THE COURT: Certainly.

17 Q Now as it relates to State's Exhibit Number Eight,

18 ---

19 MR. GIPSON: May the witness step down one more time,
20 Your Honor?

21 THE COURT: Yes, sir.

22 Q Would you put this green sticky-tab where your car
23 would be parked, if we use the diagram that Special Agent
24 Fellers used?

25 A In this area right here, this is -- this would be the

1 area where the car that I was driving be at.

2 Q Okay.

3 A This would be the area of the car right about here.

4 Q Okay.

5 A This would be the front. This would be the front of
6 the vehicle I was driving, and this would be like the
7 trunk area of the vehicle that I was driving.

8 Q All right. If you would have a seat, please?

9 MR. GIPSON: I believe that's all my questions at
10 this time.

11 THE COURT: Very well.

12 You may cross-examine.

13 MR. MURDAUGH: Please the Court?

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION

16 BY MR. MURDAUGH:

17 Q Mr. Greene, ---

18 A Yes, sir?

19 Q --- you were going fishing that night?

20 A That afternoon, yes.

21 Q That afternoon?

22 A Yes, sir.

23 Q And apparently at some point you decided not to go
24 fishing but to sit there and drink liquor.

25 A Well, I stayed a little longer than my stay was

1 planned. Yes, sir.

2 Q Okay. What time did you get to Dominick's house?

3 A Mmm, it was a little after 6:00 o'clock, like no
4 later than 6:10/6:15, somewhere around in there.

5 Q This is in October?

6 A Yes, sir. October 2nd.

7 Q It was about dark then?

8 A No, sir. It was still light outside. It was still
9 daylight outside. At that time, it wasn't getting dark
10 until about 8:00 o'clock.

11 Q Okay. And what time did all the shooting take place?

12 A Um, it had to have been around like 8:00 something, a
13 little after 8:00, somewhere around that time.

14 Q So about dark?

15 A Yes, sir.

16 Q So I assume that you had decided not to go fishing in
17 the nighttime.

18 A No, I didn't go fishing then.

19 Q Some -- at some point you decided not to go.

20 A Yes, sir. Once um -- like, once it got to like the
21 7:00 o'clock hour, I had done changed my mind, said I
22 wasn't going then, because where I have to be, it's a good
23 little walk -- ways that I have to get to the water, so by
24 the time I get there, there wouldn't have been no time for
25 me really to do no fishing that day.

1 Q Okay. They -- and the only reason you had the gun
2 with you was so that you could go fishing?

3 A Yes, sir.

4 Q Okay. When you realized that you weren't going to go
5 fishing, why didn't you put the gun up, sir?

6 A Just indulged in conversation, wasn't even thinking
7 about it at that time.

8 Q Wasn't thinking. Were you thinking it about it, Mr.
9 Greene, when you stole the gun from Nicole?

10 A Thinking about what?

11 Q Sorry?

12 A Thinking about what?

13 Q Were you thinking about anything when you stole the
14 gun from Nicole?

15 A Yeah. I was thinking about going fishing the next
16 day.

17 Q You were thinking about going fishing.

18 A Yes, sir.

19 Q Did she give you permission to get the gun?

20 A No, sir, she didn't.

21 Q Let me ask you a question. If you didn't do anything
22 wrong, why did you throw the gun away?

23 A Because I was just in panic.

24 Q In panic because you knew you had shot and killed two
25 -- one person and injured another one.

1 **A** No, sir. I didn't -- I didn't know I had shot
2 anybody.

3 **Q** You didn't know you had hit anybody?

4 **A** Not at that time.

5 **Q** Let me ask you a question. You were standing there,
6 leaving aside the Keith King incident, you were standing
7 there between Tony -- or Dexter and Dominick were standing
8 between you and Tony; right?

9 **A** Yes, sir. Well, not ---

10 **Q** Okay. And they were keeping Tony from jumping on
11 you; weren't they?

12 **A** Yeah, they was walking him -- can I answer, Your
13 Honor?

14 **THE COURT:** You may answer it.

15 Solicitor, let him finish answering the question
16 before you ask another question.

17 **MR. MURDAUGH:** I apologize.

18 **THE COURT:** Thank you, sir.

19 **A** Yeah, as -- as he was walking towards me, they
20 started walking towards him and was like leading him back
21 towards the vehicle.

22 **Q** All right.

23 **A** They weren't just standing there.

24 **Q** Okay, sir. So they were keeping him from getting to
25 you; weren't they?

1 **A** Yes, sir, because he was the aggressor.

2 **Q** He was what?

3 **A** He was the aggressor. Like he was the aggressor.

4 Like he was coming after me. I wasn't coming after him.

5 So that's why they grabbed him.

6 **Q** Okay, sir. So they stopped him.

7 **A** Yes, sir.

8 **Q** And yet you still shot him. Why didn't you leave
9 right then, sir?

10 **A** I was still trying to leave.

11 **Q** If they're holding him, why can't you leave?

12 **A** Because they still got him in the middle of the --
13 they wasn't holding him. They was like ---

14 **Q** Well, you just said they were -- excuse me. I didn't
15 mean to interrupt. Did you have something else to say?

16 **A** Yeah. I was still answering your question.

17 **Q** Okay. Go ahead.

18 **A** As they was walking him back to the vehicle, they
19 weren't standing there just holding him. Like as they was
20 walking him back towards the vehicle, I was walking like
21 at a slow pace, trying to get to the vehicle at the same
22 time. And when they got him to the truck and got him
23 inside the truck, that's when he came back out the truck
24 after me.

25 **Q** You mean that they had Tony, and they had him by the

1 arms and took him and put him in the truck?

2 A Yeah. They took him to the truck.

3 Q Okay, sir. And you stood around there with a gun in
4 your belt waiting for him to come back?

5 A No, sir.

6 Q Well, what were you doing, sir?

7 A I was trying to get to the car.

8 Q Did you have the gun out?

9 A No, sir.

10 Q Well, what were you doing? Why didn't you leave, if
11 you knew there was going to be trouble, sir?

12 A Because I never could get to the car.

13 Q Why couldn't you get to the car?

14 A Because as I was getting to the car, it was like Tony
15 came back at me. That's why I couldn't get to the car.

16 Q But you said ---

17 A From the start -- from the start, like I said, like
18 he blocked me off from the direction that I was going to
19 the car.

20 Q But you said they had him in the truck.

21 A Yeah, after he done got to the truck, you know what
22 I'm saying, that's when I was trying to get into the car.
23 And then he came back out of the truck.

24 He was in the truck, and he came back out of the
25 truck. He got back out of the truck. He -- they already

1 had him in the truck. He got back out of the truck.

2 When he saw me got close enough to the car, I guess
3 that's when he figured it was ample enough time for him to
4 jump on me.

5 Q And you know you had no business having that gun that
6 night; don't you?

7 A Yes, sir. I was wrong. I was wrong. I'll admit, I
8 was wrong.

9 Q Why did you think you needed a gun drinking liquor
10 with your friends?

11 A I didn't have no gun out there drinking liquor with
12 friends. I had the gun for fishing. And me and my
13 cousin, we normally go fishing on the weekends, and he's
14 from North Carolina, so he didn't come home that weekend.
15 He said he wasn't coming home. So I talked to him that
16 Thursday. So I still wanted to go fishing.

17 Q But you weren't going fishing. You had stopped and
18 started drinking liquor; hadn't you?

19 A Naw, that's not how it started, though.

20 Q Well, wait a minute now. You're going fishing.

21 A Yes, sir.

22 Q You put your fishing tackle in the car.

23 A Yes, sir.

24 Q You get -- you steal the gun out of the back of
25 Nicole's car.

1 **A** I ---

2 **Q** You did that the day before, though, didn't you?

3 **A** That Thursday night, I put the gun in there. Yes,
4 sir.

5 **Q** The day before, you stole the gun out of Nicole's
6 car.

7 **A** Yes, sir.

8 **Q** Okay.

9 **A** I didn't steal it. I took the gun, because I was
10 going to put the gun back that Friday night when I saw her
11 when she came over to the house. I was going to put the
12 gun back.

13 **Q** That's before you shot the people.

14 **A** What -- what my intention was before people got shot?

15 **Q** Okay. Let me ask you a question. You go down the
16 road and you stop and buy two half pints of liquor.

17 **A** That's -- that's right after I got off from work.
18 Yes, sir.

19 **Q** And you take those -- you're taking them fishing with
20 you?

21 **A** Yeah. I was going to go out there and drink me one.

22 **Q** One pint or ---

23 **A** No, no, not no one pint. It was like drink me some
24 liquor. I just be out there outside by myself.

25 **Q** Well, why did you buy a pint ---

1 **A** A half pint. A half pint.

2 **Q** --- well, two half pints. That's a pint; isn't it?

3 **A** Well, one was for today -- one was for that day, and
4 one was for the next day.

5 **Q** Okay. You ever heard the term liquor and guns don't
6 mix?

7 **A** No, sir.

8 **Q** You hadn't heard that?

9 **A** No, sir.

10 **Q** You went there that night, didn't you Mr. Brandon
11 Greene, you went there knowing that there was going to be
12 some problems; didn't you?

13 **A** No, sir.

14 **Q** You told Keith King, says: You're too big to fight.
15 I'll shoot you; didn't you?

16 **A** No, sir.

17 **Q** And Keith King told you, he said: You mess with me,
18 I'll lap this brick upside your head; didn't he?

19 **A** No, sir.

20 **Q** Huh?

21 **A** No, sir. It never happened.

22 **Q** I didn't happen.

23 **A** It never happened.

24 **Q** They lied about that.

25 **A** That was -- that was a total lie.

1 Q Okay, sir. And when that was over with and Keith
2 King and Bernard left, it was you, Dexter, Tony, and
3 Dominick.

4 A Wrong.

5 Q Who?

6 A When Keith King left, the only people that were left
7 in the yard were me, Dexter, Tony Badger, Dominick Badger,
8 Bernard Badger, Joshua Habersham, and a guy named Greg.

9 Q They were all there when the shooting took place?

10 A No, sir. After a while, like I said, after a while,
11 when he started saying he was going to leave, everybody
12 was leaving, that's when Dominick and Dexter and me was
13 walking towards the car to leave, and ---

14 Q Dominick, you, ---

15 A And Dexter.

16 Q --- and Dexter.

17 A We was walking to the car to leave, and that's when
18 Tony came out in front of us. Because I already told
19 Dominick that I was going to leave, I was leaving. So
20 that's when they started walking with me to the car.

21 And when I was walking to the car, that's when Tony
22 cut us off. Him and Josh came from out of the woods area
23 from where the trampoline and stuff was at.

24 Q Okay, sir. I assume that you never said anything to
25 Tony about not going to the party.

1 **A** No, I been saying it to his brother.

2 **Q** You never said it to Tony.

3 **A** No, I never said it to Tony.

4 **Q** Well, why would he get mad with you for saying it, if
5 you didn't tell him?

6 **A** I have no idea why he would get mad at me for saying
7 that.

8 **Q** Was he there when you told him? Could he hear you?

9 **A** He probably could have hear me from the distance that
10 I was.

11 **Q** Huh?

12 **A** He probably could have hear me when I said that.

13 **Q** Okay. Did you know Tony was getting mad with you?

14 **A** Not at that point until he started walking towards me
15 saying ---

16 **Q** Okay.

17 **A** --- he was a grown man, and I could take my punk "A"
18 home and all kind of stuff like that.

19 **Q** Say what?

20 **A** He was telling me that he was a grown man, and he be
21 saying that he grown enough to drink liquor or alcohol if
22 he wants to and go places where ever he wanted to. So
23 that was just him. And then he told me I could take my
24 punk "A" home, basically saying I could go home if I don't
25 want to go to the party with them.

1 Q Why didn't you? You didn't want to go to the party;
2 did you?

3 A So that's why I was leaving. I was going home.

4 Q Well, if you were leaving, why did you have to shoot
5 him?

6 A Because he prevented me from leaving. He came after
7 me saying he was going to burn me.

8 Q Okay. And when he came after you, Dominick and
9 Dexter grabbed him and pushed him back and put him in the
10 car, the truck.

11 A No, that was -- that was after.

12 Q That was after what?

13 A See, you talking about two different times. The
14 first time I'm talking about is when we started walking
15 towards the vehicle, and he came out from where the fire
16 barrel was at, and he started walking towards me. That's
17 when Dexter and Dominick grabbed him and started walking
18 him back towards the vehicle.

19 Q Okay.

20 A The closer they got him to the vehicle, I was getting
21 close enough to my vehicle, like still walking at a slow
22 pace to get to the vehicle that I was driving, and they
23 had done put him in the truck. When they put him in the
24 truck, I felt it was safe enough for me to try to get in
25 the car. And he jumped back out of the truck coming after

1 me saying he was going to burn me.

2 Q And what did Dominick and Dexter do?

3 A Dexter took off running, and Dominick was just
4 standing there.

5 Q Why did Dexter take off running if you hadn't shot
6 yet?

7 A He must have saw a gun, too.

8 Q Huh?

9 A He must have saw a gun, too.

10 Q The only person that had a gun was you; isn't it?

11 A Nobody knew I had a gun.

12 Q Huh?

13 A Nobody knew I had a gun on me. Nobody knew I had a
14 gun on me until ---

15 Q You were hiding it?

16 A I wasn't hiding it. I just had it on my person.

17 Q A .45 caliber pistol stuck in your belt and nobody
18 knew it was on your person?

19 A No, sir, they didn't.

20 Q How big is the .45 caliber automatic?

21 A It's a little short -- little short caliber.

22 Probably about that long right there.

23 Q And you had it stuck in your belt?

24 A It was in my waistline.

25 Q Huh?

1 **A** It was in my waistline.

2 **Q** Where?

3 **A** In my belt.

4 **Q** Where in your belt? Front? Back? Side?

5 **A** It was like tucked on the side like almost on the
6 front of the side.

7 **Q** Right over here.

8 **A** No, like in between the front and the side.

9 **Q** Right here.

10 **A** Yeah.

11 **Q** And it's sticking up there with the handle sticking
12 up, and nobody knows you've got the gun?

13 **A** No, you can't see no handle, because like the type of
14 shirt that I had on, like at that time I used to wear a
15 lot of big shirts. Like -- I was like 145 at the time.
16 The shirts that I wore then was like XXL.

17 **Q** Mr. Brandon Greene, when you realized that you
18 weren't going fishing, why didn't you put the gun in the
19 glove compartment of the car, like the law says that
20 you're supposed to do?

21 **A** Like I said before, I just got caught up in
22 conversation and just didn't think about it like that at
23 that time.

24 **Q** Why didn't you leave when they grabbed him and took
25 Brandon -- I mean, Tony away?

1 **A** Because I was -- I was leaving. He prevented me from
2 leaving.

3 **Q** You were leaving, and you shot him?

4 **A** No, I didn't leave and I shot him. I was trying to
5 leave, and he came after me. That's when I shot him.

6 **Q** If I came at you right now, would you shoot me if you
7 had a gun?

8 **A** No, because you're not threatening me.

9 **Q** Huh?

10 **A** No, because you're not presenting a threat to me.

11 **Q** What threats did he make to you?

12 **A** He said he was going to shoot me.

13 **Q** He said: I'm going to shoot you.

14 **A** I'm going to -- I'm going to burn this N, I'm going
15 to burn this N.

16 That's what he said.

17 **Q** Say what?

18 **WITNESS:** Do I have to say that word?

19 **THE COURT:** Yes, sir.

20 **A** He said: I'm going to burn this nigger. I'm going
21 to burn this nigger.

22 **Q** What's he going to burn you with, a match?

23 (WHEREUPON, SOMEONE IN THE AUDIENCE LAUGHED ALOUD.)

24 **THE COURT:** No, ladies and gentlemen.

25 **Q** Huh?

1 **A** Burn me with a match?

2 **Q** Yeah. He didn't have a gun to burn you with; did he?

3 **A** I didn't know. I didn't -- like everything was
4 moving so fast. Like I was getting out of there. I was
5 like ---

6 **Q** You just shot out of an abundance of precaution?

7 **A** An abundance of precaution?

8 **Q** Yeah. In case he had a gun?

9 **A** No, not in case, because he done put it to me that he
10 had one.

11 **Q** Let me ask you, by law were you permitted to have a
12 gun?

13 **A** No, sir, I wasn't.

14 **Q** Under any circumstances.

15 **THE COURT:** He's already said that, Solicitor. He's
16 already acknowledged that, and you've already asked that
17 question, sir.

18 **MR. MURDAUGH:** If, Your Honor, please? There's ---

19 **THE COURT:** Go into another area, but you've already
20 asked him the question that you just asked.

21 Approach, please.

22 **MR. MURDAUGH:** Yes, sir.

23 (WHEREUPON, a bench conference was held in the
24 presence of the jury but out of the hearing of the
25 jury.)

1 Q I would -- let me ask you this. You were going
2 fishing. You had put your fishing tackle in your car.

3 A Yes, sir.

4 Q When you got word from your family that the police
5 wanted you, you had thrown the gun away.

6 A Yes, sir.

7 Q Where did you throw it?

8 A I just threw it in the woods.

9 Q Huh?

10 A I just threw it in the woods.

11 Q You did or did not?

12 A I did.

13 Q You did throw it in the woods. Where?

14 A Like around my cousin's house.

15 Q Which cousin?

16 A Ernest.

17 Q Ernest?

18 A Moseley.

19 Q Ernest Moseley. Okay, sir. And when you started
20 back after learning from your family that the police
21 wanted you, where did you then go?

22 A Excuse me?

23 Q Where did -- when you learned that the police wanted
24 to see you, where did you go?

25 A I came straight to the house.

1 Q To whose house?

2 A My grandparents', where I was living at at the time.

3 Q Okay. And were the police there when you got there?

4 A Yes, sir.

5 Q They were waiting on you?

6 A Yes, sir.

7 Q Okay, sir. Did you have the fishing tackle in your
8 car then?

9 A Yes, sir.

10 Q You sure?

11 A Yes, sir.

12 Q You positive?

13 A Yes, sir.

14 Q Okay.

15 MR. MURDAUGH: I have no further questions.

16 THE COURT: Redirect?

17 MR. GIPSON: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. GIPSON:

20 Q How did the fishing tackle get out of your car?

21 A I later found out that when the car was still in the
22 yard that night, my grandfather took my things out of the
23 car, because the officers said they were going to take the
24 vehicle to impound it.

25 Q And they impounded that vehicle for a long period of

1 time; didn't they?

2 A Yes, sir, for about a year, I think it was.

3 Q Okay. And you were asked a question about having a
4 .45 in your waistline.

5 A Yes, sir, I was.

6 Q Okay. Could you stand up for a moment, please, and
7 just demonstrate what you mean by in your waistline, so we
8 can be clear?

9 A Like in my waistline right here.

10 Q Speak up, please.

11 A In my waistline right here.

12 Q Okay. And how did you wear your clothes at that
13 point in time?

14 A Like I had a shirt on -- like I had a shirt on that
15 would hang like the same length as what this jacket is
16 right now.

17 Q Okay. So if a gun is in your waistline, and you have
18 a big shirt that goes down mid-thigh, are you going to see
19 the handle of that gun?

20 A No, sir. No, sir.

21 MR. GIPSON: That's all my questions, sir.

22 THE COURT: Recross?

23 MR. MURDAUGH: I have no questions.

24 THE COURT: Thank you, sir. You may step down, Mr.
25 Greene.

1 **WITNESS:** Thank you, Your Honor.

2 **THE COURT:** Any additional witnesses?

3 **MR. GIPSON:** I ask the Court's indulgence for a brief
4 moment, Your Honor?

5 **THE COURT:** Yes, sir.

6 **MR. GIPSON:** Thank you, Your Honor.

7 No, sir. We have no other witnesses, Your Honor.

8 **THE COURT:** Reply testimony?

9 **MR. MURDAUGH:** Yes, sir. I need about three minutes,
10 if you'll give it to me.

11 **THE COURT:** Ladies and gentlemen, I'll let you go to
12 your jury room for just a short break. Do not begin your
13 deliberations. We'll be with you very shortly.

14 (SEPTEMBER 5, 2012, 2:51 P.M., WHEREUPON, THE JURY
15 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
16 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

17 **MR. MURDAUGH:** May we step out just for a moment,
18 sir?

19 **THE COURT:** Sure. We'll be at ease.

20 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, AT 2:53
21 P.M., THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD
22 OUT OF THE PRESENCE OF THE JURY:)

23 **MR. MURDAUGH:** I have one witness.

24 **THE COURT:** All right. That's fine.

25 Let the record reflect that, while the defendant has

1 rested, we're preserving and we're not arguing the motions
2 that would typically be made. I'll allow the State to
3 complete it's redirect before hearing from the defendant.
4 So the record is clear, the defendant is fully protected
5 to make its final motions, if you so desire.

6 **MR. GIPSON:** Thank you, sir.

7 **THE COURT:** Thank you.

8 All right. Let's bring in our jury, please.

9 (SEPTEMBER 5, 2012, 2:55 P.M., WHEREUPON, THE JURY
10 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
11 WERE HELD IN THEIR PRESENCE.)

12 **THE COURT:** Thank you very much, ladies and
13 gentlemen.

14 Does the State wish to ---

15 **MR. MURDAUGH:** I call Chancey Solomon.

16 **CLERK:** Put your left hand on the Bible and raise
17 your right hand.

18 CHAUNCEY SOLOMON, after being duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MURDAUGH:

22 **Q** Your name is Chauncey Solomon?

23 **A** Yes, sir. Chauncey Demetrius Solomon.

24 **Q** Okay, sir. And you're employed by the Hampton County
25 Sheriff's Department in what capacity, sir?

1 A Investigator with the sheriff's office.

2 Q Okay. I ask you whether or not on the night -- were
3 you employed at that time on October the 2nd, 2009?

4 A Yes, sir, I was.

5 Q Did you have an occasion to go to Brandon Greene's
6 grandfather's house on that night?

7 A Yes, sir.

8 Q And why were you there?

9 A A shooting had took place. We had ---

10 Q Were you trying to find Brandon Greene?

11 A We were actually looking for Brandon Greene.

12 Q Did you talk with Brandon Greene on the telephone?

13 A Yes.

14 Q And did you tell him that y'all wanted to talk with
15 him and for him to come to his grandaddy's house?

16 A Yes, sir.

17 Q When he arrived at the house, how did he get there?

18 A He was driving a vehicle.

19 Q Okay. The vehicle that he was driving, did he get
20 out of it?

21 A Yes, sir, he did.

22 Q And was that vehicle later towed away by the
23 sheriff's department -- by somebody authorized by the
24 sheriff's department?

25 A Yes, sir. When he got there, we pulled him out of

1 the car, took custody of the vehicle and took custody of
2 him also, and towed the vehicle to our office.

3 Q Did anybody ---

4 MR. GIPSON: Object to the leading.

5 THE COURT: I haven't heard the question yet. The
6 last one wasn't leading. I'll allow it.

7 State your question.

8 Q Did anybody put into or take anything out of the
9 vehicle?

10 A No, sir.

11 THE COURT: Overrule the objection. That was not
12 leading.

13 You may answer, sir.

14 A No, sir.

15 Q Okay. When they got to the impound yard, was an
16 inventory done?

17 A Yes, sir.

18 Q And who did the inventory?

19 A Myself, Captain Anthony Russell, and Perry Singleton.

20 Q Was any fishing tackle in it?

21 A I have a list of the things that we took out of the
22 vehicle.

23 Q I'm not asking you what you took out of it. I'm
24 asking you, was there any fishing tackle ---

25 A No, sir.

1 Q --- in the vehicle?

2 A No, sir.

3 Q Okay. And you have in your hand an inventory of the
4 stuff y'all took.

5 A Yes, sir.

6 Q Okay. But that's not my question, now, you
7 understand?

8 A Yes, sir. There was no fishing tackle in the
9 vehicle.

10 Q Thank you, sir.

11 MR. MURDAUGH: I have no further questions.

12 THE COURT: Cross-examine?

13 MR. GIPSON: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. GIPSON:

16 Q Do you have notes of what you discussed and who you
17 discussed with, once Brandon arrived at the house?

18 A No, sir.

19 Q Okay. So you don't have any notes. All this stuff
20 you just testified to, you don't have any notes that you
21 took where you wrote down who was there, who was at the
22 house, what you talked to those folks about, and what you
23 did at the house.

24 A No, sir.

25 Q Okay. And isn't it the practice that you're taught

1 as an investigator, as a detective, to write down
2 everything that happens when you get into a situation?

3 A No, sir.

4 Q You're not taught that?

5 A No, sir.

6 Q You're not taught to write down the things that
7 contemporaneously occur when you're at a crime scene or
8 dealing with folks who may be involved somehow in a crime
9 scene?

10 A In a crime scene, yes.

11 Q Okay. And what about ---

12 A I agree.

13 Q --- and what about the people who you speak to
14 resulting from that?

15 A Of course, yes.

16 Q Okay. And where are the notes of what you did that
17 evening?

18 A Well, it's a different scenario.

19 Q Do you have notes from that evening?

20 A It's not a scenario where you would have notes.

21 Q Do you have notes for that evening?

22 A No, sir, I don't.

23 Q Okay. And are you trying to tell this jury that you
24 didn't tell -- you or any member of your department, ---

25 A Uh-huh.

1 Q --- tell Mr. -- tell one of Brandon Greene's family
2 members that they could take his fishing tackle out of
3 that car?

4 A No, sir, that didn't happen.

5 Q Okay. You didn't do it.

6 A No, sir.

7 Q Did any of the members of your department do it?

8 A No, sir.

9 Q And you know that for a fact?

10 A As far as I know of, yes. I know that for a fact.
11 That's something that we don't do.

12 Q Okay.

13 A Just like you said, training.

14 Q Uh-huh.

15 A Training, we wouldn't allow nobody to take nothing
16 out of the vehicle.

17 Q But training also says you're supposed to write down
18 what you do that evening, too; right?

19 A We wrote down what we did that evening. This is the
20 inventory of the stuff that we took out of the vehicle.

21 Q What were the discussions that you had when you got
22 to the -- to the ---

23 MR. MURDAUGH: Your Honor, please? These have been
24 asked and answered.

25 THE COURT: I sustain.

1 You're arguing with the witness now. Move onto
2 something else.

3 **MR. GIPSON:** Yes, sir.

4 **Q** But it's your testimony you didn't tell -- you or no
5 member -- you, nor any member of your department, Yemassee
6 Police Department, whoever else was out there, tell Mr.
7 Greene or any of the members of his family that they could
8 remove items from ---

9 **A** No, sir.

10 **Q** --- the fishing tackle from that car?

11 **A** No, sir.

12 **Q** Okay.

13 **MR. GIPSON:** That's all my questions.

14 **THE COURT:** You may call your next witness.

15 **MR. MURDAUGH:** Call Perry Singleton.

16 PERRY SINGLETON, SR., after being duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 **BY MR. MURDAUGH:**

20 **Q** Your name is Perry Singleton?

21 **A** Senior.

22 **Q** And you are employed by the Sheriff's Department of
23 Hampton County as a detective?

24 **A** Yes, sir.

25 **Q** Okay. What rank do you hold, sir?

1 **A** I'm a lieutenant.

2 **Q** Okay. Mr. Singleton, on the night of October the 2nd
3 of 2009, did you have an occasion to go to the grandfather
4 of Brandon Greene's house?

5 **A** No, sir. I was stationed at the crime scene.

6 **Q** Okay. That's right. When the call got to the --
7 were you aware that the car of Brandon Greene ---

8 **MR. GIPSON:** Object to leading.

9 **THE COURT:** I'll sustain the objection.
10 Rephrase your question.

11 **Q** Did you go to the sheriff's department impound yard
12 to do an inventory of anything?

13 **A** Yes, I did.

14 **Q** And what inventory was that of?

15 **A** It was the vehicle that Brandon Greene was driving.

16 **Q** Okay. What did -- did it have anything in it related
17 to fishing?

18 **A** None, whatsoever.

19 **Q** Okay. Did you make an inventory of the contents of
20 that car that y'all -- the stuff y'all took?

21 **A** Yes, we did.

22 **Q** Thank you, sir. Did it contain any fishing tackle?

23 **A** None.

24 **MR. MURDAUGH:** Thank you. Answer any other
25 questions.

1 **THE COURT:** Cross-examine.

2 CROSS-EXAMINATION

3 **BY MR. GIPSON:**

4 **Q** You were not at the house when Brandon arrived at the
5 house; were you?

6 **A** No.

7 **MR. GIPSON:** That's all my questions.

8 **THE COURT:** All right.

9 Redirect?

10 **MR. MURDAUGH:** I have no further questions. You may
11 come down.

12 That concludes the reply, sir.

13 **THE COURT:** Very well.

14 All right, ladies and gentlemen, there are matters
15 now that I must take up out of your presence. That will
16 conclude the evidentiary portion of the proceedings.
17 There still remains, however, two very important parts of
18 this process; one, the closing arguments, and then, of
19 course, the charge on the law.

20 So, we'll be with you as quickly as we can. Please
21 retire to your jury room at this time. Do not discuss
22 this case at this time.

23 (SEPTEMBER 5, 2012, 3:01 P.M., WHEREUPON, THE JURY
24 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
25 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

1 **THE COURT:** All right, anything from the State at
2 this time?

3 **MR. MURDAUGH:** No, sir.

4 **THE COURT:** Anything from the defendant?

5 **MR. GIPSON:** Your Honor, I don't know what the
6 Court's position is on this, but we have witnesses who
7 would contradict what these officers just said.

8 **THE COURT:** You could have called anyone you wanted,
9 sir.

10 **MR. GIPSON:** Yes, sir.

11 **THE COURT:** You don't get a -- it's not a surrebuttal
12 ---

13 **MR. GIPSON:** Yes, sir.

14 **THE COURT:** --- in this proceeding.

15 **MR. GIPSON:** I understand.

16 **THE COURT:** It may be in federal court, but not here.

17 **MR. GIPSON:** Yes, Your Honor.

18 **THE COURT:** So do you have any motions?

19 **MR. GIPSON:** I would just like to renew my motions
20 that I made previously.

21 **THE COURT:** I believe it's a jury issue, so I would
22 respectfully deny it.

23 **MR. GIPSON:** Thank you, Your Honor.

24 **THE COURT:** Thank you, sir.

25 Are there any specific requests to charge from the

1 State?

2 MR. MURDAUGH: No, sir. I think until I hear what
3 they request, I may not have any, sir.

4 THE COURT: Very well.

5 Mr. Gipson?

6 MR. GIPSON: Yes, my request is for self-defense,
7 Your Honor.

8 THE COURT: I will charge -- well, basically in
9 thinking it through and listening to the testimony, now,
10 the entire part, we had a conference, and certainly taking
11 the State's case without anything, there may be some
12 inference of provocation and possibly a manslaughter
13 reduction, but given what I've heard now, there's no
14 provocation. He doesn't testify to being angry. He's
15 testified that he was afraid and that he defended himself.

16 MR. GIPSON: Yes, sir.

17 THE COURT: And so there really -- it's either murder
18 or it's not guilty because of self-defense.

19 MR. GIPSON: Yes, Your Honor.

20 THE COURT: So I believe -- I believe that applies to
21 both. There's either malice, or there's self-defense, one
22 or the other.

23 MR. GIPSON: Yes, Your Honor.

24 THE COURT: Does the State disagree with that?

25 MR. MURDAUGH: No, sir, I do not.

1 **THE COURT:** And you don't -- you don't disagree with
2 that?

3 **MR. GIPSON:** I do not disagree, Your Honor.

4 **THE COURT:** Thank you, very much.

5 All right. I will certainly charge self-defense.

6 **MR. GIPSON:** Yes, sir.

7 **THE COURT:** No question about that.

8 **MR. GIPSON:** Thank you.

9 **THE COURT:** But I will not charge any -- I will
10 charge he has the duty to avoid the conflict, if possible,
11 without of course, endangering himself.

12 **MR. GIPSON:** Yes, sir.

13 **THE COURT:** Okay. All right.

14 How long do y'all need?

15 (NO RESPONSE.)

16 **THE COURT:** How about ten minutes?

17 **MR. GIPSON:** Can I ask for fifteen, just out of an
18 abundance of caution?

19 **THE COURT:** You've got it.

20 **MR. GIPSON:** Thank you, Your Honor.

21 And does the Court charge prior to or afterwards?

22 **THE COURT:** I -- I don't have any real opposition to
23 charging before. My brothers and sisters have some strong
24 feelings about it. I don't see any need to charge before
25 this one. It's not that complicated.

1 **MR. GIPSON:** Yes, sir.

2 **THE COURT:** Because you're going to cover what I'm
3 going to charge. You've heard it a number of times,
4 murder and the typical things that you hear.

5 I'm going to charge circumstantial evidence, direct
6 evidence. They both are equally weighed, and no greater
7 weight required. Basically, the charge is pretty
8 straightforward.

9 **MR. MURDAUGH:** I would waive opening, sir, unless you
10 demand me to open on the law.

11 **MR. GIPSON:** I would like for you to open on the law.

12 **THE COURT:** So you're going to tell them what murder
13 is and assault and battery with intent to kill is.

14 **MR. MURDAUGH:** Yes, sir.

15 **THE COURT:** I never understood why assault and
16 battery with intent to kill and the first thing I tell
17 them is intent to kill is not an element of the offense.

18 **MR. MURDAUGH:** That's right.

19 **THE COURT:** Explain to me why we call it that.

20 **MR. GIPSON:** Yes, sir.

21 **THE COURT:** They didn't ask me before they did it.
22 Okay. We'll be at ease for fifteen minutes.

23 **MR. GIPSON:** Thank you, Your Honor.

24 (WHEREUPON, A BREAK WAS TAKEN AT 3:05 P.M.)

25 THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON THE

1 RECORD OUT OF THE PRESENCE OF THE JURY:)

2 THE COURT: Is the State ready to proceed?

3 MR. MURDAUGH: Yes, Your Honor.

4 THE COURT: Is the defense ready to proceed?

5 MR. GIPSON: Yes, Your Honor.

6 THE COURT: All right. Bring us the jury, please.

7 MR. GIPSON: Oh, Your Honor, one quick moment. I'm
8 sorry.

9 THE COURT: Hold the jury a minute.

10 MR. GIPSON: I spoke with Mr. Murdaugh, and I had two
11 exhibits that were Defense Exhibit One for ID purposes and
12 Three for ID purposes that I did not formally move into
13 evidence, and I didn't do that, but he said he wouldn't
14 object to moving them formally into evidence.

15 THE COURT: Any objection from the State?

16 MR. MURDAUGH: Let me see what it is he's talking
17 about.

18 MR. GIPSON: These two.

19 MR. MURDAUGH: If Your Honor, please? I have no
20 problem with State's(sic.) Exhibit Three.

21 THE COURT: State's Three?

22 MR. MURDAUGH: State's(sic.) Exhibit One for
23 identification is the statement of Anthony Badger, and I
24 do object to that, sir, because he's testified.

25 THE COURT: Okay. So State's Three is admitted

1 without objection.

2 (WHEREUPON, Defendant's Exhibit No. 3 was admitted
3 into evidence.)

4 THE COURT: State's One, you wish to have it, and he
5 testified concerning that. I will sustain the objection.

6 MR. GIPSON: Yes, sir.

7 THE COURT: Thank you.

8 COURT REPORTER: Your Honor, it's Defendant's
9 Exhibits.

10 MR. GIPSON: I'm sorry.

11 THE COURT: Oh, it's defendant's?

12 COURT REPORTER: Yes, sir.

13 THE COURT: Defendant's Exhibit Three and Defendant's
14 Exhibit One.

15 Thank you, Mrs. Cummings.

16 MR. GIPSON: And the only portion on Defendant's One,
17 it was used partially for impeachment value, because
18 there's something different than was testified to.

19 THE COURT: I understand that, but ---

20 MR. GIPSON: I understand.

21 THE COURT: --- he's testified to it, and he's
22 responded to it.

23 MR. GIPSON: Yes, sir.

24 THE COURT: So you have that.

25 MR. GIPSON: Yes, sir. Thank you, Your Honor.

1 **THE COURT:** He didn't deny -- he didn't deny -- he
2 never denied that he said that in the statement. He may
3 have testified differently, but you asked him about what
4 he said in his statement.

5 **MR. GIPSON:** Yes, sir.

6 **THE COURT:** He didn't deny making that statement.

7 **MR. GIPSON:** Okay.

8 **THE COURT:** So, therefore, it's cumulative.

9 **MR. GIPSON:** Yes, sir.

10 **THE COURT:** Okay?

11 **MR. GIPSON:** All right. Thank you, Your Honor.

12 **MR. MURDAUGH:** And if Your Honor please? Just for
13 the record, my objection does not relate to the timing of
14 the introduction.

15 **THE COURT:** Oh, I understand that.

16 **MR. MURDAUGH:** Okay, sir.

17 **THE COURT:** Okay. Bring us the jury, please.

18 (SEPTEMBER 5, 2012, 3:28 P.M., WHEREUPON, THE JURY
19 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
20 WERE HELD IN THEIR PRESENCE.)

21 **THE COURT:** Thank you very much, ladies and
22 gentlemen. I appreciate your attention thus far.

23 We now move into that portion of the proceedings
24 where the attorneys have their second opportunity to speak
25 to you. As I mentioned to you when we started, unlike the

1 opening statements, you've heard the evidence now, but
2 it's proper for them to discuss that evidence with you and
3 suggest reasonable inferences that you may draw from that
4 evidence. I believe that you will find their remarks
5 extremely helpful when you begin the process of analyzing
6 the evidence and deciding what you believe to be the true
7 facts.

8 Please give them your attention, as I know that you
9 will. But please remember, while their remarks are
10 extremely important and very helpful, they are not to be
11 considered evidence at any time. Thank you.

12 Solicitor, you may open on the law, please.

13 **MR. MURDAUGH:** May it please the Court?

14 Mr. Foreman, ladies and gentlemen of the jury, I'm
15 old and I'm wore out, and I can't hardly go, but we're at
16 the end now. We've got three things left, well, actually
17 four things. I have to open on the law, and then Mr.
18 Gipson will give you his version of the facts, and then
19 I'll have a chance to talk to you about my version of the
20 facts.

21 The law in this case is murder and assault and
22 battery. Murder is the unlawful killing of another person
23 with malice aforethought. Malice is sometimes defined as
24 a person with a wicked heart, a person bent on mischief.

25 His Honor will charge you in a lot more detail than

1 that, and I want you to listen to him. Unlawful killing
2 of another person with malice aforethought.

3 The other charge is assault and battery with intent
4 to kill. Assault is the taking and putting in force a
5 motion to injure somebody, without doing it. You follow
6 me?

7 If I were to take a swing at one of you -- at Bruce
8 Davis, and I swing at him and miss him, that's an assault.
9 If I swing at him and hit him, that's the battery.

10 Assault is putting in motion a force to injure
11 somebody. Battery is the injury itself.

12 An aggravated nature; if I were to slap one of y'all
13 in the face with my hand, that's simple assault and
14 battery. This has to be aggravated. Aggravated is
15 something more than a simple assault. It may be use of a
16 gun to apply aggravation. The seriousness of the injury
17 can imply aggravation, and that's what the law is.

18 His Honor is also going to charge you that one of the
19 most important things that you twelve people, and I say
20 you twelve, if nothing happens, you're going to get to go,
21 sir, you twelve people have to determine is what the truth
22 is in this case, as I told you, *veridicto*. Verdict is
23 derived from the Latin word, *veridicto*, which means to
24 speak the truth, and that's what it will speak.

25 And His Honor is going to tell you that in

1 determining what the truth in this case is, that you have
2 a right to use all of your faculties that you've gained in
3 all of your life. In other words, you don't walk in here
4 with a clean mind, a mind void of what experiences you've
5 learned over the years, but you come in with a knowledge
6 of everything that you have learned.

7 He's going to tell you that you've got a right to
8 take into consideration the way a man holds up his hand
9 and puts his left hand on the Bible and holds up his right
10 hand to be sworn to tell the truth, the whole truth, and
11 nothing but the truth. You've got to take that into
12 consideration.

13 By the way, it hasn't got anything to do with
14 anything, but do you know why they make you hold up your
15 right hand? In the old English law, if they ever caught
16 anybody lying, they would burn a "P" for "perjury" in his
17 palm. So the next time you came and held up your right
18 hand, they knew you were a liar. That doesn't have
19 anything to do with this. It's just something that's just
20 there.

21 He's going to tell you that you have a right to take
22 into consideration, as I said, the way he held up his hand
23 and swore to tell the truth. He's got a right to take
24 into consideration what a person has to gain or lose by
25 telling the truth or an untruth.

1 He'll tell you that you have a right to take into
2 consideration the ability of a person to observe in the
3 light and place and area to observe what went on. You've
4 got a right to take into consideration everything in the
5 world, anything, as long as it helps you arrive at a
6 verdict.

7 The verdict has got to be a unanimous verdict. All
8 twelve of you must agree to it. And in this case, it will
9 be one of two things. It will either be guilty or not
10 guilty of murder, that's the killing of Dominick Badger.
11 It's the unlawful killing of another person with malice
12 aforethought. Either guilty or not guilty.

13 For Tony Badger, Anthony Badger, the assault and
14 battery of a high and aggravated nature. Those are the
15 verdicts that you will have to bring in. And I will speak
16 to y'all again in just a few minutes.

17 **THE COURT:** Thank you, Solicitor.

18 Mr. Gipson?

19 **MR. GIPSON:** Thank you, Your Honor.

20 **THE COURT:** Yes, sir.

21 **MR. GIPSON:** May I set up just a couple moments?

22 **THE COURT:** Sure. Take your time, sir.

23 **MR. MURDAUGH:** Judge, my colleague just informed me
24 that I said assault high and aggravated. It should have
25 been intent to kill, sir.

1 **THE COURT:** Yes, sir. That's all right.

2 **MR. MURDAUGH:** And I'll -- I'll go over that again
3 later.

4 **THE COURT:** Thank you, sir. I'll cover it.

5 **MR. GIPSON:** Please the Court, Your Honor?

6 **THE COURT:** Yes, sir.

7 **MR. GIPSON:** Mr. Murdaugh? Ms. Legette?

8 Ladies and gentlemen of the jury, first of all, I
9 just want to thank you all for your service here today,
10 and I mean that genuinely. I say that because I'm sure
11 several weeks ago when you got a letter in the mail that
12 said you had jury duty, I'm sure very few of you actually
13 got that and ran around the house like you had just won
14 the lottery. I'm sure that didn't happen. I'm sure that
15 there were probably a few words that may have been said
16 that could get you in trouble if you said them in this
17 courtroom.

18 But suffice it to say, you came and that you're here.
19 And you're here, and you've been attentive, and you've
20 listened to everything that's been said. And you have
21 paid complete attention to all of these things. And it's
22 important because, as I mentioned to you yesterday, this
23 is one of the most important times for the Badger family,
24 who is seated over here, and for the Greene family as
25 well, who is seated here, because we brought a dispute

1 before you, and only you all can settle this dispute,
2 based upon the evidence that you've heard in this
3 courtroom.

4 Folks commonly say that jury duty is one of the more
5 patriotic duties that a person can perform in times of
6 peace. And one of the reasons they say that is because
7 our country was founded on the principles, or one of the
8 principles that if a person is accused of a crime, they
9 cannot be proven to be guilty unless a jury of his or her
10 peers comes before -- they appear before that jury and the
11 jury has to listen to that case and make a decision. They
12 cannot be held guilty unless that jury finds them guilty
13 beyond a reasonable doubt. That's one of the tenants of
14 this country, one of the pillars, one of the things that
15 makes this country so great.

16 Is it a perfect system? No, it's not, but we'll take
17 it over any other one that's there when you see how other
18 countries handle their disputes.

19 Folks, as I mentioned to you before, reasonable doubt
20 is the amount of doubt that causes a reasonable person to
21 hesitate to act. There's a second definition that says
22 that if you are firmly convinced -- you cannot find a
23 person guilty unless you're firmly convinced of their
24 guilt.

25 Again, Judge Dennis is going to be the -- not going

1 to be, he is the judge of the law. In a little while,
2 after Mr. Murdaugh and I finish speaking to you, he's
3 going to tell you what the law is, and then you're going
4 to get an opportunity to apply the facts of this case as
5 the twelve of you determine are important. And then you
6 get to determine how the facts line up with the law, and
7 then that's when you'll have an opportunity to come back
8 and you make a decision based on what you've heard.

9 Now, I told you guys yesterday that I did not feel --
10 well, I told you yesterday that Brandon Greene didn't
11 murder anybody. And I didn't beat around the bush. I
12 told you.

13 And as you found out here, he did shoot Tony Badger.
14 He did shoot Dominick Badger. There's no question about
15 that.

16 That's one of the reasons why when all these
17 witnesses from S.L.E.D. came up and other people came in
18 about the firearms, there's no discussion and no fight
19 about that, because there's no question. He did that.
20 But the reason that he did that is why we're here. The
21 reason is because he was defending himself.

22 When I look at cases and I try to figure out exactly,
23 you know, the best way to explain our position to a jury,
24 I try to look at different analogies that could apply to
25 it, because analogies help me define facts and help me

1 better explain what the issues are. And in this case, I
2 thought of the analogy of how jewelry is often made, or
3 how it was made in the olden days, and how if you go to
4 Colonial Williamsburg or Colonial Jamestowne, or sometimes
5 New Braumfels out in Texas, just different areas, and
6 sometimes in the Renaissance, you can see the jewelry
7 being made. And that process is intricate, but it's
8 relatively simple.

9 What the jeweler does is go take these nuggets of
10 gold or silver or whatever the jewelry is going to be and
11 all of its impurities, all the soot that's in it, all of
12 the other stuff, dirt, everything else that's in it. And
13 they'll throw it into a large crucible or a melting pot.
14 And then they'll start heating that pot up.

15 And the more they heat it up, the more the things
16 start to melt. And as the things start to melt from that
17 heat, the trash and the soot and all of those things start
18 to separate from the gold or the silver or the jewel.

19 It's kind of similar if you're cooking gumbo or if
20 you're making spaghetti or something like that. Sometimes
21 after you cook for a while, you've got to skim the fat off
22 the top of it because it's cooking all of the fat up. You
23 don't want to eat that. It'll kill you.

24 But if you start skimming that fat off, it's the same
25 principle that that jeweler is using. One of the reasons

1 that they're doing that, they're skimming that trash and
2 all that other stuff out so that you can get the pure
3 gold, the pure silver, the pure copper, whatever that
4 jewelry is that you're making.

5 I say that because the process of testimony is very
6 similar to that. If you think of the witnesses who are
7 coming to testify and you look at them as the gold or the
8 silver or whatever that jewelry is, or excuse me, whatever
9 that -- whatever that metal is that you're trying to make
10 into jewelry, and you throw it into the pot, which is
11 similar to that witness chair, and then you start to heat
12 it up, and that's when the good stuff comes out. That's
13 when you can get rid of the trash and get to the truth of
14 the matter.

15 And so I would suggest that the cross-examination
16 that we applied is like that heat. It gets rid of the
17 trash and gets you to the real stuff that you really want.
18 And that's what this process has been about, getting rid
19 of the stuff that really doesn't matter so that we can get
20 right down to the point of what happened on October the
21 2nd, 2009, on Tulifinny Road. That's why we're here.

22 Let's look a little bit at the witnesses so that you
23 can start to see a little bit more about what really
24 happened out there. It's been a brief case. It went a
25 lot faster than a lot of you probably thought, and that's

1 a good thing, because all of the testimony is at the
2 forefront of your mind.

3 We started with a Mr. Fennell, or Fennell. And Mr.
4 Fennell did his civic duty. He was doing absolutely
5 nothing wrong.

6 He came home he said from deer hunting, and within a
7 few minutes, he was on the phone and he kept hearing his
8 dog barking. And all of a sudden, he hears a thump
9 outside and he sees Mr. Badger. And Mr. Badger said:
10 Brandon Greene shot me.

11 Again, uncontradicted. We do not contradict that.
12 Brandon Greene did shoot him. No question.

13 The interesting part, and you're going to have this
14 information to go back and listen to, is that as this time
15 went on, Mr. Fennell was trying to comfort his mother, who
16 was there.

17 The man did absolutely nothing wrong. And I'm sure
18 it was a -- it was a bad position for him to be in. But
19 as he was on that tape, you heard him at some point in
20 time say in so many words -- and go back and listen:
21 Those boys are always shooting. There's always something
22 going on. They've always got something going on.

23 That's what you heard. And I asked the question, I
24 said: Well, what did you mean by that?

25 And he said: Well, Brandon always goes around

1 shooting.

2 Have you ever heard any evidence of that? Has
3 anybody ever come in here and said anything about that?
4 No.

5 What he meant is what he said. Those boys are always
6 out there shooting.

7 But that's something that was said that was caught on
8 tape. And the beautiful thing about a tape is, you can't
9 go back and change that. I can't change it. I can't
10 change it around or suit it the way I want to suit on the
11 stand. It is what it is, and that's what you have with
12 Mr. Fennell on that particular day.

13 Soon after he testified, you heard testimony from
14 Tony Badger, who again, was injured. No question that he
15 was injured, and he was injured by Brandon, but his
16 testimony to you was relatively straightforward.

17 He mentioned Keith King being present. Then he told
18 you this story about Keith King, about how Brandon said he
19 was going to shoot him, or something along those lines.
20 And Mr. King got up with a brick and threatened him. And
21 he saw a gun and all this other kind of stuff.

22 And what I want you all to think about is, as I
23 talked about those puzzle pieces, those cufflinks, start
24 putting those pieces of the puzzle together. If you had a
25 gun pulled on you, don't you think you'd remember? Isn't

1 it interesting that Keith King said he never saw a gun?

2 Isn't it interesting this other testimony came
3 through from Brandon Badger -- excuse me, Bernard Badger?
4 He said there were five shots. Brandon shot his gun up in
5 the air five times, you know, and he said stuff to Mr.
6 King. And then he said: Man, I was just playing.

7 Did Keith King say that happened? You want to know
8 why? Because it didn't happen. It didn't happen.

9 What you've got is people who love, understandably
10 so, love their brother who is no longer here. They love
11 him, but somewhere in this process, they started trying to
12 put things together and to make up a story, make an event
13 out of something that did not happen. It didn't happen.

14 Folks, things that they talked about, those ancillary
15 things, those other things that they've been talking
16 about, didn't happen. The person who it allegedly
17 happened to said it didn't happen. He never saw a gun.

18 Does that make you hesitate? Do you believe the
19 credibility and the believability of these witnesses, or
20 are you firmly convinced of Mr. Greene's guilt? Think
21 about that.

22 Keith King in his testimony, Brandon's stepfather,
23 again, never mentioned a gun. And then -- and -- and
24 there is no report that the police ever brought in to
25 here, that law enforcement ever brought in that suggests

1 that he even told them any of that kind of stuff.

2 He said: Well, in 2010 I think I may have said
3 something about -- No. No.

4 When he comes in this courtroom, unlike the others,
5 we've got statements, and there's nothing. Again, one of
6 those things that people who love their family who started
7 to try to put things together to make sure in their minds
8 that they can convict Brandon Greene.

9 It's the equivalent of sometimes people tell you
10 stories about, yeah, I was out here, and I was hunting and
11 I shot a buck, and he had twelve points. And by the end
12 of the day he tells another friend, and that buck had
13 sixteen points. And he gets bigger and bigger every time.
14 And that's the situation that you have here.

15 The more times they tell this story, the bigger it
16 gets. But the real question about this, because there's
17 no evidence of this other stuff, no shells all around, you
18 know, that suggests that Brandon shot this gun up in the
19 air. And the person who they're saying he shot at doesn't
20 even remember it happening.

21 The only thing that we talked about and that we're
22 here about is what was the dispute that made Brandon fear
23 for his life and feel like he needed to pull a gun and
24 shoot? That's why we're here. That's exactly why we're
25 here.

1 You had Dexter Bozeman who came in and testified. It
2 was interesting, because he said things in his testimony
3 that contradicts. What he said is that, well, you know,
4 Tony had been drinking and the biggest thing he said is he
5 was acting crazy. He was acting crazy. He was
6 wilding-out, meaning acting wild. He was -- he was just
7 acting crazy. He was drunk.

8 He started saying those things. And you went back
9 and you heard the audiotape, and he said that and more.
10 He was acting crazy, acting crazy, acting crazy.

11 And he said at some point in time, Brandon said:
12 Man, you've had a little too much to drink. You don't
13 need to be going to this party.

14 And that set him off. He came towards Brandon, and
15 they had -- they felt a need to separate them, to separate
16 them. And that's about as far as he was willing to go.
17 But he claims that after that Brandon shot in the ground a
18 couple of times and shot him just point blank, and then
19 did the same to his brother.

20 But the blessing is, you actually have scientists,
21 experts, like Dr. Presnell who came who can testify about
22 certain things, about how those shootings happened. It's
23 interesting to me that Dr. Presnell would tell us that the
24 angles that these bullets came in were upper angles. And
25 what did she say? The person would probably have to be up

1 high shooting down or a person leaning over.

2 And how would a person be leaning over? Running at
3 you.

4 The shooting was at a close distance, which is what
5 Brandon said. He was running after me. He was coming
6 after me, and that's when I shot him. Those pieces of the
7 puzzle start to get a little bit clearer than what the
8 solicitor's office wants you to believe.

9 It's clear that Tony was drinking a good bit, and we
10 learn that Dominick had been drinking a good bit too. His
11 blood alcohol level was .101, which Dr. Presnell said is
12 above the legal limit if you were driving, which we're not
13 suggesting he was driving. It's .08.

14 So there had been some drinking. And that's the
15 person who is not acting crazy, not amped up, not
16 wilding-out and all these other kind of things. So, one
17 can only imagine what that blood alcohol level would have
18 been.

19 What we're asking you to do as we step into this
20 process is you've got to consider several things; first of
21 all, the fact that Brandon even decided to take the stand.
22 The judge told you early in this process that he didn't
23 have to take the stand. He doesn't have to testify. He
24 doesn't have to do anything, but he chose to sit up there
25 and tell you exactly what happened and subject himself to

1 Mr. Murdaugh's cross-examination, because he wanted you to
2 understand what happened and the fact that he defended
3 himself and the fact that everybody else out there was not
4 telling the truth.

5 And is that so hard to believe that people wouldn't
6 tell you the truth, when everybody out there is family?
7 Is that so hard to believe? Everybody out there was
8 family, except for Dexter. And Dexter went farther than
9 anybody by saying that Tony was drunk and Tony was acting
10 aggressive and acting crazy. But everybody else tells the
11 same kind of story.

12 One of the things you're going to learn about
13 self-defense as the judge charges you is you have to be
14 without fault in bringing on the situation. Brandon
15 explained to you what he was doing. He explained that he
16 was out there. He had gone to get a bike chain. His plan
17 was to go fishing, and he told you he had a gun. He
18 shouldn't have had it with him, but he did have it with
19 him.

20 But the question is, and the judge will charge you
21 and he'll explain to you, if you believe that he defended
22 himself, then why he had the gun is not important. The
23 fact is, he did what he felt was needed and reasonable in
24 that position, because his life was in danger and he
25 believed it. But without fault suggests that he cannot be

1 the person who started this fight.

2 He told you: I was there, and I mentioned this
3 situation about, you know, him drinking a little bit, and
4 he tried to confront me. And he asked his brother for a
5 shotgun.

6 And he said: Hold on, hold on. You know, it's time
7 for me to go.

8 He said his brother, Dominick, tried to talk him down
9 and separate them. And he went off to the side to Josh
10 Habersham, who incidentally was a witness who was listed
11 and didn't come to testify. And Josh Habersham -- Brandon
12 said he started reaching towards Mr. Habersham.

13 He said: You know what, he's talking about a gun and
14 stuff. I'm leaving.

15 Brandon said he started walking towards his car. And
16 you'll have some of this information back there to take a
17 look at. They're at the fire area. He starts walking
18 towards the car.

19 He said Mr. Tony Greene -- excuse me, Tony Badger
20 came around and cut him off. And at that point in time,
21 that's when the others, Dexter and Dominick, grabbed him
22 and started taking him towards the car. He said they took
23 him to this car, the Suburban, this green Suburban that
24 you'll have a picture of, just as the police found it,
25 with the doors wide open.

1 What did we learn from the police? The doors were
2 wide open and the engine was running. The reason why is
3 because Brandon Greene is telling you the truth. They
4 took him to that car, and they put him in the car.

5 And Brandon waited a little bit so that he could at
6 least get to the car before he went to his, because they
7 were parked so closely together. He said the minute he
8 got in that car seat and they shut the door, Dominick
9 started walking around, he started trying to get into his
10 car.

11 Incidentally, he said: I locked the front passenger
12 side, the front driver's side, and the back driver's side,
13 and I come in through the back. That's just what I do
14 when I leave my stuff in the car.

15 That's what he told you. And so he was waiting to
16 get in the back door. The minute that door shut, he
17 started going towards his car to get in.

18 And he said what happened. Tony jumped out of the
19 car and ran towards him and said he was going to burn him,
20 burn him, meaning shoot him.

21 Now let's -- let's run back for a second. I asked
22 Tony what burn meant, and he said: I didn't have no gun.

23 That's the first thing he said: I didn't have a gun.

24 And then when I asked him what does it mean, and he
25 said: Oh, I don't know. I don't know what that means.

1 Come on. You didn't leave your common sense outside
2 when you came in here. Again, you hope people are going
3 to be honest with you when they get up here, but that just
4 suggests to you that for him to say he doesn't even know
5 what that means? How would you know that "burn" and "gun"
6 even belong in the same sentence? And then he tried to
7 crack a little joke about it, not particularly funny, when
8 you're trying to say that somebody is a murderer.

9 But what you learned is Brandon said he jumped out
10 and ran towards him in this close proximity. He chased
11 him, and he said: I'm going to burn you "N" word.

12 I'm not going to say the word. I choose not to.

13 But he starts running after him. He said: At that
14 moment, I believed that he was going to hurt me, kill me,
15 because he talked about a gun and now he got out and said
16 he's going to burn me.

17 He's been drinking. He's already been saying
18 threatening types of things. He starts running towards
19 him.

20 Brandon said: At that point, I was running toward
21 that burn pile area, and I started shooting backwards.
22 And then he went in another direction.

23 He said: As I turned around, Dominick had tackled
24 me, slammed me against the car.

25 And all of this happened in mere seconds. This

1 wasn't a period of time where something happened and five
2 minutes later something else happened. It happened back
3 to back to back.

4 And at that point in time, they wrestled. They went
5 back and forth, and he tried to get loose and he slammed
6 him again.

7 And he said: I don't know if he had a gun or not.
8 He kept coming at me. So when I got away and I started
9 running, he was coming after me, and I shot back.

10 That makes sense, with the way those gunshot wounds
11 traveled. A person running backwards shooting and
12 somebody running towards you is going to give you downward
13 traveling of the bullet. That's exactly what he testified
14 to.

15 It's not something we just came in here and made up.
16 He came in here and told you piece-by-piece and subjected
17 himself to that blistering cross-examination. And he told
18 you everything that he did.

19 He's not proud of this situation. Nobody is proud.
20 Nobody wants to be here about this. Nobody is proud of
21 it. Two people -- one person was injured, another lost
22 their life, and you've got a family that's dealing with
23 that. It's not fun to be here, but that's what happened.
24 That's what happened.

25 If you're without fault in bringing on the situation,

1 two, you have to believe that you're in danger. In that
2 moment, he believed that he was in danger.

3 Who wouldn't believe they were in danger when
4 somebody threatened to shoot them and then came running
5 after them after that? And then after the shooting, or
6 the first time of shooting the gun, you get tackled again,
7 who wouldn't believe that they're in danger?

8 We have what's called a reasonable person standard.
9 What would a reasonable person do, when faced with that
10 set of circumstances?

11 We can't just stand out here and just look back and
12 say: Well, maybe this, maybe that.

13 You have to put yourselves in that moment. What were
14 you thinking in that moment?

15 I asked him the question: Well, he came at you, why
16 didn't you just run off?

17 He said: Because if I had run off, he had already
18 threatened to shoot me, he would have shot me in the back.

19 Is that reasonable? He did try to run, but
20 obviously, he was being chased, both times.

21 He tried to get to the car, but he blocked his
22 passage, both times, both times. What is a reasonable
23 person supposed to do in that situation?

24 Of course, somebody may say: Well, he shouldn't have
25 been in the situation in the first place.

1 We can't ask that. He was there, and he tried to
2 leave when he saw things going in the wrong direction, and
3 he was not allowed to leave. If he had turned his back,
4 he feared he'd be killed.

5 What are you supposed to do? That's why the law
6 speaks to those things. You've got to believe that you
7 were in imminent danger and that was the only way that you
8 could protect yourself, by shooting. And if you believe
9 those things, if you listen to the information and believe
10 those things, then a person has the amount -- has the
11 right to use the force that he or she believes is
12 reasonable in that situation.

13 And you have the right to act on appearances. If you
14 believe, based on that set of circumstances that you're in
15 danger, you have a right to act on appearances.

16 That's why we're here, because we have to put those
17 things before you for you to make those decisions as to
18 whether or not Brandon Greene acted reasonably. Do you
19 trust him? Do you trust what he said? Do you believe
20 what he said, or you believe all these side stories that
21 are going on that nobody can corroborate? Do you believe
22 that? Was what he did reasonable?

23 But the biggest question, above all of those things,
24 are you firmly convinced that Brandon is a murderer, that
25 he took that gun out in cold blood and just shot Dominick

1 for no reason? Do you believe that?

2 Do you believe that he took that gun out and shot Mr.
3 Tony Badger for no reason? Do you believe that? That's
4 the question.

5 Are you firmly convinced of that, or are you
6 hesitating? Because if you're hesitating, the oath that
7 you took, and it's a difficult oath, to well and truly try
8 the facts of this case, it mandated that you find him not
9 guilty.

10 You're going to have a chance to review the
11 information that you've been provided and even the
12 testimony. One piece -- or one question that was asked at
13 the end of this case when the officers tried to say that
14 there was no fishing gear in the trunk, Brandon told you:
15 Yeah, there was fishing gear. My grandfather took it out
16 when they -- before they inventoried the car.

17 That's a question y'all will have to determine. But
18 ask yourselves, is that really the major issue in this
19 case? Is that the major issue in this case?

20 Brandon said he was going fishing. He told you he
21 was going fishing. He told you where and all of those
22 things, but even if you question whether or not he was
23 going fishing, that's not the issue.

24 The issue is, in that moment when he was attacked if
25 he acted reasonably, based on the circumstances that he

1 was facing. Don't get sidetracked by that issue, because
2 that's not the issue. The issue is, on Tulifinny Road
3 when all of this stuff broke loose, what was going on?

4 I asked you, why would the doors be wide open to this
5 green Suburban so that the police had to come and turn the
6 vehicle off? The only reasonable explanation that you
7 received is what Brandon told you. Does that hesitate to
8 make you call him a murderer? Are you firmly convinced
9 that he's a murderer? Are you firmly convinced?

10 They're going to trying to -- the folks at this table
11 are going to try to tell you that he's a liar and that he
12 did these things with malice aforethought in cold blood.

13 Mark Twain said that a lie can travel the world
14 around, while the truth is home putting on its shoes. A
15 lie can travel the world around, while the truth is home
16 putting on its shoes.

17 The truth of the matter is, that particular evening,
18 Brandon Green did what he had to do, or else he wouldn't
19 be here today. He was in fear of his life.

20 The lie is that he murdered that young man and that
21 he shot Tony in cold blood and malice aforethought without
22 them doing anything wrong, without provocation of any
23 sort, without being -- or feeling that his life was in
24 danger.

25 Let's end that lie today and make the hard decision,

1 as you sit down and put together everything that's gone on
2 in this case. Make the decision that a man is able to
3 defend himself, a person is able to defend himself if he's
4 confronted with a situation where he believes his life is
5 in danger. Make that decision, and by making that
6 decision, you come back with a verdict. Thank you.

7 **MR. MURDAUGH:** Please the Court?

8 **THE COURT:** Yes, sir.

9 **MR. MURDAUGH:** Mr. Foreman and ladies and gentlemen
10 of the jury, when I told y'all what the law was, I gave
11 you the law of assault and battery of a high and
12 aggravated nature. And as I told you, I'm getting old and
13 a little bit senile. He's testified that he had pled
14 guilty prior to assault and battery of a high and
15 aggravated nature, but that isn't what he's charged with
16 here. He's charged with assault and battery with intent
17 to kill, and His Honor will tell you exactly what that
18 means when we have the Charge.

19 Let's talk a little bit about truthfulness. We know
20 that Brandon Greene did not tell y'all the total truth.

21 How do we know that? He made up a story that he got
22 the pistol and had it in his belt and was going fishing.
23 You know, the law allows you to have a pistol when you're
24 going to and from fishing and hunting. Did you know that?

25 Well, bless God, he's going fishing, and Mr. Foreman

1 and ladies and gentlemen of the jury, he's going fishing
2 with no fishing tackle in the car. You heard Chauncey
3 Solomon, where ever he is. He testified to y'all that he
4 called Brandon Greene and said: Look, we need to talk to
5 you. We're at your granddaddy's house. Come around here.

6 And then he drove up, and they kept the vehicle under
7 surveillance. They impounded it. They took it to the
8 impound yard at the sheriff's department, and then they
9 did an inventory search, and no fishing tackle was in it.
10 Now that doesn't sound like a big thing, and of itself may
11 not be a big thing.

12 Chauncey also told you that when he got there that
13 they kept an eye on it, and nobody put anything in the car
14 or took anything out of the car. He told you his
15 granddaddy did, but Chancy told you that no, nobody did
16 anything in or out of that car.

17 And think about the logic of it. They are looking
18 for a pistol that has just killed one man and shot another
19 one. They don't know where that pistol is. Do you think
20 that they would allow somebody to go in that car that the
21 person that did the shooting just drove up in? No.

22 So we know he wasn't telling you the truth. Well, if
23 he wasn't telling you the truth, Mr. Foreman and ladies
24 and gentlemen of the jury, let's look at the facts of this
25 case.

1 The night before he says he stole a pistol -- I
2 apologize, he didn't say he stole it. He said he took a
3 pistol from his girlfriend, Nicole Devin -- Duvigneaud,
4 without her permission.

5 She says that he didn't know anything about it -- she
6 didn't know anything about it. The day before he says: I
7 took a pistol.

8 That afternoon he buys -- or sometime that day, he
9 buys two half-pints of liquor. Gets the pistol and puts
10 it on his side, so he said, and I'm going to show you how
11 that's not even true, says he put that on his side and
12 then he went to go fishing. Well, we know he wasn't going
13 fishing, because he had no fishing tackle. You can't go
14 fishing without fishing tackle. There just ain't no way
15 to do it. So we know he's lying there.

16 He goes around there, said the pistol was on his
17 side. But, bless God, what did Tony, Dexter, and Bernard
18 tell you, and Keith King? What do they tell you? They
19 tell you that they are all around there and that Brandon
20 Greene starts running his mouth to Keith King.

21 He said: I'm going to cut your behind.

22 Said: No, maybe not. You're a big man. I may just
23 shoot you.

24 Do you remember that? Do you remember that
25 testimony?

1 And they said that he reached in the car. And where
2 did they say the gun was? Do you remember this? Do you
3 remember where they said the gun was? They didn't say it
4 was on Bernard's(sic.) side. They said it was in the
5 pocket to the door. Do you remember that? So that's two
6 lies he's told, or two untruths he's told you.

7 He went there with mischief on his mind. He got into
8 it with Keith King. He kept running his mouth. They kept
9 drinking liquor. And all of them -- it ain't -- let me
10 tell you something. Tony shouldn't have been drinking
11 liquor to the extent he had. Dexter shouldn't. None of
12 them should have, but they were.

13 Bless God, he comes there illegally with a pistol
14 that he has stolen from Nicole. He gets into a row with
15 Keith King. His mind is bent on mischief.

16 He had a confrontation with Tony. And if you'll
17 remember the testimony, if you'll remember the testimony,
18 Dexter and Dominick grabbed Tony and pulled him back. Do
19 you remember that?

20 That's different from what -- what Bernard told you.
21 He said he shot him running, I think. Isn't that what he
22 said? Yeah, I thought that's what he said.

23 Well, let me tell you something. If he is going to
24 claim self-defense, he can't have brought on the problems
25 himself. And His Honor is going to charge you all this

1 law. Please listen to it closely. He can't be the one
2 that caused the problem.

3 And he did do it. He came there with a stolen gun,
4 with his mind intent on mischief, and he's running his
5 mouth about: You can't go to the party.

6 That really is no excuse to get in a row, but when
7 you start drinking liquor, folks, anything will set you
8 off. Back in the day when I used to drink some, most
9 anything would make me mad. And it made Tony mad.

10 Nobody, nobody, not one person that was at that house
11 that night says anything about a gun, other than Bernard
12 having it, except Bernard, who we know will tell an
13 untruth. With his mind bent on mischief, he gets there.
14 They take Tony and push him back. He could have left.

15 And the law is -- His Honor is going to charge you
16 that one of the duties you have is that you have to do
17 everything within your power to prevent the shooting or
18 the killing. And if you leave, it can't have happened.
19 If he didn't bring the gun, it couldn't have happened.

20 He caused it. That's one reason he can't have
21 self-defense.

22 He didn't leave. He didn't take the opportunity to
23 do everything within his power to prevent the shooting.

24 And God knows, let me tell y'all something ladies and
25 gentlemen of the jury. We have too many young people ---

1 **MR. GIPSON:** Your Honor, I object.

2 **THE COURT:** Sustained.

3 **MR. MURDAUGH:** What -- what is that, sir?

4 **THE COURT:** It's not a fact in evidence. It's not a
5 reasonable inference to be drawn from the facts in
6 evidence.

7 Thank you, sir. Argue the facts in evidence and the
8 reasonable inferences.

9 **MR. MURDAUGH:** There is one way that you can prevent
10 future problems. That is, when a man is guilty, when a
11 man is guilty and there has been proof that he didn't tell
12 y'all the truth, that he came there with the intent to
13 stir up a problem and he followed through with it, and he
14 didn't take the opportunity to leave when he had it to
15 prevent it from happening, y'all can stop it by finding
16 him guilty. It may not stop any other ones, but you can
17 stop this one. You can stop it from happening again.

18 You heard -- wasn't there testimony that doesn't
19 really mean a hill of beans, as it turns out, and that is
20 that the casings, they found three casings in the yard.
21 They found two slugs in the body. They two slugs came
22 from the same gun. The three casings came from the same
23 gun.

24 And do you remember Dan DeFreese told you that one of
25 the -- they -- they're pretty smart. He's an expert, and

1 they're pretty smart. They can tell -- they can eliminate
2 guns. They can't say it came from a gun, if they don't
3 have the gun, but just by using the shell casings and the
4 bullets, they can tell me it could have come -- and he
5 said it was twelve guns, I think he said, that it
6 possibly could have come from. And do you remember one of
7 those being a Ruger? The gun that was taken from Nicole's
8 car was a Ruger. The one he threw away was a Ruger.

9 We don't have the gun to show y'all, but we did the
10 best we could with what we had. So we know that it could
11 have been this gun, and it probably was. And that's one
12 of the things that y'all have a right to use your
13 intelligence in making that determination.

14 I don't know how in the world -- they said that the
15 two --

16 May I take my coat off?

17 **THE COURT:** Yes, sir.

18 **MR. MURDAUGH:** They said that the two slugs were one
19 right here and one right here, and they went down at about
20 a forty degree angle and came out somewhere back in here.
21 Y'all can see where the cross marks are.

22 I really can't reconcile that. I don't know -- he
23 had to have been leaning over, or bent on his knees, and I
24 don't suggest to you that that's true, but he had to have
25 been lower than the gun was or at an angle for it to come

1 down like that. And I don't know how it happened. I can
2 tell you what happened, but not how it happened.

3 The doctor said that this thing happened, within
4 what, forty inches? Thirty-six and six is forty-two. It
5 had to have been within forty-two inches where the gun
6 went off from him when it shot him.

7 Brandon said he was running and shooting behind him.
8 Isn't that what he said?

9 I would assume that would be more than forty-two
10 inches, but I don't know that. Y'all will have to make
11 that decision.

12 Let me tell you something. Reach a decision that
13 speaks the truth. His family and his friends and the
14 people of Yemassee are interested in the outcome of this
15 case, to be honest with you.

16 And we, and they, will be waiting on your verdict,
17 which should be guilty of murder and guilty of assault and
18 battery with intent to kill. Thank you very much.

19 **THE COURT:** Thank you, Solicitor.

20 Would you do me a favor and take that down? Thank
21 you so much. I appreciate it.

22 Ladies and gentlemen, it now becomes my
23 responsibility as the judge of the law to give you the law
24 which you have promised that you will accept and apply
25 fairly and impartially to those facts that you determine,

1 when in just a few moments you will exercise your
2 exclusive duty of determining the weight, value, and truth
3 of the evidence that has been presented in this case. And
4 that means that you will conscientiously and carefully
5 evaluate that evidence and decide what you find to be the
6 true facts, and then apply the law to that evidence. And
7 when you do that, you will have honored the commitment
8 that you made to the State and to Mr. Greene and to the
9 Court.

10 This Charge, please remember that there is nothing
11 that I would say that constitutes evidence. You shouldn't
12 consider it evidence or a suggestion of how you would
13 resolve a factual issue, because that's your prerogative.
14 That's your sole -- that's your sole -- you're the sole
15 judge of that, and you have to make that decision for
16 yourselves. I don't have anything to do with that, as I
17 stated when we commenced this proceeding.

18 You were selected as common sense individuals, to
19 apply your common sense, your sense of logic and reason,
20 and I know that you'll do that. And I know you're anxious
21 to get started, and you're almost there.

22 But you do have to evaluate the evidence, because you
23 have to determine the credibility of the witnesses and the
24 believability of witnesses. And that requires you to
25 assess each witness. And even when a witness's testimony

1 is not contradicted directly, it does not necessarily
2 render it undisputed, because there would always remain
3 the inherent credibility and believability of what one
4 says or doesn't say. And that's what you have to assess.

5 Now during this instruction, you may hear me use the
6 word defendant. A defendant is a term that we use to
7 designate the party against whom a claim is made, and in
8 this particular setting, Mr. Greene is the defendant.
9 Claims have been made by the State against him. So when I
10 use that term, please know I'm just referring to Mr.
11 Greene. You're not to infer anything else from it.

12 I mentioned to you also, when I qualified you, that
13 he's been accused by these two documents that I hold in my
14 hand. They're called indictments. They are the formal
15 charging documents. They are not evidence. They will not
16 accompany you to your jury room.

17 But to the two indictments, he's rendered a plea of
18 not guilty, which places then upon the State the burden to
19 prove his guilt beyond a reasonable doubt. Because as you
20 recall, in this state and in this country, persons such as
21 Mr. Greene who are accused of committing criminal
22 offenses, are never required to come in and prove anything
23 at all. And they are certainly not required to prove
24 their innocence.

25 The law, in fact, says that persons so accused are to

1 be presumed innocent. And it's an active presumption,
2 which requires each of you to actively presume that he is
3 not guilty. The presumption of innocence is maintained at
4 all times throughout the trial of this case and may be
5 only removed when the State brings in enough evidence,
6 after in your evaluation and assessing it, to persuade you
7 beyond a reasonable doubt that he is guilty.

8 What then is a reasonable doubt? A reasonable doubt
9 is a doubt which makes an honest -- excuse me,
10 conscientious juror, in search of the truth in a case, to
11 hesitate. Proof beyond a reasonable doubt is proof that
12 leaves you firmly convinced of the defendant's guilt.

13 Now there are very few things in this world that we
14 know with absolute certainty, and in criminal cases such
15 as this, the law does not require proof that overcomes
16 every possible doubt. If based on your consideration of
17 the evidence you are firmly convinced that Mr. Greene is
18 guilty of one or more of the charges for the crimes
19 charged, then you must return a verdict of guilty.

20 If, on the other hand, you think there's a real
21 possibility that he is not guilty, then you must give him
22 the benefit of that doubt and return a verdict of not
23 guilty as to that charge.

24 Reasonable doubt, ladies and gentlemen, may arise
25 from the evidence which is in the case or the lack or the

1 absence of the evidence in the case. And it's up to you
2 to determine whether or not a reasonable doubt exists as
3 to the guilt of this defendant.

4 I charge you that he is entitled to every reasonable
5 doubt arising in the whole case. And that means simply
6 this, if upon any issue of fact which would be essential
7 to your returning a verdict of guilty, that is convicting
8 him of that charge, you should have a reasonable doubt as
9 to how that issue should be resolved, it would be your
10 duty to resolve that reasonable doubt in his favor.

11 Now, ladies and gentlemen, these cases -- the
12 evidence can be presented in two ways or two types of
13 evidence. One is direct evidence, the other indirect
14 evidence. The more popular name, of course, for indirect
15 evidence is circumstantial evidence.

16 And direct evidence would be simply as the term would
17 imply. It's generally a sensory perception: I saw
18 something. I heard something. I felt something, or the
19 like.

20 And if you are firmly convinced as to the credibility
21 of that evidence, then it would certainly satisfy or prove
22 that particular fact or circumstance.

23 Indirect evidence is when the person testifies to a
24 number of circumstances, and you are firmly convinced as
25 to the credibility and believability of each of those

1 circumstances and you link them, they point to or suggest,
2 either through deductive reasoning or inductive reasoning,
3 a logical conclusion. Again, it would establish that
4 particular conclusion, if you're firmly convinced as to
5 the logic and the flow of that process.

6 Now I will tell you, the law makes absolutely no
7 distinction between -- between the direct or
8 circumstantial evidence. Both -- both evidence, as you
9 find it in many cases -- you find both types of evidence,
10 nor is there any greater weight or value to be given
11 either to direct or circumstantial evidence. And the
12 degree of certainty as required for circumstantial
13 evidence is not greater than that of direct evidence.
14 You're instructed to weigh all of the evidence and decide
15 what you find to be credible and believable.

16 I would charge you, however, to the extent that the
17 State relies on circumstantial evidence -- or the direct
18 and circumstantial evidence, both evidence, circumstantial
19 and direct, that if the facts when you reach a conclusion
20 are suggestive of the possibility or probability of guilt,
21 then that would not be sufficient. Because as you recall,
22 that's that standard in a civil procedure, probable. It's
23 got to be greater than that. It would have to be proof
24 that leaves you firmly convinced that the State has met
25 its burden beyond a reasonable doubt.

1 Now the evidence which you consider consists of the
2 testimony of the witnesses and exhibits that were
3 introduced through their testimony, nothing else. The
4 attorneys' remarks and my remarks are not evidence. And I
5 would instruct you that if during the arguments of the
6 attorneys, either arguments or opening statements, their
7 remarks differs from your collective recollection of what
8 a witness said or didn't say, you're to disregard their
9 remarks and take your recollection. Why? Because you're
10 the sole judges of the facts.

11 Likewise, if any of their remarks or comments on the
12 law differs from my comments in the Charge, you're
13 instructed to disregard their remarks and take the law as
14 I give it to you. Why? Because for the purposes of this
15 proceeding today, I'm the sole judge of the law.

16 Now, please remember something in that regard. That
17 also means that you have to accept the law as I give it to
18 you. And I respect each of you in your rights to feel
19 that a law should be otherwise, that it should be changed,
20 or that there's a better way of providing some legal
21 principle. We have that right to feel that way in this
22 country, but for purposes of this proceeding, you promise
23 the State and you promised Mr. Greene that if you should
24 have a feeling or philosophy that differs from what I tell
25 you the law is, you promise to set that aside. Then take

1 it as I give it to you and apply that law fairly and
2 impartially.

3 Also please understand that the order of my Charge
4 means nothing. I had to put it in some order. Consider
5 the Charge as a whole. Don't focus any more on one
6 aspect, but consider it as a whole.

7 Now, ladies and gentlemen, our Rules of Evidence
8 ordinarily do not permit witnesses to testify to opinions
9 or conclusions. An exception to this rule exists for
10 witnesses we call expert witnesses. A witness, who by
11 education and experience has become an expert or has
12 developed some expertise in some art, science, or
13 profession, may state an opinion as it pertains to
14 relevant matters and as it pertains to his or her
15 expertise or the area of their expertise. And they may
16 also state the reasons for that opinion.

17 You should consider any expert opinion received in
18 evidence in this case with all other evidence and give it
19 the weight that you think it deserves. If you decide that
20 the opinion of the expert witness is not based on
21 sufficient education and experience, or if you should
22 conclude that the reasons given in support of the opinion
23 are not sound, or that the opinion is outweighed by some
24 other evidence, you may disregard the opinion in its
25 entirety.

1 Furthermore, an expert witness's testimony is to be
2 given no more greater weight than any other witness,
3 simply because the witness claims some expertise.
4 Furthermore, you are not required to accept the expert's
5 opinion, even though it is not contradicted directly.

6 Now how do you decide credibility and believability?
7 As we've talked about from the very onset of this process,
8 you make those decisions everyday of your life. You do it
9 by applying your common sense, your sense of logic and
10 reason, and you have to decide what you find to be
11 believable, persuasive, or convincing. And those are the
12 same things that you've done throughout your life. And in
13 a few moments, you're expected to apply the same process
14 and the same thought process in a manner that you've done
15 before.

16 And there are many, many factors that one may
17 consider in assisting them to make this type of decision.
18 I want to discuss some of them with you now, but if I
19 don't mention a fact or a method that you've employed and
20 you've found reliable to your life, please use it when you
21 do begin your deliberations. But some of the factors that
22 you may want to consider would be the appearance of the
23 witness. How did they appear to you, straightforward or
24 hesitant in answering questions?

25 Was the testimony of a witness strengthened or

1 weakened by other evidence in the case?

2 Was the testimony consistent, or was it inconsistent?

3 How did that witness come to know the facts that he
4 or she testified to, and what was the ability of that
5 witness to know those particular facts or circumstances?

6 Is there a reason for a witness to give testimony
7 which may be helpful to one side or the other, or may be
8 detrimental to one side or the other? In other words, was
9 the witness bias or prejudice in any manner?

10 Also during the trial and the evidence, there was
11 testimony concerning a prior record of a witness. I would
12 instruct you that that is offered solely for the purposes
13 of evaluating the credibility of that particular witness.
14 And because a person has a prior record does not render
15 that testimony not credible or unbelievable. It's just a
16 factor that you may consider in evaluating the
17 truthfulness of that particular witness.

18 Now in making the determination of what you believe,
19 the law gives you very broad discretions. You have the
20 right to believe many witnesses against one, one witness
21 against many. You have the right to believe all of a
22 witness's testimony, parts of a witness's testimony, or
23 none of a witness's testimony. Now, of course, you don't
24 make those decisions arbitrarily, but if you find that
25 after evaluating the evidence in this case, you have that

1 prerogative, because your objective is to determine the
2 truth, regardless of the source of the evidence.

3 Now let's look, if you will for a few moments at the
4 two charges. First I want to talk with you about the
5 murder charge. Section 16-3-10 of our South Carolina Code
6 of Laws defines murder as the killing of any person with
7 malice aforethought, either express or implied.

8 The State must prove beyond a reasonable doubt that
9 Mr. Greene killed another person with malice aforethought.
10 Malice is hatred, ill-will, or hostility towards another
11 person. It is the intentional doing of a wrongful act,
12 without just cause or excuse and with an intent to inflict
13 an injury or under circumstances that the law would infer
14 an evil intent.

15 Malice indicates a formed purpose and design to do a
16 wrongful act under circumstances that exclude any legal
17 right to do it. Further, there must be malice
18 aforethought, which means that the malice must have been
19 conceived in the mind of the defendant prior to the act
20 producing the fatal result.

21 The word "aforethought" is usually understood to
22 refer to the time when the evil is conceived, and the law
23 does not require that malice must exist for any
24 appreciable length of time before the commission of the
25 act. It may be conceived at the very moment that the

1 action is taken which results in the death of another.

2 Malice aforethought may be expressed or inferred.

3 The terms "expressed" and "inferred" do not mean different
4 kinds of malice but merely the manner in which the malice
5 may be shown to exist, that is either by direct or by
6 inference from the facts and circumstances which are
7 proved. That is that circumstantial evidence that we
8 talked about.

9 Expressed malice is shown when a person speaks words
10 which express hatred or ill-will for another, or when the
11 person prepared beforehand to do the act which was later
12 accomplished.

13 Malice may be inferred from conduct showing a total
14 disregard for human life. If facts are proved beyond a
15 reasonable doubt sufficient to raise an inference of
16 malice to your satisfaction, this inference would be
17 simply an evidentiary fact to be taken into consideration
18 by you, along with all other evidence in the case. And
19 you may give it such weight as you find it should receive.

20 You, as the judges of the facts, are free to accept
21 or reject this inference, depending on your view of the
22 facts. If malice is present in the mind of one doing the
23 killing for any length of time before the act, then its
24 presence would be sufficient to render the killing murder.

25 Next I'd like to talk with you about the offense of

1 assault and battery with intent to kill. The defendant
2 has been charged with this, and in order to prove assault
3 and battery with intent to kill, the State must prove
4 beyond a reasonable doubt that the defendant committed an
5 unlawful act of a violent nature to a person of another
6 with malice aforethought.

7 An assault occurs when a person unlawfully attempts
8 or offers to commit a violent injury upon another person
9 and had the present ability to complete the attempted
10 injury. An assault is the intentional creation of a
11 reasonable fear of immediate bodily harm. It is not
12 necessary that the attempted injury or harm actually take
13 place for an assault to have occurred.

14 Now, battery is the unlawful touching of another
15 person by a person who has committed the assault. An
16 unlawful touching can be caused by a part of the accused's
17 body or by any object the accused puts in motion. A
18 battery is the completion of the assault by using or
19 applying force to another person, however slight, in a
20 rude, angry, or resentful manner, without legal
21 justification for doing so.

22 Now, the malice aforethought, we just talked about
23 malice. Malice, as you recall, is that hatred, ill-will,
24 or hostility towards another person. It is the
25 intentional doing of a wrongful act, without just cause or

1 excuse, and with the intent to inflict injury, or under
2 circumstances that the law would infer an evil intent.

3 Malice aforethought and express or implied malice
4 would be the same that we just defined, so I'm not going
5 to redefine that for you at this point.

6 I would also charge you that, notwithstanding the
7 name of assault and battery with intent to kill, the
8 specific intent to kill is not an element the State is
9 required to prove to establish this offense of assault and
10 battery with intent to kill, but there must be a general
11 intent to commit serious -- a serious bodily injury.

12 "Intent" means intending the result which actually
13 occurs. It's not accidental or involuntary. Intent may
14 be shown by acts and conduct of the defendant in other
15 circumstances from which you may naturally and reasonably
16 infer intent.

17 The evidence of the character of the assault, the
18 character of the instrument used, the manner in which it
19 was used, the purpose to be accomplished and the resulting
20 wounds or injuries may be considered in determining the
21 intent with which the assault was committed. Intent may
22 be inferred when it is demonstrated that the defendant
23 voluntarily and wilfully committed acts, the natural
24 tendency of which would be to destroy another's life or
25 inflict serious bodily harm.

1 The defendant in this case has raised the defense of
2 self-defense. Self-defense is a complete defense, and if
3 it is established, you must find the defendant not guilty.

4 The State has the burden of disproving self-defense
5 by proof beyond a reasonable doubt. If you have a
6 reasonable doubt of the defendant's guilt after
7 considering all of the evidence, including the evidence of
8 self-defense, then you must find the defendant not guilty.
9 If, on the other hand, you have no reasonable doubt of the
10 defendant's guilt, after considering all of the evidence,
11 including the evidence of self-defense, then you must find
12 the defendant guilty.

13 The following elements are required to establish
14 self-defense. First, the defendant must be without fault
15 in bringing on the difficulty. If the defendant's conduct
16 was the type which was reasonably calculated to, and did,
17 provoke a deadly assault, the defendant would be at fault
18 in bringing on the difficulty and would not be entitled to
19 an acquittal based on self-defense.

20 The second element of self-defense is if a defendant
21 was actually in immanent danger of death or serious bodily
22 injury, or that the defendant actually believed he was in
23 immanent danger of death or serious bodily injury. If the
24 defendant was actually in imminent danger, it must be
25 shown that the circumstances would have warranted a person

1 of ordinary firmness and courage to strike or inflict the
2 fatal blow or fatal action or the action which resulted in
3 the fatality to prevent death or to -- in order to prevent
4 death or serious bodily injury.

5 If the defendant believed he was in imminent danger
6 of death or serious bodily injury, it must be shown that a
7 reasonably prudent person of ordinary firmness and courage
8 would have had the same belief. In deciding whether the
9 defendant actually was, or believed he was, in imminent
10 danger of death or serious bodily injury, you should
11 consider all of the facts and circumstances surrounding
12 the crime, or the alleged crime, including the physical
13 condition and the characteristics of the defendant and the
14 persons who were injured or fatally -- or received a fatal
15 injury.

16 The defendant does not have to show that he was
17 actually in danger. It would be enough if the defendant
18 believed he was in imminent danger, and a reasonably
19 prudent person of ordinary firmness and courage would have
20 had the same belief.

21 The defendant has the right to act on appearances,
22 even though the defendant's beliefs may have been
23 mistaken. It is for you to decide whether the defendant's
24 fear of imminent danger or of death or serious bodily
25 injury was reasonable and would have been felt by an

1 ordinary person in the same situation.

2 The final element of self-defense is the defendant
3 had no other probable way to avoid the danger of death or
4 serious bodily injury, than to act as he did in this
5 particular instance.

6 I would further charge you that a person cannot be
7 required to make an exact calculation as to the degree or
8 amount of force which may be needed to avoid death or
9 serious bodily harm. Therefore, in self-defense, the
10 defendant has the right to use the force needed to avoid
11 such harm or death. The force used in self-defense does
12 not have to be limited to the degree or amount of force
13 being used by the victim.

14 The defendant has the right to use so much force as
15 appears to be necessary for complete self-protection in
16 which a person of ordinary reason and firmness would have
17 believed to be needed to prevent the death or serious
18 bodily harm.

19 Furthermore, if the defendant is justified in
20 defending himself and in taking the actions that he took,
21 then the defendant is also justified in continuing to take
22 such action until it is apparent that the danger of death
23 and serious bodily injury has been completely resolved or
24 ended.

25 I would further instruct you, ladies and gentlemen,

1 that criminal intent is an element of both crimes. It
2 must be established beyond a reasonable doubt by the
3 State.

4 Criminal intent is always a matter that must be
5 determined by you, considering the circumstances
6 surrounding the situation. So the law states that
7 criminal intent may be inferred from the circumstances
8 which have shown to have existed, and this is how you make
9 that determination as to whether or not criminal intent is
10 present.

11 Criminal intent is the state of mind that operates
12 jointly with an act in the commission of a crime. Intent
13 includes those consequences which represent the very
14 purpose for which act is done, or known to be
15 substantially certain to result, regardless of one's
16 desire. Criminal intent is a mental state of conscious
17 wrongdoing.

18 So it's up to you to determine whether or not that is
19 present and that is what the defendant intended to do,
20 based on the circumstances which have been shown to have
21 existed. I tell you that they must prove criminal intent
22 beyond a reasonable doubt.

23 Ladies and gentlemen, throughout this entire process,
24 you have not been selected or -- or were sworn to be an
25 advocate for anyone. You aren't partial to anyone. You

1 have absolutely no friends to reward, nor do you have any
2 enemies to punish.

3 You've also been selected to do something else, which
4 I confess to you as a fellow human being, that's not
5 always easy to do. But one thing is for sure, when we
6 perform the task of being a judge, it requires us to do
7 that, and that is you have to set aside human emotion.
8 And that's not always easy, but you promised that you will
9 do that.

10 Sympathy, compassion, anger, frustration, all those
11 things that enter into our lives, you have to set those
12 aside. You have to be motivated only by one thing: Your
13 conscientious and deliberate application of your common
14 sense and your life's experiences and your sense of logic,
15 analyzing the evidence and deciding what you believe to be
16 the true facts.

17 Once you decide those facts, you take the law that
18 I've just given to you, apply that fairly and impartially
19 to those facts and report your decision. When you've done
20 that, ladies and gentlemen, you will have honored the
21 commitment that you made when you started this process,
22 and I know that you will do that very shortly when you
23 begin your deliberations.

24 To assist you, Mr. Gill, in reporting your verdict,
25 I've prepared two verdict forms that I would like to

1 discuss now with you and the other jurors. You'll note
2 that they're both captioned, and that means nothing,
3 that's just to facilitate the filing of the document. And
4 they both have two choices. The order in which they
5 appear means absolutely nothing, but they are the same two
6 choices.

7 One says: We, the jury, by unanimous consent, find
8 the defendant, Brandon Greene, on the charge of assault
9 and battery with intent to kill, guilty or not guilty.

10 The other says: We, the jury, by unanimous consent,
11 find the defendant, Brandon Greene, on the charge of
12 murder, guilty or not guilty.

13 Then there's a place for your signature where it
14 says: Presiding Juror.

15 Then you must date it.

16 Let's talk about what will you be saying. If in
17 either or both you've said your choice is guilty, then
18 you've said in your analysis that you have analyzed the
19 evidence and you're convinced in each case beyond a
20 reasonable doubt that the State has met its burden of
21 proof and established each element of that particular
22 crime, be it murder or be it assault and battery with
23 intent to kill; and furthermore, they have established
24 beyond a reasonable doubt, they have met their burden of
25 disproving self-defense. That having been said, and

1 consistent with my instruction, the State would be
2 entitled to a verdict of guilty on that particular charge.

3 Not guilty would say that in your analysis the State
4 has failed to prove each element -- one -- if they fail on
5 one, you must return a verdict of not guilty as to that
6 particular crime; or if they've proved the elements of the
7 crime of murder or assault and battery with intent to
8 kill, but they didn't disprove self-defense. If that be
9 the case, then you must return a verdict of not guilty on
10 that as well. Why? Because they have the burden of
11 establishing each element and disproving self-defense.

12 Whatever your decision be, I would ask that you --
13 you will note that there's a line that precedes the
14 choice. You'll place a checkmark on that and circle it as
15 well. That makes it certain that that is your decision.

16 Before you can place a checkmark on either of the
17 forms, your vote must be twelve to zero. Eleven to one
18 will not work. Ten to two, not sufficient. Twelve to
19 zero. You all must agree.

20 I know you're anxious to get started, and you're
21 almost to that point. First let me ask of the first of
22 the twelve, do any of you believe that you will not be
23 able to continue? If so, please raise your hand.

24 (NO RESPONSE.)

25 **THE COURT:** Mr. Stanley, at this point it appears

1 that the twelve preceding jurors will be able to continue.
2 So when the jury retires in just a moment, I would ask
3 that you not rejoin them in the jury room. They'll take
4 you to another room, and I'll be in very shortly to tell
5 you how much longer you need to remain with us.

6 Ladies and gentlemen, as I told you, the last
7 instruction that I would give you is when you may commence
8 your deliberations, and you are almost there. I have to
9 discuss my Charge with the attorneys. It may be necessary
10 that I return you to the courtroom to give you some
11 clarification or further instruction. If so, we will
12 return all of you to the courtroom to accomplish that.
13 But if there aren't any additions that need to be given or
14 any clarifications, then we will gather the evidence and
15 deliver them to you.

16 When you receive those exhibits, then you may
17 commence your deliberations. Now once the deliberations
18 start, the only restriction that I place on the
19 deliberations is this; if any juror has to leave the table
20 for any reason, you must stop deliberating until all
21 twelve of you are together. Other than that, you may
22 proceed as you deem fit and proper.

23 Thank you for your attention. Please retire to your
24 jury room now and await the exhibits before commencing
25 your deliberations.

1 (SEPTEMBER 5, 2012, 4:46 P.M., WHEREUPON, THE JURY
2 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
3 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

4 **THE COURT:** Exceptions or additions from the State?

5 **MR. MURDAUGH:** None, sir.

6 **THE COURT:** Exceptions or additions from the
7 defendant?

8 **MR. GIPSON:** None, Your Honor.

9 **THE COURT:** Thank you all very much. It was a
10 pleasure trying the case with you.

11 (WHEREUPON, AT 4:50 P.M., THE EXHIBITS ARE TAKEN TO
12 THE JURY TO BEGIN DELIBERATIONS.)

13 (WHEREUPON, AT 5:56 P.M., THE FOLLOWING PROCEEDINGS
14 WERE HELD ON THE RECORD:)

15 **THE COURT:** All right. Let the record reflect Mr.
16 Greene is present.

17 We have a question from the jury. It's Court's
18 Exhibit One.

19 (WHEREUPON, Court's Exhibit No. 1 was marked for
20 identification only.)

21 **THE COURT:** What degree of murder?

22 I intend to bring them in and really tell them that
23 that has not been discussed in this whole trial, and it's
24 certainly not part of my Charge. So, obviously, somebody
25 is injecting something outside of the law, because there's

1 no such thing as a degree of murder in this state.

2 I'll remind them that they are to take the law and
3 apply the law. I'm going to just tell them what murder
4 is, and if they need further instruction, I'll let them go
5 back and if they need to hear that charge again, then
6 sobeit, but I'm going to just define the statute for them
7 at this point.

8 Bring in the jury please.

9 (SEPTEMBER 5, 2012, 5:57 P.M., WHEREUPON, THE JURY
10 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
11 WERE HELD IN THEIR PRESENCE.)

12 **THE COURT:** Thank you so much, ladies and gentlemen.
13 I have what's now Court's Exhibit One, a question from the
14 jury. It is: What degree of murder? It's signed by you
15 and dated today's date.

16 I remind you in my Charge I told you that you are
17 instructed to take the law as I give it to you. That
18 means set aside your own knowledge or what you believe the
19 law is or should be.

20 The degree of murder has to be from somebody's
21 thought, and I don't want to know who or what or in the
22 context of which it comes up that would justify this
23 question, but there's never been a discussion of degree of
24 murder in this trial and certainly not in the law that I
25 gave to you. I remind you that you are not at liberty to

1 deal with what you believe the law is or should be or what
2 you've heard or read or seen somewhere else, but rather
3 you are instructed to take the law as I gave it to you and
4 apply that law to the facts that you determine.

5 Murder, the State has to -- I'll read it, and then
6 I'll let you return. If there needs to be further
7 instruction on this, let me know and I'll be happy to
8 address that.

9 For murder, the State has to prove beyond a
10 reasonable doubt that Mr. Greene killed another person
11 with malice aforethought. That's what you're dealing
12 with. There's no such degree involved. The State has to
13 prove those elements to be entitled to a verdict of
14 guilty; killing of another with malice aforethought.

15 I've defined malice for you. I've defined
16 aforethought.

17 Please, with that additional instruction, retire and
18 resume your deliberations, but if you need further
19 explanation of the offense of murder, let me know. Thank
20 you so much.

21 (SEPTEMBER 5, 2012, 6:00 P.M., WHEREUPON, THE JURY
22 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
23 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

24 **THE COURT:** Exceptions or additions from the State?

25 **MR. MURDAUGH:** None, sir.

1 **THE COURT:** Exceptions or additions from the
2 defendant?

3 **MR. GIPSON:** None, Your Honor.

4 **THE COURT:** Thank you very much. We'll continue to
5 be at ease. Thank you.

6 (WHEREUPON THIS CASE WAS RECESSED WHILE THE JURY
7 DELIBERATES. THEREAFTER, AT 7:09 P.M., THE FOLLOWING
8 PROCEEDINGS WERE HELD ON THE RECORD IN THIS CASE:)

9 **THE COURT:** I'm advised the jury has reached a
10 verdict. Is the State ready to receive the verdict?

11 **MR. MURDAUGH:** The State is.

12 **THE COURT:** The defendant -- let the record reflect
13 Mr. Greene is present.

14 Is the defendant ready to receive the verdict?

15 **MR. GIPSON:** Yes, sir, we are.

16 **THE COURT:** Thank you.

17 Ladies and gentlemen, those of you that are in the
18 audience, I thank you for complying with the Court's
19 request regarding the proper decorum to be maintained.
20 And I understand that what we're about to receive could
21 influence human beings, as you heard me tell the jury.
22 We're all human, and we have human emotions, and I respect
23 each one of you and your feelings. I understand that it's
24 been a very difficult time for you.

25 But one thing is for sure, we're going to continue to

1 maintain the proper decorum in this courtroom. And this
2 process is not going to be in any way belittled or we're
3 not going to treat what's been done with any disrespect.
4 And I think the efforts given by all involved, and
5 especially those twelve men and women from this community
6 that have sat and deliberated and performed the task
7 assigned to them, they deserve that verdict to be read and
8 published with dignity and respect.

9 So if you feel that you will have difficulty
10 complying, I ask you to leave now, because if there is
11 any, I mean any, outburst, I'm going to ask the deputies
12 to detain you. When the jury is excused, then I will deal
13 with your outburst and your contempt of court. So please
14 understand that.

15 If anybody needs to leave, please leave now before
16 the jury enters, because once the jury comes in, no one
17 will be allowed to leave. Thank you very much.

18 Bring in our jury, please.

19 (SEPTEMBER 5, 2012, 7:12 P.M., WHEREUPON, THE JURY
20 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
21 WERE HELD IN THEIR PRESENCE.)

22 **CLERK:** Mr. Foreman, have you reached a verdict?

23 **FOREPERSON:** We have.

24 **THE COURT:** The verdict forms have been properly
25 completed. I ask that the defendant please rise.

1 Court of General Sessions, Indictment Number
2 2009-GS-25-515, in the case of State of South Carolina
3 versus Brandon Greene: We, the jury, by unanimous
4 consent, find the defendant, Brandon Greene, on the charge
5 of murder, guilty. Signed by Thomas Gill, Presiding
6 Juror.

7 **FOREPERSON:** Theodore Gill.

8 **THE COURT:** Theodore Gill. I'm sorry. Thank you.
9 Theodore Gill, as the Presiding Juror, dated September the
10 5th, 2012.

11 Indictment 2009-GS-25-567, State of South Carolina
12 versus Brandon Greene, defendant: We, the jury, by
13 unanimous consent, find the defendant, Brandon Greene, on
14 the charge of assault and battery with intent to kill, not
15 guilty. Signed by Theodore Gill, Presiding Juror, dated
16 September the 5th, 2012.

17 Ladies and gentlemen, if I have accurately published
18 your verdict, please indicate that by raising your right
19 hand.

20 Thank you. You may put them down.

21 Let the record reflect that each juror raised their
22 right hand in response to the Court's question.

23 You may be seated now, if you wish.

24 Anything further from the defendant of the jury at
25 this point?

1 **MR. GIPSON:** Not from the jury at this point, Your
2 Honor.

3 **THE COURT:** Very well.
4 Anything further from the State?

5 **MR. MURDAUGH:** Nothing, sir.

6 **THE COURT:** Ladies and gentlemen, thank you so very
7 much for your assistance in serving in this case as a
8 judge with me. It's been an honor to serve with each one
9 of you.

10 You are now at liberty to talk about this case,
11 should you choose to. But if someone should persist in
12 asking you questions and you elected not to talk to them
13 and they will not cease in trying to find out, let your
14 clerk of court know. She can call me, and we'll try to
15 take care of it for you.

16 So I wish you well. You're free to leave now.
17 You're free to remain, whatever you like.

18 If anyone has any questions, if you'll wait in the
19 jury room, I'll be happy to try to answer them. If not,
20 have a great evening. Thank you.

21 (WHEREUPON, JURY WAS RELEASED.)

22 **THE COURT:** All right. Any motions from the State at
23 this point?

24 **MR. MURDAUGH:** None, sir.

25 **THE COURT:** Any motions from the defendant at this

1 point?

2 **MR. GIPSON:** Yes, sir. Yes, Your Honor. I mean,
3 obviously, the jury deliberated long and they did listen
4 to all the information, and obviously there's a question
5 as to whether or not -- well, they felt like he defended
6 himself, as what we argued, to some extent. As I try to
7 surmise, it seems that as if there's a compromise verdict,
8 in some sense, Your Honor, and I'd ask if the Court would
9 consider acting as a thirteenth juror in this situation
10 because of the compromised verdict that they gave.

11 They came back with a question asking about degrees
12 of murder and things of that nature, and it seems that
13 they made a decision that could have been based on
14 something other than the facts that were brought forth in
15 this courtroom.

16 **THE COURT:** At first blush, the thought crossed my
17 mind when I saw that, but really when you consider the
18 testimony in this case, there was much more aggression on
19 the part of the individual in the assault and battery case
20 than there was on the murder side.

21 **MR. GIPSON:** Yes, Your Honor.

22 **THE COURT:** And that's precisely what they found. He
23 was the one that was, at least according to his testimony,
24 was causing most of the trouble. They were separating
25 them, but there was certainly very little testimony, other

1 than the testimony of him removing his shirt, I think,
2 Dominick, but other than that, there was really no
3 aggression. In fact, if anything, he was trying to serve
4 as a peacemaker in several instances. So there was an
5 abundance of evidence, I believe given the charge, for
6 those two verdicts to be consistent with the instruction.

7 **MR. GIPSON:** Yes, sir. Would the Court consider --
8 may I have ten days for additional post-trial motions?
9 Would the Court consider it?

10 **THE COURT:** Well, not really, because the other
11 verdict would be to give you a new trial.

12 **MR. GIPSON:** Yes, sir.

13 **THE COURT:** And I think the evidence, as I've just
14 articulated, I believe is supportive of the verdicts that
15 were rendered.

16 **MR. GIPSON:** Yes, sir.

17 **THE COURT:** Clearly. I don't think there's anything
18 inconsistent.

19 Solicitor, I'll be happy to hear from you, if you
20 wish to be heard further.

21 **MR. MURDAUGH:** If Your Honor please? I am in
22 agreement with you, what you've said, sir. I don't think
23 I can add much to it.

24 **THE COURT:** You can tell me how -- I mean, we can --
25 let me have the other indictment. Thank you. Anthony

1 Badger, there was testimony about -- kind of a lot of
2 things about him ---

3 MR. GIPSON: Yes, sir.

4 THE COURT: --- during the afternoon, but I -- if you
5 can help me, I can't recall anything, other than at the
6 end. And I'm just trying to recollect, I believe the
7 shirt was removed after Anthony was shot.

8 MR. GIPSON: Yes, sir. My recollection of the
9 testimony is that after Anthony was shot that Mr. Greene
10 testified that the moment he kind of turned around and
11 tried to get to the car, that's when he was essentially
12 hit and thrown up against the car by Dominick.

13 THE COURT: Well, yeah, but there was also testimony
14 that he didn't do that. And I think the jury certainly
15 had evidence, and again, that's why I believe it was a
16 jury issue.

17 MR. GIPSON: Yes, sir.

18 THE COURT: You know, certainly we all could maybe
19 have passed a different judgment on that, but I don't find
20 those verdicts inconsistent based on the evidence that I
21 heard.

22 MR. GIPSON: Yes, Your Honor.

23 THE COURT: There's no question at that juncture --
24 there was no statement -- there was also a statement, I
25 believe that Anthony said: I'll burn you.

1 Which that gave threat and concern about possibly
2 having a gun, but nothing about Dominick. I mean there
3 was no suggestion that he was armed.

4 **MR. GIPSON:** If I could? I think the only testimony
5 to that was that Dominick at some point had come to --
6 excuse me, Tony had come to Dominick and asked for his
7 shotgun.

8 **THE COURT:** Well, I understand that, but there was no
9 suggestion that he had it and nothing that he threatened.
10 No -- no -- no -- nothing -- no statement attributed to
11 Dominick.

12 **MR. GIPSON:** Yes, sir.

13 **THE COURT:** So I respect your motion, but I must
14 respectfully deny that motion. Thank you, ---

15 **MR. GIPSON:** Thank you, Your Honor.

16 **THE COURT:** --- Mr. Gipson. I appreciate it.

17 **MR. GIPSON:** Yes, sir.

18 **THE COURT:** All right. Are you ready for sentencing,
19 or do you need a few moments?

20 **MR. GIPSON:** Just a couple moments, Your Honor?

21 **THE COURT:** Sure.

22 Let me thank the audience as well for their observing
23 the proper decorum. Thank you all very much. I
24 appreciate that.

25 **MR. MURDAUGH:** Your Honor, please? While he's

1 talking, we have talked with the family, and they do not
2 wish to make any statement to the Court but asked me to
3 express to you, sir, their gratitude with the way you
4 handled this case.

5 **THE COURT:** Well, thank you, sir. I thank them as
6 well. I appreciate that.

7 **MR. GIPSON:** We're ready, Your Honor.

8 **THE COURT:** You're ready?

9 **MR. GIPSON:** Yes, sir.

10 **THE COURT:** Thank you, sir. I'll be delighted to
11 hear from you.

12 **MR. GIPSON:** First and foremost, and I'll address the
13 Court, as I know it's not proper to address the family,
14 but you know, as I mentioned in our opening statements,
15 you know, our collective hearts go out to the Badger
16 family, because there is a loss that they have suffered
17 because of this situation. And while we articulated in
18 our argument as to why it happened, the bottom line is
19 that it did happen, and there's nothing that we can do to
20 turn back the hands of time.

21 I can tell you that in meeting with Brandon over the
22 last almost three years, Judge, he's been consistent with
23 me about what he did, what he thought, and why he did
24 those things.

25 The jury has now spoken, and I respect the purview of

1 the jury. I'm of the opinion, I mean, what I do or what
2 Solicitor Murdaugh and I do and Ms. Legette, what we do is
3 we -- we -- we advocate to the best of our ability, and we
4 leave it to a jury because we trust that they'll make the
5 decisions that are proper in situations. And although I
6 may not agree with it, I respect the decisions that's been
7 made. I respect the family and what they feel, Your
8 Honor.

9 I would ask, understanding that you're constrained by
10 law with certain sentences that have to be given in this
11 case, I'd ask that you consider the minimum that you can.

12 I understand that this is a day-for-day sentence,
13 Your Honor, with a minimum of thirty years that this Court
14 can sentence in this situation. I would ask that you
15 consider that, based on what the jury came back with,
16 understanding that something happened out there, there was
17 an argument of sorts, and they felt like he properly
18 defended himself in the first instance.

19 And the question about the defense in the second
20 instance, as the Court has noted, is a jury question. And
21 they did not determine that he was guilty on both counts,
22 so they believed there was some justification for him
23 feeling what he felt.

24 As he has articulated to me from day one, after he
25 shot Tony Badger, at that point in time, he was

1 immediately attacked. And he felt like he was still in
2 danger, and that's why he tried to get away and ended up
3 shooting at that point in time and got in the car
4 immediately and left.

5 Yes, he did throw the gun away, but when law
6 enforcement called, he came back. And I think those
7 things speak to -- just at the core, he knows the
8 difference between right and wrong. He's articulated
9 that, and he came back and he turned himself in.

10 He comes from a wonderful family, who is seated here.
11 His pastor is here. His grandfather is here and other
12 members of his family, who are God-fearing citizens. They
13 are good people in this community. Quite frankly, they're
14 all in -- well, both families live in that same community.
15 And I'd ask the Court consider those things in terms of
16 when it passes its sentence.

17 The minimum sentence accomplishes what a sentence
18 should accomplish. It gives reflective time. It gives
19 him time to do the things that he needs to do.

20 Your Honor, I can tell you, he's become extremely
21 involved in his church. I know his pastor is seated right
22 here in the front row. He works there daily. Each
23 morning he goes, he works, and he does -- he's -- he's
24 been extremely involved, and just turning away from the
25 lifestyle of drinking and hanging out and all that kind of

1 stuff. He doesn't do that, and it's been some time. So
2 there has been a change, a noticeable change that he's
3 undergone. So I'd ask that you consider those things,
4 Your Honor.

5 **THE COURT:** Thank you, sir.

6 **MR. GIPSON:** Yes, sir.

7 **THE COURT:** Does Mr. Greene wish to make any
8 statements at this point?

9 **DEFENDANT, MR. GREENE:** I just want to say my prayers
10 and my heart goes out to them, to the family. I just pray
11 peace for everyone.

12 **THE COURT:** Well, I know they appreciate that. I
13 believe you are sincere, and I also share in that as well
14 to both families, the family of the victims, but to your
15 family as well. It's a tragedy in every sense of the
16 word.

17 Anything else, sir?

18 **DEFENDANT, MR. GREENE:** No, sir.

19 **THE COURT:** And I think you said it. We can all
20 start making lists of: What if somebody hadn't done this
21 or that?

22 I think that would probably have prevented it, but
23 you said it best. I don't know whether my home
24 jurisdiction is unique, but it seems that everyday I pick
25 up the paper, there's somebody in the Charleston area that

1 has been shot or is dead because somebody used a firearm.
2 And I don't know when we're going to stop being brutal to
3 each other. I just don't understand.

4 I grew up in rural Berkeley County. I can only think
5 of one instance in my entire high school career when
6 somebody actually shot a firearm at or towards somebody.
7 There were a lot of fights. People went down little dirt
8 roads and met and somebody got hit in the nose, and that
9 would be the end of the fight, but nobody ever shot
10 anybody. Nobody even thought about shooting anybody.

11 I remember when we heard about the guy that did it,
12 we talked about he must be crazy. I mean, that was the
13 talk among us, the people in the community. But today
14 people just shoot people without even thinking.

15 And I understand what you've said. You testified to
16 it and articulated your basis. And that's the danger of
17 carrying, because it's such a fine line between
18 self-defense and murder.

19 And quite frankly, you're right, Mr. Gipson, it could
20 be a compromised verdict, but it may be the other way. I
21 mean, it could be that it really wasn't a sufficient basis
22 to shoot Mr. Tony Badger, I mean, really. But the jury
23 has spoken.

24 **MR. GIPSON:** Yes, Your Honor.

25 **THE COURT:** And I don't quarrel with that, because

1 they have weighed that evidence. But, obviously, if Mr.
2 Greene, as he stated, hadn't taken the gun or had put it
3 up, he may have been -- he may have been hurt. I really
4 don't think anybody was going to shoot anybody, from what
5 I heard, but I wasn't there. And I understand you acted,
6 and as you heard me charge, you had the right to act on
7 impression of what you did, and that's the risk you run,
8 because the jury said, nope, you could have avoided it.
9 So I'm going to give you some consideration.

10 What's his record, Solicitor?

11 **MR. MURDAUGH:** Your Honor, please? He has the
12 assault and battery of a high and aggravated nature that
13 you're aware of.

14 **THE COURT:** And a failure to stop for a blue light.

15 **MR. MURDAUGH:** A failure to stop for a blue light.
16 He has a number of magistrate court offenses, including
17 one possession of marijuana, a carrying a weapon on school
18 grounds. It was pled down to public disorderly conduct.
19 Things of that nature, sir.

20 **THE COURT:** Obviously, there has to be a message that
21 has to be sent, and that's part of the sentencing, that's
22 part of the factoring that I have to consider, as well as
23 punishment.

24 Given what happened, and Mr. Gipson, you're asking --
25 and it's something that I truthful wrestle with all the

1 time. You know what, my prayer is that I never stop
2 wrestling with it, because if I don't, then I don't think
3 I'm doing justice to the community and I'm certainly not
4 doing justice to this job. It ought to be something that
5 we have to think about and ponder, and -- because it's --
6 it's incredibly difficult. And I'm human, and I'm trying
7 to do the best I can with my humanity.

8 But I don't believe he should have life imprisonment,
9 but I cannot accept just a thirty year minimum. So the
10 sentence of the Court is -- I believe the sentence range
11 is thirty years to life.

12 **MR. GIPSON:** Yes, sir.

13 **THE COURT:** I'm going to give him an opportunity to
14 get out one day, if he stays healthy. I mean, none of us
15 knows how long we're going to live.

16 The sentence of the Court is forty years. Good luck
17 to you, sir. God bless you.

18 God bless the families as well.

19 **(END OF REQUESTED TRANSCRIPT OF RECORD.)**
20
21
22
23
24
25

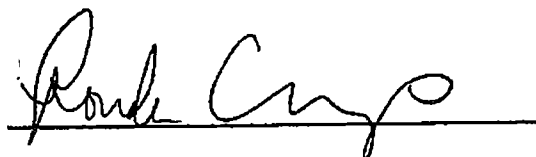
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

I, Ronda T. Cummings, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Hampton County, South Carolina, on the 4th and 5th days of
September, 2012.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

December 8, 2012

A handwritten signature in cursive script, appearing to read "Ronda Cummings", is written over a horizontal line.

Ronda T. Cummings, CVR
Official Court Reporter

FORM 5

AW
14

STATE OF SOUTH CAROLINA

County of HAMPTON

FILED IN THE COURT OF COMMON PLEAS

2015 MAR -4 PM 2:32 2015-CP-25-090

Brandon Greene, #289919

Full name and prison number (if any) of Applicant

MYLINDA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.

BY _____

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Hampton County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2009-GS-25-515 Murder**RECEIVED**

MAR 10 2015

Referred to

PCR/PM

Answered _____

- (b) 2009-GS-25-567 ABWIK
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) September 4, 2012 Forty (40) years
- (b) Not Guilty
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 2, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. The State v. Brandon Greene, Unpublished Opinion NO. 2014-UP-140
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Addendum Pages
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Addendum Pages
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

Brandon Greene, # 289919

PCR Addendum

- 10(a) Applicant was denied the effective assistance of counsel, in violation of Article I, §§ 3 & 14 of the South Carolina Constitution, South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution as a result of trial counsel failing to invoke the Sixth Amendment Compulsory Process Clause to obtain or call a witness to support Applicant's theory of defense and rebut state witness testimony that challenged the veracity or Applicant's testimony.
- 10(b) Applicant was denied the effective assistance of counsel, in violation of Article I, §§ 3 & 14 of the South Carolina Constitution, South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution as a result of trial counsel failing to request the requisite three-step *Batson v. Kentucky* hearing to determine racially-based peremptory challenges denied Applicant a jury of his peers guaranteed by the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution.
- 10(c) Applicant was denied the effective assistance of counsel guaranteed by the Sixth Amendment of the United States Constitution, South Carolina Constitution art. I, § 3, and South Carolina law where trial counsel failed to challenge a venire person for cause who was a former law enforcement officer who informed the Court that he knew several of the State's law enforcement witnesses and the Court failed to excuse the venire person during voir dire; and again upon discovery the same venire person was charged with a crime that the Assistant Solicitor participated in the disposal of and the trial court again qualified the juror.

- 10(d) Applicant was denied the effective assistance of counsel, in violation of Article I, §§ 3 & 14 of the South Carolina Constitution, South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution as a result of trial counsel failing to move for a mistrial when it was revealed a venire person failed to respond to the Court's query of whether jurors knew any of the State's witnesses, that the juror was a coworker of a State's witness and participant in the trial, and the juror did have extraneous contact about the trial with the coworker witness, which tainted the jury and deprived Applicant of a fair trial.
- 10(e) Applicant was denied the effective assistance of counsel, in violation of Article I, §§ 3 & 14 of the South Carolina Constitution, South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution as a result of trial counsel failing to object to the Solicitor's introduction of an uncharged offense during the Solicitor's opening argument which denied Applicant his Sixth Amendment right to a fair trial by an unbiased jury and violated the Due Process Clause, which did prejudice the outcome of the trial.
- 10(f) Applicant was denied the effective assistance of counsel, in violation of Article I, §§ 3 & 14 of the South Carolina Constitution, South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution as a result of trial counsel failing to object to the trial court unfairly restricting the defense's cross-examination of a key prosecution witness and Applicant's right of Confrontation.

Brandon Greene, # 289919

PCR Addendum

- 10(g) Applicant was denied the effective assistance of counsel, in violation of Article I, §§ 3 & 14 of the South Carolina Constitution, South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution as a result of trial counsel failed to make a specific Brady request for a witness statement that was inconsistent and denied the Applicant the right to Confrontation and a defense under the Sixth Amendment.
- 10(h) Applicant was denied the effective assistance of counsel, in violation of Article I, §§ 3 & 14 of the South Carolina Constitution, South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution as a result of trial counsel failed to object to the Solicitor pitting Applicant against State witnesses.
- 10(i) Applicant was denied the effective assistance of counsel, in violation of Article I, §§ 3 & 14 of the South Carolina Constitution, South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution as a result of trial counsel failed to request a jury instruction on manslaughter where the evidence supported the charge and the trial court incorrectly held the only options were murder, if malice was present; or self-defense if malice was not present.
- 10(j) Applicant was denied the effective assistance of counsel, in violation of Article I, §§ 3 & 14 of the South Carolina Constitution, South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution as a result of appellate counsel failing to raise the properly preserved and meritorious issue that the trial court did not allow the introduction of an inconsistent statement of a key State witness who testified for consideration by the jury.

Brandon Greene, # 289919

PCR Addendum

10(k) Applicant was denied the effective assistance of counsel, in violation of Article I, §§ 3 & 14 of the South Carolina Constitution, South Carolina law, and the Sixth and Fourteenth Amendments to the United States Constitution as a result of trial counsel failing to object to the sentence pronounced, which exceeded the statutory maximum and was contrary to the legislative intent of S.C. Code of Laws §16-3-20(A) (1995).

Brandon Greene, # 289919

PCR Addendum

- 11(a)** Applicant's theory or defense was that after work he went home and retrieved fishing tackle and a pistol. Applicant specifically testified, answering the Solicitor's question three (3) times, that he had the fishing tackle in the car upon returning to the home he shared with his grandparents after the incident occurred. On redirect, trial counsel asked Applicant how the fishing tackle was removed from the car, to which Applicant responded that his grandfather [Samuel Greene] had removed Applicant's personal effects from the vehicle before it was impounded. On redirect, the Solicitor called Investigator Chauncey Solomon, who testified that no one took anything out of the car. Trial counsel stated Applicant has a witness to support his testimony regarding the fishing tackle. The trial court informed counsel Applicant did not get a surrebuttal. Trial counsel failed to invoke the Compulsory Process Clause of the Sixth Amendment to obtain Samuel Greene as a witness.
- 11(b)** The record demonstrates only one (1) African-American male was seated as a juror where all three (3) of the State's peremptory challenges were used to remove / strike African-American male venire persons and trial counsel failed to request a *Batson* hearing to ascertain the basis of the peremptory strikes which did prejudice the Applicant, an African-American male. Trial counsel subsequently failed to request the *Batson* hearing upon invitation of the trial court.
- 11(c)** Counsel failed to strike venire person # 55 (Theodore Gill - seated as Juror # 10) who informed the Court during voir dire that he knew several of the State's law enforcement witnesses because he was a former police officer in two (2) local townships and a former deputy sheriff; who subsequently revealed that he was charged with ABWIK; and that Assistant Solicitor Murdaugh [trying the instant case] "got it expunged and everything," and the trial court failed to remove the juror for cause and qualified the juror.

- 11(d) During voir dire the Court asked the venire panel if any of the panel was related to or knew any of the State's witnesses. The Court further admonished the jurors, once seated, not to talk about the case. Darren Youmans [Juror # 11] made no response. After the State presented its case-in-chief it was revealed that Juror Youmans was a coworker of State witness Keith King and that Mr. Youmans did speak with Mr. King about some instance of the trial. An *in camera* hearing was held and Mr. Youmans was released from the jury. Trial counsel failed to request an *in camera* hearing with the remaining jurors to ascertain the degree of the taint or move for a mistrial for Mr. Youmans' exposure and impact on the remaining jurors.
- 11(e) During opening arguments the Solicitor introduced an uncharged offense [possessing a gun] that implied the Applicant's previous conviction of a felony offense, which was not explained. The Solicitor's opening further informed the jury that Applicant's girlfriend had purchased some guns, could not locate them after the events here, and that Applicant "took" the guns and threw them away.
- 11(f) Dexter Bozeman was called as a State witness. On cross-examination trial counsel questioned Bozeman in regards to making a statement. Mr. Bozeman testified that his oral / taped statement was different from the written statement as transcribed. Mr. Bozeman published the transcribed statement to the jury. Counsel attempted to question Mr. Bozeman about what Bozeman thought of the inconsistencies between the two statements. Counsel moved to admit Bozeman's written statement to which the State objected and the statement was marked as Defense Exhibit for Identification purposes. Counsel questioned Bozeman regarding the veracity of the written statement and its contents. Counsel moved and entered the written statement, over objection, into evidence which was published to the jury. Trial counsel began to cross-examine Bozeman on the inconsistencies between the two statements when the trial court interrupted counsel's cross-examination.

Brandon Greene, # 289919

PCR Addendum

11(g) The State called Keith King as a witness to the events of October 2, 2009. On cross-examination Mr. King could not remember when he spoke with police and testified that he wrote a statement for police but that he did not have a copy. Counsel held a sidebar with the trial court and Solicitor that was not on the record at that time. The trial court placed the substance of the sidebar on the record. The State claimed never to have seen Mr. King's statement and counsel stated he never received anything about the statement. The court commented that "It's fair game for argument." The court invited counsel to place an objection on the record and counsel declined to do so.

11(h) On cross-examination of Applicant the Solicitor pitted State witness Keith King against the Applicant, pressing the Applicant, "They lied about that."

11(i) During the charge conference the trial court informed counsel for the parties there was no provocation present and "there's either malice, or there's self-defense, one or the other. Trial counsel did not disagree with the trial court or object. The court gave a jury instruction on the elements of murder and malice. The court did not charge a lesser included offense of murder, i.e., voluntary manslaughter, despite the jury believing there did exist evidence of a lesser "degree of murder" by their request for an additional jury instruction.

- 11(j) Anthony Badger, an alleged victim and key State witness was called to the stand. On cross-examination Mr. Badger admitted to making a written statement to authorities. Counsel moved to mark the statement as Defense Exhibit One for identification only, and the Solicitor interjected that the State had no objection to the introduction of the statement. The trial court held the State's response was premature. Trial counsel cross-examined Mr. Badger regarding inconsistencies in the statement with Mr. Badger's trial testimony. Trial counsel did not move to introduce the Exhibit into evidence during the testimony. Trial counsel moved to introduce Defense Exhibit One. The Solicitor at that time entered an objection based upon the witness having testified and the trial court sustained the objection.
- 11(k) The trial court sentenced Applicant to forty (40) years for the offense of murder, Tr. p. 432, lines 8 - 11. The trial judge specifically delineated between the 30 year sentence as a "mandatory minimum" and what the amended statute currently reads. The trial court exceeded the maximum statutory sentence for the offense of murder, pursuant to S.C. Code §16-3-20(A) (1995), which was in effect at the time of Applicant's arrest and indictment. Section 16-3-20(A) (1995) was clear in the first sentence: "(A) A person who is convicted of or pleads guilty to murder must be punished by death; by imprisonment for life; or by a mandatory minimum term of imprisonment for thirty-years." (Emphasis supplied). Section 16-3-20(A) was not amended and applicable until June 2, 2010, which changed the language to "for thirty years to life." (Emphasis supplied). Thus, the trial court exceeded the statutory maximum sentence for the offense of murder at the time of arrest and indictment upon the offense.

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) All grounds presented herein cognizable only on PCR
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 i. Byron E. Gipson, Esq., Hampton County Bar
Katherine H. Hudgins, Esq. S.C. Office of Appellate Defense
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial & sentencing
Direct appeal
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:
Vacate reverse and remand conviction and sentence

20. Are you now under sentence from any other court that you have not challenged?
No

Revised 3/2003

STATE OF SOUTH CAROLINA)

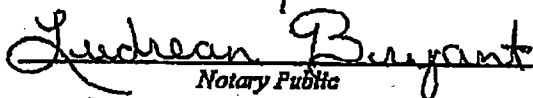
County of HAMPTON)

VERIFICATION

I, Brandon Greene, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 26th
 day of February, 2015.

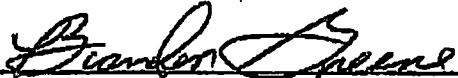
 (L.S.)
 Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Brandon Greene, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
26th day of February, 2015.


Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Brandon Greene, #289919,

2015-CP-25-0090

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed March 4, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Hampton County Clerk of Court. The Applicant was indicted at the December 2009 term of the Hampton County Grand Jury for murder (2009-GS-25-0515) and at the July 2010¹ term for assault and battery with intent to kill (ABWIK) (2009-GS-25-0567). Byron Gipson, Esquire, represented the Applicant. On September 5, 2012, the Applicant proceeded to trial before the Honorable R. Markley Dennis, Jr. and a jury, which found the Applicant not guilty of ABWIK and guilty of murder. Judge Dennis sentenced the Applicant to confinement for forty (40) years for murder.

Applicant filed a timely notice of appeal and an appeal was perfected on his behalf. On Appeal, Kathrine Hudgins, Esquire, represented the Applicant. The South Carolina Court of

¹ The Applicant had previously been indicted for ABWIK at the December 2009 term; July 2010 reflects the term of re-indictment.

Appeals dismissed the appeal. State v. Greene, Op. No. 2014-UP-140 (S.C. Ct. App. filed April 2, 2014). The Remittitur was issued on April 18, 2014.

Attached herewith and incorporated herein are the records of the Hampton County Clerk of Court regarding the subject conviction(s), the application, the plea transcript, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"

- a. "[T]rial counsel fail[ed] ... to obtain or call a witness to support Applicant's Theory of defense"
- b. "[T]rial counsel fail[ed] to request the requisite three-step *Batson v. Kentucky* hearing ... [thus] denied Applicant a jury of his peers"
- c. "[T]rial counsel fail[ed] to challenge a venire person for cause"
- d. "[T]rial counsel fail[ed] to move for a mistrial when it was revealed a venire person failed to respond to [a] query by the Court [regarding juror knowledge of State's witnesses]"
- e. "[T]rial counsel fail[ed] to object to the Solicitors' introduction of an uncharged offense during ... opening"
- f. "[T]rial counsel fail[ed] to object to the trial court unfairly restricting the defense's cross-examination"
- g. "[T]rial counsel fail[ed] to make a specific Brady request"
- h. "[T]rial counsel fail[ed] to object to the Solicitor pitting Applicant against State witnesses"
- i. "[T]rial counsel fail[ed] to request a jury instruction on manslaughter"
- j. "[A]ppellate counsel fail[ed] to raise the properly preserved and meritorious issue

[regarding] the introduction of an inconsistent statement”

- k. “[T]rial counsel fail[ed] to object to the sentence pronounced”

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of a hearing and should be filed as required by Rule 11, SCRCP(a).

III.

The Applicant’s allegations are of ineffective assistance of trial counsel. The Respondent submits trial counsel rendered effective assistance of counsel. In a Post-Conviction Relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney’s performance by its "reasonableness

under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

[SIGNATURE BLOCK ON NEXT PAGE]

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

October 28, 2015.

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS

2015-CP-25-0090

BRANDON GREENE, #289919,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

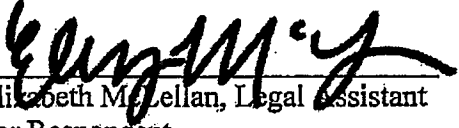
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esq.
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this 28th day of October, 2015.


Elizabeth M. Lellan, Legal Assistant
For Respondent

1 In the Court of Common Pleas for the
 2 State of South Carolina, County of Hampton
 3
 4 Case No.: 2015CP250090
 5 Brandon Greene,
 6 Plaintiff(s),
 7 vs. Transcript of Record
 8 State of South Carolina,
 9 Defendant(s).
 10
 11

12 **POST-CONVICTION RELIEF HEARING TRANSCRIPT**
 13
 14
 15

16 October 9, 2017
 17 Beaufort, South Carolina
 18
 19
 20
 21

22 BEFORE:

23 The Honorable Thomas A. Russo
 24
 25

APPEARANCE PAGE

APPEARANCES

REPRESENTING APPLICANT:

James K. Falk, Esquire

PO Box 1058

Charleston, SC 29402

843-606-6007

jfalklaw@gmail.com

REPRESENTING THE STATE:

Ruston Neely, Esquire

Office of the Attorney General

PO Box 11549

Columbia, SC 29211

rneely@scag.gov

803-734-5844

INDEX PAGE

1	INDEX	
2		
3	WITNESS:	PAGE:
4		
	BYRON GIPSON	
5	Direct Examination By Mr. Falk	8
	Cross Examination By Mr. Neely	15
6	Redirect Examination By Mr. Falk	17
7	RANDOLPH MURDAUGH	
	Direct Examination By Mr. Falk	18
8		
	BRANDON GREENE	
9	Direct Examination By Mr. Falk	24
	Cross Examination By Mr. Neely	38
10		
	SAMUEL GREENE	
11	Direct Examination By Mr. Falk	43
	Cross Examination By Mr. Neely	45
12		
	BYRON GIPSON	
13	Direct Examination By Mr. Falk	47
	Cross Examination By Mr. Neely	58
14		
	BRANDON GREENE	
15	Direct Examination By Mr. Falk	61
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

INDEX PAGE

1 PROCEEDINGS

2 MR. NEELY: The next case that we will call is
3 Brandon Greene versus the State of South Carolina,
4 Case no. 2015CP250090. I believe Mr. Falk is missing a
5 witness.

6 MR. FALK: Yes, Your Honor. We filed an amended
7 PCR application to show that there is a possible Batson
8 issue that was never shown at the trial court level.
9 And I believe that the only way that I can show
10 prejudice would be to really try and conduct a Batson
11 hearing today. So, I have subpoenaed trial counsel, or
12 Randolph Murdaugh III, who was the --

13 THE COURT: The solicitor.

14 MR. FALK: No, he was representing him at the
15 time. And he -- no, excuse me, sorry, he was the
16 solicitor at the time. So he conducted the voir dire
17 and strikes on behalf of the State. So, anyway, so
18 that's where we are. And I spoke with Mr. Murdaugh on
19 the phone and I believe that he was -- you know, we had
20 sort of a meeting of the minds, but I don't see him
21 here yet.

22 THE COURT: All right. Can we move to the next
23 case to give Mr. Murdaugh time?

24 MR. NEELY: Certainly, Your Honor.

25 THE COURT: In the meantime, can we get at least

CALLING OF THE CASE

1 somebody to maybe try and contact his office to see
2 what his situation is?

3 MR. FALK: Yes, Your Honor.

4 MR. NEELY: I know that Mr. Murdaugh is partially
5 retired. He doesn't handle a lot of cases anymore.

6 THE COURT: I know that he is, but if he's under
7 subpoena he needs to appear.

8 MR. NEELY: Certainly.

9 * * *

10 (Other cases heard in the meantime, then the
11 hearing was resumed as follows at 11:50 a.m.):

12 MR. NEELY: This is the case of Brandon Greene
13 versus the State of South Carolina, Case No.
14 2015CP250090. Applicant was indicted December 2009 by
15 the Hampton Grand Jury for murder and assault and
16 battery with intent to kill. And in the July 2010 term
17 of court Byron Gipson represented applicant.

18 September 5th, 2012 applicant received a trial
19 before the Honorable Mark Dennis Junior. And the jury
20 found the applicant not guilty of the ABWIK charge, but
21 guilty of the murder charge. Judge Dennis sentenced
22 the applicant to 40 years for murder.

23 Applicant filed a timely notice of appeal and the
24 appeal was perfected on his behalf. On the appeal
25 Catherine Hudgins from Indigent defense represented

CALLING OF THE CASE

1 applicant. South Carolina Court of Appeals dismissed
2 the appeal on April 2nd, 2014. And the remitter was
3 issued April 18th, 2014.

4 THE COURT: All right. Mr. Falk.

5 MR. FALK: Can Mr. Greene come forward?

6 THE COURT: Yes, please. Brandon Greene, come
7 forward to defense table.

8 MR. FALK: Your Honor, I am just going through the
9 allegation that he has raised PCR related.

10 THE COURT: All right, sir.

11 MR. FALK: All right. So, my client raised the
12 following grounds: Ineffective assistance of counsel
13 and trial counsel failed to call or obtain a witness to
14 support his theory of defense. Trial counsel failed
15 the requisite three-step Batson process hearing. Trial
16 counsel failed to challenge a voir dire person for
17 cause. Trial counsel failed to move for a mistrial
18 when it was revealed that a voir dire person failed to
19 respond to a query by the Court of knowledge of one of
20 the State's -- failed to respond to a query by the
21 Court regarding the juror's knowledge of a State's
22 witness.

23 Trial counsel failed to object to the Solicitor's
24 introduction of an uncharged defense during opening.
25 Trial counsel failed to object to the trial court

CALLING OF THE CASE

1 unfairly restricting the defense's cross examination.
2 Trial counsel failed to make a specific Brady request.
3 Trial counsel failed to object to the Solicitor's
4 pitting the witnesses. Trial counsel failed to request
5 a jury instruction on manslaughter. Appellate Counsel
6 failed to raise the proper and preserve meritorious
7 issue regarding introduction of inconsistent
8 statements. And trial counsel failed to object to the
9 sentence pronounced.

10 It is obviously a very long laundry list here, but
11 since Mr. Murdaugh is here I thought maybe we could go
12 to the Batson issue first so it doesn't take the rest
13 of his day.

14 THE COURT: All right.

15 MR. FALK: So, In that regard, I'll ask to call
16 trial counsel to the stand first, just for the limited
17 foundation purposes.

18 THE COURT: Just for the Batson issue?

19 MR. FALK: Yes.

20 THE COURT: Okay. You want Mr. Murdaugh or you
21 want --

22 MR. FALK: Trial counsel.

23 THE COURT: Okay.

24 Thereupon,

25 BYRON GIPSON

DIRECT EXAMINATION OF MR. GIPSON BY MR. FALK

1 was called as a witness, having been first duly sworn,
2 was examined and testified as follows:

3 THE WITNESS: My name is Byron Gipson.

4 DIRECT EXAMINATION

5 BY MR. FALK:

6 Q Good morning, Mr. Gipson.

7 A Good morning.

8 Q Where do you primarily practice?

9 A Between Orangeburg, Columbia, and down to the
10 lower part of the state, which includes this part of the
11 circuit as well.

12 Q How often are you practicing in Hampton County?

13 A Whenever needed. We -- it just depends on how
14 business flows. Sometimes I have multiple cases there,
15 sometimes I don't have any.

16 Q Okay. Were you retained in this case or
17 appointed?

18 A I was retained.

19 Q Okay. My client has raised several issues, but we
20 are just here for one issue right now to talk about, and
21 that concerns the jury that was ultimately seated in this
22 case.

23 A Yes, sir.

24 Q Do you have a copy of the transcript?

25 A I do.

DIRECT EXAMINATION OF MR. GIPSON BY MR. FALK

1 Q Okay. If you could look at Page 7 of the
2 transcript. Do you have that?

3 A I do.

4 Q Okay. And to the best of your knowledge, does
5 that accurately reflect the strikes that each side made in
6 this case?

7 A It does. There's obviously a longer list that
8 exists, but this is the paired down version in the
9 transcript, so I don't see any issues. Yes, it accurately
10 reflects it, yes.

11 Q Okay. And so that the State, for example, the
12 State struck juror number 44 on that list. You know, that
13 was a juror number, he was number four on the juror list.

14 A Dayshan Dobson.

15 Q Do you have any special recollection of
16 Mr. Dobson?

17 A With me, no, I don't. Would you like me to go
18 through my process of how we select juries?

19 Q Sure.

20 A All right. Well, I have been practicing about 20
21 years. My first year was as a law clerk and then after that
22 I have practiced 20 years. What we do with my firm, we
23 obviously get the jury list that is provided by the clerk,
24 we provide a jury list to the client with the understanding
25 that they are not to contact any jurors on that list

DIRECT EXAMINATION OF MR. GIPSON BY MR. FALK

1 because, at that point, there could be a juror tampering
2 issue and SLED gets involved and there could be other
3 matters that go from there.

4 After we get that list, we go through the
5 list, we meet with people in the county who we know to have
6 a chance to look at the list and see who they don't know on
7 the list and who they don't know. The terminology that I
8 like to use, and because we are in court I will change the
9 language, but a "heck no" list, meaning are there a list of
10 people on this list that you do not want on that jury and
11 tell me why, if there's some reason, if there is some family
12 connection if there is some business issue that you had with
13 them. Or just a reason, maybe they don't like the family.
14 But if there's a list of people that you don't want, we need
15 to know who those people are. If there are people who you
16 have had conflicts with in the past, we need to mark those
17 folks.

18 We talk to public defenders offices, we talk
19 to court personnel and just try to pair the list down to get
20 an idea of who we do think will be a decent juror on this
21 case. So, we did that on this case as we do in all criminal
22 cases.

23 Q Thank you. So, on the list, the strike sheet list
24 that is included in there, that are six blacks on that list?

25 A Yes.

DIRECT EXAMINATION OF MR. GIPSON BY MR. FALK

1 Q Now, the -- you said that you practiced in Hampton
2 County before, was the voir dire panel, was that about the
3 same makeup?

4 A I don't have that list with me, but I would
5 suspect there were more. I mean, just proportionately there
6 may have been more there. But for many reasons, as you
7 know, some people just try to get out of jury duty, some are
8 not qualified for criminal offenses, some have children
9 under the age of seven, some don't work outside of the
10 house, some have health issues, some can't read.

11 I mean, there's a list of exceptions and
12 exemptions. And we went through that list, obviously, prior
13 to that. Some were disqualified before we stepped into
14 court. And then after that some were disqualified for other
15 reasons or maybe transferred to other terms.

16 Q I'm going back to Dayshan Dobson, who the State
17 struck, that was their first strike. Do you recall if he
18 was on your "heck no" list?

19 A I don't recall.

20 Q Okay. And then, moving down to Eric Moore, junior
21 105, number five on that list, he is another black male. Do
22 you have any information about him?

23 A Nothing independent that I have with me today. My
24 larger list, as I told you, I don't have with me. But just
25 with my notes that I took contemporaneous with the strikes

DIRECT EXAMINATION OF MR. GIPSON BY MR. FALK

1 being done, I do not see anything particular about him.

2 Q Then let's look at the State's third strike, who
3 was John Taylor, who was witness -- or juror number 146, and
4 a similar question?

5 A Actually, what I see here is that there was a
6 child support issue, something that may have been mentioned
7 there. I have cs/issue in my notes, juror 146, but that is
8 the only. Give me just a moment.

9 Q So, after the State --

10 A You need to give me just one moment. I am looking
11 back through my notes.

12 Q Oh, I'm sorry.

13 A That is the only piece that I have on this list
14 and that is from, it looks like September 4th, 2012?

15 Q Okay. What concern would you have if somebody had
16 a child support issue, as far as serving on your case?

17 A No, I didn't strike him.

18 Q That would not be someone that you would have
19 struck anyway, would it?

20 A No, and I didn't.

21 Q So, at the end of the day a jury was seated with
22 one black on it?

23 A Yes.

24 Q And the State struck three of the blacks from
25 the -- used three of their peremptory strikes on blacks?

DIRECT EXAMINATION OF MR. GIPSON BY MR. FALK

1 A Correct.

2 Q Did you make a decision about making a Batson
3 challenge?

4 A Obviously, my decision was to say, no I didn't
5 challenge it because it goes hand in hand. If you look at
6 the list it looks like I struck one black parson, one black
7 male. It looks like that was William Solomon. And there
8 were six strikes that I used, the other were white. So,
9 consequently, if they wanted to ask me about Batson
10 questions if they had the same idea, they could have as
11 well. I didn't feel like there was some kind of race -- I
12 didn't feel like there was something that was not race
13 neutral as a reason for a strike. They may have had
14 additional information, because they are all from that area,
15 that lead them to believe that whoever they struck were not
16 good candidates for the jury. I struck folks that I didn't
17 think would be a proper fit for our jury, as they did as
18 well.

19 Sometimes, unfortunately, it leads to having
20 a jury that doesn't facially, you know, look like my client.
21 And unfortunately that happened here. However, that doesn't
22 mean that they were unfair. They acquitted him of one
23 charge.

24 Q Did you discuss -- after the panel was seated and
25 the Judge asked you if you had any motions to make, did you

DIRECT EXAMINATION OF MR. GIPSON BY MR. FALK

1 consult with your client about whether he had any concerns
2 about the panel?

3 A Absolutely, what we do -- my assistant is present
4 as well in these matters, and that is Tammy Preston at the
5 time, and she would have been with me. She has been with me
6 15 years now, so at that point probably eight or so years,
7 and she has, you know, the larger book with all of the
8 information that we have taken. Mr. Greene would have
9 either been in the middle. Ms. Preston could have been in
10 the middle, but usually the three of us will sit very close
11 by and when each person is called we will look at our
12 information and see if there's something particular that
13 leads us to believe we need to strike that person. And if
14 we do, I'll ask them to be stricken. Once the jury is set,
15 I will always, my practice is to lean over and ask my
16 client, are we okay, is that what we need. Is there
17 anything else that I need to raise that you see. And I
18 didn't see anything legally that I needed to raise, but had
19 I been prompted I would have. But I didn't see any reason
20 to ask for a Batson motion at that time because I didn't
21 think anything improper had been done.

22 Q Did the State furnish you with any information
23 about the people that they struck? I mean, you have been in
24 trials before when they will furnish you information
25 about --

DIRECT EXAMINATION OF MR. GIPSON BY MR. FALK

1 A Prior records, things of that nature, of course,
2 right.

3 Q Prior records, yes.

4 A We have that information, but otherwise, no, that
5 is their work product.

6 Q So you don't know whether or not the State had a
7 race neutral basis for their peremptory challenges?

8 A I didn't feel like they didn't have a race neutral
9 basis, and I don't take making a Batson motion lightly. If
10 I feel like there is something that I feel like stinks or is
11 improper, I will be the first one to holler. I didn't see
12 that in this matter.

13 MR. FALK: I have no further questions of this
14 witness on this subject at this time.

15 MR. NEELY: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. NEELY:

18 Q A couple of quick questions Mr. Gipson. The list
19 that you have in front of you, that is the list that is
20 randomly generated for your specific trial, correct?

21 A That's correct.

22 Q And in this case, I believe the first alternate
23 was also a black male; is that correct?

24 A That's correct.

25 Q And in this case the first alternate was actually

CROSS EXAMINATION OF MR. GIPSON BY MR. NEELY

1 put onto the jury mid-trial; is that correct?

2 A Yes.

3 Q And during the trial, they got one more on the
4 jury than the originally chosen 12?

5 A Yes.

6 Q I spoke to you on the phone and asked you what you
7 thought about the jury when it was taken. How did you feel
8 about the jury whenever you had it in the box?

9 A I felt like the jury having tried cases in Hampton
10 before, some have had more blacks than other, you know, that
11 other members -- have had more blacks than others. You
12 know, the thought process is that you always want to have
13 more people on that jury that look like you. And I think
14 that all defendants, even lawyers, tend to be a little more
15 comfortable when you have that situation because you feel
16 like there may be some things that they may understand,
17 culturally, that others may not.

18 However, in looking at the jury as a whole I
19 am just a believer in -- you get 12 people in a box and
20 whoever -- meaning the jury box, and whoever the alternates
21 are you have got to go try the case. It doesn't matter who
22 is up, you try the case. And the prayer is that the people
23 have been honest about being fair and impartial and you have
24 just got to go try the case. I have had juries that have
25 had no black folks on it, I have had juries that were

CROSS EXAMINATION OF MR. GIPSON BY MR. NEELY

1 predominantly black, I have had juries with all different
2 types.

3 And, you know, you have to go try the case
4 and you put it all out there. And this matter, I think that
5 it bore out, you know, that unfortunately Mr. Greene was
6 convicted of a murder. He was acquitted of the ABWIK
7 charge. And so, I just don't see how you can have it both
8 ways, the jury was unfair on this charge and fair on this
9 charge. They listened to the information, and although I
10 may not agree with their ultimate outcome on the murder they
11 did hear the information and I think they weighed it fairly.

12 Q In this case the State had five strikes and used
13 3; is that correct?

14 A Correct.

15 Q And you had ten strikes and used six?

16 A Correct.

17 MR. NEELY: That is all I have.

18 THE COURT: Anything further?

19 REDIRECT EXAMINATION

20 BY MR. FALK:

21 Q How often do you do a Batson challenge? You said
22 that you have been practicing 26 years?

23 A Twenty years.

24 Q Sorry. How often have you made a Batson
25 challenge?

REDIRECT EXAMINATION OF MR. GIPSON BY MR. FALK

1 MR. NEELY: Relevancy, Your Honor.

2 THE COURT: I don't understand the relevance of
3 this issue. I'll allow it, just go ahead.

4 THE WITNESS: So I answer?

5 THE COURT: Yes, yes, sir.

6 THE WITNESS: Maybe twice.

7 MR. FALK: Okay, thank you. No further questions.

8 THE COURT: All right. Thank you very much.

9 Thereupon,

10 RANDOLPH MURDAUGH

11 was called as a witness, having been first duly sworn,
12 was examined and testified as follows:

13 THE WITNESS: Randolph Murdaugh, III

14 DIRECT EXAMINATION

15 BY MR. FALK:

16 Q Thank you for coming to court today, Mr. Murdaugh.
17 You were the Solicitor in this case, or you were one of the
18 solicitors in the case of State versus Brandon Greene?

19 A Along with Tameaka Legette I tried the case, yes,
20 sir.

21 Q Okay. And you were responsible for the voir dire
22 process for the State, were you not?

23 A That is correct.

24 Q Okay. And do you recall what you were looking for
25 when you were picking your jury?

DIRECT EXAMINATION OF R. MURDAUGH BY MR. FALK

1 A I was looking for a fair and impartial juror that
2 could issue a decision on this case.

3 Q You -- there were four blacks in the first --
4 excuse me. There were four potential blacks that could have
5 been on the jury and you struck three of them, does that
6 sound right to you?

7 A I have absolutely no idea, sir.

8 Q Can I show you the strike sheet?

9 A I take your word for it, but I just have no
10 independent recollection of that, sir.

11 Q So, do you have any -- so, you, according to the
12 random strike sheet, Cedric D Goodman was Juror number 59,
13 he is listed as a black male. He was allowed to sit on the
14 jury. He was number two. We move down to Dayshan Dobson,
15 juror number 44, he was a black male and you struck him.

16 A He is from Brunson.

17 Q Okay.

18 A Isn't that correct, sir?

19 Q I believe so.

20 A I have had a problem with the Dobson family in
21 Brunson over the years and I wouldn't take anybody from that
22 family.

23 Q You had an Eric Moore who was another black male,
24 he was juror number 105?

25 A You have got to understand that this was, what,

DIRECT EXAMINATION OF R. MURDAUGH BY MR. FALK

1 nine years ago or something like that?

2 Q Yes, sir.

3 A And it's hard to remember. If I'm not mistaken
4 Moore was from Hampton and I think that I prosecuted his
5 brother for assault and battery, but I -- I'll be honest
6 with you, I wouldn't stake my life on that answer, sir.

7 Q Okay. Then we are going to move down to Johnathan
8 Taylor, who was juror number 146.

9 A I think Johnathan Taylor was a young man from
10 Estill, if I remember correctly, and he was in the drug
11 business.

12 Q Did he have any prior convictions?

13 A I don't think he did. You have got to understand,
14 I'm getting old and my mind is sort of feeble, sir. But I
15 think if you will check, he was from Estill and that -- and
16 I know that he was in the drug business.

17 Q Certainly, if he had any felony convictions for
18 drug charges he would not have been able to make it to the
19 jury?

20 A Absolutely, he would have been disqualified.

21 Q He would have been disqualified?

22 A But I'm not going to let somebody that is in the
23 drug business sit on the jury that I have got.

24 Q Uh-huh. (Indicating affirmatively.)

25 MR. FALK: Your Honor, if I may have a moment?

DIRECT EXAMINATION OF R. MURDAUGH BY MR. FALK

1 (Pause.)

2 Q Do you know Terry Hires?

3 A I am sorry?

4 Q Terry Hires, do you know Terry hires?

5 A I do.

6 Q What do you know about him?

7 A He is a friend of mine that lives in Hampton.

8 Q What did you know about Cedric Goodman?

9 A Cedric Goodman, the Goodmans are a good family. I
10 mean, you know, you have some families that just aren't so
11 good and you have some families that are good, and the
12 Goodman family is a Goodman family. And, Coach, let me tell
13 you something, Brandon Greene, his grandfather back there is
14 probably as good a friend as I have got in Hampton County.

15 Q Christine Tuten?

16 A Tuten, she is a white lady from out on 63, I
17 think.

18 Q Sorry, let me withdraw that. What about Johnathan
19 Winn?

20 A I have no idea who that is, sir. The Wynns
21 generally come from the Nixville area of Hampton County and
22 they are a bunch of good people. We have got a County
23 counsel, a fellow Breeze Winn is on county council now.

24 Q What do you know about Diane Cook?

25 A Diane Cook?

DIRECT EXAMINATION OF R. MURDAUGH BY MR. FALK

1 Q Diane H. Cook.

2 A Don't, doesn't ring a bell.

3 Q Johnathan Capps, a white male?

4 A Capp?

5 Q C-A-P-P-S.

6 A I'm sorry?

7 Q Capps, C-A-P-P-S, Johnathan capps?

8 A Don't know who that is.

9 Q Lawrence Altman, Lawrence B. Altman, another white
10 male?

11 A Lawrence Altman worked at Westinghouse for a
12 number of years and comes from a good family, sir.

13 Q Barbara Stedman?

14 A Is she from Yemassee.

15 Q I do not know.

16 A I think that she is a lady from Yemassee that
17 is -- no problem with her.

18 Q Kaleb Strickland, white male.

19 A Doesn't ring a bell.

20 Q Paul Curtis, white male.

21 A Doesn't ring a bell.

22 Q Theodore Gill.

23 A Gill?

24 Q G-I-L-L, yes, sir.

25 A His father was the former chief -- I mean, the

DIRECT EXAMINATION OF R. MURDAUGH BY MR. FALK

1 chief of police in Hampton.

2 Q Darian Youmans?

3 A Doesn't ring a bell. But the Youmans is a great
4 family in Hampton County. The clerk of court was Helen
5 Youmans.

6 Q And Patricia Tuten was juror number -- well, the
7 12th juror seated. Is she kin to Ernestine Tuten?

8 A I don't know, sir. I don't think so.

9 Q Don't think so.

10 MR. NEELY: I have no further questions.

11 THE COURT: Cross?

12 MR. NEELY: No cross from the State, Your Honor.

13 I think that Mr. Murdaugh has very sufficiently
14 explained --

15 THE WITNESS: May I be excused, sir?

16 THE COURT: Any objection?

17 MR. FALK: No objection, Judge.

18 THE COURT: Thank you. You may be excused.

19 THE WITNESS: Good to see you, Judge.

20 THE COURT: Good to see you as well, sir.

21 All right. Mr. Falk.

22 MR. FALK: I will call Brandon Greene.

23 THE COURT: All right. Sir, if you would please
24 come around and you can bring with you if you have
25 anything documentation-wise that you need, you can

DIRECT EXAMINATION OF R. MURDAUGH BY MR. FALK

1 certainly bring that with you.

2 Thereupon,

3 BRANDON GREENE

4 was called as a witness, having been first duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FALK:

8 Q All right. You alleged ineffective assistance of
9 counsel, based on your counsel failing to call a witness in
10 your defense. Can you explain?

11 A Excuse me?

12 Q In your application for PCR brief you said that
13 your trial counsel failed to obtain or call a witness to
14 support applicant's theory of defense. Is that correct?

15 A Yes, sir.

16 Q Can you explain what is the basis for that
17 allegation?

18 A Where is that?

19 Q All right. I'll go -- I will take these in a
20 different order then. Yeah, look at your 10A on page -- are
21 you on your supplemental page?

22 A Yes, sir, yes, sir.

23 Q Now, when you filled out that application, what
24 were you -- what kind of discussions have you had with your
25 trial counsel up to that point, as far as witnesses that

DIRECT EXAMINATION OF B. GREENE BY MR. FALK

1 could be called?

2 A That after work I obtained my fishing stuff and I
3 went down to the house where this incident happened and the
4 solicitor was saying that he brought somebody for Chauncey
5 Solomon to say that there was no fishing tackle in the car
6 when they impounded it and I had my grandfather to say that
7 he did take my stuff out of the car, but the Court say that
8 there was no surrebuttal. And the trial -- I felt like the
9 trial counsel didn't, you know what I am saying, like obtain
10 my grandfather for a witness because he wasn't able to call
11 him forward.

12 Q Okay. So he didn't call your grandfather to
13 testify; is that correct?

14 A Yes, sir.

15 Q What do you believe that your grandfather would
16 have said had he testified?

17 A That he took the stuff out of the car, and how he
18 took it out and why he took it out and that he was able to
19 take it out.

20 Q How do you think that would have influenced the
21 jury had they known that there was fishing gear in the car?

22 A It would have said that I went fishing, I had the
23 intention of going fishing that day instead of what the
24 State was trying to say, that I took -- or that I
25 intentionally took a weapon somewhere to start trouble.

DIRECT EXAMINATION OF B. GREENE BY MR. FALK

1 Q Did you tell your trial counsel about your
2 grandfather?

3 A Yes, sir.

4 Q Did he have contact information for your
5 grandfather?

6 A He spoke with my grandfather about it.

7 Q Okay. Did you ask him to call him as a witness?

8 A Well, he said that he was going to have my
9 grandfather as a witness, and another guy, Armonzo Lockhees
10 as a witness and I think that Armonzo Lockhees was the only
11 one that was marked as a witness for my case.

12 Q Okay. Did you have -- did you have a discussion
13 with your counsel about the composition of the jury once all
14 of the strikes were used?

15 A About Mr. Theodore Gill, he asked me did I want to
16 pick him as a juror because he said that he was sheriff
17 deputy and he was an officer for two towns, or two counties
18 or whatever. I'm not sure. But I made the remark that I
19 don't think that I should have him on my jury because he
20 said that Mr. Murdaugh had expunged a case for him, he
21 expunged a assault and battery intent to kill case for him
22 and got it expunged. And I felt like by him being on my
23 jury he would be in favor of the State because I felt like
24 he would have owed a favor to them.

25 Q And that was juror Theodore E. Gill?

DIRECT EXAMINATION OF B. GREENE BY MR. FALK

1 A Yes, sir. And my lawyer was like -- at the time
2 he said that it would be good to have him on there being
3 that he's done been through an assault and battery intent to
4 kill case he would understand the case better, so being that
5 he was the attorney I figured he had a certain strategy so I
6 allow him.

7 Q But at the end of the day, when they put the 12
8 people in the jury box, there was one black on the jury; is
9 that correct?

10 A Yes, sir.

11 Q And you were aware when the jurors were getting
12 struck, they all came up and stood in front of the Bench?

13 A Yes, sir. Before, before all of that happened, it
14 was like, ask, does anybody know any of the witnesses or
15 officers or anybody involved in the case. And it was a lot
16 of black folks that were in there seated to be on the jury
17 but a lot of them stood up and say that they either -- they
18 either knew me or they either knew the victim or the State's
19 witness side.

20 Q But you heard Mr. Gipson testify that he talked to
21 you once -- he talked to you about, were you happy with the
22 racial makeup of the jury?

23 A There was not really anybody to pick from by the
24 time that everybody got up and left there wasn't really that
25 many black folks to pick from. And the few that was picked,

DIRECT EXAMINATION OF B. GREENE BY MR. FALK

1 the ones that was picked, I didn't know any of them. I
2 didn't know any of them.

3 Q But you were aware that three blacks were struck
4 from the jury; is that correct?

5 A Yes, sir.

6 Q And you were aware that those were the only
7 strikes that the State used; is that correct?

8 A Yes, sir.

9 Q Did Mr. Gipson ask you or advise you that you
10 could challenge that panel?

11 A No, sir.

12 Q Were you happy with the fact that there was only
13 one black on the jury?

14 A No, I wasn't. I wasn't happy with the fact that
15 the majority of my jury was like older people like and had
16 nobody to really look at the case and understanding of how I
17 had to -- the situation and the dealing.

18 Q So I'm looking at your third grounds for PCR
19 relief. This is on your application where you said
20 applicant's trial counsel failed to challenge a voir dire
21 person for cause who was a former law enforcement officer
22 who informed the Court that he knew several of the State's
23 law enforcement witnesses and the Court failed to excuse the
24 voir dire person during voir dire. And again upon discovery
25 the same voir dire person was charged with a crime and the

DIRECT EXAMINATION OF B. GREENE BY MR. FALK

1 assistant solicitor participated in the disposal of that
2 trial court. So, is that what you were talking about
3 before?

4 A Yes, sir, Theodore Gill.

5 Q Juror number 55?

6 A Yes, sir.

7 Q That was Theodore Gill?

8 A Yes, sir.

9 Q He had an ABWIK, similar to what you were charged
10 with?

11 A Yes, sir.

12 Q And you said that the Solicitor in that case was
13 able to get that expunged?

14 A Expunged, yes, sir.

15 Q And I believe that Mr. Murdaugh said that his
16 father is a sheriff.

17 A Yes, sir.

18 Q Okay. And did you tell him that you -- I mean,
19 you had more strikes left, did you think that --

20 A I mean, I wanted to strike Mr. Theodore Gill just
21 because of what he attest to the Court that he used to be an
22 officer and he knew plenty of witnesses in the case that
23 were witnesses for the State and that he was charged with
24 assault and battery intent to kill and that the solicitor
25 that was trying my case got his case expunged. I felt like

DIRECT EXAMINATION OF B. GREENE BY MR. FALK

1 I didn't want him on my jury trial, but my lawyer's
2 strategy, I guess, felt that it was best that he be on there
3 because of the charge that he had.

4 Q Now, on number -- Part D of your -- Paragraph
5 10(d) of your PCR application, the voir dire person failed
6 to respond to the Court's query -- this was in mid-trial.
7 That the -- I'm looking at Page 3 of your addendum.

8 A Yes, sir. Yes, sir.

9 Q So, one of the jurors failed to respond to the
10 Court's question whether he knew any of the State's
11 witnesses and that it became clear that he did know one of
12 the witnesses?

13 A Yes, sir.

14 Q That was Mister --

15 A Youmans.

16 Q -- Darian Youmans?

17 A Youmans, yes, sir.

18 Q That was Juror 172. And when that became clear,
19 did you ask your lawyer to have him struck?

20 A Yeah, we stepped out of the Judge's chamber and we
21 spoke about it and I told him that I wanted to have him
22 struck.

23 Q And what happened?

24 A He said that -- well, he kind of figured that I
25 would want to do that being that it came to light that he

DIRECT EXAMINATION OF B. GREENE BY MR. FALK

1 spoke with a witness that was involved in the case.

2 Q And did your lawyer move for a mistrial?

3 A No, sir.

4 Q Was the juror struck?

5 A Yes, sir.

6 Q And that put Cecil Jenkins on the -- on the -- the
7 first alternate was then put on?

8 A Yes, sir.

9 Q Did your lawyer give you an explanation why he
10 didn't move for a mistrial?

11 A It was told to him by a Judge that he could bring
12 forth before the Court why the juror was strike, but he told
13 me like it really wouldn't have made no difference though.

14 Q And then, moving now through your application to
15 Paragraph E. You said that the solicitor failed -- that the
16 solicitor brought up an uncharged offense during his opening
17 argument; is that correct?

18 A Yes, sir.

19 Q What was that offense?

20 A He said in the beginning -- let me see. Please
21 forgive me, Court.

22 (Pause.)

23 A Okay. In my trial transcript, Page 66, he says,
24 Not only -- even though he's not charged with it, there's a
25 law in South Carolina that you can't possess a gun. And he

DIRECT EXAMINATION OF B. GREENE BY MR. FALK

1 says right there, Brandon Greene is breaking the law by
2 possessing a gun. I felt the jury didn't know that I was
3 incarcerated before, so giving that information from the
4 solicitor that put in they minds, I guess that put in they
5 minds that I was already charged for a gun that I wasn't
6 able to possess them.

7 Q So, what was your understanding of why he said you
8 can't possess a gun?

9 A What was my understanding?

10 Q I mean, why do you think that Mr. Murdaugh said
11 that you couldn't possess a gun?

12 A Because he knew of my prior conviction.

13 Q So, you had a prior felony conviction?

14 A Yes, sir. It was an ABHAN.

15 Q And so, that is lines 2 through 5 of Page 66 of
16 the transcript?

17 A Yes, sir.

18 Q And moving on to Paragraph F. What did you feel
19 that the trial court was unfairly restricting cross
20 examination of a key prosecution witness?

21 A Well, when Mr. Bozeman, he gave conflicting
22 stories about his statement and his testimony and trial
23 lawyer. He got Mr. Bozeman to read his statement before the
24 Court to the jury and he played the recording and it showed
25 a difference, and he went to -- the trial lawyer went to

DIRECT EXAMINATION OF B. GREENE BY MR. FALK

1 question Mr. Bozeman about the conflicting stories in his
2 statement and in his testimony and the Judge basically made
3 him -- told him to move on because it was told that we can
4 tell that it's conflicting stories of -- I think that it
5 is -- he said something as to the fact that he knows
6 something there to be correct. Can I turn to the trial
7 page?

8 Q All right. Let's move on to Page 3(c) of your
9 application, and I'm looking at Paragraph 10(g).

10 A Okay.

11 Q So, there were inconsistent statements made by
12 Dexter Bozeman; is that correct?

13 A Yes, sir.

14 Q And Keith King?

15 A Keith King, he said that he wrote a statement to
16 Mr. Bruce Davis, but it came to when they had a side bar,
17 the Judge said before, without the jury in the Court that
18 they had a sidebar and what was said that Mr. Keith King
19 said that he wrote a statement to Mr. Bruce Davis, which I
20 think is the State investigator. And Mr. Bruce Davis say
21 that he never received any statement from that witness. And
22 the witness, Mr. Keith King was saying things of the nature
23 that I had an altercation with him. And he said something
24 different than Dexter Bozeman said, he said that he was
25 leaving because he didn't want any situations or problems

DIRECT EXAMINATION OF B. GREENE BY MR. FALK

1 with me when Dexter Bozeman said that Mr. Keith King was
2 leaving because he was going home to get something to eat
3 because he was hungry or something like that I think.

4 Q So, it is your understanding that Keith King gave
5 a statement to the prosecution's or the solicitor's
6 investigator; is that correct?

7 A From what he said, but it turned out he never --
8 he never made a statement.

9 Q How do you know that he never made a statement?

10 A The State said that they never received a
11 statement or took any statement from him. And Mr. Bruce
12 Davis, the guy that he said that he wrote the statement to,
13 also said that he didn't receive or took any statement from
14 him.

15 Q What about Mr. Badget, Bernard Badget?

16 A I don't think his statement was ever in evidence
17 or identification or anything like that. But he did
18 testify. And what he testified to was basically the same
19 thing that Mr. Keith King testified to, but Mr. Badget said
20 that I had a firearm and I fired shots at Mr. Keith King.
21 But when it was asked of Mr. Keith King did I ever fire a
22 gun at him, he said no.

23 Q But did Mr. Badget make a statement?

24 A Mr. Bernard Badget?

25 Q Yes.

DIRECT EXAMINATION OF B. GREENE BY MR. FALK

1 A He wrote a statement, but it was never in evidence
2 or identification for Court.

3 Q Okay. On 10(h), you said that your trial counsel
4 failed to object when the solicitor was pitting witnesses
5 against -- which ones are you talking about here?

6 A The Keith King situation. It was like he kept
7 asking me about the altercation between me and Keith King,
8 and I kept telling him that they lied about that, that that
9 situation never happened. Because the State even asked
10 Dexter Bozeman about the situation, and we were all in the
11 same vicinity and he said that he never seen nothing like
12 that happen. And from Mr. Keith King's testimony, Bernard's
13 statement and testimony, Mr. Tony Badget's statement and
14 testimony, they all testified that me and Mr. Keith King had
15 an altercation, but everybody's conflicting stories never
16 matched up.

17 Q Was the solicitor ever challenging saying, Why
18 would Mr. King lie.

19 A Yes, he basically say, Well, they lied about that.
20 And I said that was a total lie. I told them that was a
21 total lie.

22 Q So, the jury heard it was either you or Mr. King
23 is lying?

24 A Basically.

25 Q How do you think that that prejudiced your case?

DIRECT EXAMINATION OF B. GREENE BY MR. FALK

1 A Because they made it seem like I went down there
2 to cause trouble with these people and I didn't.

3 Q Did your trial counsel object?

4 A No, sir.

5 Q And did you -- was there any discussion about
6 whether or not your trial counsel would ask for an
7 instruction on manslaughter?

8 A When the jury came back with the question asking
9 him what degree of murder I guess they could deliberate on,
10 the Judge didn't give them an instruction on that lesser
11 included offense and my lawyer never objected to, you know
12 what I am saying, that there was a lesser included offense
13 which they felt like 'I guess I didn't murder, but they felt
14 like it was a charge lesser than.

15 Q And 10(j). You are saying that the trial counsel
16 failed to object -- no, no, no, sorry, that is issue of
17 appellate counsel, excuse me.

18 Now, you received a sentence that you believe
19 was -- the last argument was the sentence that you received,
20 40 years, exceeded the statutory maximum?

21 A Yes, sir.

22 Q And what was your understanding there?

23 A That before -- during the time that I was charged
24 and indicted it was still under the law that it was either,
25 if you are guilty -- if you plead guilty to murder, you are

DIRECT EXAMINATION OF B. GREENE BY MR. FALK

1 found guilty of murder, it's like you must be punished by
2 imprisonment for life or a mandatory minimum sentence for 30
3 years, but the law language didn't change on that until I
4 think that it was June of 2010, or that next year where it
5 says 30 to life. Thirty years to life. And I felt like
6 giving the 40-year sentence was exceeding the maximum time.

7 Q Well, you could have gotten life and you didn't
8 get life, you got 40 years.

9 A Excuse me?

10 Q You could have gotten a life sentence; is that
11 correct?

12 A Yes, sir.

13 Q Okay.

14 A But that was -- I thought that was saying the 30
15 to life was a life sentence on that, being that the law
16 didn't change until that time.

17 Q Okay. Do you have anything else that you would
18 like to add? I think that we have walked through the
19 allegations in your application. And I think that you have
20 had an opportunity to flush out the basis of those
21 allegations. Is there anything else that you would like to
22 add?

23 A Just that with the conflicting stories in my case
24 is like -- and the understanding that, how can I say, the
25 way that the Judge worded it about being towards both, both

DIRECT EXAMINATION OF B. GREENE BY MR. FALK

1 charges, I was thinking basically if it was found that --
2 the way that he worded his instruction to the jury, if he's
3 found not guilty or there's a doubt, that he should be found
4 not guilty, that I should be found not guilty of the charges
5 that I was in court for, on trial for. Basically saying if
6 it was malice for one, it was malice for both. And they
7 didn't find malice for one, so then how could you find
8 malice in the next one when it was both the same action? I
9 was running from these people.

10 Q So, you were convicted for the murder of whom?

11 A Dominique Badget.

12 Q And the ABWIK charge was dismissed?

13 A Yes, sir, that was the Anthony Badget.

14 MR. FALK: I have nothing else, no further
15 questions of this witness.

16 THE COURT: Okay.

17 THE WITNESS: Step down?

18 THE COURT: No, you have to answer questions from
19 attorney Neely.

20 THE WITNESS: Okay.

21 CROSS EXAMINATION

22 BY MR. NEELY:

23 Q Quickly, Mr. Greene. Speaking of Theodore Gill on
24 the jury.

25 A Yes, sir.

CROSS EXAMINATION OF B. GREENE BY MR. NEELY

1 Q You mentioned concerns and you and counsel talked
2 about that?

3 A Yes, sir.

4 Q After you spoke and discussed the pros and cons of
5 having Mr. Gill on the jury, you agreed with Counsel's
6 decision that he could be on the jury; is that right?

7 A I did, after the fact that he said that it would
8 be best that we place him on the jury because of his charge,
9 he would understand what I was on trial for more better.

10 Q And that is because Mr. Gill had had a previous
11 assault charge?

12 A Assault and battery with intent to kill charge,
13 yes, sir, basically the same charge that I was on trial for.

14 Q Okay. But you did discuss that with counsel at
15 the table?

16 A Say under the table?

17 Q At the table.

18 A Yes, sir, at the table. Because -- can I finish?

19 Q Sure.

20 A No, because when he asked me, you know what I am
21 saying, what do I want to do about that juror I was like,
22 well, being that he admitted that he's been acquitted, had
23 his record expunged by the same person that is trying my
24 case I felt like I didn't feel comfortable with him being
25 there. But as for my attorney, I figured that he knew his

CROSS EXAMINATION OF B. GREENE BY MR. NEELY

1 strategy or what he was doing, so I trusted him, I trusted
2 him in choosing that juror.

3 Q You are aware that acquitted and expunged are not
4 the same thing?

5 A Yes, sir, I am aware of that. I didn't mean to
6 say acquitted, but I mean expunged.

7 Q Okay. So, he was actually charged and pled guilty
8 or was found guilty of ABWIK?

9 A I'm not sure if he was or not. All it was said
10 that he had -- that Mr. Murdaugh had his case expunged, or
11 his record expunged.

12 Q OKay. It's fair to say that you don't have
13 personal knowledge of that situation, correct?

14 A I don't have personal knowledge of Mr. Theodore
15 Gill other than what he spoke of before the Court.

16 Q Just to clarify, you said that a bunch of people
17 in the jury pool, whenever they had the big pool of jurors,
18 a lot of black people stood up and said, I know somebody in
19 this case, I can't be part of the jury?

20 A Yes, sir, it was a few people that say that they
21 were family members of the State's side witnesses and a few
22 people that say that they were family or friends of the
23 family on that side and my side. I even had like a few
24 cousins that I had on there that were striked. Well, not
25 even striked because they didn't -- the Judge, one of my

CROSS EXAMINATION OF B. GREENE BY MR. NEELY

1 cousins, the Judge excused him himself. He excuse him
2 hisself..

3 Q Is it fair to say that after voir dire took place
4 and the Judge excused people who said that they knew
5 somebody in the trial, there was a predominantly white jury
6 pool left?

7 A Yes, sir.

8 Q That is not the fault of Mr. Gipson, correct?

9 A Not by people getting up, no, I wouldn't say that
10 that was his fault.

11 Q Okay. And the conflicting statements that were
12 given, Mr. Gipson cross-examined those witnesses about their
13 conflicting statements didn't he?

14 A To an extent, yes.

15 Q Okay.

16 A Can I say something else? I felt like with Dexter
17 Bozeman, he could have said more with Dexter Bozeman to the
18 point that it could have been explained better of how the
19 truck doors were left open because everybody left out a
20 whole part of the whole situation. Nobody mentioned the
21 truck doors being opened, how they got open, the truck being
22 cranked. Because I think that it was a deputy that got up
23 on the stand that said, when they arrived on the scene or
24 the area where the situation happened the truck was still
25 running, the lights were on, the doors were opened. And I

CROSS EXAMINATION OF B. GREENE BY MR. NEELY

1 testified how that came upon, that is the reason why I took
2 the stand to like fill in the blanks everything that
3 everybody else left out which was Dominique Badget having
4 the driver's door open, that is how the truck got cranked up
5 and the passenger's door was because his brother jumped back
6 out of the truck to come back at me and attack me or
7 whatever.

8 Q Is it fair to say that the tackle, the doors being
9 opened were not the main issue in this case, the main issue
10 was whether or not you were trying to defend yourself from
11 Mr. Badget and Dominique?

12 A Yes, sir, and that is why I felt like by him
13 questioning Mr. Bozeman more on what the situation was it
14 would have brought out what the situation was or how it
15 really started. Because Mr. Bozeman said in his testimony
16 that the incident happened behind the car that I was
17 driving, and then Mr. Badget, Tony Badget, said that the
18 incident happened on the side of the car that I was driving.
19 And it is like when they found shells or empty cartridges
20 they say they found it on, like basically on the side of the
21 car that I was driving in between a woodpile and a trailer,
22 so the incident never happened behind the car as Mr. Bozeman
23 stated.

24 Q But you were able to testify to all of that on
25 direct examination, correct?

CROSS EXAMINATION OF B. GREENE BY MR. NEELY

1 A Yes, sir.

2 MR. NEELY: That is all of the questions I have,
3 Your Honor .

4 THE COURT: Anything on redirect?

5 MR. FALK: No redirect, Your Honor.

6 THE COURT: Thank you very much, sir. You may
7 step down.

8 THE WITNESS: Thank you.

9 MR. FALK: I believe Mr. Greene's grandfather is
10 here. May I have a moment, Your Honor?

11 THE COURT: Yes.

12 (Brief recess.)

13 Thereupon,

14 SAMUEL GREENE

15 was called as a witness, having been first duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. FALK:

19 Q Mr. Greene, if I stand here, can you hear me?

20 A I can hear you.

21 Q Okay. Can you please state your name.

22 A Samuel Greene.

23 Q How do you spell your last name?

24 A Greene with an E.

25 Q Okay. And are you related to Brandon Greene?

DIRECT EXAMINATION OF S. GREENE BY MR. FALK

1 A That is my grandson.

2 Q Okay. And you are aware of the charges that he
3 had; is that correct?

4 A Yes, sir.

5 Q Okay. And there was a discussion about whether or
6 not when your grandson showed up at the scene, whether or
7 not he was planning on going fishing. Was there fishing
8 gear in his car?

9 A Yes, it was.

10 Q Is there an explanation why when the police got
11 there there was no fishing gear in the car?

12 A Well, the car was rented to me and I was letting
13 him drive the car and they said that they were going to
14 confiscate the car. I started taking the stuff out and
15 putting it in my little house. And when the other officer
16 came, they didn't say anything. They said, Well, let me
17 look at the car, what was in the car. I had already take
18 the stuff out because I didn't want -- because the car was
19 my car, it wasn't his car and that is the reason that I took
20 it out. The reason why was because I didn't know what was
21 going on because the officers told me that he was only
22 taking my grandson for safety purposes, that is all that he
23 said.

24 Q Okay. Did you have a conversation with
25 Mr. Gipson, your grandson's lawyer?

DIRECT EXAMINATION OF S. GREENE BY MR. FALK

1 A I talked to him. I have talked to him.

2 Q Did you tell him about the taking of stuff out of
3 the car?

4 A I told him.

5 Q And when was that; was that prior to the trial?
6 That was before he went -- that was before the trial
7 started, wasn't it?

8 A Before the trial, yes, it was.

9 Q Okay. How many conversations did you have with
10 his lawyer?

11 A One or two.

12 Q Okay.

13 MR. FALK: I have no more questions.

14 THE COURT: Cross?

15 MR. NEELY: If I may.

16 THE COURT: Yes.

17 CROSS EXAMINATION

18 BY MR. NEELY:

19 Q Mr. Greene, would it be fair to say that your
20 grandson Brandon has been in trouble before this incident?

21 A Yes, he had been in trouble.

22 Q What kind of trouble had he been in before?

23 A Fighting.

24 Q Fighting?

25 A (Nods in the affirmative).

CROSS EXAMINATION OF S. GREENE BY MR. NEELY

1 Q But would you still say that Brandon was a good
2 kid?

3 MR. FALK: Relevance, objection.

4 MR. NEELY: I believe that the relevancy will be
5 established later when Mr. Gipson testifies.

6 THE COURT: I will give leeway, overruled.

7 BY MR. NEELY:

8 Q Would you say that Brandon is a good kid?

9 A Yes, he is.

10 Q Why would you say Brandon is a good kid?

11 A Well, he always would go to work and come back and
12 go to work and come back. And I don't know what happened
13 because I was not there, what went on. I was in my bed and
14 his sister called me and told me that her brothers and all
15 had guns down there, but that was all. So I didn't pay any
16 attention to it until my wife said that, Let's go down to my
17 sister-in-law's house because there's a lot of cars down
18 there. And we went down there and still didn't see
19 anything, so I still didn't know nothing until about two
20 days later.

21 MR. NEELY: That is all of the questions that I
22 have, Your Honor.

23 THE COURT: Anything further?

24 MR. FALK: No redirect.

25 THE COURT: Thank you very much, sir. You may

CROSS EXAMINATION OF S. GREENE BY MR. NEELY

1 step down.

2 MR. FALK: We would like to call Mr. Gipson to the
3 stand.

4 THE COURT: Okay. Come around and you are still
5 under oath, sir.

6 Thereupon,

7 BYRON GIPSON

8 was recalled as a witness, having been previously duly
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. FALK:

12 Q Do you recall having conversations with Mr. Greene
13 regarding Theodore Gill?

14 A Which Mr. Greene?

15 Q Sorry, my client.

16 A Yes.

17 Q What were those about?

18 A Similar to what he recounted, you had a juror
19 previously charged with assault and battery with intent to
20 kill, which was exact the same charge that he was facing.
21 And, you know, my position strategy-wise is that it is rare
22 that you have a person who is able to sit on a jury who has
23 been charged with a similar offense, you know, of that
24 magnitude. And you would want to have somebody who is had
25 the chance, or not the chance, it is not something that you

DIRECT EXAMINATION OF B. GIPSON BY MR. FALK

1 want, but who has had that history, being charged, having to
2 deal with family, explain what is going on, what happened,
3 didn't happen, and who has had to go through the trepidation
4 of being charged with something like that and then being
5 found either not guilty or having it dismissed.

6 You have somebody now who thinks similarly to
7 how you think, somebody who has seen some of the things that
8 you have seen, that you almost never get in this type of
9 trial. So, to me, that is the type of juror that you want
10 to have because he would be sympathetic to some of the
11 things that you are going through. And I believe, based on
12 the fact this he was found not guilty of assault and battery
13 with intent to kill, there was something to the thought
14 process.

15 Q Mr. Gill's father was law enforcement in Hampton
16 County?

17 A He testified, but I don't recollect that.

18 Q Okay. Now, did you have a conversation with
19 Brandon Greene's grandfather?

20 A Many conversations, absolutely. We spoke
21 regularly, absolutely.

22 Q Okay. Now, you heard my client testify regarding
23 the fishing tackle in the car?

24 A I did hear that.

25 Q Isn't it true that when the car was impounded and