

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable G. Thomas Cooper, Circuit Court Judge

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S.C. SUPREME COURT

BERNARD DEWBERRY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000647

APPENDIX

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1 STATE OF SOUTH CAROLINA }
2 COUNTY OF SPARTANBURG } COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,)
5 PLAINTIFF,)
6 VS.)
7 BERNARD DEWBERRY,)
8 DEFENDANT.)

TRANSCRIPT
OF
RECORD
2015-GS-42-3593

9
10 August 22nd - 24th, 2016
11 Spartanburg, South Carolina

12
13 B E F O R E :
14 THE HONORABLE ROGER L. COUCH, Judge.

15
16 A P P E A R A N C E S :
17 ABEL GRAY and ALLISON MABBS
18 ASSISTANT SOLICITORS
Attorneys for the State

19 ANDREA PRICE and JAMES CHEEK
20 ASSISTANT PUBLIC DEFENDERS
Attorneys for the Defendant

21
22
23 PAMELA E. GREEN
24 Circuit Court Reporter
Seventh Judicial Circuit

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P R O C E E D I N G S

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2
3 THE COURT: All right. Let's see here. I have
4 received a witness list from the defense and requested voir
5 dire and a State's witness list and State's requested voir
6 dire.

7 SOLICITOR MABBS: And, Your Honor, I have an extra copy
8 if your law clerk would like one as well.

9 THE COURT: Yes, ma'am, pass it up.

10 All right. Is there anything else that I need to take
11 up with you before we pick a jury?

12 From the State?

13 SOLICITOR GRAY: The family is present, is present
14 upstairs, Your Honor.

15 THE COURT: The victim's family?

16 SOLICITOR GRAY: Yes, sir.

17 THE COURT: All right. You can go get them and bring
18 them down.

19 SOLICITOR GRAY: Yes, sir.

20 THE COURT: And I assume the defendant is here and
21 ready to go?

22 MS. PRICE: He is in custody in the jail room.

23 THE COURT: All right. Let's get him in the courtroom.
24 we'll take a short break while they get him in and
25 anybody needs to use -- can run, can run.

1 (WHEREUPON, a short recess was taken at this time.)

2 THE COURT: Mr. Gray, is the family on the way?

3 SOLICITOR GRAY: Yes, Your Honor.

4 THE COURT: Okay. They're on the way.

5 (Pause.)

6 THE COURT: Mr. Gray.

7 SOLICITOR GRAY: Yes, sir.

8 THE COURT: Mr. Gray, you and Ms. Price approach.

9 SOLICITOR GRAY: Yes, sir.

10 (WHEREUPON, a bench conference was held at this time.)

11 THE COURT: All right. Let's come to order please.

12 Ms. Price, I have received an indictment in Case Number
13 15-GS-42-3593. It appears that that indictment has two
14 counts on the indictment. Count One is for the offense of
15 murder. Count Two is for the possession of a firearm during
16 the commission of a violent crime.

17 Now, has your client been arraigned on those charges?

18 MS. PRICE: Your Honor, these are the charges that he
19 was originally arrested on and he was indicted as such. So
20 I believe he has already been arraigned at his appearance
21 before the magistrate when he was arrested in May of 2015.
22 So I'll waive formal arraignment again today. I think
23 would -- it would be duplicative.

24 THE COURT: I see.

25 okay. And I assume he is -- continues to plead not

1 guilty and requests trial by jury?

2 MS. PRICE: He does, Your Honor, and is prepared to go
3 forward.

4 THE COURT: All right. Now, is there anything the
5 state wishes to take up with the Court before we bring the
6 jury in for jury selection?

7 SOLICITOR GRAY: No, sir, not for jury selection, no,
8 sir, Your Honor.

9 THE COURT: All right. Anything from the defense?

10 MS. PRICE: No, Your Honor.

11 THE COURT: I understand there are some pretrial
12 motions. We'll take those up once the jury has been
13 selected.

14 All right. I'll ask the bailiffs, if they would, to
15 bring the potential jury panel back to the courtroom.

16 (Pause.)

17 THE COURT: Mr. Gray, can you check the shirt and be
18 sure we can't see anything?

19 She's right behind you.

20 Turn around, ma'am.

21 (The unidentified individual replies.)

22 THE COURT: Okay. That's gonna be fine. Thank you
23 very much.

24 (Pause.)

25 SOLICITOR GRAY: Your Honor?

1 THE COURT: Yes, sir.

2 SOLICITOR GRAY: Ten and five?

3 THE COURT: I'm sorry?

4 SOLICITOR GRAY: Ten and five?

5 THE COURT: Yes, or should I say five and ten?

6 THE CLERK: You want to pick one alternate?

7 One alternate?

8 THE COURT: Probably, probably do two if we're gonna go
9 three days.

10 THE CLERK: Yes, sir.

11 (WHEREUPON, the following takes place within the
12 presence of the entire jury panel.)

13 THE COURT: All right. Thank you very much.

14 Ladies and gentlemen, we're about to begin the trial of
15 the case of the State of South Carolina against Bernard
16 Dewberry. I have been presented with an indictment in this
17 case for trial. This indictment is in Case Number
18 2015-GS-42-3593.

19 Now, this indictment contains two counts or two charges
20 within the same indictment. I'm going to, at this time, go
21 over the indictment with you, but, in doing so, let me point
22 out to you that the indictment is simply the document that
23 brings the case into this Court. It represents the formal
24 charge that has been lodged against this defendant.

25 Now, as such, it can not be used by a jury in any

1 fashion whatsoever in determining the guilt or the innocence
2 of a defendant charged within that indictment. Again, it
3 simply informs this Court of the charge to be tried. It
4 informs the defendant of the charge lodged against him. It
5 is simply an informational document.

6 Now, I'm going to go over it with you because some of
7 the information contained in the indictment may assist you
8 later on in your answering the questions that I'm about to
9 ask you that pertain specifically to this trial.

10 Count Number One of this indictment is for the offense
11 of murder. The indictment states that Bernard Dewberry did,
12 in Spartanburg County, on or about May the 9th of 2015,
13 feloniously, willfully, and with malice aforethought, kill
14 one Jerry Wayne Fernandez by shooting the victim and that
15 the said victim died as a proximate result thereof in
16 violation of Section 16-3-10 and 20 of the Code of Laws of
17 South Carolina, 1976 as amended.

18 Count Number Two of the indictment is for the crime of
19 possession of a firearm during the commission of a violent
20 crime. The indictment states that Bernard Dewberry did, in
21 Spartanburg County, on or about May 9 of 2015, possess a
22 firearm during the commission of a violent crime as defined
23 in Code Section 16-1-60, to wit, murder, in violation of
24 Code Section 16-23-490 of the Code of Laws of South
25 Carolina, 1976 as amended, against the peace and dignity of

1 the State and contrary to the statute in such case made and
2 provided.

3 So, again, that is the indictment that's been presented
4 to us. I've gone over it with you so that you might more
5 fully answer the questions I'm about to ask in just a few
6 minutes. But, again, it can not be used by a jury in any
7 manner whatsoever in determining the guilt or the innocence
8 of a defendant. The defendant has pled not guilty to that
9 indictment and has requested a trial by jury.

10 Now, I'm going to ask you a series of questions.
11 Again, I want to provide you with some information that
12 might assist you in answering those questions.

13 First of all, one of the things I want you to be aware
14 of are the names of the attorneys that are involved in the
15 trial of this case.

16 So, at this time, I would ask that the attorneys
17 introduce themselves, and in the case of the defense, if you
18 would introduce the defendant to the jury as well.

19 For the State.

20 SOLICITOR GRAY: My name is Abel Gray. I'm a senior
21 assistant solicitor here in Spartanburg County. I'll be
22 prosecuting this case along with --.

23 SOLICITOR MABBS: My name is Allison Mabbs. I'm also
24 an assistant solicitor here in the Spartanburg solicitor's
25 office.

1 THE COURT: Now for the defense.

2 MS. PRICE: Thank you, Your Honor.

3 Good afternoon now, ladies and gentlemen. My name is
4 Andrea Price and I represent Mr. Bernard Dewberry.

5 THE COURT: Sir, if you'll stand and face the jury
6 panel so that they can place a face with that name.

7 (Defendant complies.)

8 THE COURT: Thank you very much. You can be seated.

9 (Defendant complies.)

10 THE COURT: Now, ladies and gentlemen, the questions
11 that I'm about to ask you obviously are important because
12 they'll be used by the attorneys to determine their strikes
13 in the case and, again, it's important that the information
14 that you provide in response to the questions I'm going to
15 ask you is truthful, honest, and complete information.

16 So, for that reason, I'm, again, gonna ask the clerk to
17 place you under oath in this case to be truthful in your
18 responses to this Court.

19 Madam Clerk, please swear the jury panel.

20 THE CLERK: Yes, sir.

21 (WHEREUPON, the jury panel was placed under oath at
22 this time.)

23 THE COURT: Now, if there's any member of the jury
24 panel who either failed or refused to take the oath just
25 administered by the clerk, I'd ask that you now stand.

1 (No response.)

2 THE COURT: All potential jurors, it appears, have now
3 been sworn concerning their responses that they're about to
4 give in the case.

5 Now, we're gonna follow a process similar to the
6 process we followed in the qualification situation. I'll be
7 asking you questions. If you have a response to those
8 questions, I'll be asking that you stand. I'll call on you
9 individually. Again, I'll need your name and number on the
10 record before I discuss whatever response you might have to
11 these questions and we proceed.

12 My first question. Has any member of this jury panel
13 ever been related by marriage or have you ever been related
14 by blood to either the -- just one second -- there it is.
15 The defendant in this case, Mr. Bernard Dewberry, or the
16 alleged victim in this case. That would be Jerry Wayne
17 Fernandez.

18 So if you've been related by marriage or blood to
19 either of those individuals, please stand.

20 (No response.)

21 THE COURT: Has any member of the jury panel ever had a
22 close social, personal, or a business relationship with
23 either of those individuals, that is the defendant, Bernard
24 Dewberry, or the alleged victim, Jerry Wayne Fernandez, if
25 that's true, please stand.

1 (No response.)

2 THE COURT: Now, as to the attorneys involved in this
3 case, has any member of the jury panel ever been represented
4 by either of the attorneys in this matter or have they ever
5 appeared on the other side of a legal matter from you, if
6 that is true, please stand.

7 (Juror responds.)

8 THE COURT: Name and number, sir.

9 THE JUROR: Number four, Joseph Barcopia.

10 THE COURT: Yes, sir.

11 THE JUROR: I believe the defense attorney represented
12 a case that had something to do with my son that went on.

13 THE COURT: I see.

14 THE JUROR: I'm not -- I mean I don't think it's a
15 problem, no, sir.

16 THE COURT: Well, let me ask you this. That -- if that
17 is true, if, in fact, that's true, would that affect your
18 ability to be both---

19 THE JUROR: No, sir.

20 THE COURT: ---fair and impartial to both sides in this
21 case?

22 THE JUROR: No, Your Honor.

23 THE COURT: All right. Thank you. You can be seated.
24 Anyone else?

25 (No response.)

1 THE COURT: Now, has any member of this jury panel ever
2 been related by marriage or are you related by blood or have
3 you ever had a close social, personal, or business
4 relationship with any of the attorneys involved in the case,
5 if that's true, please stand.

6 (No response.)

7 THE COURT: Now, I'm going to go over a list of people
8 who have been identified to me by the attorneys as possible
9 witnesses in this case. These -- this list is fairly
10 lengthy. So what I'm going to do is I'm going to call out
11 ten names. Then I'll stop and ask you about those
12 individuals. Then I'll call about another group so that we
13 don't try to remember all of these names for the whole
14 period of time. The total is about 31 names. So I'm gonna
15 try to break it down so that we don't cover too many at any
16 one given time.

17 So the people that have been identified to me as
18 possible witnesses in this case are Mr. Doug Smith. He is
19 with the Spartanburg County Sheriff's Office.

20 If I indicate that someone is with the Sheriff's
21 office, it will be the Spartanburg Sheriff's Office or I'll
22 specifically state otherwise. So if I say Sheriff's Office,
23 that's who I'm referring to.

24 Next one is Robert Talanges. He's with the Sheriff's
25 office.

1 Coby Stepp also with the Sheriff's Office.

2 Michelle Pearson with the Sheriff's Office.

3 John Moriarty with the Sheriff's Office.

4 Harry Cline with the Sheriff's Office.

5 Sara Kruger with the Sheriff's Office.

6 Mike Winks with the Sheriff's Office.

7 Tony Knighten with the Sheriff's Office.

8 Robert Rosenberg with the Sheriff's Office.

9 That's the first ten of those individuals.

10 My question to you is has any member of the jury panel
11 ever been related by marriage or are you related by blood or
12 have you ever had a close social, personal, or business
13 relationship with any of the individuals that I just named
14 to you, if that is true, please stand.

15 (No response.)

16 THE COURT: All right. The next names from the list of
17 potential witnesses.

18 Fred Lux with the Sheriff's Office.

19 David Lewis with the Spartanburg County EMS.

20 Leslie Horton with Spartanburg County EMS.

21 Doctor David Wren. I believe he works for the Medical
22 Center, Regional Medical Center and also with the Coroner's
23 Office.

24 Dwayne Corn with the Coroner's Office.

25 Lee Burnette with the Cowpens Police Department.

1 James Owens with the Cowpens Police Department.

2 Keith Lee with Spartanburg County 9-1-1.

3 Jason Bryant.

4 Versi Fernandez.

5 Now, as to those individuals, has any member of the
6 jury panel ever been related by marriage or are you related
7 by blood or have you ever had a close social, personal, or
8 business relationship with any of those people that I've
9 named as possible witnesses in the case, if that's true,
10 please stand.

11 (Juror responds.)

12 THE COURT: Name and number, ma'am.

13 THE JUROR: Number 73.

14 THE COURT: You knew one of the -- know of those
15 individuals?

16 THE JUROR: I was friends in high school with Jason
17 Bryant.

18 THE COURT: I see.

19 Been a couple years ago I believe since high school?

20 THE JUROR: A few years.

21 THE COURT: All right. Now, ma'am, would the fact
22 that -- if he were to be a witness in this case and you were
23 seated on the jury, the fact that you had that prior
24 knowledge of him, would that affect your ability to be fair
25 and impartial to both the State and the defense?

1 THE JUROR: None at all.

2 THE COURT: All right. Thank you, ma'am. You can be
3 seated.

4 Anyone else?

5 (No response.)

6 THE COURT: All right. The next people off of the
7 list, Najee, it's N-A-J-E-E, Whitney.

8 Amanda Newland.

9 Brio Means.

10 Chad Mitchell.

11 Adrienne Fuller.

12 Lanna Fernandez.

13 Reese Dodd.

14 Samantha Laney.

15 Now, as to those individuals that I just named, has any
16 member of the jury panel ever been related by marriage or
17 are you related by blood or have you ever had a close
18 social, personal, or business relationship with any of the
19 individuals I just named as possible witnesses in the case,
20 if that's true, please stand.

21 (No response.)

22 THE COURT: All right. Now, this case -- this incident
23 is alleged to have occurred on May the 9th of 2015, and it
24 occurred in the community of Cowpens allegedly here in
25 Spartanburg County.

1 My question is have any of you discussed this case or
2 have you heard anyone discuss this case or have you received
3 any information from any source, including the media, either
4 today or at anytime before today, such that it would have
5 caused you to either form or express an opinion about any
6 issue or matter that might be involved in this?

7 So if you have received or gathered such information,
8 please stand.

9 (No response.)

10 THE COURT: Is there any member of this jury panel who
11 is related by blood or ever been related by marriage or do
12 you have a close personal friend of anyone who is employed
13 in the Seventh Judicial Circuit Solicitor's Office, the
14 Spartanburg County Sheriff's Office, the Spartanburg City
15 Police Department, any police department in any town or
16 municipality in Spartanburg County, in the State Law
17 Enforcement Division, or at Spartanburg Regional Medical
18 Center?

19 So if you're related by blood or marriage or you have a
20 close personal friend of anyone who is employed in any of
21 those locations, and I will put in also the Seventh Judicial
22 Circuit Public Defender's office as well.

23 So if you, if you have a friend, close friend or if
24 you're related to someone who is working within those
25 offices, please stand.

1 (Jurors respond.)

2 THE COURT: I'll start back here in the corner.

3 Your name and number please, ma'am.

4 THE JUROR: 135, Yvonne Tanbonliong.

5 THE COURT: Yes, ma'am, you're related to someone where
6 or know someone?

7 THE JUROR: Spartanburg Regional Healthcare. I'm
8 sorry.

9 THE COURT: I see.

10 THE JUROR: My father works there.

11 THE COURT: I see.

12 Now, would that fact affect your ability to be fair and
13 impartial in the trial of this case?

14 THE JUROR: I don't believe so.

15 THE COURT: Well, I have to know would it affect it.

16 THE JUROR: I don't think so.

17 THE COURT: Well, that's -- not thinking so is not
18 telling me---

19 THE JUROR: No, sir.

20 THE COURT: ---whether it would or not.

21 THE JUROR: No, sir.

22 THE COURT: So I have to get you to say could -- can
23 you be fair and impartial to either side.

24 THE JUROR: Yes, sir.

25 THE COURT: Thank you.

1 Name and number, sir.

2 THE JUROR: John Rennor, Juror 105. My brother-in-law
3 works for Spartanburg Sheriff's Office as a school resource
4 officer.

5 THE COURT: I see.

6 Any other connections?

7 THE JUROR: No, sir.

8 THE COURT: All right. Now, would that fact affect
9 your impartiality in this matter?

10 THE JUROR: No, sir.

11 THE COURT: Thank you, sir.

12 Name and number, sir.

13 THE JUROR: William Thomason, 137.

14 THE COURT: Yes, sir.

15 THE JUROR: My sister is an employee health nurse at
16 Spartanburg Regional.

17 THE COURT: I see.

18 Now, would that fact that she works there affect your
19 impartiality in the trial of this matter?

20 THE JUROR: No, sir.

21 THE COURT: Thank you very much.

22 Name and number, sir.

23 THE JUROR: Anthony Scott, 114.

24 THE COURT: Yes, sir.

25 THE JUROR: My wife works at Spartanburg Regional

1 Medical Center.

2 THE COURT: I see.

3 Now, would that fact affect your impartiality in this
4 trial?

5 THE JUROR: No, sir.

6 THE COURT: Thank you, sir.

7 Name and number.

8 THE JUROR: William Whitfield, 153. My wife's a case
9 manager at Spartanburg Regional.

10 THE COURT: Would that affect your impartiality in this
11 case?

12 THE JUROR: No, sir.

13 THE COURT: Thank you.

14 Ma'am, name and number.

15 THE JUROR: Katie Suppiger, 132.

16 THE COURT: Yes, ma'am.

17 THE JUROR: My father-in-law is a detective I believe
18 in Spartanburg or Cherokee County.

19 THE COURT: Would the -- with which police agency?

20 THE JUROR: I'm not sure.

21 THE COURT: Okay. All right. Would that affect your
22 impartiality then in the trial of this matter?

23 THE JUROR: No, sir.

24 THE COURT: Thank you.

25 Name and number, ma'am.

1 THE JUROR: Samuel Justice.

2 THE COURT: Sir, excuse me.

3 THE JUROR: 67. My mom works at Spartanburg Regional.

4 THE COURT: All right. Would that affect your
5 impartiality in this case?

6 THE JUROR: No, sir, Your Honor.

7 THE COURT: Thank you.

8 Yes, ma'am.

9 THE JUROR: Joann Freeman, Number 8. The last part
10 that you presented, did you same something about the Seventh
11 Judicial attorneys or---

12 THE COURT: Well, there's, there's two different
13 agencies involved in the trial of this case. On the side of
14 the prosecution would be Seventh Circuit solicitor's office,
15 and on the defense side would be the Seventh Circuit Public
16 Defender's Office.

17 THE JUROR: Because I do---

18 THE COURT: So I'd asked about both of them, if you
19 have anyone---

20 THE JUROR: I don't know in which group they're with
21 but I do know that they work here. So --.

22 THE COURT: All right. Who is they?

23 THE JUROR: Well, Robert Hall.

24 THE COURT: Uh-huh. (Affirmative).

25 He's with the Public Defender's Office.

1 THE JUROR: Okay. And Derrick Bulsa.

2 THE COURT: He's with the prosecutor's office.

3 THE JUROR: All right. Just, just as a---

4 THE COURT: All right. Now, would the---

5 THE JUROR: ---professional.

6 THE COURT: Would the fact that you know those two
7 individuals, would that affect -- and, of course, they're
8 not directly involved in the trial of this case, but would
9 that affect your impartiality if you were on the jury?

10 THE JUROR: No.

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

13 Anyone else?

14 (No response.)

15 THE COURT: Has any member of the jury panel or a
16 member of your immediate family ever been employed by any
17 civilian or military law enforcement agency?

18 So if you've ever been employed, either by a military
19 or civilian, law enforcement agency or a member of your
20 immediate family has been, please stand.

21 (Jurors respond.)

22 THE COURT: Name and number, sir.

23 THE JUROR: John Renner, Juror 105. My brother, who is
24 deceased now, but he was a city police officer of
25 Greenville.

1 THE COURT: All right. Would that affect your
2 impartiality in this matter?

3 THE JUROR: No, sir.

4 THE COURT: Any other relatives in police business?

5 THE JUROR: Other than my brother-in-law, no.

6 THE COURT: Thank you.

7 Yes, ma'am, name and number.

8 THE JUROR: Haley Cooke, 22.

9 THE COURT: Yes, ma'am.

10 THE JUROR: My uncle, Tracy Fowler, Cherokee County
11 police officer.

12 THE COURT: All right. Would that affect your
13 impartiality in this trial?

14 THE JUROR: No.

15 THE COURT: Thank you, ma'am.

16 Anyone else?

17 (No response.)

18 THE COURT: Has any member of the jury panel or a
19 member of your immediate family ever been the victim of a
20 serious physical assault, if that's occurred, please stand.

21 (No response.)

22 THE COURT: Has any member of the jury panel or a
23 member of your immediate family ever, ever been a victim or
24 a prosecuting witness in any case which was prosecuted by
25 the Seventh Circuit Solicitor's Office either in Spartanburg

1 or Cherokee Counties, if that's true, please stand.

2 (No response.)

3 THE COURT: Are you or a member of your immediate
4 family the victim or a prosecuting witness in any case which
5 is currently being prosecuted by the Seventh Circuit
6 Solicitor's Office, if that's true, please stand.

7 (No response.)

8 THE COURT: Has any member of the jury panel or a
9 member of your immediate family ever been represented by the
10 Seventh Circuit Public Defender's Office, if that's true,
11 please stand.

12 (Juror responds.)

13 THE COURT: Yes, name and number please, ma'am.

14 THE JUROR: Traci Hurt, 62.

15 THE COURT: Yes, ma'am.

16 Someone, someone has been represented by the Public
17 Defender's Office?

18 THE JUROR: I think my son has been at times.

19 THE COURT: I see.

20 Well, now, would that fact affect your impartiality if
21 they were defending this case?

22 THE JUROR: No, sir.

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

24 All right. Has any member of this jury panel ever been
25 charged with or convicted of any crime involving violence in

1 any Court of the State, if that's true, please stand.

2 THE JUROR: Your Honor, could you repeat that please?

3 THE COURT: Yes.

4 Has any member of the jury panel or a member of your
5 immediate family ever been charged with, arrested for, or
6 convicted of any crime of violence in any Court in this
7 state, if that's true, please stand.

8 (Jurors respond.)

9 THE COURT: Name and number please.

10 THE JUROR: Katie Suppiger, 132.

11 THE COURT: Yes, ma'am, your situation.

12 THE JUROR: My father and my mother when I was younger.

13 THE COURT: All right. Now, would that fact affect
14 your ability to be fair and impartial if you were a juror in
15 this case?

16 THE JUROR: No, sir.

17 THE COURT: Thank you.

18 Name and number please, ma'am.

19 THE JUROR: Haley Cooke, Number 22.

20 THE COURT: Your situation, ma'am?

21 THE JUROR: My husband was arrested for criminal
22 domestic violence --

23 THE COURT: Right.

24 THE JUROR: -- but was found not guilty.

25 THE COURT: All right. Well, would that fact though

1 affect your impartiality in this trial?

2 THE JUROR: No.

3 THE COURT: Thank you, ma'am.

4 Anyone else?

5 (No response.)

6 THE COURT: Has any member of the jury panel or a
7 member of your immediate family ever been arrested by either
8 the Cowpens Police Department or the Spartanburg County
9 Sheriff's Department, if that's true, please stand.

10 (Jurors respond.)

11 THE COURT: Name and number please, ma'am.

12 THE JUROR: Jasmine Moultrie, 93.

13 THE COURT: Yes.

14 THE JUROR: My brother.

15 THE COURT: Your brother?

16 THE JUROR: Yes.

17 THE COURT: All right. Would that affect your
18 impartiality in this trial?

19 THE JUROR: No, Your Honor.

20 THE COURT: Thank you.

21 Yes, sir, name and number.

22 THE JUROR: Mike Lancaster, 76.

23 THE COURT: Yes, sir.

24 THE JUROR: My nephew, yes, sir.

25 THE COURT: All right. Would that affect your

1 impartiality in this trial?

2 THE JUROR: No, sir.

3 THE COURT: The fact that they arrested him?

4 THE JUROR: No, sir.

5 THE COURT: Thank you.

6 Name and number please, ma'am.

7 THE JUROR: Lisa Granville, Number 7. My husband who
8 is now deceased.

9 THE COURT: All right. would that affect your
10 impartiality, ma'am?

11 THE JUROR: No.

12 THE COURT: Thank you.

13 Name and number, ma'am.

14 THE JUROR: Angela Degraffenreid, 32.

15 THE COURT: Yes, ma'am.

16 THE JUROR: My husband was.

17 THE COURT: All right. would that arrest affect your
18 ability to be fair and impartial in this trial?

19 THE JUROR: No, sir.

20 THE COURT: Thank you.

21 Ma'am, name and number.

22 THE JUROR: Tracy Heard, 62. My son.

23 THE COURT: All right. would that affect your
24 impartiality in this trial?

25 THE JUROR: No, sir.

1 THE COURT: Thank you.

2 Ma'am, name and number.

3 THE JUROR: Jesse Deingenkis, 133. I was arrested in
4 Spartanburg.

5 THE COURT: All right. Would the fact that you've had
6 that arrest affect your impartiality?

7 THE JUROR: No, sir.

8 THE COURT: Thank you.

9 Sir, name and number.

10 THE JUROR: Anthony Scott, 114.

11 THE COURT: Yes, sir.

12 THE JUROR: My son.

13 THE COURT: I'm sorry.

14 Was it you that were arrested?

15 THE JUROR: Excuse me?

16 THE COURT: Was it you that was arrested?

17 THE JUROR: No, my son.

18 THE COURT: Your son?

19 THE JUROR: Yeah.

20 THE COURT: Okay. Would that affect your impartiality
21 in this matter?

22 THE JUROR: No.

23 THE COURT: Thank you, sir.

24 All right. Is there any member of this jury panel who
25 is aware of any bias or prejudice that you might have either

1 for or against the State or the defense in this case?

2 If you're aware of such a prejudice or bias, please
3 stand.

4 (No response.)

5 THE COURT: Is there any member of this jury panel who
6 may have been a member of the Grand Jury that issued the
7 indictment in this case?

8 The indictment was issued on July the 29th of 2015.
9 If that's true, please stand.

10 (No response.)

11 THE COURT: Is there any member of the jury panel who
12 is a member of or a contributor to any group which has as
13 its primary concern the promotion of law enforcement and/or
14 victim's rights?

15 These groups would include but not be limited to such
16 groups as Mothers Against Drunk Driving, Students Against
17 Drunk Driving, Citizens Against Violent Crime, the South
18 Carolina Sheriffs Association, the South Carolina Troopers
19 Association, or other similarly oriented organizations.

20 If you've ever been a member of or a contributor to
21 such a group, please stand.

22 (Juror responds.)

23 THE COURT: Yes, ma'am, name and member.

24 THE JUROR: Debbie Cousins, 166.

25 THE COURT: Yes, ma'am.

1 THE JUROR: I contribute to the Sheriffs Association.

2 THE COURT: All right. Would that fact affect your
3 impartiality if you were to be selected on the jury?

4 THE JUROR: No, sir.

5 THE COURT: Thank you, ma'am.

6 Does any member of this jury panel know of any reason
7 whatsoever why he or she should not serve as a juror in this
8 case with particular emphasis being placed upon your ability
9 to be both fair and impartial to both the State and the
10 defendant, if you are aware of such a reason, please stand.

11 (No response.)

12 THE COURT: State have any additional questions at this
13 time.

14 SOLICITOR GRAY: No, sir, Your Honor.

15 THE COURT: Defense have any additional questions?

16 MS. PRICE: No, Your Honor.

17 THE COURT: All right. Then I'll direct the clerk to
18 prepare a list of potential jurors.

19 Let me explain to you what we're doing at this time.

20 We have a program on the computer that the clerk has
21 that makes random selections from lists of people. At this
22 time she is going to prepare such a list.

23 Now, as she does that, once the list has been prepared,
24 it will be provided to me, my law clerk, and to the, to the
25 court reporter, and we'll begin to go down that list one

1 name at a time.

2 Now, as we call the names on that list, if we call your
3 name, we want you to step out, come down the center aisle to
4 where the clerk is seated, and then stand and face the door
5 of the courtroom and what I call the back of the courtroom.

6 Now, while you're there, then the attorneys will be in
7 a position to exercise their strikes.

8 In this case, the State will get five strikes. The
9 defense will be ten strikes.

10 We're going to pick two alternates on this jury with
11 the State having one strike and the defense having two
12 strikes on each alternate.

13 Now, if you have any personal belongings that you
14 brought into the courtroom with you, when your name is
15 called, bring those items with you because, if you're
16 selected on this jury, you won't be going back to the
17 assembly room or back with the other jurors. You will be
18 seated over here in this jury box and then you will not be
19 going back to those locations until the case is over. So be
20 sure you keep your personal belongings with you and bring
21 them up when your name is called.

22 Ashley, you ready?

23 THE CLERK: Yes, sir, you ready?

24 THE COURT: All right. State ready?

25 SOLICITOR GRAY: Yes, sir, Your Honor.

1 THE COURT: Defense ready?

2 MS. PRICE: Yes, Your Honor.

3 THE COURT: All right. You may begin to call the
4 names, Madam Clerk.

5 THE CLERK: Yes, sir.

6 (WHEREUPON, a jury panel was selected at this time.)

7 THE COURT: All right. We are now selecting the
8 alternate.

9 First alternate.

10 THE CLERK: Yes, sir.

11 (WHEREUPON, the first alternate juror was seated at
12 this time.)

13 MS. PRICE: May we approach just a moment, Your Honor?

14 I'm sorry. I need clarification.

15 How many strikes does -- do we get for alternates?

16 THE COURT: The State gets one. You get two.

17 MS. PRICE: All right. Is that your second---

18 THE COURT: For each alternate.

19 THE CLERK: This is the second alternate.

20 THE COURT: This is the second alternate we're picking.

21 MS. PRICE: Okay. All right. That's what I needed
22 clarification on.

23 THE COURT: So he has now used his second strike on the
24 second alternate.

25 MS. PRICE: Yes. Thank you. I was unclear on that.

1 THE COURT: Okay.

2 (WHEREUPON, the second alternate was seated at this
3 time.)

4 THE CLERK: Jury selection has been completed.

5 THE COURT: Thank you, Madam Clerk.

6 Any objection to the jury selection process from the
7 State?

8 SOLICITOR GRAY: None from the State, Your Honor.

9 THE COURT: Any objection from the defense?

10 MS. PRICE: No, Your Honor.

11 THE COURT: All right.

12 (Pause.)

13 THE COURT: All right. Ladies and gentlemen, you have
14 been selected as jurors in this case.

15 Now, there's some matters that I have to take up with
16 the attorneys, pretrial matters, and, from my discussion
17 with them already this morning, it appears that that's going
18 to take most of the afternoon. So, at this point in time,
19 I'm going to release you to return back to the courthouse in
20 the morning to begin the trial of this case.

21 Now, let me caution you and give you some instructions
22 concerning your behavior as you leave the courthouse. When
23 you come back to the courtroom, you'll be taking another
24 oath. I know we've had you sworn twice already this
25 morning. We're gonna have you sworn again when you come

1 back into the courtroom. But this one's a little different.

2 This oath has to do with your duties and
3 responsibilities as a juror in this case, and you'll find,
4 when you take that oath, you'll be swearing to decide this
5 case based upon the law and the evidence and that alone.

6 Now, I will tell you that any information that you
7 might get outside of this courtroom is neither evidence nor
8 is it the law. It would be highly improper for you to
9 consider any information that you might receive from any
10 source outside of this courtroom. That includes media
11 reports, friends talking to you, family members talking to
12 you, you going on-line and searching either the people
13 involved in this trial or the events that are alleged to
14 have happened in this case. All of that would be a
15 violation of your oath for you to gather that information
16 and then sit on this case and decide this case because you'd
17 be considering information that was neither law or evidence.

18 The only evidence you hear in this case will be
19 testimony from witnesses. They'll be sworn to tell the
20 truth. They'll testify from this witness stand. And then
21 whatever documents or other pieces of evidence are sworn to
22 by those witnesses will go into the record. That's the only
23 evidence you'll hear in this case, and the only thing that
24 you should consider in reaching a verdict in this case.

25 At the close of the trial I'll charge you concerning

1 the law that you're to apply to the facts as you determine
2 those facts to be. So, again, there is no source of
3 evidence or law outside of this courtroom.

4 Now, we've gone to a lot of trouble just now to pick a
5 jury that has an open mind about this case, that doesn't
6 have any already made up ideas, any preconceived notions
7 about any of the issues that we're going to consider. I
8 want you to keep that open mind. I want you to keep it
9 throughout the trial until you've heard all the evidence,
10 you've heard all the arguments by the lawyers, you've heard
11 my charge on the law. Only then will you have the tools
12 that you need to begin a discussion about the issues in this
13 matter.

14 So I'm going to caution you not to discuss anything
15 about this case with anyone outside of this courtroom and
16 don't even discuss it among yourselves. I hope you realize
17 that even the most innocent conversation that you might have
18 with a family member or a friend, if you start talking about
19 the people involved in the case, or the nature of the
20 charges, or the issues involved, you may begin to make up
21 your decision tonight and you haven't heard the first word
22 of evidence in this case, and that wouldn't be fair to the
23 parties involved. That's not what we're here to do.

24 So I'm going to ask you not to discuss anything about
25 this case with anyone until I tell you to begin your

1 deliberations, and only then will you discuss it with your
2 fellow jurors in the jury room in deliberating on this case.
3 It's okay to tell family or friends look, I got jury duty
4 this week, you know I got picked on a trial, and then you
5 start talking about the Olympics, you start talking about
6 the football season, the weather, whatever you want to talk
7 about, but don't mention another word about this case.

8 Again, even the most innocent conversation you have,
9 whether you realize it or not, may begin to color your
10 decision and you haven't even heard the first word of
11 testimony.

12 So don't do that. Don't go there. Don't discuss it
13 with anyone. You'll have plenty of time, once the trial is
14 ended and you choose to, to discuss it with anybody you want
15 to discuss it with. But, at this point in time, please
16 don't do that.

17 Now, I mentioned earlier in my discussion with you
18 about here at the courthouse what you should do. But I want
19 to point out to you again that, should anyone attempt to
20 influence your decision in this case or try to give you
21 information about this case outside of this courtroom, I
22 want you to report that activity to me as soon as possible.
23 I've explained to you it's a crime in this state for anyone
24 to try to improperly influence the decision of a juror.

25 So if someone is doing that, they're committing a

1 crime. I don't think you want to be a part of that. So I
2 think you want to report it as soon as you can, and we'll
3 take the appropriate action should someone attempt to do
4 that during this trial. So let us know if that should
5 occur.

6 So, in a nutshell, my advice to you or my instructions
7 to you, as you leave the courthouse, are don't listen to,
8 watch, or read any media reports. I suspect this case will
9 be reported in the media. So it would be wise for you not
10 to watch newscasts, not to listen to the news, not to read
11 the newspaper, while you're serving on this jury. So don't
12 listen to, watch, or read media reports.

13 Don't discuss the case with anyone, even among
14 yourselves, and don't allow anyone to discuss it with you.
15 Don't gather any information on your own from any source
16 outside of this courtroom.

17 That's pretty much my instructions in a nutshell, and,
18 again, if anybody tries to contact you about your service on
19 the jury, report that to us as quickly as possible.

20 Now, I'm going to start -- we'll start again with you
21 in the morning about 9:30. The bailiffs will show you the
22 jury room that we're gonna use for this trial. They'll be
23 asking you to return to that jury room by 9:30 in the
24 morning.

25 Again, if you're not here by then, we're gonna come

1 looking for you. So be here on time, and if you have any
2 problems, let us know about those problems.

3 Again, I want to thank you for your cooperation. I
4 look forward to working with you on this trial over the next
5 few days while we get this, this matter before you. And if
6 you have any difficulty or problems, again, let the bailiffs
7 know. They'll be glad to let us know about that and we'll
8 try to take care of those things for you.

9 So, again, be back in the jury room, 9:30 in the
10 morning. Please follow my instructions cause you'll find,
11 every time you come back into this courtroom after having
12 been away, I'm gonna put you under oath and ask you whether
13 you've been able to follow those directions. Please be in a
14 position to tell me that you followed my directions.

15 Thank you very much.

16 You're free to go.

17 Oh, one other thing. There are no assigned seats in
18 the jury box except those two. Those are the alternates.
19 So, as you come and go, you can sit anywhere you'd like.

20 Thank you.

21 You're free to go.

22 (WHEREUPON, the following takes place outside the
23 presence of the jury.)

24 THE COURT: Any objections to my instructions from the
25 State?

1 SOLICITOR GRAY: No, sir.

2 THE COURT: Any from the defense?

3 MS. PRICE: No, Your Honor.

4 THE COURT: All right. We're going to break at this
5 time for lunch. I'll ask you to be back at 2:15. That
6 should give us a little more than an hour for lunch and
7 we'll be in a position then to begin with pretrial motions.

8 The defendant has been in custody, will remain in
9 custody at this time.

10 Thank you very much.

11 We're in recess.

12 (WHEREUPON, Court was in recess for the lunch hour.)

13 (WHEREUPON, State's Exhibit Nos. 1 through 26 were
14 marked for identification purposes only at this time.)

15 SOLICITOR GRAY: May we approach, Your Honor?

16 THE COURT: Yes, sir, please do.

17 (WHEREUPON, a bench conference was held at this time.)

18 THE COURT: All right. My understanding is that we
19 have pretrial motions that are being made by the defense I
20 believe.

21 Ms. Price, you may proceed.

22 MS. PRICE: Defense will call Mr. Bernard Dewberry
23 please.

24 THE COURT: Well, I need -- put your motion on the
25 record first.

Doug Smith - Direct examination
By Solicitor Gray

1 MS. PRICE: Okay. Yes, sir.

2 THE COURT: What is the motion?

3 MS. PRICE: Your Honor, this is a motion as to
4 admissibility of my client's statements to a Detective Doug
5 Smith who's also here in the courtroom today. You know my
6 client gave a statement on the day of his arrest. We're
7 here to determine its voluntariness and admissibility.

8 THE COURT: Okay. Normally the State would go first
9 with its testimony on that.

10 You want them to go first?

11 MS. PRICE: That will be fine.

12 THE COURT: All right.

13 SOLICITOR GRAY: Thank you, Your Honor.

14 State calls Detective Doug Smith.

15 THE COURT: Yes, sir, come forward over here to my left
16 to be sworn please.

17 DOUG SMITH, being first duly sworn,
18 testified as follows:

19 THE COURT: State your name please.

20 THE WITNESS: Doug Smith.

21 THE COURT: Thank you.

22 Your witness, Mr. Gray.

23 SOLICITOR GRAY: Thank you, sir.

24 THE COURT: Yes, sir.

25 DIRECT EXAMINATION

Doug Smith - Direct examination
By Solicitor Gray

1 BY SOLICITOR GRAY:

2 Q Where do you work Mr. Smith?

3 A Spartanburg County Sheriff's Office.

4 Q How long have you worked there?

5 A About three years.

6 Q What are your present duties and responsibilities?

7 A My present duties are I'm assigned to the civil
8 division.

9 Q In those 30 plus years, what, what kind of things have
10 you done?

11 A The -- primarily investigations, criminal
12 investigations.

13 Q As part of those criminal investigations, have you ever
14 taken statements from witnesses and/or potential suspects?

15 A Yes, sir.

16 Q Now, on May 9th of 2015, were you assigned a case
17 involving Mr. Dewberry, the defendant, and a Mr. Fernandez?

18 A Yes, sir.

19 Q What were the facts surrounding that case briefly?

20 A All right. I was on call and I got called out to Wood
21 Street in Cowpens, and officers on the scene advised me that
22 they had been a shooting, and they told me that a -- that
23 the possible suspect was Mr. Dewberry and that a Jerry
24 Fernandez had been shot.

25 Q Okay. Do you see Mr. Dewberry in the courtroom?

Doug Smith - Direct examination
By Solicitor Gray

1 A Yes.

2 Q Point him out please.

3 A He's right over there in the orange suit.

4 Q Thank you.

5 May the record reflect that he identified the suspect
6 as the defendant in this case?

7 THE COURT: The record will so reflect.

8 You may proceed.

9 SOLICITOR GRAY: Thank you, Your Honor.

10 Q You said, as part of your duties in the past for
11 criminal investigations, you interviewed suspects, potential
12 defendants.

13 What is the procedure for talking to the defendants?

14 A Before you start talking to him you got to advise them
15 of their rights, their Miranda rights.

16 Q And how do you do that?

17 A I have a form that I present them, and I'll read it to
18 them from the form word for word.

19 Q I show you what's been marked as State's Exhibit No. --
20 I'm sorry.

21 May I approach, Your Honor?

22 THE COURT: You may.

23 Q State's Exhibit No. 1 for identification purposes.

24 I apologize, Your Honor. It's State's Exhibit No. 7.

25 Is that the form you were talking about---

Doug Smith - Direct examination
By Solicitor Gray

1 A Yes.

2 Q ---discussing the rights?

3 A Yes, sir.

4 Q And could you please read that?

5 A At the top it's got a place for the name, which I wrote
6 in Bernard Dewberry. Asked his address. [REDACTED]
7 Cowpens, South Carolina, 29330. His age was 36 years old.
8 The date was 5/9/15. The time was 14:34PM. The location
9 was the Cowpens Police Department in Cowpens, South
10 Carolina, and it starts, and I check them off as I read
11 them. It says you have the right to remain silent. It has
12 a checkmark by it. Anything that I say -- it's written as
13 though they're reading it.

14 It says anything that I say can and will be used
15 against me in a Court of law. Check that one off. Have a
16 right to talk to a lawyer and to have him present while or
17 with me while I am being questioned, which is checked. If I
18 cannot afford to hire a lawyer one will be appointed to
19 represent me before any questions if I so wished. Checked.
20 It says I have the right to stop answering questions at any
21 point in the questioning. And then the right -- above
22 rights have been advised to me by Investigator Doug Smith.

23 I put my name and it says I have read the above rights
24 and I understand my rights fully and it's signed Bernard
25 Dewberry and then there's a second section too. It says I

Doug Smith - Direct examination
By Solicitor Gray

1 waive/give up my rights as explained above and agree to talk
2 to Officer Smith in reference to a fight I had with Jerry,
3 and any statements that I make of my -- is of my own free,
4 free will without fear, threat, or promise, or favor of
5 reward of any kind. I'm able to read and write the English
6 language and finished nine years of school, and then it's
7 signed Bernard Dewberry and it was witnessed by I think it
8 was Jason Bryant.

9 Q Okay. At that time, when he signed that document, how
10 long had he been being questioned by you?

11 A That was before there was any questioning.

12 Q That was before my questioning?

13 A Yes, sir.

14 Q Were there any threats made to Mr. Dewberry?

15 A No, sir.

16 Q Any promises made to Mr. Dewberry?

17 A No, sir.

18 Q And it says there on -- you stated on the form this was
19 in reference to a fight.

20 A Yes, sir.

21 Q Now, who wrote that part in, you or Mr. Dewberry?

22 A I did.

23 Q You wrote that.

24 So what actually happened to the victim in this case?

25 A The victim died.

Doug Smith - Direct examination
By Solicitor Gray

- 1 Q The victim died?
- 2 A Yeah.
- 3 Q How did he die, sir?
- 4 A It was from a gunshot wound.
- 5 Q And where was he shot?
- 6 A In the back.
- 7 Q But the defendant and you were talking about allegedly
- 8 a fight?
- 9 A Yeah, it started as a fight.
- 10 Q It started as a fight.
- 11 He gave you one -- how many statements did he give you
- 12 about this case?
- 13 A He actually gave me three.
- 14 Q Three different statements?
- 15 A Yes, sir.
- 16 Q Did he give you any verbal statements about this?
- 17 A Well, I was writing as he was talking.
- 18 Q All right. At anytime did he say I need to stop, I
- 19 need to go get a lawyer?
- 20 A No, sir.
- 21 Q Did he say I'm afraid for my safety, I want to stop?
- 22 A No, sir.
- 23 Q What was his demeanor the entire time?
- 24 A He was, he was calm. He answered, you know, told me --
- 25 I mean he, he was, he never -- calm is the way I would

Doug Smith - Direct examination
By Solicitor Gray

1 describe it.

2 Q Did, did he ask for any water during this
3 interrogation?

4 A I, I don't remember him asking for any.

5 Q And he asked for any food?

6 A No.

7 Q How long did this take?

8 A Well, it started out at about -- well, 2:34 is when he
9 signed the waiver, and I think the last statement was signed
10 at a little bit after 5:00. So about two and a half hours.

11 Q Two and a half hours, and during that time, again, were
12 any threats made against his life?

13 A No.

14 Q Any promises of leniency or anything during this time?

15 A No.

16 Q Now, this fight on the first statement you say he gave
17 to you did you write it or did he write it?

18 A I wrote it.

19 Q What did you write -- did he tell you what to write?

20 A Yes, sir.

21 Q And did he sign those statements?

22 A Yes, sir.

23 Q And what did he tell you in the first statement I
24 believe that's State Exhibit No. 8?

25 Is that correct?

Doug Smith - Direct examination
By Solicitor Gray

1 A Right.

2 You want me to read the entire time?

3 Q Yes, sir.

4 A It was written by Doug Smith at my request and I
5 checked that. It says earlier this morning Jerry Fernandez
6 walked through my yard. He was acting funny. I knocked on
7 the window and he did not acknowledge me or nothing. He had
8 been threatening me on the phone for about a week. I don't
9 know why he had been doing that.

10 I walked up to his house a little later. I wanted to
11 know what was going on. His mama and Lanna and him was out
12 in the yard. I asked him what was going on. He stated --
13 started ranting about Samantha Laney. I left and went down
14 the street. I picked up Brio Means. He wanted to talk to
15 Jerry.

16 Me and Brio walked back to Jerry's house, and there I
17 had wrote Bernard's house, but I went through it and changed
18 it to Jerry's house and noted that. Brio asked Chuck, which
19 he said is Jerry, what was going on. He got mad and started
20 cursing. He told us to get the fuck out of his yard. He
21 pulled off his shirt. He had two knives, one in each hand.

22 Me and Brio went back to my car. I dropped Brio off.
23 I went back to my house. I walked to my cousin Peanut's
24 house. She is my, my first cousin. I told her that Chuck
25 had tried to cut me. I told her about the knives and the

Doug Smith - Direct Examination
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1 threats.

2 That's the first -- I got the statement right there.

3 Okay. This is Page 2. We was just sitting there. I
4 had the door opened. I saw Chuck, Jerry, walking through
5 the field with the knife, and the knife was like a butcher
6 knife. It had a white handle. We started to tussle.

7 The next thing I knew I had a gun. I don't know where
8 it came from. I don't know if he had brought it or what. I
9 do not own a gun. I do not know what was next. I do not
10 know if I had blacked out or what.

11 The next thing I remembered was him running down, down
12 Carver Street. He was running back -- I was running back to
13 my house. I don't remember shooting the gun. I want you to
14 do a gun residue test on me. I can't remember what
15 happened.

16 I got in my car and went to my baby mama's house. Her
17 name is Adrienne Fuller. I told her what had happened. She
18 knew Chuck had been threatening me and I had told -- I told
19 him -- she told me I needed to turn myself in. She brought
20 me to the Cowpens Police Department. That was the first
21 statement.

22 At that point I advised him well, the story he was
23 telling me wasn't adding up with the evidence that we had.
24 And so---

25 Q Now, during that time, when you told him that, were you

Doug Smith - Direct examination
By Solicitor Gray

1 threatening him or saying you can go to jail for a long time
2 or whatever?

3 A No, I just told him the story wasn't adding up to the
4 evidence, the evidence that we had.

5 Q All right. Did he give another statement?

6 A This is another statement from Bernard Dewberry. It
7 was written by Doug Smith at my request.

8 It says early this morning Jerry Fernandez walked
9 through my yard. Let me make sure I've got the right one.
10 I think I'm reading the same thing over again.

11 Okay. This is the second statement. This is written
12 by Doug Smith at my request. I remember a little more.
13 While we were tussling the gun went off. I let the gun go.
14 We were on the ground when the gun went off. The bullet had
15 hit him in the back. I got up and, and ran and got or I got
16 up and ran and he got up and ran.

17 When I got up, I seen blood on the back of his shirt.
18 I went by where I had left Brio. I told him what had
19 happened and I also told Adrienne what had happened, and,
20 again, I told him, you know, that it just wasn't adding up,
21 the story didn't coincide with the evidence we had. And so
22 then he just -- he gave me -- that is when I, I got him. I
23 rode him out to the crime scene on Wood Street, and---

24 Q Okay. Between---

25 A Yeah.

Doug Smith - Direct examination
By Solicitor Gray

1 Q ---the second statement---

2 A After that statement, after the statement that I just
3 read.

4 Q After the second one?

5 A Yeah, because he was telling me that's what happened.
6 I said well, it's just not adding up. And so we rode out to
7 the crime scene, and when we -- when I pulled up or stopped
8 within sight of it, half a block away, he said that's not
9 where it happened, and I said what do you mean it's not
10 where it happened? You know, he said it didn't happen
11 there, and I told him -- I said well, there's what we found,
12 you know, blood and that's where he was at.

13 And so he, he gave me -- we went back to the -- went on
14 to the Sheriff's Office and took this last statement, and he
15 says I remember more than I had told Officer Smith. I went
16 home. I was inside the house. I saw Jerry coming across
17 the field. I went outside. I knew where the gun was at. I
18 got it because he had the knife. I put it on me.

19 When he pulled the knife out of his pocket, I pulled
20 the gun. We were -- was about ten feet apart. He was
21 coming at me. When I pulled the gun out, he stopped in his
22 tracks. I did not know he had turned his back. I closed my
23 eyes and shot. He started running away. I saw the blood on
24 his shirt.

25 I ran back to the house. I dropped the gun. I do not

Doug Smith - Direct examination
By Solicitor Gray

1 know where it is at. It was a .22 revolver. That was the,
2 the last statement. That one was completed at 5:15.

3 Q In any of these statements, did you make any threats
4 to -- against Mr. Bernard Dewberry?

5 A No, sir.

6 Q Did you make any promises to Mr. Bernard Dewberry?

7 A No, sir.

8 Q Did you tell him, if he told you a certain story, he
9 would get less years in jail or more years in jail?

10 A No, sir.

11 Q Did you tell him what type of charge he was facing
12 during this situation?

13 A No, sir.

14 Q And the entire time he's giving you a statement, was it
15 about murder or about fighting?

16 A About -- it started -- when I walked in, I asked him I
17 just want him to tell me his side of the story, and that's
18 the way it started.

19 Q His side of the story?

20 A Yes, sir.

21 Q Not what you wanted to hear?

22 A No.

23 Q Did he seem agitated at all?

24 A No, as I stated earlier, he was calm.

25 Q Did he seem scared?

Doug Smith - Cross-examination
By Ms. Price

1 A At times, you know, when the -- during it he would seem
2 a little scared.

3 Q What about the ride out to the crime scene, did he seem
4 scared?

5 A He seemed fine. He sat in the front seat. He was
6 handcuffed in the front. He sat in the front seat beside
7 me.

8 Q Did you do anything to get those three statements from
9 Mr. Dewberry that were harassing or cajoling or threatening?

10 A No, sir.

11 SOLICITOR GRAY: I have no further questions at this
12 time with this witness, Your Honor.

13 THE COURT: Ms. Price, your witness.

14 MS. PRICE: Thank you, Your Honor.

15 THE COURT: Yes, ma'am.

16 CROSS-EXAMINATION

17 BY MS. PRICE:

18 Q Investigator Smith, about what time did Mr. Dewberry
19 show up at Cowpens Police Department if you know?

20 A I don't know exactly. I got a phone call. They told
21 me he had turned himself in to the P.D. and I went there
22 from the crime scene.

23 Q Do you know if that was the same day as the---

24 A Yeah, it was probably -- I had probably been on the
25 crime scene 30 minutes or so.

Doug Smith - Cross-examination
By Ms. Price

1 Q Okay. So -- and about what time did you get to the
2 Cowpens Police Department if you remember?

3 A Yeah, it would of been when I advised him of his
4 rights. It was 2:34PM.

5 Q And this was at the Cowpens Police Department?

6 A Yes, ma'am.

7 Q Were you and Mr. Dewberry -- was he in -- handcuffed or
8 shackled at that time?

9 A He was handcuffed.

10 Q Okay. So, in your mind, there was no question that he,
11 he was in custody?

12 A Yes. I mean yeah, no, no question.

13 Q Okay. And you went over his rights statements with
14 him?

15 A Yes, ma'am.

16 Q And he went through nine years of schooling he told
17 you?

18 A That's what he told me.

19 Q Okay. And he advised you, when you first Mirandized
20 him, that this was about a fight that he had with Jerry?

21 A Yes.

22 Q Okay. Did he say if it was a physical fight or a
23 verbal fight if he said?

24 A He said in his statements that they were tussling.

25 Q Okay. But when you first started talking to him, did

Doug Smith - Cross-examination
By Ms. Price

1 he indicate if it was a physical fight or a verbal fight?

2 A No, when I, when I asked him, I asked him to tell me
3 his side of the story as just to what happened to Jerry.

4 Q Okay. So he did not -- he didn't indicate if it was --
5 but he -- when you first started talking to him, when you
6 Mirandized him, he didn't indicate what kind of fight it
7 was?

8 A No.

9 Q Okay. And he gave three statements in this case.
10 Is that right?

11 A Yes, ma'am.

12 Q And the first one was -- you Mirandized him at 2:34 in
13 the afternoon?

14 A Yes.

15 Q And he signed this statement at 3:14 in the afternoon?
16 Is that right, his first statement?

17 A Oh, yeah, the first statement.

18 Q So that's approximately 45-minutes later?

19 A Right.

20 Q Did you have any conversation before you started
21 writing his statement?

22 A We may, may of talked a little before I started writing
23 word for word.

24 Q Okay. And did you write -- you wrote contemporaneous
25 with his speaking?

Doug Smith - Cross-examination
By Ms. Price

1 A I would -- yeah. Yeah, I think I understand what
2 you're saying.

3 Q Okay.

4 A I wrote it as he told me.

5 Q Okay. And y'all -- did you start talking -- did you
6 start writing right away after you Mirandized him?

7 A Probably not immediately after I Mirandized him, no.

8 Q Okay. So y'all did have a conversation before you
9 start talking?

10 A I don't remember the context of it but I'm, I'm sure I
11 introduced myself and all that.

12 Q So a two page statement took 45-minutes according to
13 the times?

14 A Yes.

15 Q Okay. And that was at -- 3:14 was his first statement?

16 A Yes.

17 Q And his second statement was completed, according to
18 the copies I have, at 3:27PM?

19 A Right.

20 Q So approximately 13-minutes later?

21 A Right.

22 Q And that statement's about half a page long?

23 A Yeah. Yeah, a third of a page.

24 Q Okay. And it was at that point that you took him out
25 to the crime scene?

Doug Smith - Cross-examination
By Ms. Price

1 A Yes, after the second statement.

2 Q Was that at his request?

3 Was that at his request?

4 A No, I took him out because he -- to show him I couldn't
5 explain to him the differences in his statement and what we
6 had found at the crime scene.

7 Q Okay. And so about approximately, if you remember,
8 what time were you called out to the crime scene if you
9 remember?

10 A It's in my incident report but I don't have it with me.

11 Q Was it after -- early afternoon or early morning?

12 A Yeah, it was early afternoon. It would, it would of
13 probably been about 30 minutes before I met with him at the
14 P.D.

15 Q Okay. So that would of been approximately two o'clock
16 in the afternoon?

17 A Yes.

18 Q Okay. And at 5:15 he signs another statement?

19 A The last statement, yeah.

20 Q Okay. So in about a little over three hours, the
21 Sheriff's Office had already formed an opinion about what
22 happened at the scene?

23 A The Sheriff's Office?

24 Q Yes, the investigating agency.

25 A Yeah, in three hours, yeah.

Doug Smith - Redirect examination
By Solicitor Gray

1 Q Okay. In fact, you had -- they -- you already had a
2 theory, a going theory of the case about what happened when
3 you took his first statement at 2:14?

4 A Yeah, based on the evidence that was at the scene.

5 Q So, in two hours, you think you already know what's
6 going on?

7 A Well, I think we do, yeah.

8 MS. PRICE: Okay. Beg the Court's indulgence.

9 THE COURT: Yes, ma'am.

10 (Pause.)

11 MS. PRICE: That's all I have of Detective Smith.

12 THE COURT: All right. Redirect?

13 SOLICITOR GRAY: Just briefly, Your Honor.

14 THE COURT: Yes, sir.

15 REDIRECT EXAMINATION

16 BY SOLICITOR GRAY:

17 Q Well, during this entire time, did the defendant have
18 an opportunity to review his statements?

19 A Yeah, each, each -- at the end of each one, right.

20 Q Before he signed them?

21 A Yes, sir.

22 Q Read over them?

23 A Yes, sir.

24 Q All right. Thank you.

25 Nothing further in the form of this witness at this

James Owens - Direct examination
By Solicitor Gray

1 time.

2 THE COURT: Recross?

3 MS. PRICE: No, Your Honor.

4 THE COURT: You may step down.

5 THE WITNESS: Thank you.

6 THE COURT: You may call your next witness, Mr. Gray.

7 SOLICITOR GRAY: State calls Officer Owens.

8 THE COURT: Come forward and be sworn, sir.

9 JAMES OWENS, being first duly
10 sworn, testified as follows:

11 THE COURT: Have a seat please.

12 (Witness complies.)

13 THE COURT: State your name please, sir.

14 THE WITNESS: James Owens.

15 THE COURT: Counselor, your witness.

16 SOLICITOR GRAY: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY SOLICITOR GRAY:

19 Q where do you work, sir?

20 A Cowpens Police Department.

21 Q How long have you worked there?

22 A Approximately six years.

23 Q What are your primary duties and responsibilities?

24 A Respond to all police related emergencies and also work
25 K-9.

James Owens - Direct examination
By Solicitor Gray

1 Q Now, May 9th of last year, were you familiar with the
2 shooting of Mr. Jerry Fernandez?

3 A Yes, I received a call in the latter part of the or in
4 the afternoon of to come assist.

5 Q And what did you do as far as assisting?

6 A On my arrival, pretty much waited till I was directed
7 to do something. Investigator Smith showed up. I actually
8 went with the -- Investigator Smith down to Mr. Fernandez
9 house. He had actually talked to one of the witnesses there
10 and I think took a statement and I actually ended up
11 witnessing that statement. Just as soon as that was over
12 with, we found out that Mr. Dewberry was going to turn
13 himself into the police department.

14 Q You didn't arrest Mr. Dewberry?

15 A I didn't do it, no.

16 Q When you arrived at the Cowpens Police station (sic),
17 was Mr. Dewberry there?

18 A Not right away. I -- actually I was sent over there to
19 unlock the door for the investigators so they could utilize
20 our courtroom to talk to Mr. Dewberry.

21 Q Okay. Did you---

22 A It was shortly, shortly after Mr. -- arriving, he
23 arrived with another female at the front door.

24 Q Did you put Mr. Dewberry in any kind of shackles or
25 handcuffs or anything?

James Owens - Direct examination
By Solicitor Gray

1 A I did not, no, sir.

2 Q What happened after he arrived at the Cowpens Police
3 Department?

4 A He, he come in the door. The investigators took him
5 into the courtroom, and they were in there quite some time,
6 and while they were in there, I was sitting in the kitchen
7 area with a couple of -- the female that brought him up, up
8 there and another female.

9 Q Did you hear any yelling or screaming?

10 A No, sir.

11 Q Any angry voices?

12 A No, sir.

13 Q When Mr. Dewberry came in, what was his demeanor?

14 A Well, he looked relieved, calm, relieved kind of.

15 Q Did he have any scrapes or bruises or anything on him?

16 A No, sir.

17 Q When Mr. Dewberry left, if you know, what was his
18 demeanor?

19 A Honestly I couldn't answer that cause I don't remember
20 him leaving.

21 Q All right. But you didn't hear any angry yelling or
22 screaming?

23 A Everything was very calm and -- from the time he walked
24 through the door, there was nothing.

25 Q And while you there, did you ever see him go to the

1 bathroom?

2 A I don't remember him going to the restroom.

3 Q To go get any -- get water?

4 A I don't remember.

5 Q Any food or cigarettes or anything?

6 A Not that I know of.

7 Q All right. Thank you.

8 Nothing further, Your Honor.

9 THE COURT: Your witness.

10 MS. PRICE: I have no questions for Officer Owens.

11 THE COURT: You may step down. Thank you.

12 SOLICITOR HUNTER: That's the State's showing, Your
13 Honor.

14 THE COURT: Defense may call its witnesses.

15 MS. PRICE: Thank you, Your Honor.

16 Defense calls Mr. Bernard Dewberry.

17 THE COURT: Sir, if you'll come forward to be sworn.

18 THE WITNESS: Your Honor, I got the Koran.

19 Can I swear on my Koran rather than the Bible?

20 THE COURT: Yes, sir.

21 THE CLERK: If you'll raise your right-hand and put
22 your left-hand on the Bible. Raise your right-hand and put
23 your left-hand on the Bible.

24 THE WITNESS: Oh.

25 THE CLERK: I'm sorry.

Bernard Dewberry - Direct examination
By Ms. Price

1 THE WITNESS: Well, we can't -- we ain't suppose to put
2 our left-hand on the Koran. I, I -- can I put my
3 right-hand?

4 THE COURT: Well, is it -- are you taking an oath?

5 THE WITNESS: Yes, sir, on, on my God.

6 THE COURT: Okay. Let him put his right-hand on the
7 Bible.

8 BERNARD DEWBERRY, being first duly
9 sworn, testified as follows:

10 THE COURT: Sir, do you acknowledge that you're under
11 oath for this testimony?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Thank you.

14 You may proceed.

15 DIRECT EXAMINATION

16 BY MS. PRICE:

17 Q Would you please state your full name for the record
18 please?

19 A It's Bernard Dewberry.

20 Q Mr. Dewberry, how old are you?

21 A Right now I'm 37.

22 Q And how far did you go in school?

23 A I finished the eighth grade.

24 Q And where did you finish the eighth grade?

25 A Broome High School.

Bernard Dewberry - Direct examination
By Ms. Price

1 Q what type of classes were you in at Broome?

2 A Special ed.

3 Q Okay. Mr. Dewberry, I'm gonna take you back to May of
4 2015.

5 Do you -- are you familiar with a gentleman known as
6 Jerry Fernandez?

7 A Yes, ma'am.

8 Q Who is Mr. Fernandez?

9 A He's my cousin.

10 Q And on that particular day, we've heard testimony that
11 you gave police three statements in this matter.

12 A Yes, ma'am.

13 Q And when you went to the Cowpens Police Department,
14 what happened to you upon your arrival?

15 A I was greeted by one, one of the officers.

16 Q Uh-huh. (Affirmative).

17 A And one of them put the handcuffs on me before I
18 entered the police station, but I don't know which one it
19 was. But---

20 Q Okay. And, at that point, where did you go?

21 A To the, the little courtroom on the left.

22 Q Were you unaccompanied?

23 A Chief Macobmsón was there and Mr., Mr. Smith.

24 Q Okay. How long had you been there when you met
25 Mr. Smith?

Bernard Dewberry - Direct examination
By Ms. Price

- 1 A Not very long.
- 2 Q Do you have any, any indication of time, a few minutes?
- 3 A Yes, ma'am.
- 4 Q A few hours?
- 5 A No, a few minutes.
- 6 Q Okay. And what I am going to -- may I approach, Your
7 Honor?
- 8 THE COURT: You may.
- 9 MS. PRICE: Thank you.
- 10 what I am going to show you has been previously marked
11 for identification purposes as State's Exhibit No. 7.
- 12 Do you recognize this document please?
- 13 A Yes, ma'am.
- 14 Q what is that?
- 15 A A waiver.
- 16 Q A waiver for what?
- 17 A My rights.
- 18 Q Your rights for what?
- 19 A To remain silent.
- 20 Q Is this your signature?
- 21 A Yes, ma'am.
- 22 Q Okay. Do you, do you -- did you sign this paper?
- 23 A Yes, ma'am.
- 24 Q Do you remember signing this paper?
- 25 A Yeah.

Bernard Dewberry - Direct examination
By Ms. Price

1 Q Okay. And you proceeded, at that point, to speak with
2 Investigator Smith.

3 Is that correct?

4 A Yes, ma'am.

5 Q And approximately for how long do you remember that?

6 A Like I couldn't, I couldn't recall.

7 Q Okay.

8 A But---

9 Q Did y'all have a conversation before he started
10 writing, if you remember?

11 A No, ma'am, not I remember.

12 Q Okay. After you -- I'm also going to show you what's
13 been marked for exhibit purposes as State's No. 9.

14 Do you remember this?

15 Do you know what this is?

16 A Yes, ma'am.

17 Q What is that?

18 A A voluntary statement.

19 Q Is this your handwriting?

20 A No, ma'am.

21 Q Whose handwriting is that?

22 A Mr. Smith.

23 Q Whose name is that at the bottom?

24 A That's my name.

25 Q Did you -- is that your signature?

Bernard Dewberry - Direct examination
By Ms. Price

- 1 A Yes, ma'am.
- 2 Q Did you sign this?
- 3 A Yes, ma'am.
- 4 Q Did you read it before you signed it?
- 5 A No, ma'am, he read it over. He read it to me.
- 6 Q He read it to you.
- 7 And after you -- after he read you that statement, did
- 8 he -- you and he have a conversation?
- 9 A Not then.
- 10 Q Okay. Did you give another statement in this matter?
- 11 A Yes.
- 12 Q About how long after the first one if you remember?
- 13 A Don't remember really. I was thinking that we was
- 14 still on the same first statement. I didn't realize that I
- 15 was making those many statements.
- 16 Q Okay. Do you remember taking a ride in a -- with
- 17 Mr., excuse me, Investigator Smith?
- 18 A Yes, ma'am.
- 19 Q Were you handcuffed at that time?
- 20 A Yes, ma'am.
- 21 Q And how did you get to your neighborhood?
- 22 A Mr. Smith.
- 23 Q What vehicle were you in?
- 24 A His, his car.
- 25 Q Was it a marked police car?

Bernard Dewberry - Direct examination
By Ms. Price

1 A An unmarked.

2 Q Unmarked.

3 Were you handcuffed?

4 A Yes, ma'am.

5 Q Okay. And when you got back to the police department,
6 did you sign another statement?

7 A No, ma'am.

8 Q You didn't?

9 You don't remember signing one or did you not sign up?

10 A I didn't sign one.

11 Q Okay. The State is contending that you made -- you
12 signed three statements.

13 How many do you remember?

14 A I remember signing one paper.

15 Q One paper.

16 Okay. But do you dispute that this is your signature
17 on the second and the third?

18 A I don't dispute it. It's my signature.

19 Q But how many of them do you remember signing?

20 A I signed, I signed one at the, at the station and -- I
21 signed that waiver at the station.

22 Q Uh-huh. (Affirmative).

23 A And when we got to the sheriff's office, I signed one.
24 That was another one. That was it. That was it. That was
25 the statement.

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 Q Did you read anything that you signed?

2 A No. No, ma'am.

3 Q Why is that?

4 A I'm not good at that reading.

5 Q Why aren't you good at reading.

6 A I didn't finish school. I don't know. I guess I can
7 read a little bit but just on a third grade level.

8 MS. PRICE: Okay. That's all the witnesses -- excuse
9 me. That's all the questions I have for Mr. Dewberry at
10 this time.

11 THE COURT: Mr. Gray, your witness.

12 SOLICITOR GRAY: Thank you, sir.

13 CROSS-EXAMINATION

14 BY SOLICITOR GRAY:

15 Q Mr. Dewberry, you said you signed twice?

16 A Yes, sir.

17 Q Not three times?

18 A Yes, sir.

19 Q But those -- may I approach, Your Honor?

20 THE COURT: You may.

21 Q These statements and the waiver of State's Exhibit 7,
22 8, and 9 all have your signature, correct?

23 A Yes, sir.

24 Q You didn't read them but you had Mr. Smith read them to
25 you, correct?

Bernard Dewberry - Cross-examination
By Solicitor Gray

- 1 A Yeah, what I -- what he wrote down for me.
- 2 Q But he read it to you --
- 3 A Yes, sir.
- 4 Q -- before you signed it?
- 5 A Yes, sir.
- 6 Q So you know -- you knew what you were signing?
- 7 A I knew what I was signing, yeah.
- 8 Q Right.
- 9 So he didn't hit you over the head and say sign this?
- 10 A No, sir.
- 11 Q Those three different statements you signed
- 12 voluntarily?
- 13 A I don't even remember signing the waiver and my first
- 14 statement.
- 15 Q I understand that you don't remember it, but, in the
- 16 process, he never threatened you to sign---
- 17 A Oh, no.
- 18 Q ---any paper?
- 19 A Oh, no, sir. No, sir.
- 20 Q He never made any, any deals with you to sign any
- 21 papers?
- 22 A No, sir.
- 23 Q And he read everything to you --
- 24 A Yes, sir.
- 25 Q -- before you signed those papers?

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 A Yes, sir.

2 Q Correct?

3 A Yes, sir.

4 Q So there was no trickery here --

5 A No. No, sir.

6 Q -- correct?

7 And I understand that you said that you read on a third
8 grade basis.

9 Now, what is that in your shirt pocket?

10 A It's a Koran.

11 Q It's a Koran.

12 What language is that?

13 A It's in English.

14 Q It's in English.

15 Have you read that?

16 A Yeah, that's -- to be honorable basis with you, that's
17 the only thing that I've read good. It's the Bible and the
18 Koran.

19 Q That's the only thing you can read?

20 A Like on a higher, you know what I'm saying, on a
21 higher---

22 Q On a higher level?

23 A Higher level.

24 Q And why is it you---

25 THE COURT: Did he just answer that he does read that.

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 book?

2 SOLICITOR GRAY: Sir?

3 THE COURT: Was his answer that he does read that book?

4 SOLICITOR GRAY: Yes, sir.

5 THE COURT: I didn't make out his answer. I just
6 wanted to be sure I got it right.

7 SOLICITOR GRAY: Yes, sir.

8 THE COURT: Go ahead.

9 Q You can read the Koran and the Bible on a higher level?

10 A Yeah, I can read, you know, the word of God better than
11 anything that's put in my presence.

12 Q But not your confessions?

13 You couldn't read those?

14 A It wasn't in my writing.

15 Q Okay. Is -- are those in your writing, the Bible and
16 the Koran?

17 A Yes, the Koran is just translated in English.

18 Q I mean are those -- did you write those?

19 A Did I write this?

20 Q Yes, sir.

21 A Oh, no, sir.

22 Q So how can you read them so well?

23 A How can I read them -- in the word of God?

24 Q Okay. Mr. Dewberry, you've had a -- one or two brushes
25 with the law in your past, correct?

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 A Yes, sir.

2 Q So this time getting questioned wasn't really your
3 first time, was it?

4 A It's -- this is some -- I never been in no predicament
5 like this.

6 Q So resisting arrest and trespassing, 1997, that was
7 you, wasn't it?

8 A Yes, sir.

9 Q Driving under suspension in 1997?

10 A Yes, sir.

11 Q Possession of marijuana and driving under suspension
12 third, 1999?

13 A Yes, sir.

14 Q Driving under suspension again in 1999?

15 A Yes, sir.

16 Q Driving under suspension three counts in 2000 and
17 failure to stop for a blue light?

18 A Yes, sir.

19 Q Could you not read the blue light?

20 A (No response.)

21 Q Driving under suspension again in 2000. Habitual
22 traffic offender in 2000. Common law robbery in 2004.

23 Now, did you give a statement in that case?

24 A No, sir.

25 Q You didn't give a statement?

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 A No, sir.

2 Q Okay. But you understood when officers arrested you
3 and gave you your Miranda rights?

4 A To be honest with you, sir, I thought I was signing a,
5 a -- signing something else.

6 Q But you've been arrested all these times.
7 Officers never gave you Miranda rights before?

8 A Not -- I ain't never signed no paper like this before.

9 Q Oh, you never gave a confession before?

10 A No, sir.

11 Q Okay. Possession of cocaine, common law robbery, 2006.
12 So all those times you never were Mirandized by any
13 officers or signing anything dealing with all these
14 convictions?

15 A I been read my rights.

16 Q You've been read your rights.

17 So you have a fairly good understanding of your rights?

18 A Fairly.

19 Q Yeah.

20 So when the officer read it to you, you knew what you
21 were doing?

22 A Yes, sir.

23 Q And you knew what you were writing -- was being said to
24 you and you, you knew what you were signing when the officer
25 read it to you.

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 Is that correct?

2 A Yes, sir.

3 Q Even though you had a third grade level.

4 once he read it to you, you understood it?

5 A I, I -- yes, sir.

6 Q And you signed it freely and voluntarily?

7 A Yes, sir.

8 Q And those are the words that -- to confess to a tussle,

9 something happening earlier, and you don't know where the

10 gun came from, you don't know where it went, but you shot

11 Jerry. Those are the three things -- statements you signed?

12 A The two statements.

13 Q You signed those?

14 A Yes, sir.

15 SOLICITOR GRAY: Nothing further, Your Honor.

16 THE COURT: Redirect.

17 REDIRECT EXAMINATION

18 BY MS. PRICE:

19 Q Mr. Dewberry, we've heard that you have had contact

20 with the police before.

21 A Yes, ma'am.

22 Q And had you ever, before, signed a statement as to

23 those allegations against you --

24 A No, ma'am.

25 Q -- that you remember?

1 A No, ma'am.

2 MS. PRICE: That's all I have.

3 THE COURT: Anything further, Mr. Gray?

4 SOLICITOR GRAY: Sir?

5 THE COURT: Anything further from this witness?

6 SOLICITOR GRAY: No, sir, Your Honor.

7 THE COURT: You may step down.

8 Defense may call its next witness.

9 MS. PRICE: I have no other witnesses, Your Honor.

10 THE COURT: State wish to call any additional
11 witnesses?

12 SOLICITOR GRAY: No, sir, Your Honor.

13 THE COURT: All right. Your motion, Ms. Price. I'll
14 hear from you first.

15 MS. PRICE: Your Honor -- as Your Honor knows, the
16 issue here is whether or not this was a free and voluntary
17 statement given by my client.

18 We have heard here that, although this -- he has not
19 had inter -- he has had interactions with police in the
20 past, this is the first time that he, it appears, to his
21 knowledge, that he was interrogated and needed to sign this
22 statement and giving up those, those rights as Miranda
23 warnings. My client has went through Broome High School to
24 the ninth grade. As you've heard, he's not a very educated
25 person.

1 We would just ask Your Honor to, under these
2 circumstances, to -- and to rule that these are inadmissible
3 as not freely and voluntarily given. I don't think it's
4 very clear from the statement that he quite understood what,
5 what he was doing. He was just read something, he signed it
6 while handcuffed, and we're left with these three statements
7 here today.

8 So we would ask Your Honor to suppress those.

9 THE COURT: Mr. Gray.

10 SOLICITOR GRAY: Thank you, Your Honor.

11 I believe that these statements were given freely and
12 voluntarily. He has a long history of being arrested and
13 convicted by law enforcement of a myriad of crimes. Once he
14 is handcuffed he is read his Miranda rights. He says this
15 is not -- this is the first time I signed something. This
16 is the first time I confessed. So he confessed at this
17 time. He understood the difference between confessions and
18 not confessions. It is right under -- his rights under
19 Miranda.

20 Furthermore, you heard testimony from Deputy Smith
21 about the entire situation. He was calm. He was relaxed.
22 There were no threats made. He never asked for anything but
23 Mr. Smith told him, said this isn't adding up, drove him out
24 to a spot, and gave him a different confession that he gave
25 Doug Smith. Doug Smith read it back to him. He signed that

1 also. In all three instances he signed his name after it
2 was read back to him and Mr. Smith did not make these up.
3 Mr. Dewberry gave the statements to Mr. Smith.

4 You even heard from Officer Owens with the Cowpens
5 Police, when the defendant got there, he didn't look
6 relaxed, he look relieved. In handcuffs, he walks into a
7 police station and looks relieved. He was that comfortable,
8 Your Honor. I don't see how it could be any situation by
9 Officer Smith where promises were made, threats were made,
10 of any type of situation where this was not aboveboard.

11 The -- Mr. Dewberry in this case gave a confession. He
12 understood his Miranda rights. He went to the ninth grade
13 and miraculously he could read the Koran and the Bible. So
14 I don't think this is a situation where he doesn't
15 understand what was going on. He was not threatened and he
16 was not cajoled and he was not promised anything. These
17 statements were freely and voluntarily given, and, and
18 should come in as evidence against Mr. Dewberry.

19 THE COURT: All right. Anything further?

20 MS. PRICE: No, Your Honor.

21 THE COURT: All right. I do find that the defendant
22 gave three statements in this situation. He apparently
23 voluntarily talked to the police. It appears that he was
24 read his Miranda rights and he signed the, the form
25 indicating that he had had the rights explained to him.

Brio Means - Direct examination
By Ms. Price

1 He heard -- has indicated that he heard the
2 statements -- the body of the statements even though they
3 were written by the police officer. They were read back to
4 him before he signed it. I don't find that it was in a
5 situation where he was under any threats or any duress.
6 There were no promises of leniency made in order to obtain
7 the statements.

8 I find the statements to have been voluntarily given in
9 the face of signed Miranda rights, and, therefore, I will
10 rule that they are admissible at trial.

11 SOLICITOR GRAY: Thank you, Your Honor.

12 THE COURT: All right. Now next motion.

13 MS. PRICE: Your Honor, this -- we have an immunity
14 motion under the Protection of Persons and Property Act.

15 THE COURT: All right.

16 MS. PRICE: We're ready to proceed.

17 THE COURT: Are you ready to proceed?

18 MS. PRICE: Yes, sir.

19 THE COURT: All right. You may do so.

20 MS. PRICE: All right. Thank you.

21 First off, the defense would call Brio Means.

22 THE COURT: Sir, come forward and be sworn.

23 BRIO MEANS, being first duly
24 sworn, testified as follows:

25 THE COURT: Have a seat please.

Brio Means - Direct examination
By Ms. Price.

1 THE WITNESS: Yes, sir.

2 THE COURT: State your name.

3 THE WITNESS: Brio Means.

4 DIRECT EXAMINATION

5 BY MS. PRICE:

6 Q And, Mr. Means, you don't have to get quite that close
7 to the microphone. It will pick you up. If you get too
8 close it will -- it sounds almost like you're hitting the
9 mic. So --.

10 A All right.

11 Q Yeah, just, just speak loudly. We'll be able to hear
12 you.

13 A All right.

14 THE COURT: State your name, sir.

15 THE WITNESS: Brio Means.

16 Q Excellent.

17 Okay. Mr. Means, do you know Bernard Dewberry?

18 A Yes, ma'am.

19 Q How do you know him?

20 A We been friends for a long time.

21 Q How, how many years approximately?

22 A At least about 20.

23 Q Are y'all neighbors?

24 A Well, not really neighbors. I stay right down the
25 street from him though.

Brio Means - Direct examination
By Ms. Price

- 1 Q Okay. Approximately how far?
- 2 A I'd say about maybe a mile and a half.
- 3 Q I'm sorry?
- 4 A Maybe about a mile and a half.
- 5 Q Okay. And I'm gonna take you back to May the 9th of
- 6 2015.
- 7 Did you know a gentleman named Jerry Fernandez?
- 8 A Yes, he was a good friend of mine too.
- 9 Q okay. And does Jerry go by any other name?
- 10 A Nah, he just go by Jerry.
- 11 Q Okay.
- 12 A Oh, well, Chuck.
- 13 Q Okay. How did you know -- when you -- if you saw him
- 14 on the street, how would you refer to him?
- 15 A I mean if I saw him on the street how would I what?
- 16 Q If you said hey and called his name, how would you
- 17 refer to him?
- 18 A How you -- Chuck.
- 19 Q Chuck.
- 20 Is that what he normally went by to you?
- 21 A Yes, ma'am.
- 22 Q Okay. So on -- in May of 2015, on May the
- 23 9th specifically, did you have occasion to go over to
- 24 Chuck's house?
- 25 A Yes, me and Mr. Dewberry went over there.

Brio Means - Direct examination
By Ms. Price

1 Q Okay. And what happened at Chuck's house?

2 A When we got there I walked up to him. I was fixing to
3 ask him what was going on between him and his cousin but he
4 told me he didn't want to talk about it. So I left it alone
5 and, all of a sudden, they just started fussing. So when
6 they started fussing, I just told Bernard to come on. I
7 grabbed him by the arm and said come on and then Chuck still
8 been -- he was still upset. He went in the house and came
9 back out. He had two butcher knives. As we was walking
10 down the road, he threatened Mr. Dewberry. Told him that he
11 would kill him.

12 Q And did Mr. Dewberry---

13 A And Mr. Dewberry, he told him the same thing. But
14 Chuck swore on his dad first that I would kill you, and Mr.
15 Dewberry said, Mr. Dewberry said well, if it like that right
16 there, he said well, I swear on my mama I will kill you too
17 then.

18 Q When he was saying that, what -- did he have anything
19 in his hands?

20 A He had two butcher knives.

21 Q How long were they?

22 A Oh, they was big.

23 Q Approximately.

24 A Approximately about like that.

25 Q And did he chase you with the knives?

Brio Means - Cross-examination
By Solicitor Gray

1 A Well, he didn't have time to really chase us because, I
2 think, one of his sisters, Apple, she came out there in the
3 street and she got him.

4 Q Okay. But you saw -- is it your testimony today that,
5 on May the 9th, you saw Mr. Fernandez, Chuck, armed with two
6 knives?

7 A Yes, ma'am.

8 Q Approximately, approximately what time of day was this?

9 A I really couldn't tell you.

10 Q Was it --

11 A I was like---

12 Q Morning or afternoon?

13 A It might of been about in the afternoon. Somewhere
14 along in there.

15 MS. PRICE: Okay. That's, that's all I have for
16 Mr. Means.

17 THE COURT: Your witness, Mr. Gray.

18 SOLICITOR GRAY: Yes, sir.

19 CROSS-EXAMINATION

20 BY SOLICITOR GRAY:

21 Q Mr. Means?

22 A Yes, sir.

23 Q How long had you known these two gentlemen?

24 A Well, like I said, I been knowing Mr., Mr. Dewberry
25 over there for like 20 years. Chuck, maybe been about ten.

Brio Means - Cross-examination
By Solicitor Gray

1 SOLICITOR GRAY: Court's indulgence, Your Honor.

2 THE COURT: Okay.

3 (Pause.)

4 SOLICITOR GRAY: I'm sorry, Your Honor.

5 THE COURT: He's, he's trying to lower them now.

6 SOLICITOR GRAY: Okay. Okay. Thank you.

7 Q Okay. You said you had known him for 20 years?

8 A Yes, sir.

9 Q Have you always lived in -- they lived -- always lived
10 in that area?

11 A Since I been knowing him, yes, sir.

12 Q Okay. So for Mr., Mr. Dewberry, where would he live?
13 You can use this?

14 A Oh.

15 Q You can see it. There's Wood Street, Carver Street,
16 Old Pacolet Road. About right here is Mr. Fernandez.

17 A Mr. Fernandez about right there.

18 Q Right.

19 A Mr. Dewberry, just go across. Go across. Hu huh.

20 (Negative).

21 Q That way?

22 A Yeah, right around in that area.

23 Q Right around in this area?

24 A Come down. Come down some.

25 Q Come down some.

Brio Means - Cross-examination
By Solicitor Gray

- 1 A About right in there.
- 2 Q All right. Now, this fight, where did that take place?
- 3 A What fight?
- 4 Q The butcher knives thing.
- 5 A Mr. Dewberry -- Mr. Fernandez house.
- 6 Q Mr. Fernandez house down here?
- 7 A Yes, sir.
- 8 Q So Mr. Dewberry was down here and there was a fight and
- 9 that, I guess, taking off shirts and I want to kill you with
- 10 some butcher knives and I'm gonna kill you too is what
- 11 Mr. Dewberry said?
- 12 A Mr. Fernandez told him he swear to God --
- 13 Q Okay.
- 14 A -- on his daddy's grave, he had two butcher knives,
- 15 told Mr. Dewberry that he would kill him --
- 16 Q All right.
- 17 A -- like I said.
- 18 Q Now at that point --
- 19 A Yes, sir.
- 20 Q -- if you're to be believed now, at this point, Mr.
- 21 Dewberry went home?
- 22 A I don't know. He took me home first.
- 23 Q He took you home first?
- 24 A Yes. And then he must of went back. But he had told
- 25 me he was going to Gaffney.

Brio Means - Cross-examination
By Solicitor Gray

1 Q Was Mr. Dewberry afraid at this time when you were in
2 Mr. Fernandez's front yard?

3 A I'm pretty sure he was because he didn't have no
4 weapon.

5 Q Was he driving a car?

6 A Yes, he was driving a car but he had parked it down the
7 street. He had went, I think, to another relative he had
8 over there.

9 Q So he was in a car with you when he was allegedly
10 threatened with these butcher knives?

11 A He wasn't in a car.

12 Q We wasn't in a car?

13 A He had a car with it but we was walking.

14 Q Okay. He had a car with him but he wasn't in a car.
15 You were walking.

16 A Yes.

17 Q Okay. He took you home.

18 How long did that take?

19 A Took five minutes to take me home.

20 Q Okay. Did he come back to Mr. Fernandez's house?

21 A I don't know. I wasn't with him.

22 Q You don't know?

23 A Hu huh. (Negative).

24 Q So from the time he took you back home to the time that
25 Mr. Fernandez was deceased, you don't know what happened?

Brio Means - Cross-examination
By Solicitor Gray

- 1 A No.
- 2 Q At all?
- 3 A At all. I wasn't nowhere around him.
- 4 Q So you don't know if Mr. Dewberry threatened Mr.
- 5 Fernandez?
- 6 A No, I don't know.
- 7 Q You don't know where Mr. Dewberry got the gun --
- 8 A I don't know.
- 9 Q -- that killed Mr. Fernandez?
- 10 A I don't know.
- 11 Q You have no idea what transpired between here and here
- 12 to make these two gentlemen end up right here?
- 13 A No.
- 14 Q No idea?
- 15 A No idea.
- 16 Q So how -- whose fault is it?
- 17 I'm, I'm trying to understand.
- 18 Who, who is in danger at Wood Street and Pacolet Road
- 19 at that time?
- 20 If Mr. Dewberry lives way over there, why did he kill
- 21 Mr. Fernandez about, what's that, a quarter mile away from
- 22 his house?
- 23 A Because all that is in the same vicinity.
- 24 Q Same vicinity?
- 25 A Yeah, like I said, you can walk from Mr. Fernandez

Brio Means - Cross-examination
By Solicitor Gray

1 house across the yard to get to Mr. Dewberry's house.

2 Q Right. I get that.

3 A Yes.

4 Q You can walk through---

5 A Wood Street is just right there on the side. It's just
6 like a skip and a hop.

7 Q Or you can stay at home if there's a problem, right?

8 A I guess.

9 Q He could have cause he drove you away from the problem
10 initially, didn't he?

11 A No. Yeah, I mean I'm 42 years---

12 Q It's simple.

13 Did he drive you away from the problem?

14 A Yeah, we -- he took me home.

15 Q He drove you away.

16 What you say is the butcher knife problem, he drove you
17 away?

18 A Yeah, after all that, after all that went down, I asked
19 him, I said, come on. I said we didn't come up here for
20 that. We come up here to talk to him. That's all you come
21 up here to do.

22 Q Oh, you're trying to calm him down?

23 A Yeah.

24 Q Did it work?

25 A Mr. Fernandez, he got upset. Well, he got upset about

Brio Means - Cross-examination
By Solicitor Gray

1 the whole ordeal.

2 Q Uh-huh. (Affirmative).

3 A That's what I was trying to tell Mr. Dewberry. I
4 grabbed him by the arm. I said come on. About the time we
5 was walking out his driveway, Mr. Fernandez, he come running
6 out the door with two big butcher knives.

7 Q All right. Did he ever stab Mr. Dewberry?

8 A No, sir.

9 Q Did he ever stab you?

10 A No, sir.

11 Q Did he ever threaten you?

12 A Yes, he told me he'd kill me too but I paid it no
13 attention.

14 Q You paid it no attention?

15 A Yes.

16 Q Did you go get a gun?

17 A No, I'm not a violent person.

18 Q Did you come back to the scene---

19 A No.

20 Q ---and try to---

21 A No.

22 Q ---fight Mr. Fernandez?

23 A Nope. Nope.

24 Q Well, if he threatened you, didn't you think your life
25 was in danger?

Brio Means - Cross-examination
By Solicitor Gray

1 A No.

2 SOLICITOR GRAY: No further questions, Your Honor.

3 THE COURT: You can bring the lights back up, sir.

4 (Bailiff complies.)

5 THE CLERK: All right. Thank you.

6 Ms. Price, you may ask any further questions, questions
7 of the witness.

8 MS. PRICE: Okay.

9 REDIRECT EXAMINATION

10 BY MS. PRICE:

11 Q About how -- this scenario that you've just been
12 talking about with Mr. Gray, about how long did that take to
13 take place?

14 A What's that?

15 Q About how long did it take all of that to take place?

16 A The little incident?

17 Q Yes.

18 A It didn't take long. I'd say -- we probably went up
19 there no more than ten minutes.

20 Q Okay. And is this the same day that Jerry died?

21 A Yes.

22 Q And do you -- you did see -- you saw Mr. Fernandez
23 armed with two knives?

24 A Yes, ma'am, I did.

25 Q And he -- you heard him threaten the life of Mr.

Bernard Dewberry - Direct examination.
By Ms. Price

1 Dewberry?

2 A Yes. Yes, ma'am, he done that.

3 Q That's all I have, Mr. Means.

4 SOLICITOR GRAY: Nothing further, Your Honor.

5 THE COURT: You may step down, sir.

6 You may call your next witness.

7 MS. PRICE: Mr. Bernard Dewberry.

8 THE COURT: Sir, if you'll come back to the stand
9 please.

10 (Witness complies.)

11 THE COURT: Mr. Dewberry, you were placed under oath
12 previously before this Court.

13 Do you acknowledge that you remain under oath at this
14 time?

15 THE WITNESS: Yes, sir.

16 THE COURT: Have a seat please.

17 BERNARD DEWBERRY, having been
18 previously sworn, testified as follows:

19 THE COURT: You may proceed, Ms. Price.

20 MS. PRICE: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MS. PRICE:

23 Q Mr. Dewberry, you've already put your name on the
24 record but just repeat it again please.

25 A Yes, ma'am, it's Bernard Dewberry.

Bernard Dewberry - Direct examination
By Ms. Price

1 Q And, Mr. Dewberry, how do you know Mr. Fernandez?

2 A He's my cousin.

3 Q I'm gonna take you back to the morning of May the 9th
4 of 2015. Let's start at the beginning of the day.

5 what happened?

6 A Woke up that morning. Took, took Amanda Newland to
7 work.

8 Q Who's Amanda Newland?

9 A At that time she was a female I was going with.

10 Q Okay.

11 A Took her to work. Came back home. While I was at
12 home, I observed Jerry coming through mama yard. Knocked on
13 the window, tried to get his attention. Kept going. So I
14 goes to my aunt house. Didn't go there to fight. Go over
15 there to, you know what I'm saying, to ask Jerry a question
16 about a female.

17 Q Now, when you say you went to go ask Jerry a question
18 about a female, what do you mean by that?

19 A The female I was going with -- had been living with for
20 about nine years, about eight, nine years. I asked him was
21 they messing around.

22 Q Okay.

23 A But I heard they were messing around.

24 Q Okay. And what did Mr. Fernandez say?

25 A At that point he was like no, I can't believe that you,

Bernard Dewberry - Direct examination.
By MS. Price

1 you would come ask me something like that.

2 Q About what time of the day was this?

3 A Like in the morning about -- I'd say about, about
4 11:00 or something.

5 Q Okay. Did you see Mr. Fernandez later in the day?

6 A After I left his mother house or before that?

7 Q Before that.

8 A Yes, ma'am, walking through my mother's yard that
9 morning.

10 Q Okay. I'm gonna show you what's previously been
11 marked -- can you see that from where you're sitting?

12 A Yes, ma'am.

13 Q Okay. Can you see that well enough to talk about it?

14 A Yes, ma'am.

15 MS. PRICE: Okay. Able, can I get your pointer? Thank
16 you.

17 THE COURT: Do you need the lights down?

18 MS. PRICE: I think we can -- I think he's indicated he
19 can see, Your Honor.

20 THE COURT: I'm having a hard time from -- seeing,
21 seeing it from over here.

22 MS. PRICE: All right. Can we get that please?

23 (Bailiff complies.)

24 MS. PRICE: Thank you.

25 THE COURT: All right. Thank you.

Bernard Dewberry - Direct examination
By Ms. Price

1 MS. PRICE: May I approach?

2 THE COURT: Yes, ma'am, you may.

3 Q Okay. This is a laser pointer. I'm gonna ask you some
4 questions and please indicate on the map where we're talking
5 about.

6 Okay?

7 A Yes, ma'am.

8 Q Push that button to get it to shine.

9 Okay?

10 A (Witness nods affirmatively.)

11 Q Okay. Mr. Dewberry, do you recognize this map?

12 A Yes, ma'am.

13 Q What is it?

14 A Map of, map of my neighborhood.

15 Q Okay. Could you indicate on this where your home is
16 located?

17 A Like right in here.

18 Q Okay. And could you indicate to us where Jerry --
19 where Chuck lived?

20 A Like right in here. Right in this area.

21 Q Okay.

22 A Right where -- right -- yeah, right in here.

23 Q Okay. When you first saw Chuck that morning from your
24 window, which direction was he headed?

25 A He was coming through the little pathway heading

Bernard Dewberry - Direct examination
By Ms. Price

1 towards his house.

2 Q When you say a little pathway, is that a street?

3 A It's, it's not a -- it got streets in-between it but
4 you walking through, you walking through a field coming out
5 of my yard walking -- and through the backyard walking
6 through a field.

7 Q Okay. If you can indicate that please?

8 A Come -- coming out of my backyard---

9 Q Uh-huh. (Affirmative).

10 A ---onto Wood Street in the field. Church somewhere
11 around in -- somewhere around in here and this way. This is
12 a straight narrow shot.

13 Q Are these people's yards?

14 A It's a church right there.

15 Q Is, is that a foot -- is it a footpath?

16 A Yes, ma'am.

17 Q Is it gravel?

18 A No, ma'am.

19 Q Just, just worn -- is it a worn out place on the---

20 A Yes.

21 Q ---on the ground?

22 A Yes, ma'am.

23 Q Is it unusual to see people coming and going that way?

24 A No, ma'am.

25 Q Do you use that path often?

Bernard Dewberry - Direct examination
By Ms. Price

1 A Yes, ma'am.

2 Q Does the neighborhood use that path often?

3 A So and so. If they, you know what I'm saying, people
4 that's coming toward my house.

5 Q But is it used by persons other than yourself or Mr.
6 Fernandez?

7 A Yes. Yes, ma'am.

8 Q So the first time -- I'm backtracking just a little.

9 The first time you saw Mr. Fernandez that morning, he
10 was on this path?

11 A Yes, ma'am, he walked through my, through my yard,
12 through my front yard, through the backyard, through,
13 through the backyard onto Wood Street, through this, through
14 this little area right here onto Carver Street, and then on
15 Old Pacolet and his mama and them stay right there in front
16 of -- across the street from Old Pacolet.

17 Q Did he live with his mom?

18 A Yes, ma'am.

19 Q Okay. Did you have occasion to see him again that
20 morning?

21 A The -- yeah, at -- when, when I went -- that morning
22 when I went over there to ask him about the situation about
23 the female.

24 Q Okay. And is that the previous testimony we just heard
25 Mr. Means talk about?

Bernard Dewberry - Direct examination
By Ms. Price

1 A No, ma'am.

2 Q Okay. When y'all had, when y'all saw each other this
3 time, did y'all actually have a face-to-face conversation?

4 A The very first time?

5 Q Yes.

6 A Yes, ma'am.

7 Q And where was that?

8 A It was at that -- it was at his, it was at his mama
9 house in the front yard.

10 Q Okay. And what happened in, in the front yard of his
11 mama's house?

12 A Said after the questioning and stuff, you know what I'm
13 saying, we both got heated. My aunt, she asked me to leave.
14 So I left.

15 Q At this point in time did it become a physical
16 altercation?

17 A No, ma'am.

18 Q Were y'all yelling at each other?

19 A Sort of. We got---

20 Q Cussing each other?

21 A Yes, ma'am.

22 Q Approximately what time of the day was that?

23 A About, about 11:30. Somewhere around 11:00.

24 Q How did you, how did you get, how did you get to your
25 aunt's house?

Bernard Dewberry - Direct examination
By Ms. Price

1 A I drove the first time.

2 Q Okay. And after you and Mr. Fernandez had an argument,
3 how did you leave?

4 A I got in my car and left.

5 Q Where did you go?

6 A I went down, I went down Old Pacolet. I seen Brio and
7 Hokey walking and that's where I picked up Brio on Old
8 Pacolet.

9 Q Okay. Where did you take Mr. Means?

10 A Me and him went, we went -- we came back up -- I
11 told -- first, when he got in the car, I told him about the
12 situation, me and Chuck. I needed him to talk, you know
13 what I'm saying, talk to Chuck because me and him and Chuck
14 couldn't get no understanding. So went back over there. We
15 parked my car down here in my aunt house and we walked up to
16 Chuck on Old Pacolet.

17 Q So you parked your car and walked to Chuck's house?

18 A Yes, ma'am.

19 Q Why didn't you just drive to Chuck's house?

20 A I, I don't know.

21 Q Is that something you do normally?

22 A Most of the time we just -- most of the time I just
23 stay right there, right across there. Most of time I walk,
24 I walk over there. Sometimes I drive.

25 Q Okay. So you and Brio walked to Chuck's house?

Bernard Dewberry -- Direct examination
By Ms. Price

1 A Yes, ma'am.

2 Q And where's Chuck's house again?

3 A Right in this area right here.

4 Q Okay. And when you got to Chuck's house, what
5 happened?

6 A Brio tried to talk to Chuck. Chuck said he didn't want
7 to hear it. He got upset and he said he got something for
8 this. Went in the house. Grabbed two butcher knives. So
9 me and Brio backed up with -- we backed up in the road.
10 Chuck came after. His sister Lanna jumped in front of him
11 and stopped him from further approaching us with the knife.

12 Q How many knives did he have?

13 A Two butcher knives.

14 Q How big were they?

15 A About that long.

16 Q Approximately how many inches long?

17 A Oh, I really don't remember. I guess say about two,
18 three inches I guess.

19 Q Now, Mr. Dewberry, when that happened, what did you and
20 Mr. Means do?

21 A Well, after that, after the threats was made and he
22 threatened me and everything, I went back -- we went back to
23 my car. I dropped, I dropped him, Brio, back off at home
24 and I went back to my house.

25 Q How did he threaten you?

Bernard Dewberry -- Direct examination
By Ms. Price

1 A He told me he swear on his daddy grave that he was
2 gonna kill me.

3 Q And what did you say?

4 A And I responding to his threat, I put it on my mama
5 grave that I was gonna kill him.

6 Q Were you armed?

7 A No, ma'am.

8 Q Was he armed --

9 A Yes, ma'am.

10 Q -- when he said that?

11 After you went back to your house, what happened?

12 A I parked my -- I walked, I walked through the fairway
13 to my cousin house, Peanut. I was on my way to her house.

14 Q Approximately how long after you were threatened did
15 that happen --

16 A I'd say---

17 Q -- did you encounter Mr. Fernandez again?

18 A Probably about -- I'd say about -- at least about ten,
19 fifteen minutes.

20 Q Where does Peanut live?

21 A She live, she live right on Carver Street.

22 Q Okay. Now, at this point, were you armed?

23 A Yes, ma'am.

24 Q What were you armed with?

25 A A .22.

Bernard Dewberry - Direct examination;
By Ms. Price

1 Q And why did you arm yourself?

2 A I kind of felt threatened but I didn't want to feel
3 threatened cause that was my family.

4 Q Were you afraid for your life?

5 A Yes, ma'am.

6 Q Why were you afraid for your life?

7 A Cause my cousin threatened to kill me with two -- come
8 at me with two butcher knives and I wasn't trying to do no
9 physical body harm to him.

10 Q On your way to Peanut's house, did you encounter Mr.
11 Fernandez again?

12 A Yes, ma'am.

13 Q Where?

14 If you'll show us on this map.

15 A It's Old Pacolet.

16 Q Uh-huh. (Affirmative).

17 A Yeah. Peanut stay right here off Carver. We
18 confronted each other right here in this field. That's like
19 we right there in the church parking -- well, background,
20 backyard, whatever. Right in here.

21 Q Were you on that footpath you talked about earlier?

22 A Yes, ma'am.

23 Q What happened when you saw Jerry that day?

24 A We had a little more word. So I start, I start heading
25 back to the house, Wood Street, but I never turned my back

Bernard Dewberry - Direct examination
By Ms. Price

1 on him. He kept approaching me. So when I got on Wood
2 Street---

3 Q Well, when Jerry approached you, where was Jerry coming
4 from?

5 A He was coming, he was coming from, from his house. We
6 was right here. He was coming from Carver Street. He head
7 into, into Carver Street and onto -- in the, in the pathway
8 right there by the church.

9 Q So were y'all approaching each other from opposite
10 directions?

11 A Yes, ma'am.

12 Q So you're facing, you're facing each other?

13 A Yes, ma'am.

14 Q Okay. About -- at what point did -- you saw Jerry?

15 A In the field.

16 What point?

17 Q Uh-huh. (Affirmative).

18 On the footpath, where were you?

19 A We was probably about midrange. About right in here.

20 Q Closer to your house than his?

21 A Yes, ma'am.

22 Q Okay. What happened at that point?

23 A At -- I didn't, I didn't put it. He pulled out the
24 knife on me.

25 Q How did you see him pull out a knife?

Bernard Dewberry - Direct examination:
By Ms. Price

1 A He pulled it out his pocket.

2 Q Was he following you?

3 A Yes, ma'am, that's -- once we got there on Wood Street,
4 I pulled out, I pulled out a gun and, as he was trying to
5 approach me again, and I, and I, I turned my back and shot
6 him.

7 Q How far away from you was he?

8 A He was about eight to ten feet.

9 Q Did he still have the knife in his hand?

10 A Yes, ma'am.

11 Q How many knives did he have?

12 A He had one.

13 Q Okay. What happened at that point?

14 A I just shot. I just shot and fired. I took -- I just
15 shot and fired. He ran, he ran down here. He ran down Wood
16 Street. I ran through, I ran through the field way right
17 here.

18 Q What did you do with the gun?

19 A I had to drop it in-between this field heading to my
20 mama backyard or in-between, in-between this, in-between
21 right here.

22 Q Mr. Dewberry, why did you shoot Chuck?

23 A I shoot -- I shot Jerry cause I feared for my life.

24 Q That's all I have for you. Please answer Mr. Gray's
25 questions.

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 SOLICITOR GRAY: Thank you.

2 THE COURT: Mr. Gray, your witness.

3 SOLICITOR GRAY: Thank you, sir.

4 THE COURT: Yes, sir.

5 MS. PRICE: Do you want him to have the laser pointer?

6 SOLICITOR GRAY: I need it.

7 MS. PRICE: Okay.

8 THE COURT: Do you need the lights up or down,

9 Mr. Gray?

10 SOLICITOR GRAY: Down please.

11 THE COURT: All right. Just leave it just like it is.

12 Thank you.

13 SOLICITOR GRAY: Thank you, sir.

14 CROSS-EXAMINATION

15 BY SOLICITOR GRAY:

16 Q You do realize this is where Jerry was shot, don't you?
17 Right there.

18 A No, sir.

19 Q That's where Jerry was shot and where his body was
20 found.

21 A That's where, that's where the body was found but not
22 where he---

23 Q That's where he was shot.

24 A That where -- not where he was shot.

25 Q Not over here.

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 So he ran all the way over here after you shot him?

2 A If you ask the -- if you get a gun is an -- a .22
3 bullet is not gonna knock you off your feet. It don't have
4 enough power to knock you off your feet, sir.

5 Q This .22 bullet had enough power to kill him, didn't
6 it?

7 One bullet in the back, didn't it kill him?

8 A They say that's what killed him.

9 Q They say.

10 All right. So you say you were over here in a fight,
11 in a tussle, but the officer said there was no injuries to
12 you at all. You had a gun, he had a knife, and you were in
13 a tussle.

14 What kind of tussle?

15 Describe the tussle.

16 A Really I think he got my words misunderstood. It
17 wasn't no tussle. It was a fuss. We were fussing. We
18 started back fussing in that path. We had words in that
19 path.

20 Q Sir, we went over this that he read your statement back
21 to you before you signed it. So, before you signed it, he
22 read it to you and the words you used were we started to
23 tussle.

24 How do you tussle verbally with a knife and a gun?

25 A I believe he misunderstood me, sir.

Bernard Dewberry - Cross-examination
By Solicitor Gray

- 1 Q You believe the officer misunderstood you?
- 2 A Yes, sir.
- 3 Q That there was a knife and a gun present and there was
- 4 a verbal tussle?
- 5 That's what the officer was suppose to take from that?
- 6 A We was, we was arguing.
- 7 Q All right. You were arguing down here somewhere.
- 8 Did anybody else see this argument?
- 9 A No, sir.
- 10 Q You went home to get the gun?
- 11 A No, sir, I had it in my glove compartment.
- 12 Q In your car?
- 13 A (Witness nods affirmatively.)
- 14 Q So when you took Brio home, you already had the gun
- 15 with you, didn't you?
- 16 A Not in my possession. In my glove compartment.
- 17 Q Okay. If it's not in your possession in the glove
- 18 compartment, who owns it in the glove compartment?
- 19 A I own it but it wasn't in my possession. It wasn't---
- 20 Q In your hand?
- 21 A ---on me personally, no.
- 22 Q But it was in the glove compartment?
- 23 A Yeah.
- 24 Q So when you had this altercation down here in that area
- 25 and wherever else, you drove Brio home?

Bernard Dewberry - Cross-examination
By Solicitor Gray

- 1 A Drove Brio home, yes, sir.
- 2 Q with a .22 in your glove compartment?
- 3 A Yes, sir.
- 4 Q You drove back?
- 5 A To my house.
- 6 Q To your house.
- 7 A Uh-huh. (Affirmative).
- 8 Q Then got -- walked out of your house---
- 9 A I never was in my house.
- 10 Q You didn't go in your house?
- 11 A No, sir.
- 12 Q You got out of your car with the .22?
- 13 A I put the .22 on me, yes, sir.
- 14 Q Where did you put it?
- 15 A In my pocket.
- 16 Q In your pocket.
- 17 Okay. Now, was anybody else at home when you got home?
- 18 A Nobody don't live with me but except me and my nephew.
- 19 Q Okay. Why didn't you go in the house and just stay
- 20 there?
- 21 A Because I didn't, I didn't, I didn't think Mr.
- 22 Fernandez was gonna come back after me.
- 23 Q Sir?
- 24 A I didn't think he was, I didn't think he was gonna come
- 25 back after me.

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 Q You didn't think he would?

2 A No. No, sir.

3 Q So why -- that's my question.

4 why not stay at home if you don't think he's gonna come
5 after you?

6 Just stay at home.

7 A why should I, why should I stay -- is it a law that I
8 had to stay at home?

9 Q Okay. why didn't you call the police if this man
10 threatened your life?

11 A To be honest with you, our family, we don't, we don't
12 -- what would we -- what I look like calling the police on?

13 Q How would you look calling the police?

14 A I thought, I thought this was gonna -- I thought it was
15 gonna be resolved. I didn't think it was gonna turn into a
16 situation like this.

17 Q So how do you look now?

18 A I look like a person that was defending his life. You
19 know what I'm saying?

20 Q You defended your life with a .22 inside your car. You
21 could of been inside your home. You could have been at
22 Eckerd's or Hardee's, anywhere.

23 You didn't have to come back to the situation, did you?

24 A I didn't go back to the situation, sir.

25 Q You went back to your house?

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 A My home. My residence.

2 Q Right.

3 And you shot your cousin near your house and he
4 miraculously wound up over here?

5 A Yes, sir.

6 Q And you don't know he got, what, a quarter mile from
7 your house---

8 A Last time I---

9 Q ---to that corner?

10 A When I, when I left him he was running down -- he was
11 running down Wood Street.

12 Q He was running down Wood Street.

13 Doesn't Wood Street curve?

14 A Yes, sir.

15 Q So -- okay. You turned and shot.

16 Did the bullet curve too or did the bullet flow this
17 way?

18 I'm---

19 A what you mean curve?

20 Q I'm just asking, with a .22, that's a hell of a shot.

21 How did you do that?

22 A I don't, I don't -- I'm trying to see what you getting
23 at, what you trying to---

24 Q You turned your back. You turned around. You were,
25 you were so upset at this situation that you came back. You

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 turned your back and shot, and shot your cousin in the back.
2 He wound up a quarter mile away.

3 How did you do that, not even looking at the target,
4 this person you're afraid of?

5 A I just pulled out and fired blindly.

6 Q You pulled out and fired blindly?

7 A Blindly, you know what I'm saying? I fired the gun
8 with my eyes closed.

9 Q And back to the gun too?

10 A Back to him?

11 No, no, never that. Back to him, no.

12 Q I do not know if it had been bought or what. I do not
13 own a gun.

14 That was part of your statement, right?

15 A Yeah, I do not own a gun.

16 Q But the gun was in your car?

17 A Yes, sir.

18 Q So who owned the gun that you shot and killed your
19 cousin with?

20 A The gun was -- when my mama passed, before my mama
21 passed, mama had been passed. She hadn't, she hadn't been
22 passed but about not even six months before this happened.
23 Her boyfriend was in the Army and he had, he had a .22. So,
24 when she passed, he passed first but when she passed, going
25 through her personal stuff that she had, I ran across the

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 .22.

2 Q Okay. Now, when did you pull the gun out of the
3 dashboard?

4 A When I got out, when I got out of the car at my house.

5 Q At your house?

6 A When I put it on me.

7 Q Did you see him before you got out of the car?

8 A No, sir.

9 Q You didn't?

10 A No, sir.

11 Q You didn't see him before you got the gun out of the
12 dashboard?

13 A I didn't see him.

14 Q When he pulled the knife out of his pocket or pulled
15 the gun, that's what you said in your statement.

16 So which is it, you saw the knife first or you didn't
17 see the knife first?

18 A It happened so fast, sir, you know what I'm saying. I
19 couldn't -- I can't recall it.

20 Q Okay. How far apart were you?

21 A Probably about eight or ten feet.

22 Q Eight to ten feet.

23 And was he running to you or running away?

24 A He was coming towards me.

25 Q Okay. And you closed your eyes and you shot?

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 A Yes, sir.

2 Q And when did you open your eyes to see him running away
3 again?

4 A After, you know what I'm saying, after I fired, I
5 opened my eyes and that's when I seen him turning and
6 running away.

7 Q So you shot him in the front?

8 A At first he was standing, he was standing at me like in
9 a boxer stance, like in an angle, with the knife in his
10 hand.

11 Q So you shot him in the front cause you said he turned
12 and ran?

13 A (Witness stands up.)

14 So he's standing, he's standing like this at an angle
15 like this.

16 THE COURT: Sir, you need to remain seated.

17 THE WITNESS: Okay. Okay.

18 (Defendant complies.)

19 A He's standing at me like that in a boxing stand.

20 Q And that's how you shot him?

21 A That's how I remember when I, when he was standing, you
22 know what I'm saying, when he -- when I pulled out the gun.

23 Q And what happened to the gun again?

24 A I dropped it.

25 Q You dropped it?

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 A Yes, sir.

2 Q Where did you drop it?

3 A In-between the -- in that field.

4 Q In that field?

5 A Yeah, running back towards my mother.

6 Q Did you ever tell the officers where the gun was?

7 A I told them where I could -- I told them where it could
8 of been located at.

9 Q You told them where it could be located?

10 A Where at. What area it would be in.

11 Q You went driving out to the scene, right?

12 A Yes, sir.

13 Q And Officer Odo -- Officer Smith showed you where Chuck
14 got shot.

15 A And I told him -- when they -- when we got to there, I
16 told, I told Officer Smith that this wasn't, this were not
17 where the incident occurred.

18 Q Well, why didn't you take him to where the gun was?

19 A We went to the incident. I showed him where the
20 incident, where it, where it happened at.

21 Q All right. Maybe I'm not speaking correctly.

22 Why didn't you take him to the gun?

23 A Cause he didn't ask me to take him to the gun. He
24 asked me to show him where the incident took place.

25 Q Did Chuck ask you to go get a gun?

Bernard Dewberry - Cross-examination
By Solicitor Gray

- 1 A (No response.)
- 2 Q When you got up and ran you saw blood on the back of
- 3 his shirt.
- 4 Was that correct?
- 5 A When I -- after I had him and I opened my eyes and I
- 6 seen, you know what I'm saying, I seen him running down the
- 7 street, I seen a blood spot.
- 8 Q You saw a blood spot.
- 9 So which way did he run?
- 10 A He ran down Wood Street.
- 11 Q Down Wood Street.
- 12 A Uh-huh. (Affirmative).
- 13 Q I, I -- did he ever touch you with these supposed
- 14 knives?
- 15 Did he ever cut you?
- 16 A No, sir.
- 17 Q Did he ever punch you?
- 18 A No, sir.
- 19 Q Did he ever cut anybody else in the family?
- 20 A Not that I know of.
- 21 Q Brio, did he cut Brio?
- 22 A Brio wasn't there.
- 23 Q Okay. When you left and came back, did he go to your
- 24 house and hide in your house and wait for you?
- 25 A Who?

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 Q Chuck.

2 A Did he go hide in my house?

3 Q Yes, sir.

4 A No, sir, he ain't ride to my house. I never went to --
5 I never went back to my house.

6 Q You never went back to your house?

7 A Not in my house.

8 Q It was in the street, right?

9 A In the street what?

10 Q That this happened.

11 A Right there. Right, right in-between Wood Street and
12 Carver, Carver.

13 Q Not your house?

14 A Not my house.

15 Q Not his house?

16 A Not my house. Not his house.

17 Q Right.

18 In a field?

19 A In a field.

20 Q In a field or in the street?

21 A In a field in a public, you know what I'm saying, right
22 there, right there on Wood Street.

23 Q You could of gone home, locked your door, called the
24 police, couldn't you?

25 A Well, when I seen him with the knife?

Bernard Dewberry - Cross-examination
By Solicitor Gray

1 Q Yes, sir.

2 A What -- I was at a -- we was at a close distance. I
3 was gonna -- I wasn't fully turning my back on a person
4 that, you know what I'm saying, with a knife.

5 Q Okay. When did you see him with the knife, when you --
6 before you got out of that car---

7 A I never seen him---

8 Q ---or were you still in the car?

9 A I got out of my car. I placed the .22 on me. I had---

10 Q When did you see the knife?

11 A He pulled the knife on me when he, when we --.

12 Q When you were in the car?

13 A No, sir. No, sir.

14 Q So why did you pull the .22 if he didn't have the
15 knife---

16 A What you mean?

17 Why, why I put the .22 on me?

18 Q Yeah. You say he didn't have the knife out yet.

19 A I put the .22 -- a gun on me.

20 Q I know that.

21 A Yeah, for my protection.

22 Q But he didn't have a knife.

23 THE COURT: The question was, the question was why did
24 you put the .22 on you.

25 THE WITNESS: Oh, I put, I put the .22 on me for my

1 protection. Not from him. Just from anybody in general.

2 SOLICITOR GRAY: No further questions.

3 THE COURT: You may reexamine. Redirect.

4 MS. PRICE: I just have one question.

5 REDIRECT EXAMINATION

6 BY MS. PRICE:

7 Q On May the 9th, 2015, were you -- when you saw Chuck in
8 that field, did you think he was gonna hurt you?

9 A Yes, ma'am, he had potential.

10 MS. PRICE: That's all I have.

11 THE COURT: Mr. Gray, did you hear the question, the
12 answer?

13 SOLICITOR GRAY: No, sir, no further questions.

14 THE COURT: All right. You may step down, sir.

15 Defense wish to call any witnesses, other witnesses?

16 MS. PRICE: No, Your Honor.

17 THE COURT: State wish to call any reply or rebuttal
18 witnesses?

19 SOLICITOR GRAY: Yes, sir, Your Honor.

20 THE COURT: All right. You may do so.

21 SOLICITOR GRAY: State calls Mr.---

22 THE COURT: Why don't we take about a five minute
23 break?

24 SOLICITOR GRAY: Yes, sir, Your Honor.

25 THE COURT: Court, Court will take about a five minute

Nathaniel Dodd - Direct examination
By Solicitor Gray

1 recess.

2 (WHEREUPON, a short recess was taken at this time.)

3 THE COURT: All right. Let's see.

4 Are you ready to proceed, Mr. Gray?

5 SOLICITOR GRAY: Yes, sir, Your Honor.

6 THE COURT: All right. I didn't see your cocounsel.

7 SOLICITOR GRAY: She'll be back momentarily.

8 THE COURT: All right. You may proceed.

9 SOLICITOR GRAY: State calls Nathaniel Reese Dodd.

10 THE COURT: All right. Come forward to be sworn, sir.

11 NATHANIEL DODD, being first duly
12 sworn, testified as follows:

13 THE COURT: Sir, have a seat.

14 (Witness complies.)

15 THE COURT: State your name please.

16 THE WITNESS: Reese Nathaniel Dodd.

17 THE COURT: Thank you very much.

18 Mr. Gray, your witness.

19 SOLICITOR GRAY: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY SOLICITOR GRAY:

22 Q Mr. Dodd, where do you live?

23 A I live on Cowpens, Bunch Circle.

24 Q Bunch Circle?

25 A ■ Bunch Circle, yeah.

Nathaniel Dodd - Direct examination
By Solicitor Gray

1 Q Is that near---

2 A Yeah, I live right there like where Chuck's and them
3 house is. It's a road right there between us. I'm -- my
4 house is right there behind it like if---

5 Q I get it. You're very close to the whole situation.

6 A Oh, yeah, yeah.

7 Q How long have you known Jerry Fernandez?

8 I know you called him Chuck just now.

9 A Yeah, I call him Chuck. I'm sorry.

10 Q How long did you know Jerry Fernandez?

11 A I been knowing him ever since a little kid you know.

12 Q What about his cousin, Mr. Dewberry?

13 A I been knowing him for probably about -- I'd say ever
14 since I came back home from Charlotte. So I'm gonna say
15 probably about 18, 20 years. It's been a while. You know,
16 it's been a while.

17 Q For -- and Mr. Dewberry and Mr. Fernandez are first
18 cousins, correct?

19 A Right.

20 Q That 18, 10, 20 years, whatever, did they have any
21 other problems?

22 A I never knowed them to have no problems. They been
23 like -- they was like brothers to me. I mean, you know, in
24 my opinion it was.

25 Q All right. This situation on May 9th of 2015, were you

Nathaniel Dodd - Direct examination
By Solicitor Gray

1 involved in this in anyway?

2 A No, I wasn't involved with it but I was sitting out on
3 the porch with Chuck for about over an hour or more.

4 Q What porch?

5 A On the -- well, they call the porch. Right there at
6 Chuck's mother's house. You sitting out there. He call me
7 up to his house and he wanted to talk to me.

8 Q All right. Did you ever see Mr. Dewberry that day?

9 A Yes, I seen him. After me and Chuck had been out there
10 for a while, he, he, he -- I seen him later on, yeah.

11 Q And Mr. Dewberry, was, was he alone?

12 A No, he wasn't. No, he wasn't.

13 Q Who was with Mr. Dewberry?

14 A Brio.

15 Q Brio Means?

16 A Yes. Yes.

17 Q Where they in a car?

18 A Well, me and Chuck was sitting out there and we kind of
19 talking. Next thing I know, I had my back kind of turned
20 cause I was sitting on the -- like the little porch like
21 thing and Chuck was up under the carport sitting on his
22 chair. Next thing I know, Chuck said oh, man, let it go,
23 man, and I turned around and Bernard and Brio was riding by
24 going down Bunch Court and they turned to go down to the
25 Bunch Court and now I guess that's whey they parked their

Nathaniel Dodd -- Direct examination
By Solicitor Gray

1 car. Parked his car.

2 Q Okay. They went down Bunch Court and parked the car?

3 A Yeah.

4 Q What is the next time you saw Mr. Means and Mr.

5 Dewberry?

6 A They was walking up towards Chuck's house where Chuck's
7 mother house was.

8 Q From Bunch Court?

9 A Right.

10 Q From---

11 A walking up the road coming in. They got on Pacolet
12 Road walking towards the house.

13 Q From behind Chuck?

14 A Yeah, you know, when Chuck seen them, I seen them come.

15 I said Chuck, here they come.

16 Q Okay. Not from Mr. Dewberry house's direction?

17 A Nah, they was coming from Bunch Court.

18 Q All right. So they walked up.

19 Was there a fight?

20 A No, it wasn't no fight.

21 Q Was there a tussle?

22 A No, it wasn't no tussle either.

23 Q Was there a mental tussle?

24 A Only thing I know was words.

25 Q Words.

Nathaniel Dodd - Direct examination
By Solicitor Gray

1 A It was words when they came up on the carport even when
2 they confronted Chuck.

3 Q Were there words or were there threats?

4 A Well, when they got up to the car porch, Bernard didn't
5 say nothing. It was all, it was all Brio doing all the
6 talking. I mean Chuck -- I mean Bernard didn't say nothing
7 until they get -- which calm. Then all of a sudden a few
8 words had said and yes, Chuck start going off. And next
9 thing I know, I seen, I seen Bernard, he's taking his shirt
10 off. Started taking his shirts off and stuff.

11 Q Did he appear to be afraid?

12 A I, I think Chuck was cause I ain't no---

13 Q No, I mean Mr. Dewberry.

14 A No, he didn't look like he was afraid, no.

15 Q How about Mr. Means, Brio?

16 A No, me and him -- no, neither one.

17 Q All right. And you're there?

18 A I'm right there.

19 Q And I'm, I'm---

20 A I'm right there.

21 Q And I'm not gonna sugarcoat it. I guess you're there
22 in case something jumps off---

23 A Yeah.

24 Q ---to help Chuck?

25 A Cause he, he kept telling me, for the whole time, don't

Nathaniel Dodd - Direct examination.
By Solicitor Gray

1 leave cause he was nervous. He, he, he could -- I ain't
2 never see Chuck like that. Chuck, he's strong, but I know
3 for a fact, he ain't feared nobody nothing. They right
4 there. He had a little fear in his heart. He had a bunch
5 of it. He kept telling me to stay there. I stayed up there
6 with him. They there.

7 Q All right. Now, I'm gonna ask you a difficult
8 question.

9 Did Chuck threaten Bernard?

10 A Well, like I say, them -- when them words -- when he
11 took his shirt off, that's when Chuck jumped up. He said
12 okay. He said -- but he said he getting me. He called my
13 name like he, he -- he jetted in the house and he, you know,
14 he didn't really say like threatening him at the, you know,
15 but Chuck did go in the house and got two butcher knives,
16 yes, sir.

17 Q Once Mr. Dewberry took off his shirt, then Mr.---

18 A Yeah, he walked in the house.

19 Q ---Mr. Fernandez went in the house---

20 A Went in the house---

21 Q ---and got the knives?

22 A ---and then he came back out.

23 Q Okay. Did Mr. Dewberry leave at that point?

24 A Well, yeah, they -- when Chuck came back out, Chuck
25 said that was the man -- just another thing. Y'all think

Nathaniel Dodd - Direct examination
By Solicitor Gray

1 y'all do me like that. Ain't gonna do me like that, ain't
2 gonna jump me, bla, bla, bla, and next think I know, you
3 know, words said and then that's when Lanna came outside
4 and, you know, kind of slowed it down, you know, stopped
5 them and told him---

6 Q And Lanna would be?

7 A The oldest sister, yeah.

8 Q of Chuck?

9 A Chuck's sister.

10 Q Jerry Fernandez?

11 A Yeah, yeah. She came outside and kind of calmed it
12 down a little bit.

13 Q The victim in this case?

14 A Yes, sir.

15 Q So she---

16 A Calmed her brother down, yeah.

17 Q So his older sister calmed him down?

18 A Yeah, she calmed him down and then, you know --.

19 Q So what did Mr. Dewberry do at that point?

20 A Well, next thing I know, after that, Bernard just
21 turned around like this or something. He said well, I got
22 something for you and did just like that with his finger.
23 He say I got something for you and did just like that.

24 Q Pointed at Mr. --?

25 A Pointed at Chuck, yeah.

Nathaniel Dodd - Direct examination
By Solicitor Gray.

1 Q In the form of a gun?

2 A In the form of with his finger. He did just like that.

3 Q Did you ever see Mr. Fernandez again that day?

4 A Yes. Well, Chuck went in the house and it's like I
5 say. Like him, like him kind of calming down I guess to put
6 the knives back up. So he went in the house. He got the
7 knives and he came back out with a phone and he got on the
8 phone and like --.

9 Q Okay.

10 A And if I'm not mistaken, I think he called his Uncle
11 Chad.

12 Q Did you ever see him alive again that day?

13 A Yes, I -- well, my wife had called me. Like I say,
14 only thing she had to do was just holler at just, you know,
15 I can hear him from Chuck's house. We was in the front and
16 that's when he was out there talking -- he was on the phone
17 talking to Chad and I heard my wife call me. So I went back
18 home. And so I went down there. I had to give her a couple
19 of dollars. She was going to the store. She was gonna get
20 some things for us. You know, we was just down there
21 chilling out. You know, her daughter and all them was down
22 there, you know. And next thing I know, I walk back up to
23 the house and I had a few beers. So I'm going, I'm going
24 back up on the porch and just chill out with him.

25 The next thing I know, and this is the last time I seen

Nathaniel Dodd - Direct examination
By Solicitor Gray

1 Chuck, he was walking across the road. I said Chuck, man,
2 is you for sure, man, you need to go across there. He said
3 man, I'll be all right. I was thinking he was going over
4 to -- he was going to another friend of his house over there
5 across the road right there off Wood Street.

6 Q Okay. Wood Street.

7 A Yeah.

8 Q Did he go directly into the direction of---

9 A I can't---

10 Q ---Mr. Dewberry?

11 A I'm gonna, I'm gonna be real, I'm gonna be real with
12 you. After he went in -- right there where the -- one of
13 the ends of the duplexes and went on, that was it. That's
14 the last time I seen him until I seen his girlfriend and
15 Lanna going down the street and I guess that's when he, he
16 collapsed right there on Wood Street and they went out there
17 and then I went.

18 Q So was he, was he on Pacolet Road?

19 A Well, he was right there on the corner of Pacolet and
20 Wood Street right there where he fell, yeah. That's where
21 he was at, right there on Wood. But he was more on Wood
22 Street, yeah.

23 Q Okay. And that's -- and you were there when he fell
24 or---

25 A Well, no, I seen it after they went down there cause

Nathaniel Dodd - Cross-examination
By Ms. Price

1 that's when I seen his girlfriend running down the step --
2 running down there and I heard Lanna come out crying and,
3 you know, going to, you know, check her brother out.

4 Q And where was his injury that you could see?

5 A well, the injury?

6 Q Yes, sir.

7 A Where he got shot at.

8 Q Yes, sir.

9 A Oh, yeah, it was in the back right here.

10 Q It was in the back?

11 A Yeah, right up in here cause, when I got out there, see
12 what it was, when I heard that and I seen him coming, I
13 hollered and I said what's up and then that's when I seen
14 Lanna running down there. She said Reese, you know, and
15 then they ran down there and then that's when I thought --.

16 Q Was Mr. Dewberry anywhere around?

17 A No, he wasn't there whenever -- when I got down to the
18 street to see Chuck -- on Chuck, no, he wasn't there.

19 SOLICITOR GRAY: No further questions, Your Honor.

20 THE COURT: Your witness, Ms. Price.

21 CROSS-EXAMINATION

22 BY MS. PRICE:

23 Q So, Mr. Dodd, you were over at Chuck's house when Mr.
24 Dewberry and Mr. Means came up?

25 A Yes, I was.

Nathaniel Dodd - Cross-examination
By Ms. Price

1 Q Did you see Mr. Dewberry with a weapon?

2 A No, I didn't see him with it.

3 Q Okay.

4 A I admit, no.

5 Q Okay. And your testimony here today is they, they
6 started fussing.

7 Is that right?

8 A Well, like I say, when he came up -- when they, they
9 came up on the porch, Bernard wasn't saying nothing. It was
10 all Brio doing the talking.

11 Q Okay. But no -- did anybody throw any punches?

12 A No. No.

13 Q Any scrapes?

14 A No.

15 Q No kicking?

16 A No kicking or nothing.

17 Q Okay. And yet Chuck goes back in his house and comes
18 out with two knives?

19 A Well, see that's when Bernard started acting like he
20 gonna do something. He's taking his shirt off like he was
21 gonna attack him, you know what I mean, at that time. But
22 it wasn't no fighting.

23 Q But he---

24 A He did that while he was attacking -- going to attack
25 him.

Nathaniel Dodd - Cross-examination
By Ms. Price

1 Q But, again, he didn't have -- you didn't see him with
2 any weapons?

3 A I didn't see nothing. No, I admit it.

4 Q Okay. And, at that point, do you know if Chuck called
5 the police at that point?

6 A No, he just went in the house. He went in the house
7 and got the knife.

8 Q And he -- and came back out?

9 A Yeah.

10 Q How big were the knives?

11 A Pretty nice size.

12 Q Nice size?

13 A Uh-huh. (Affirmative).

14 Q Okay. And then did Mr. Dewberry and Mr. Means leave at
15 that point?

16 A They stood out there in the road, yeah, and then they,
17 they kind of walked. You know, that's when Lanna came
18 outside to calm Chuck down and --.

19 Q Okay. And approximately how long was it from that
20 point to the point that Mr., that, excuse me, that Chuck,
21 left his house when you spoke to him?

22 A You talking about after all that stuff, you know, went
23 on and what -- what you mean, before he left his house?

24 Q Let, let me back up for you.

25 You testified that Chuck -- you and Chuck said -- had a

Nathaniel Dodd - Cross-examination
By MS. Price

1 conversation when you saw Chuck leave the house?

2 A I told him -- I said I don't think he should of left.

3 Q That's, that's right. That's, that's the conversation
4 I'm talking about.

5 A Right.

6 Q How -- what was the time period between Mr. Dewberry
7 and Mr. Means leaving the house and when Chuck left the
8 house?

9 A Like I say, he was on the phone with his uncle.

10 Q Uh-huh. (Affirmative).

11 A I left down the house and came back. Fifteen minutes,
12 something like that thing.

13 Q About 15 minutes?

14 A Something like that.

15 Q Okay. Do you remember giving a statement to the police
16 in this matter?

17 A Yes, I have.

18 Q Okay. Have you read that lately?

19 A No, I haven't read it, no.

20 MS. PRICE: Okay. May I approach please?

21 THE COURT: You may.

22 Q Okay. This is a copy of your statement given to the
23 police. If you'll just read over that and just look up when
24 you're---

25 A No, I can't see that good on it. I don't have my

Nathaniel Dodd - Cross-examination
By Ms. Price

- 1 glasses.
- 2 Q Oh, okay.
- 3 A I can't see anything.
- 4 Q Well, do you remember the substance of your statement?
- 5 A Like I said, but what Chuck had told me and everything.
- 6 Q But do you remember what you told the police that day?
- 7 A A lot of it. It's been so -- it's been a while, but,
- 8 like I said, I remember most of it, yeah.
- 9 Q Okay. Do you remember, in your statement, saying
- 10 anything about Chuck being -- seeming scared?
- 11 A Yeah, he was scared.
- 12 Q Did you say that in your statement?
- 13 A Yeah, the boy was scared. He was telling me that he
- 14 feel like, you know, Bernard gonna do something to him.
- 15 That's what he wanted.
- 16 Q Did you tell the police that?
- 17 A Well, I told him, you know, he was kind of shaken up
- 18 and stuff, yeah. I think I did. Yeah, I think I told them
- 19 that.
- 20 Q Would it surprise you to learn that you didn't?
- 21 A No, I know the boy was scared, you know. That's all I
- 22 can tell you.
- 23 Q Okay. And do you also remember telling the police
- 24 that, let's see, you said that -- and I know your testimony
- 25 here today you said that Mr. Dewberry looked at Chuck as he

Nathaniel Dodd - Redirect examination
By Solicitor Gray

1 was leaving and said I got something for you?

2 A That's what he said, yeah.

3 Q And you -- did he make -- and he made a hand/gesture
4 like this?

5 A Yes, he did.

6 Q What---

7 A He turned around, he turned around at Chuck and he said
8 okay, like that. I got something for you and just like
9 that. He said I got something for you.

10 Q Would it surprise you to learn that the gesture's not
11 in your statement either?

12 A Well, I told them that. I mean I told them, I told
13 them that.

14 MS. PRICE: Okay. May I approach again?

15 THE COURT: You may approach the witness.

16 Q Is that your signature down at the bottom?

17 A Yes, it is.

18 MS. PRICE: Okay. That's all I have.

19 THE COURT: Mr. Gray.

20 SOLICITOR GRAY: Yes, sir.

21 REDIRECT EXAMINATION

22 BY SOLICITOR GRAY:

23 Q About your statement that Ms. Price was asking you
24 about, you did say Bernard looked back and said I got
25 something for you?

Nathaniel Dodd - Recross examination
By Ms. Price

1 A That's what I said.

2 Q And you said, in street terms, that means I got a
3 bullet for you?

4 A That's, you know, they gonna shoot you or do something
5 to you. That's what I just said.

6 Q All right. Thank you.

7 THE COURT: What was that last statement?

8 SOLICITOR GRAY: Sir?

9 THE WITNESS: I say, I say, in street terms, when you
10 say something like that, you know, I got something for you,
11 you know, he's gonna do something to you, shoot you or
12 something like.

13 THE COURT: All right.

14 SOLICITOR GRAY: Nothing further, Your Honor.

15 THE COURT: You wish to ask anymore questions?

16 MS. PRICE: I got one more follow-up.

17 RE CROSS EXAMINATION

18 BY MS. PRICE:

19 Q Is it your testimony today that you saw Chuck walking
20 towards Carver Street that last time you saw him?

21 A Yeah, he was walking across the street, yeah. I mean
22 that's when I told him I don't think he should go across the
23 street back in there.

24 Q Okay. And he was walking across to Carver Street from
25 his house.

1 Is that correct?

2 A Yeah.

3 MS. PRICE: Okay. That's all I have.

4 THE COURT: Anything further, Mr. Gray?

5 SOLICITOR GRAY: No, sir.

6 THE COURT: You may step down.

7 SOLICITOR GRAY: That would be the state's showing,
8 Your Honor.

9 THE COURT: All right. Defense wish to call any other
10 witnesses?

11 MS. PRICE: No, Your Honor.

12 THE COURT: All right. Defense motion.

13 MS. PRICE: Thank you, Your Honor.

14 Excuse me. My computer went to sleep and I'm just
15 trying to bring up the statute.

16 (Pause.)

17 MS. PRICE: Your Honor, what I'm gonna call your
18 attention to today is Section 16-11-440(c) is the applicable
19 section of the Protection of Personal Property Act there.
20 And as Your Honor knows, it's a fairly new law but it's also
21 a fairly broad law.

22 There's a couple of things that the state would, excuse
23 me, that the defense does have to meet in order to prevail
24 on its motion today. I got number one. A person who is not
25 engaged in an unlawful activity.

1 Well, you got my client is walking in this heavily
2 covered foot trail in-between houses. That's something that
3 he's testified that's normally an activity that's in this
4 community. So it doesn't appear that he's trespassing. It
5 doesn't appear---

6 THE COURT: Well now wait a minute.
7 Is he claiming that was his property?

8 MS. PRICE: No, sir.

9 THE COURT: I didn't hear any testimony as to who owned
10 that property.

11 MS. PRICE: No, sir.

12 THE COURT: He certainly didn't claim it was his
13 property.

14 MS. PRICE: No, sir.

15 THE COURT: It sounded like it might of been a vacant
16 lot of some kind --

17 MS. PRICE: Yes.

18 THE COURT: -- is the best I could tell from the
19 testimony that I heard. I was listening very carefully to
20 see if he rented it, leased it, owned it. I didn't hear any
21 of that testimony.

22 The act that there's a piece of property out there and
23 it's got a path on it, does that mean it's open to the
24 public, anybody's got a right to use it?

25 MS. PRICE: Well, it doesn't -- it does not appear,

1 from the record that we have here today, that he was not
2 allowed not to use it.

3 THE COURT: So the presumption is you can go on
4 property you don't own?

5 MS. PRICE: No, the presumption is, Your Honor, for the
6 purposes of this hearing, this today, that he was in a place
7 where -- that he was not banned from.

8 THE COURT: That's not what the statute says. The
9 statute says you have a legal right to be.

10 MS. PRICE: Well, actually, it, it says, let's see, who
11 was attacked in another place where he has a right to be.

12 THE COURT: That's right, right to be, and they talked
13 in terms of the legal rights to be. So the statute talks
14 about that several times.

15 MS. PRICE: Yes, sir. And under the State's theory,
16 this happened at the corner of Wood and Old Pacolet Road.

17 THE COURT: Well, no, it's in -- somewhere in, in a --
18 I couldn't tell whether it was a field or a vacant lot. It
19 wasn't in the street. I didn't hear anybody say the
20 shooting took place in a street. No testimony to that.

21 Did you hear some testimony to that effect?

22 MS. PRICE: That's what it sounded like to me, Your
23 Honor.

24 THE COURT: Beg your pardon?

25 MS. PRICE: That's what it sounded like to me.

1 THE COURT: Oh, okay. Well, I'll hear from Mr. Gray on
2 that.

3 Go ahead.

4 MS. PRICE: Okay. And has no duty to retreat and has
5 the right to stand his ground to meet force with force,
6 including deadly force, if he reasonably believes it's
7 necessary to prevent death or great bodily injury to himself
8 or another person or to prevent the commission of a violent
9 crime as defined earlier in that statute.

10 THE COURT: Uh-huh. (Affirmative).

11 MS. PRICE: It would be our contention that, based on
12 the testimony that you've heard today, that Mr. Dewberry
13 does meet all the elements of that section of the statute,
14 and, therefore, he would be subject to immunity under the
15 Personal Property Act.

16 THE COURT: Okay. Mr. Gray.

17 SOLICITOR GRAY: Your Honor, this was a situation where
18 he was not entitled to immunity under this act. Where the
19 victim's body was found is not where the defendant said this
20 altercation occurred.

21 He pulled into his driveway after they fought, I guess,
22 through some common area. We don't know if he had a legal
23 right to be there or not. He did not establish that, by a
24 preponderance of the evidence; that he had a legal right to
25 be there.

1 As to what he's established, that the gun he used was
2 legal. He didn't establish he was in fear of his safety
3 specifically from Mr. Fernandez in this situation. He
4 didn't establish anything except the fact that he carried---

5 THE COURT: Did I gather, did I gather from the
6 testimony that Mr. Fernandez was shot in the back?

7 SOLICITOR GRAY: Yes, sir.

8 THE COURT: All right. And I also think I've gathered
9 from the testimony that the defendant says that he shot him
10 pointing the gun backwards and not aiming?

11 SOLICITOR GRAY: Yes, sir.

12 THE COURT: So the physical evidence would indicate
13 that Fernandez was not facing the gun and his testimony that
14 he was not facing Fernandez. So we got two people facing in
15 opposite directions and one gets shot in the back by the
16 other one and the other -- the one who gets shot in the back
17 is armed with knives.

18 Is that the way I understand it?

19 SOLICITOR GRAY: Well, that's what he says at that
20 point. But you just heard that his sister came down and
21 calmed the situation down and took the knives away and he
22 was still shot after that. But we don't know if he had a
23 knife or not or when he pulled the gun.

24 THE COURT: Well, let's, let's assume that he had a
25 knife.

1 SOLICITOR GRAY: He had a knife.

2 THE COURT: He's facing the opposite direction with a
3 knife.

4 SOLICITOR GRAY: Yes, sir.

5 THE COURT: Cause he got shot in the back.

6 SOLICITOR GRAY: Yes, sir, he did get shot in the back.
7 There's no doubt about that.

8 THE COURT: And the defendant's testimony that he shot
9 backwards without looking.

10 SOLICITOR GRAY: That's, that's his altered testimony.
11 Originally it was I was facing him. I shot him in his
12 statements that he gave.

13 THE COURT: Isn't that what he testified here?

14 SOLICITOR GRAY: That's what he testified to.

15 THE COURT: Okay.

16 SOLICITOR GRAY: But his statements were also---

17 THE COURT: Well, I understand there's---

18 SOLICITOR GRAY: There's---

19 THE COURT: There's several different versions.

20 SOLICITOR GRAY: Yes, sir, that he was pointing at him.
21 Well, first -- well, in one of his statements he didn't know
22 where the gun came from. I just got it. Then I got it.
23 Then I don't own it. Now I do own it. It's not in my
24 possession. It is in my possession. It's in the dashboard.
25 I---

1 THE COURT: Well, one of the things I've got to decide
2 is whether he had a reasonable fear for his safety.

3 SOLICITOR GRAY: No, sir, Your Honor, not from this
4 particular individual. He said on the stand I used that gun
5 just in general.

6 THE COURT: Oh, okay. All right. Go ahead. I
7 interrupted you but I just wanted to make sure I understood
8 what, what the---

9 SOLICITOR GRAY: Yes, sir.

10 THE COURT: ---different versions I've heard of this.
11 Now let's talk about this -- I think it's very
12 important, under the statute, as to where the shooting took
13 us. That's extremely important for the purposes of this
14 statute we're talking about.

15 SOLICITOR GRAY: Yes, sir, Your Honor, in this statute,
16 the State alleges the shooting took place at the corner of
17 Old Pacolet Road and Wood Street.

18 THE COURT: So, are you saying it happened---

19 SOLICITOR GRAY: In the street.

20 THE COURT: ---in the street?

21 SOLICITOR GRAY: Yes, sir, Your Honor.

22 THE COURT: Okay. And they were both on foot?

23 SOLICITOR GRAY: Yes, sir, Your Honor.

24 THE COURT: Not in a vehicle?

25 SOLICITOR GRAY: No, sir.

1 THE COURT: All right. Let's hear from you about that.

2 MS. PRICE: Well, Your Honor, I'm not aware of any
3 statute that precludes anybody from walking down the street.
4 That's a public right of way, Your Honor.

5 THE COURT: Well, I don't know. I've got to try to
6 figure out what's been proven by the preponderance of the
7 evidence.

8 SOLICITOR GRAY: The preponderance of the evidence,
9 what's been proven is that he told this man I'm gonna get
10 you later and he did.

11 THE COURT: Well, that---

12 SOLICITOR GRAY: The most telling---

13 THE COURT: That's one of the versions I've heard.

14 SOLICITOR GRAY: Yes, sir, Your Honor. Well, but you
15 can also hear from the officers earlier when they talked to
16 this man later. He wasn't fidgety. He was scared. He
17 wasn't calm. He wasn't even relaxed. He was relieved. He
18 killed his first cousin. Now he was relieved he carried out
19 his earlier threat.

20 THE COURT: One thing that concerns me a little bit.
21 There was testimony from the defendant that he was aware
22 that the victim had run or gone down the street cause it was
23 a trail of blood. He saw the drips of blood.

24 Did the police -- I didn't hear any testimony from the
25 police officers---

1 SOLICITOR GRAY: There were no---

2 THE COURT: ---that there were any trails of blood---

3 SOLICITOR GRAY: No, sir, Your Honor.

4 THE COURT: ---on the streets or anywhere else where
5 they could trail from where the shot was made where the body
6 fell.

7 SOLICITOR GRAY: Where he alleges -- he was shot at the
8 corner of Old Pacolet Road and Wood Street, Your Honor.
9 There were no trails and drips.

10 THE COURT: Now, if it was in the street, doesn't that
11 help his case?

12 SOLICITOR GRAY: It can unless in this case, Your
13 Honor, he had no extra sense of danger from this particular
14 individual. He did not. He had made a threat to end his
15 life. As you heard testimony saying, I'll take care of this
16 later, we'll take care of this later, or whatever. He
17 pointed his finger at him in the shape of a gun, pulled the
18 trigger, and he did that.

19 He went home. He dropped Mr. Means off first, went
20 home, and, under what actually happened, Your Honor, parked
21 at his house, walked until he found the victim, and then
22 shot him. The victim was not in his -- at his residence.
23 The victim was not coming to his residence. The victim had
24 no weapons on him at that time at Wood Street and Pacolet
25 Street. This was he tracked him down and assassinated him,

1 plain and simple, and the gun disappeared.

2 THE COURT: Let me go back to that one thing I was
3 asking you about earlier. I'm looking at State versus
4 Curry, Curry, 2013 case, and it says that, in a case where a
5 murdered defendant claims immunity under the Protection of
6 Persons And Property Act, a valid case of self-defense must
7 exist and the Trial Court must necessarily consider the
8 elements of self-defense in determining the defendant's
9 entitlement to immunity including all of the elements of
10 self-defense save the duty to retreat. State versus Curry
11 is 406 S.C. 364.

12 MS. PRICE: 153826 is the case number, judge?

13 THE COURT: I don't, don't know what the case number
14 is. I'm, I'm reading from the---

15 MS. PRICE: Case number. I'm sorry. Case number.

16 THE COURT: Oh, I don't know what the case number is.
17 153826?

18 MS. PRICE: Yes, sir, I've got it right here.

19 THE COURT: That's the reason I was asking about this,
20 whether or not he would of been in reasonable fear of his
21 safety if the assailant had his back to him with knives and
22 he had his back to the assailant and was shooting over his
23 shoulder. That's the reason I brought that up.

24 So the only thing that, that the Protection of the
25 Persons And Property, the only element that it excuses all

1 together is the duty to retreat. All the other elements
2 must be present as well according to that case.

3 It goes on the next -- it goes on to talk about the
4 four elements required to establish self-defense and all of
5 them have to be present. The only issue you don't consider
6 is whether there was a duty to retreat. I think Curry is a
7 Supreme Court case. I'm not sure there would be anything --
8 a Court of Appeals case.

9 In reading Curry, it seems to me to be that that case
10 is somewhat analogous to the case that we have here. We had
11 two men in an argument. There was a fight. They were
12 separated. They moved to different parts of the apartment
13 complex. Later on, apparently the difficulty resumed. One
14 of them was shot in the back. This -- he was shot six times
15 I think in the back. This one I think was shot one in the
16 back. But, but he testified that he had a right to be
17 there, that he was -- had no duty to retreat. The other --
18 the victim was unarmed in that case. In this case the
19 victim was armed.

20 However, there was testimony from several witnesses
21 that was in conflict over whether or not it was a
22 self-defense case or not a self-defense case, and, in this
23 case, we actually have statements made by the defendant
24 several different ways. They're, they're -- the statements
25 are not, not analogous. But what the Supreme Court said in

1 that case was this is the quintessential case for it to go
2 to a jury for them to determine. Not for the Court to
3 determine where you've got differences in the testimony and
4 differences in the stories, and it's not a clear cut case of
5 self-defense.

6 So I'm suppose to consider the other elements of
7 self-defense besides just whether or not he was in a place
8 and had a right to shoot. In other words, did he have a
9 duty to retreat or not. I think Curry stands for the fact
10 that you consider all of the elements of self-defense in
11 making the decision, and in a case where it is unclear from
12 the testimony, there is not a preponderance of the evidence
13 that's been presented either way that it is, to quote the
14 Court here, it says -- what did it say?

15 Given the facts presented here, we conclude the
16 evidence -- that there is evidence to support the Trial
17 Court's denial of immunity under the act and appellate's
18 claim of self-defense present a quintessential jury question
19 which most assuredly is not a situation warranting immunity
20 from prosecution. That's what Curry says.

21 Now, in this case, we've got stories all over the place
22 as to what happened. Including multiple stories from the
23 defendant as to what happened. And if you take his
24 testimony, his most recent testimony, that's the reason I
25 was asking the question, we've got a man shot in the back

1 who was -- supposedly had knives and he was shot by someone
2 who also had his back turned and shot a blind shot backwards
3 and hit him. That doesn't sound like the elements of
4 self-defense to me. And we've got testimony both ways on,
5 on -- as to whether or not who should of been in fear of
6 whom. There's testimony from various witnesses.

7 So I'm not finding that a preponderance of the evidence
8 has been presented that would weigh in favor of granting
9 immunity from prosecution when there are several elements of
10 the, of the question of self-defense that have been called
11 into question by the testimony I've heard so far.

12 I'll hear from you on it if it's something that I'm
13 missing.

14 MS. PRICE: Your Honor, that would just be our showing.

15 THE COURT: Well, I understand it.

16 All right. Well, my ruling is going to be that, that
17 there is not sufficient evidence to justify me granting a --
18 immunity from prosecution. I do not find that, by the
19 preponderance of evidence, it's been shown that this was a
20 self-defense case or it's not been shown by the
21 preponderance of the evidence that the defendant was located
22 in a place that he had a legal right to be. And so I don't
23 find that, that either of those questions have been answered
24 such that I would grant immunity. So I'm denying the
25 immunity request on that.

1 Now, anything else that we need to go over from the
2 defense -- any other motions from the defense today?

3 MS. PRICE: I don't believe so, Your Honor.

4 THE COURT: Anything from the State today?

5 SOLICITOR GRAY: No, sir.

6 THE COURT: All right. Now, is there anything that
7 we're going to take up before the jury comes in in the
8 morning?

9 I've got them coming at 9:30. I'll be glad to resume
10 court at nine o'clock if there's something we need to take
11 up before we bring the jury in and swear them.

12 SOLICITOR GRAY: Just a set of pictures, Your Honor.

13 May we approach?

14 THE COURT: Certainly.

15 (WHEREUPON, a bench conference was held at this time.)

16 THE COURT: All right. We'll resume in the morning at
17 9:30. Court's in recess. Thank you very much.

18
19 (WHEREUPON, Court was in recess for the evening.)
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Tuesday, August 23rd, 2016

THE COURT: Are they bringing him in?

MS. PRICE: No, sir, I don't think that's necessary
this morning.

THE COURT: Okay. All right. Let's bring the jury in,
Mr. Ruth.

So you're waiving his presence?

MS. PRICE: Yes, sir.

THE COURT: All right. Thank you.

MS. PRICE: Just for the purposes of this morning.

THE COURT: I understand.

(WHEREUPON, the following takes place within the
presence of the jury.)

THE COURT: All right. The record will reflect the
jury has returned to the courtroom. I hope everyone had a
good evening.

We started to start the trial this morning. I was made
aware of the fact that one of the participants in the trial
is feeling ill, and we're not able to start without that
person's assistance. So I'm going to allow that person to
go to the doctor this morning and determine the exact nature
of the problem. We hope that we'll be able to continue once
that doctor's visit is over.

So what I'm going to do is allow you to leave the

1 courthouse at this time. I'm gonna ask you to call back in
2 on the call in number at one o'clock this afternoon. We'll
3 give you additional instructions as to how we'll proceed in
4 this case.

5 In the mean time, the instructions that I've given you,
6 while you're from, away from the courthouse, will continue.
7 That is and I will urge to you -- well, first of all, let me
8 ask you, did any of you have any difficulty at all in
9 following the instructions I gave you yesterday?

10 If you had any difficulty in following them, please
11 stand.

12 (No response.)

13 THE COURT: It appears that all jurors have been able
14 to comply with my instructions thus far.

15 Again, my instructions will continue to be that you not
16 discuss the case with anyone, not allow anyone to discuss it
17 with you. Don't listen to, watch, or read any media
18 reports. Do not try to gather any information from any
19 source outside of the courtroom including the Internet, and
20 should anyone try to contact you concerning your service on
21 this jury, please report that to us as soon as possible.

22 So, again, I'm going to ask you to call the call in
23 number at one o'clock. We'll give you additional
24 instructions at that point in time as to how we'll proceed
25 in the case.

1 Thank you for your promptness this morning. I
2 appreciate that. I wish we were in a position to get
3 started. But we do need to take care of this so that we can
4 conduct a fair trial as we go forward. So if you don't mind
5 cooperating with us, we do appreciate that. The bailiffs
6 will show you out.

7 Thank you very much.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: I will put on the record that I had, that I
11 had a conference in my chambers with the attorneys. At that
12 time I was informed that the defense counsel was feeling
13 ill, and I -- we discussed it and decided the best way to
14 proceed would be to allow you to go see a doctor this
15 morning and then report on your condition.

16 MS. PRICE: Thank you.

17 THE COURT: Did I correctly state our conference in
18 chambers?

19 SOLICITOR GRAY: Yes, sir, Your Honor.

20 MS. PRICE: Yes, sir.

21 THE COURT: All right. So we're gonna adjourn or be in
22 recess in this case until at least one o'clock.

23 If you would, please report your situation to us so
24 that we can inform the jury by that time.

25 MS. PRICE: Yes, Your Honor. I'll email both the

1 solicitor and I'll email your clerk as well.

2 THE COURT: All right. Thank you very much. This case
3 is in recess at this time.

4 MS. PRICE: Thank you.

5 SOLICITOR GRAY: Thank you, Your Honor.

6 SOLICITOR MABBS: Thank you, Your Honor.

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8 (WHEREUPON, this case was in recess at the time.

9 However, Court was later in recess for the day.)

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Wednesday, August 24th, 2016

SOLICITOR GRAY: May we approach, Your Honor?

THE COURT: Yes, please do.

(WHEREUPON, a bench conference was held at this time.)

THE COURT: All right. Bring the defendant in. He should be on his way.

(WHEREUPON, the defendant enters the courtroom at this time.)

THE COURT: All right. We're on the record in the case of the State versus Bernard Dewberry.

Mr. Dewberry, your attorney came back to my chambers just a few minutes ago and indicated to me that perhaps you'd like to take up something with the Court this morning. I'll be happy to hear from you, sir.

Before he does that, please place him under oath.

(WHEREUPON, the Defendant was placed under oath at this time.)

THE COURT: All right. Now, Mr. Dewberry, before we begin to speak, I do want to caution you about a couple of things.

You have a right to remain silent, a Constitutional right to remain silent. If you speak before this Court voluntarily, you have every right to do that as well. However, anything that you say during this period of time

1 can and could be used against you in the trial of the case.
2 I want you to be aware of that before you begin to speak.
3 So by talking with me freely, you are, in effect, waiving a
4 Constitutional right and that is your right to remain silent
5 in this matter.

6 Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Now, if you wish to speak to
9 me, I'll be glad to hear from you.

10 THE DEFENDANT: Your Honor, I know -- we did the
11 pretrial hearing and -- when I was on the stand. When they
12 said that -- the detective said I wrote three different
13 stories -- statements, and I know you remember me telling
14 him I don't remember signing three different statements.
15 Even though he showed me -- he said my signature was on
16 those statements, Your Honor. But I got, I got, I got a
17 statement where I don't have the original pink copy and he
18 forged (sic) my name.

19 I got a lot of paperwork where, when I signed the
20 waiver, I didn't sign it in cursive. I signed it in print.
21 And the third statement, I never signed that statement. I
22 don't have the pink copy. He signed, he signed my name and
23 I, I can, I can -- if I can come up there and show you, Your
24 Honor, I can, I can --.

25 THE COURT: Well, sir, I understand that. So what's

1 the point that you want to make?

2 THE DEFENDANT: It's -- his word, his word is not
3 reliable.

4 THE COURT: Well, sir, we haven't started the trial of
5 the case. So alls I can tell you is you have the right to
6 discuss this with your attorney. I would assume that your
7 attorney would give you legal advice as to whether or not
8 that evidence can and should be used in the trial. So far,
9 I don't know what you're wanting me to do.

10 THE DEFENDANT: I would ask for you, Your Honor, to
11 have this, you know what I'm saying, that third statement
12 suppressed.

13 THE COURT: Well, sir, the issue has already come
14 before the Court and I found that, by the preponderance of
15 the evidence, that the statements were voluntarily made
16 after you being given your Miranda rights. I found that
17 there was no duress in taking those statements. So I've
18 already made a ruling on that that they can come in.

19 Now, that issue still is presented to the jury during
20 the trial, and during the trial, the jury would have the
21 right, independently, to decide whether or not those
22 statements were freely and voluntarily made. And if they
23 were to find that they were not voluntarily made, they have
24 the right to throw them out themselves. So that issue still
25 can be presented to a jury. Just because I've ruled to

1 allow them to come in in evidence' doesn't mean that the jury
2 will consider them as being truthful. So that issue has
3 still been preserved at this point in time.

4 would that be your understanding, Ms. Price?

5 MS. PRICE: Yes, Your Honor.

6 THE COURT: Okay. So I'm not sure what you're asking
7 me to do.

8 what do you want me to do?

9 THE DEFENDANT: Well, Your Honor, I just want -- I want
10 a fair trial. I want a fair trial. I want, I want justice.
11 I don't want this buddy/buddy system, you know what I'm
12 saying?

13 THE COURT: Okay.

14 THE DEFENDANT: You scratch my back, I scratch yours,
15 Your Honor. It's -- I want justice. I want justice. I
16 want a fair trial, a fair trial.

17 THE COURT: I just indicated that those issues have all
18 been preserved at this time. You still have the right to
19 present those issues as long as there's competent evidence
20 to present them to the jury with to the jury.

21 I'm not, I'm not understanding how you've been
22 prejudiced at this point in time other than I made a ruling
23 against you and, of course, I may make other rulings during
24 this case against you. I don't know what's coming up. I
25 may make some in your favor.

1 So I'm asking you, again, is there something you're
2 asking me to do at this point in time?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right. Thank you, sir. You can be
5 seated.

6 MS. PRICE: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 State have any issues that you'd like to bring up
9 before we bring the jury in this morning?

10 SOLICITOR GRAY: Your Honor?

11 THE COURT: You indicated there was some evidence---

12 SOLICITOR GRAY: Yes, sir.

13 THE COURT: Back in the room, there was some evidence
14 that maybe y'all had already discussed and I don't know what
15 that is. So you'll have to tell me about it.

16 SOLICITOR GRAY: Yes, sir, State's Exhibit No. 1, that
17 was an overview map that we are using pretrial. We
18 discussed this with the defense, and the defense is gonna
19 stipulate that's an accurate representation of the area.

20 THE COURT: So it's an aerial map of the area where
21 this occurred?

22 SOLICITOR GRAY: Yes, sir, Your Honor.

23 THE COURT: And have you agreed that it is an accurate
24 aerial map?

25 MS. PRICE: It is, absolutely, Your Honor. In fact, we

1 both have been trying to come up with a good map and -- of
2 this area. This is the best one, between the two of us,
3 that we can come up with.

4 THE COURT: All right. So you're, you're agreeing for
5 it to be put into evidence?

6 MS. PRICE: Yes, sir.

7 THE COURT: All right. No. 1 will be entered into
8 evidence.

9 (WHEREUPON, State's Exhibit No. 1 was received into
10 evidence at this time.)

11 THE COURT: Yes, sir.

12 SOLICITOR GRAY: All right. Your Honor, the, the three
13 statements we had, they were out of order in the way that
14 they were presented stapled yesterday by the court reporter
15 through no fault of her own. We rearranged those in the
16 correct form.

17 THE COURT: That entire -- in order of time you're
18 saying?

19 SOLICITOR GRAY: Yes, sir, Your Honor.

20 THE COURT: Okay. I would assume they have the time
21 stated on them?

22 SOLICITOR GRAY: Yes, sir, it was different times,
23 different -- in the same date.

24 THE COURT: Right.

25 SOLICITOR GRAY: And just stapled wrong.

1 THE COURT: Okay. Do you---

2 SOLICITOR GRAY: So we corrected those.

3 THE COURT: ---agree that that's been rearranged so
4 that it's in the right---

5 MS. PRICE: It is correct.

6 SOLICITOR GRAY: It was my fault.

7 THE COURT: ---timeline?

8 MS. PRICE: The, the two page statement, the first page
9 was stapled to the wrong second page but it doesn't
10 materially alter what's been presented to the court.

11 THE COURT: I see.

12 MS. PRICE: So that's been fixed.

13 THE COURT: All right. Well, I agree that, that
14 exhibit to be rearranged.

15 SOLICITOR GRAY: Yes, sir, it's not in evidence yet.

16 THE COURT: Okay. Anything else?

17 MS. PRICE: Nothing from the defense.

18 THE COURT: All right. All right. Give me just a
19 minute while I get myself ready.

20 (Pause.)

21 THE COURT: All right. Let's bring the jury in.

22 (WHEREUPON, the following takes place within the
23 presence of the jury.)

24 THE COURT: Thank you.

25 All right. The record will reflect the jury has

1 returned to the courtroom and I want to thank you very much
2 for your patience with us. Everybody now is in position to
3 move forward with the case, and I do want to ask you though,
4 during your absence from the courtroom, whether or not
5 you've been able to follow my instructions.

6 If there are any of you who have not been able to
7 follow my instructions, please stand.

8 (No response.)

9 THE COURT: It appears that all jurors have been able
10 to comply with my instructions thus far.

11 At this point in time, I told you, when you came back
12 to this courtroom, that you would be taking an oath
13 concerning your responsibilities as jurors in this case.
14 So, at this time, I'll ask the clerk to please swear the
15 jury panel.

16 Madam Clerk.

17 THE CLERK: Yes, sir.

18 (WHEREUPON, the jury was placed under oath at this
19 time.)

20 THE COURT: Now, if there's any member of this jury
21 panel who either failed or refused to take the oath the
22 clerk just administered, please stand.

23 (No response.)

24 THE COURT: The record will reflect that all jurors
25 have now been sworn concerning your responsibilities in this

1 case.

2 THE COURT: Now, before we begin the trial, there's
3 some things that I would like to go over with you.

4 I suspect that, for most of you, this is the first time
5 that you've ever served on a jury in the trial of a criminal
6 case in a Court of law. And for that -- for those of you
7 who have never been in this position before, there's some
8 basic things that I'd like to go over with you concerning
9 the responsibilities that you have in the case and the other
10 people that are involved in this case, myself and the
11 attorneys who are involved in this case. I will go over the
12 procedures that we'll follow in the trial of the case and
13 discuss with you what your responsibilities are. In other
14 words, what your job is here as a juror in this case.

15 If you've never been in this situation before, it's my
16 belief that probably most of what you might know about or
17 believe about what goes on in courtrooms you would of
18 gathered from such sources as television shows you've
19 watched or movies you've seen or books you've read, things
20 of that nature. And while those sources of information are
21 always entertaining and interesting, they always have good
22 plots and twists and turns, you know, it never ceases to
23 amaze me though that, in cases of television, you can have
24 an event occur, the case be tried, and all be wrapped up in
25 a space of one hour, and they still have time to stop five

1 times for commercials during that hour.

2 So that might tell you that that source of information
3 might be a little bit twisted. In other words, they take
4 what's called literary license so that the storyline fits
5 and everything, the plot comes together, and, and so what
6 they show about what's going on in a courtroom sometimes is
7 not very accurate because those sources of information are
8 intended to entertain you as I said.

9 what you're engaged in now is intended for anything but
10 your entertainment. what you're involved in today is a
11 fundamental part of our governmental structure and I hope,
12 you realize that. You know, if you were to look around the
13 world today at most of the judicial systems that exist in
14 the countries of this world, you would find that the vast
15 majority of those systems do not allow citizens to directly
16 participate in the decision making process that goes on in
17 the courtrooms of those countries. Their decisions are made
18 by bureaucrats or people appointed by a government.
19 Sometimes a government that's not even elected by the
20 people.

21 We're a little different in our country. As I
22 indicated to you, we have a right to a trial by a jury.
23 Every citizen has that right and that right goes back to a
24 document that was signed in England 800 years ago last year.
25 That's the Magna Carta. So our tradition of trials by

1 juries by citizens is an 800 year old tradition. It's a
2 right that's embodied in our Bill of Rights, and I hope it's
3 a right we never lose because a lot of Americans have fought
4 and died to protect those rights.

5 I want to thank you for your participation in that
6 system today because what you're engaged in here is a search
7 for the truth. It's an effort to see that justice is done
8 between the parties that are before you during this trial,
9 and those parties are the State of South Carolina that has
10 brought charges against one of its citizens, the defendant
11 in this case, and I hope you realize that seeking justice,
12 finding truth are processes that sometimes are slow as you
13 found out. Sometimes it's deliberate. Sometimes we'll
14 repeat ourselves in here because, if I were to ask you what
15 you might think a search for the truth would be like, I
16 would think you would say, if I was trying to determine the
17 truth of a matter, that I would want to be deliberate. I'd
18 want to go about it in methodically, slowly. Sometimes I
19 might want to go over it two or three times to be sure I get
20 it right.

21 So don't, don't lose your patience with us as we go
22 through this process. We are searching for the truth and
23 we're making a honest and sincere effort to see that justice
24 is done between the parties in this Court.

25 Now, the attorneys who are involved in this case,

1 they're going to be here advocating for their clients.
2 Again, the State of South Carolina and the defendants in
3 this case, and you can expect them to do an excellent job in
4 presenting those cases before you during this trial.

5 One thing layman probably don't realize about attorneys
6 is that, first and foremost, attorneys are also officers of
7 the Court. In other words, at some point in time they came
8 before this Court and they were required to take an oath,
9 and that oath includes, in that oath, a statement that they
10 will assist you in your search for the truth in this trial.
11 For that reason, you can expect that they'll be reasonable
12 and professional in the, in the presentation of those cases
13 during this, this trial.

14 I want to remind you too that you just came in front of
15 this Court. You took an oath to decide this case based
16 solely upon the law and the evidence presented during this
17 trial. You too are now expected to act in a reasonable, a
18 professional, and an ethical manner in the discharge of
19 those duties as, as the jurors in this case. I want to
20 thank you very much for your willingness to accept that
21 responsibility in this case.

22 Now, what I'm telling you now is not intended to be a
23 charge on the law. Later on I will charge you concerning
24 the law to be applied. Again, I'm trying to give you an
25 explanation of the procedures and the responsibilities that

1 we all have in this case.

2 On Monday I went over with you an indictment. The
3 indictment is the document I told you that brings this case
4 into this Court. It explains to us or tells us what the
5 charges are that have been lodged, the charges to be tried.
6 It informs the defendant of the charges lodged against him,
7 and so I will not go over that indictment with you again in
8 detail right now. I will tell you again, however, the
9 indictment contains two charges, two counts. Count One is
10 for the offense of murder. Count Two is for the possession
11 of a firearm during the commission of a violent crime.

12 Now, at the close of the trial, I'll go over those
13 charges with you in much greater detail when I charge you on
14 the law in this case.

15 Now, to that indictment this defendant has pled not
16 guilty and has requested a trial by jury. And, under our
17 system, that, that request for a trial by jury and that plea
18 places the burden of proof in this trial solely upon the
19 State. It is the State's responsibility now to prove the
20 allegations that are contained in the indictment to you by
21 proof beyond a reasonable doubt.

22 Now, at the close of the trial, I'll be going over with
23 you that standard of proof and what's necessary in order for
24 this case to be established by the State. It will be your
25 responsibility, at the close of the trial, to make a

1 determination as to whether or not the State has met that
2 burden of proof as to the allegations that are contained in
3 the indictment.

4 So, therefore, it's your purpose, as jurors, to find
5 and determine the facts in this case, and I will tell you
6 that, in every case tried in this courtroom with a jury
7 being present, the jury is the sole and exclusive judge of
8 the facts in this case. I will tell you that I will be the
9 judge of the law in this case, and the same law that makes
10 you the sole judges of the facts makes me the sole judge of
11 the law to be applied in this case.

12 So, at the close of the trial, when I charge you with
13 the law, it will be your responsibility to take the law
14 exactly as I give it to you, apply that law to the facts as
15 you decide those facts to be, and then make a determination
16 as to the guilt or innocence of the defendant of the charges
17 that have been lodged in this case.

18 I will tell you that you are to determine the facts
19 from the testimony that you hear and from any other evidence
20 that's introduced into the record of the case during the
21 trial of the case. It's up to you to determine the
22 inferences which you feel can be properly drawn from the
23 evidence presented and placed into the record of the case.
24 And it's especially important that you perform your duties
25 as the fact finders in this case diligently, diligently and

1 conscientiously because, under our system of justice,
2 ordinarily there is no means by which an erroneous
3 determination of fact made by a jury can ever be changed.

4 Now, as I said, you are the sole judges of the facts
5 and, therefore, I'm not allowed an opinion on the facts. It
6 will be my job to preside over the trial and I'll be making
7 rulings on the appropriateness of questions being asked, the
8 admissibility of evidence, other procedural matters that
9 might come up.

10 I will ask you, please don't take from anything that I
11 say or do in the trial of this case to indicate to you that
12 I have a preference one way or the other as to how you
13 determine the facts in this case. I will tell you now that
14 I have no opinion concerning the facts in this case. I'm
15 not allowed such an opinion concerning the facts in this
16 case, and I'll repeat that to you at the close of the trial.
17 Don't take any indication from what I say or do in the
18 discharge of my duties to somehow indicate to you that I
19 have such an opinion. I do not have such an opinion.

20 Now, the same law that makes you the same judge -- the
21 same law that makes you the sole judges of the facts makes
22 me the sole judge of the law, and I will tell you, if you
23 came into this courtroom today with an opinion or a notion
24 as to what the law is or what the law ought to be, you
25 should leave those notions outside of the jury room before

1 your deliberations. You are to take the law exactly as I
2 give it to you and then again apply it to the facts as you
3 decide them to be. So the law doesn't allow me to disagree
4 with you concerning the facts. The law doesn't allow you to
5 disagree with me concerning the law to be applied to those
6 facts.

7 Now, I told you -- I gave you some instructions when
8 you left the courtroom, and that was mainly to instruct you
9 that you're not to gather any information on your own
10 outside of the courtroom. You're not to discuss the case
11 even among yourselves. So general, general instructions
12 concerning those things because I indicated to you that I
13 wanted you to keep an open mind during this trial.

14 I will tell you if, at anytime during the trial, you
15 feel that a fellow juror is violating those instructions, in
16 other words gathering information from some other source or
17 trying to discuss the case with you during your breaks and
18 that, that sort of thing, please report it to me through the
19 bailiffs. I'll take the appropriate action should that
20 occur. But, again, I'm going to caution you, don't discuss
21 the case even among yourselves or with anyone else because,
22 again, I want you to keep an open mind about this case until
23 you've heard all the arguments by the lawyers, you've heard
24 all the testimony from the witnesses, you've reviewed and
25 seen all of the evidence in the case, and I have charged you

1 concerning the law. Only then will you have information
2 sufficient to begin a discussion about this matter.

3 So, again, do not discuss it among yourselves. Don't
4 allow anyone to discuss it with you and let me know if you
5 feel someone is violating my instructions.

6 Now, it's your solemn responsibility, at the close of
7 the trial, to determine the guilt or the innocence of the
8 defendant, and your verdict must be based, as your oath
9 stated, solely upon the evidence and the only place you'll
10 hear evidence in this case is in this courtroom from this
11 witness stand from witnesses who've been sworn to tell the
12 truth and whatever documents or other pieces of evidence go
13 into the record through that testimony. That's the only
14 evidence you'll be hearing in this case.

15 Now, during this trial, we're going to allow the
16 attorneys to directly talk to you, address you, twice. One
17 time will be at the beginning of the trial in what we refer
18 to as an opening statement, and then at the close of the
19 trial, once all the evidence has been presented, they'll be
20 allowed to do a summation or a closing argument in which
21 they will go over the evidence that you've heard, they'll
22 urge you to draw certain inferences from that evidence, and
23 urge you to draw certain conclusions from what you've seen
24 or heard during the trial.

25 Now, I'm going to point out to you statements made by

1 lawyers, during the trial, do not constitute evidence.
2 Therefore, they cannot be used directly by you in
3 determining the guilt or the innocence of a defendant. The
4 only evidence in the case, again, and I'll stress to you, is
5 the testimony of the witnesses who are sworn to tell the
6 truth and whatever comes into the record through their
7 testimony. So statements made by lawyers at the beginning
8 and the end of the trial, while they may be helpful to you
9 in how you view the evidence, they, in and of themselves,
10 are not evidence and can't be used by you as evidence in
11 this case.

12 Now, from time to time there may be a situation where
13 we have a discussion about some ruling I'm about to make and
14 that discussion will be between me and the lawyers. If it's
15 my belief that that discussion may lead to a discussion of
16 some matter or issue or piece of evidence that's not
17 admissible in, in the record, based on the rules of evidence
18 that govern the admission of evidence, so if I think the
19 discussion is gonna go in that direction, I may ask you to
20 step out of the courtroom while I discuss that matter with
21 the lawyers.

22 Don't take from the fact that I've asked you to step
23 outside, again, to show somehow that I have a preference one
24 way or the other as to how you decide the case. I hope you
25 realize it's just me doing my job and my job, as the

1 gatekeeper concerning evidence coming in or out, is that you
2 do not -- you only consider properly admitted evidence in
3 reaching your verdict. So if I ask you to leave the
4 courtroom, I have a purpose there, and, again, it is to see
5 to it that you only consider properly admitted evidence in
6 reaching your verdict.

7 So don't take any -- don't draw any conclusions from
8 that. When you come back into the courtroom, I'll announce
9 my ruling, we'll proceed with the trial of the case, but
10 that's not an effort by me, in any way, to try to influence
11 your decisions on the facts.

12 Now, in determining what the facts are in this case,
13 one of the things you're going to find, you will necessarily
14 be required to determine the credibility or the
15 believability of what you've heard from the witness stand.
16 Credibility just means that. That means believability.

17 You know, every single day of your life you go about
18 your life and you make common sensical decisions as to what
19 you believe and what you don't believe to be true. You do
20 it everyday whether you realize it or not. I'm going to ask
21 you to use that same good common sense that you've developed
22 over your lifetime thus far in making decisions as to what
23 testimony you believe and what testimony you choose not to
24 believe. I want you to listen to the testimony carefully.
25 Pay attention to what's being said in the courtroom, how

1 it's being delivered.

2 You have the right to consider anything that's in the
3 record of this case in order for you to make the decision as
4 to what you choose to believe and what you choose not to
5 believe because, at the close of the trial, part of your
6 responsibility will be able to -- be, be to decide what
7 evidence you choose to believe and what weight you choose to
8 assign to that evidence. It's your sole decision as to the
9 credibility, believability, weight, the value, and the
10 effect of the testimony that you hear.

11 So try not to let your thoughts wonder as the trial
12 goes on. Try to pay attention to what's being said. Using
13 that common sense that I'm talking about, you have the right
14 to decide whether or not a witness has a stake in the
15 outcome of the case, whether or not a witness might display
16 some bias or prejudice either for or against one side or the
17 other. You have the right to determine, in your own mind,
18 whether or not the witness has the ability to actually know
19 the facts about which the witness is testifying, and I've
20 been in courtrooms now, I hate to say it, it's been -- we're
21 about 41 years now, but in all those years, every courtroom
22 I've ever been in, the witness stand is always right in
23 front of the jury box.

24 There's a reason for that. They want the jury to look
25 directly at the witnesses as they testify, view them as they

1 speak, be in a position to weigh the credibility and the
2 believability of what they testify to. Again, again, as the
3 sole judges of the facts, that makes you the sole judge as
4 to credibility and the believability of the testimony that
5 you'll hear during this trial. So, again, try to pay
6 attention. Try not to let your thoughts wonder as the trial
7 goes along.

8 Now, I do not appoint a foreperson of the jury until I
9 charge you on the law and that's at the close of the trial.
10 I do that because I want to emphasize this point to you.
11 When this case is turned over to you for your deliberations,
12 I will instruct you that you can not reach a verdict in this
13 case on any of the questions presented to you unless all of
14 you, all 12 jurors who are deliberating, agreed as to that
15 verdict.

16 It has to be unanimous. That means no one juror's
17 opinion is more important than any other juror's. You all
18 have to reach an agreement before a verdict has been
19 reached. I don't want you to think, because I may have
20 appointed this lady right here as the foreperson, that I
21 think she's the smartest person and you just sit back and
22 not pay attention and go along with what she says. I want
23 all of you to think you might be the foreperson.

24 You might be the person called upon to lead the jury in
25 its discussions. So you need to pay attention and be in a

1 position to lead those discussions. I'll make the
2 appointment of the foreperson at the close of the trial and
3 it can be any one of you at that point in time. So I want
4 you to pay attention as if you are the foreperson of the
5 jury as the case goes along.

6 So, in the mean time, if there's some issue that you
7 think I need to be aware of, you each have the right to
8 report that to the bailiffs. They'll let me know about
9 that. You don't need the foreperson to speak on your behalf
10 if there's some problem or issue that you think I need to be
11 aware of. So please don't let that stop you in reporting
12 anything that might be going on that you think is not
13 proper.

14 Now, I want to be sure that I haven't violated anyone's
15 rights in what I've told you thus far.

16 Does the State have any objection to any of my opening
17 comments?

18 SOLICITOR GRAY: No, sir.

19 THE COURT: Defense have any objections?

20 MS. PRICE: No, Your Honor.

21 THE COURT: All right. Now, ladies and gentlemen, let
22 me explain one other, other thing about our procedure.

23 As I told you, the State has the burden of proof and
24 the only burden of proof in this case, and that is to prove
25 the allegations to you beyond a reasonable doubt. Because

1 they have that burden of proof, they're allowed to go first
2 with their arguments followed by the defense. They are then
3 allowed to present their evidence first followed by the
4 defense. And then, at the close of the trial, we'll have
5 the closing arguments with both attorneys presenting a
6 closing or summation. Once that's completed, I'll charge
7 you on the law. Once I've completed my charge on the law,
8 the case becomes your case. It goes to you for
9 deliberations and ultimately a verdict in the case.

10 So that's the process that we'll go through. Opening
11 statements, followed by the evidence, closing statements,
12 charge, excuse me, charge on the law, and then it will be
13 handed to you for your deliberations.

14 All right. At this point in time we'll begin with the
15 opening statements.

16 State may proceed.

17 SOLICITOR MABBS: Thank you, Your Honor.

18 THE COURT: Yes, Ms. Mabbs.

19 SOLICITOR MABBS: May it please the Court.

20 Ladies and gentlemen of the jury, we are here today
21 because Jerry Fernandez was shot in the back by the
22 defendant and he died. And throughout the course of this
23 trial, you're gonna have the opportunity to hear from
24 several witnesses including the victim, Jerry, or most of
25 his friends and family call him Chuck. You'll hear from

1 Chuck's fiancée and sister, and you'll hear that they were
2 the ones who found him on the street corner in Cowpens on
3 Old Pacolet Road and Wood Street. And they found him lying
4 there with a bullet hole in his back.

5 In this case, you're gonna have the unique opportunity
6 that we don't often have in murder trials. You're gonna get
7 to hear from the victim. You're gonna get to hear the
8 victim say who shot him. You'll hear the victim say that
9 Bernard Dewberry, the defendant, was the person who shot him
10 in the back.

11 You're gonna get to see evidence. You'll get to see
12 the bullet that killed Chuck. You'll get to see pictures of
13 the area where they were shot on the street corner. You'll
14 get to hear about what led up to that day.

15 You'll hear that the defendant showed up at the
16 victim's house not once but twice, and the first time he
17 came alone. You'll hear the second time he came back with a
18 friend.

19 But what matters here today is not either of those two.
20 But what matters today is when Chuck last saw the defendant
21 because that's when the defendant shot him in the back.

22 You'll get to hear from Doctor Wren, who is the coroner
23 who performed the autopsy on Chuck, and he'll explain to you
24 all the injuries that that one bullet hole to the back
25 caused and how it eventually led to Chuck's death.

1 Now, members of the jury, you heard the judge tell you
2 that you're here on two different charges today, murder and
3 possession of a firearm during a violent crime. Now, at the
4 end of the trial, the judge will charge you on those, but
5 briefly, for now, murder is the killing of another person
6 with malice aforethought.

7 Now, malice aforethought is -- usually when you see
8 these kind of trials on TV, it's someone who plans things
9 out in advance, who might stalk someone, things like that.
10 But what's important to remember is it doesn't have to take
11 long. It can be an instant and possession of a weapon
12 during a violent crime is fairly self-explanatory.

13 The judge will explain to you that, in South Carolina,
14 murder is, by definition, considered to be a violent crime,
15 and common sense tells you to shoot somebody you have a
16 firearm.

17 Now, members of the jury, you are 12 people, 14 with
18 our alternates. Fourteen people with eyes who will be able
19 to see the evidence, see the witnesses testify on the stand,
20 see their demeanor while they testify. Fourteen people with
21 ears to hear the testimony, to hear the victim's words on a
22 9-1-1 call. You're 14 people with different life
23 experiences that have helped form your judgment and common
24 sense that you can bring into this courtroom in your
25 consideration of this case.

1 But at the end of this trial, you'll no longer be 14
2 people. You'll no longer be 12 people. You'll be one. One
3 jury, one voice, and one verdict, and, at the end of this
4 trial, we ask that you find the defendant Bernard Dewberry
5 guilty.

6 Thank you.

7 THE COURT: State (sic) may proceed, Ms. Price.

8 MS. PRICE: Thank you, Your Honor.

9 THE COURT: Yes, ma'am.

10 MS. PRICE: Good morning, ladies and gentlemen.

11 We met on Monday but my name is Andrea Price and I
12 represent Mr. Bernard Dewberry who's seated with me at the
13 table here. And we're here today because what Ms. Mabbs
14 told you just now is absolutely true but it's not the whole
15 story.

16 The whole story is, in a nutshell, that Mr. Dewberry
17 and his first cousin, Chuck, they're first cousins because
18 their mothers are sisters, they got into an argument over a
19 girl. Mr. Dewberry goes over to Chuck's house twice on the
20 morning of May 9th of 2015 to try to reach some sort of
21 impasse or agreement with Chuck cause they were first
22 cousins. They grew up together. They're, they're friends.
23 More like brothers.

24 You're also gonna hear the second time that Chuck went
25 over, that they went over to Chuck's house, Chuck came out

Najee Whitney - Direct examination
by Solicitor Gray

1 with two knives and threatened Mr. Dewberry.

2 That, ladies and gentlemen, is it in a nutshell. A
3 little later on you'll also hear that Chuck still had a
4 knife and still threatened Mr. Dewberry and that's when the
5 shooting occurred.

6 So I just ask that this is pretty doggone early during
7 the day. We do appreciate your patience because I could not
8 do my job and the State can't do their job without y'all.
9 We do understand this is an inconvenience to you and we do
10 thank you for listening. But we do ask that you start
11 listening to everything, and, at the end of the day, that
12 you'll find Bernard Dewberry not guilty.

13 Thank you.

14 THE COURT: State may call its first witness.

15 SOLICITOR GRAY: State calls Najee Whitney.

16 THE COURT: Come forward please to be sworn.

17 (Witness complies.)

18 THE COURT: Ma'am, if you'll step over here to my left
19 to be sworn in please.

20 (Witness complies.)

21 THE COURT: Thank you.

22 NAJEE WHITNEY, being first duly
23 sworn, testified as follows:

24 THE COURT: Ma'am, once you're seated, please state
25 your name.

Najee Whitney - Direct examination
by Solicitor Gray

1 THE WITNESS: Najee Whitney.

2 THE COURT: Thank you.

3 Mr. Gray, your witness.

4 Ma'am, I'll urge you to move as close to the microphone
5 as you can but speak up so that everyone can hear you.

6 You may proceed, Mr. Gray.

7 SOLICITOR GRAY: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY SOLICITOR GRAY:

10 Q Ms. Whitney, how do you know Mr. Jerry Fernandez?

11 A We was about to get married.

12 Q And that is the individual that was killed in this
13 situation?

14 A Yes.

15 Q Was that May 9th of last year?

16 A Uh-huh. (Affirmative).

17 It was.

18 Q I need you---

19 A It was.

20 Q Thank you, ma'am. I don't want to inflame the
21 situation anymore but please yes or no or---

22 A Yes.

23 Q Thank you.

24 Do you know Mr. Dewberry?

25 A Yes.

Najee Whitney - Direct examination
by Solicitor Gray

1 Q How long have you known Mr. Dewberry?

2 A For about as long as I knew Jerry. About -- almost two
3 years.

4 Q Two years?

5 A Almost, yeah.

6 Q You say you were engaged to Jerry.

7 Did Jerry go by another name?

8 A He went by Chuck.

9 Q He went by Chuck?

10 A He did.

11 Q Now, did you and Chuck have a good relationship?

12 A Yeah, I mean I loved him and we was gonna get married.

13 That was my other half. That's all I had.

14 Q On this day, May 9th of 2015, did you -- were you
15 living with Chuck?

16 A I was, yes.

17 Q All right. Where did you live with Chuck?

18 A At his mama's house.

19 Q I'm gonna show you what's been marked for
20 identification purposes as State's Exhibit 11.

21 One moment, Your Honor.

22 THE COURT: Yes, sir.

23 (Pause.)

24 Q I'll ask you if you recognize this, ma'am.

25 A Looks like that little place is across the street from

Najee Whitney - Direct examination
by Solicitor Gray

1 where Jerry got shot.

2 SOLICITOR GRAY: Okay. State would like to introduce
3 State's No. 1 by stipulation, the overhead shot.

4 MS. PRICE: Okay. Without objection to stipulation.

5 THE COURT: All right. Without objection, it will be
6 admitted.

7 (WHEREUPON, State's Exhibit No. 1 was previously
8 received into evidence.)

9 Q Okay. Does this look somewhat familiar?

10 A Yes, that's the neighborhood.

11 Q That's the neighborhood?

12 A Uh-huh. (Affirmative).

13 Q All right.

14 THE COURT: Do you wish to publish it?

15 SOLICITOR GRAY: Yes, sir, Your Honor.

16 THE COURT: All right. You may do so.

17 Let's bring the lights down so we can see it better.

18 Thank you.

19 Q That's better.

20 All right. If you could, please just point with that.
21 Show about where Jerry's mother lived.

22 A Right there. That's her house.

23 Q Okay. Thank you.

24 Now, that day, was there an altercation between Jerry
25 and the, the defendant, Mr. Dewberry?

Najee Whitney - Direct examination
by Solicitor Gray

1 A Yes.

2 Q How many times did they have fights or anything of that
3 nature?

4 A Twice. They got into really bad arguments that
5 morning.

6 Q Okay. Did they all take place at his mother's house?

7 A Yes.

8 Q All the fights took place right there?

9 A Yeah, everything I saw was right there.

10 Q Everything you saw was right there?

11 A Uh-huh. (Affirmative).

12 Q There.

13 Now, during that day, did Mr. Fernandez ever attack Mr.
14 Dewberry in your sight?

15 A No, I didn't see him attack him. I know he was mad and
16 they was arguing pretty bad but I didn't see nobody attack
17 anybody.

18 Q Nobody hit anybody?

19 A No.

20 Q Nobody cut anybody?

21 A No.

22 Q Now, I have to ask you now about Mr. Fernandez.

23 Did he get angry enough to grab any weapons?

24 A He did.

25 Q What did he---

Najee Whitney - Direct examination
by Solicitor Gray

1 A I mean---

2 Q What did he grab?

3 A He grabbed two knives. It was two men coming to his
4 house after one had just left trying to jump him. So he had
5 to do something to defend himself.

6 Q So he grabbed some knives?

7 A He did.

8 Q Now, did he ever use -- cut these men with the knives?

9 A I took the knives from him.

10 Q Now, who was the knives -- who were the two men that
11 came to the house to jump him?

12 A Bernard and that other dude, Brio, I think his name is.
13 I don't really know him.

14 Q All right. Did you hear any threats at that time?

15 A I didn't hear any threats. All I saw was -- I heard
16 them arguing. I didn't hear everything clearly cause at
17 first I was in the house, and by the time I came outside, I
18 guess they was starting to walk off and Lanna was getting
19 Jerry back towards the house.

20 Q Lanna is who?

21 A His sister. Jerry's sister.

22 Q So Lanna had calmed Jerry down?

23 A (Witness nods affirmatively.)

24 Q And she---

25 MS. PRICE: Objection to leading.

Najee Whitney - Direct examination
by Solicitor Gray

1 THE COURT: Okay. Don't lead the witness.

2 SOLICITOR GRAY: Yes, sir, Your Honor.

3 THE COURT: Thank you.

4 Q But Lanna was a sister and what did you do about the
5 knives?

6 A I took them from him and I was like dude, just chill
7 out and then first he was like nah, nah, I'm gonna get that
8 man, nah, it's wrong. And then I just took them and I hid
9 them. And I went back in the house cause I figured he was
10 calming down and everything was cool. They was cousins. I
11 didn't think it was gonna be too much more to it after that.

12 Q All right. Now, you said this is his mother's house.

13 After the knives were taken, where was the next place
14 you saw Mr. Fernandez?

15 A Well, after that, I saw him walking in front of the
16 house back and forth on the sidewalk there, and then, after
17 that, that's the last time I saw him was right there.

18 Q At the corner of Old Pacolet Road and Wood Street?

19 A (Witness nods affirmatively.)

20 Q How did you see -- how -- what did you hear?

21 A I heard a gunshot and I went outside and looked for him
22 cause I didn't see him walking back and forth in front of
23 the house anymore. So I went across the street to the
24 neighbors cause I know he goes to his other cousin's house
25 right behind the duplexes sometimes and I went to look for

Najee Whitney - Direct examination
by Solicitor Gray

1 him and he wasn't there. So I stopped in a neighbor's
2 driveway. I stood and I heard him yelling, yelling,
3 hollering help. He just kept saying help and I seen him and
4 he looked fine and then he rolled over and I saw a big red
5 spot on his back. So I ran towards him.

6 Q And this was the corner of Wood Street and Old Pacolet
7 Road?

8 A Yes.

9 Q And that was the, the next time you saw Mr. Fernandez?

10 A Yes.

11 Q Was Mr. Dewberry anywhere around?

12 A I didn't see him.

13 Q Were there any knives around Mr. Fernandez?

14 A No.

15 Q Was there a gun around Mr. Fernandez?

16 A No.

17 Q Any other parties around Mr. Fernandez?

18 A It was just him laying in the middle of the street
19 dying.

20 Q Now, you saw him you said and you heard him screaming
21 what to you, ma'am?

22 A He was saying help, help is all.

23 Q What did you do once you heard him screaming?

24 A I ran towards him and I got to him and he was already
25 on the phone with the police. So I took the phone and then

Najee Whitney - Direct examination
by Solicitor Gray

1 they told me to take the shirt off. We ripped his shirt off
2 and put it on the, on the bullet wound.

3 Q Where was the bullet wound?

4 A In his low back.

5 Q In where?

6 A His lower back.

7 Q Lower back.

8 A (Witness nods affirmatively.)

9 Q Were there -- was there more than one bullet wound?

10 A It was just one little real small bullet wound in the
11 back.

12 Q Now, you said you called the police.

13 Was it actually 9-1-1 that was called?

14 A I'm not sure. He was already on the phone when I got
15 up but I was on the phone with 9-1-1 when I got to him.

16 Q What did you say to Mr. Fernandez?

17 A I asked him who did it and he told me it was Bernard
18 and I asked him---

19 MS. PRICE: I'm objecting to hearsay, Your Honor, and
20 the lack of foundation.

21 THE COURT: Sustained.

22 SOLICITOR GRAY: Thank you, Your Honor.

23 At that time what was Mr. Fernandez's condition?

24 A He was dying. He kept telling me I'm dying.

25 MS. PRICE: Objection. Speculation.

Najee Whitney - Direct examination
by Solicitor Gray

1 THE COURT: Your position, Mr. Gray?

2 SOLICITOR GRAY: Your Honor, that's the defendant's --
3 the victim's own words. I don't think that's speculation on
4 his part.

5 THE COURT: I'll overrule the objection. It also could
6 be a present sense impression.

7 SOLICITOR GRAY: Yes, sir.

8 Q He kept saying --?

9 A He was dying, I'm dying, I'm dying, and I kept telling
10 him no, you're not but he was. I kept telling him to shut
11 up, don't say that, you're not dying but he was.

12 Q What did you do?

13 A I just stood there. I had to try to keep him down and
14 keep him from moving. So I just held him and I put one of
15 my hands on his chest so I could feel his heart beat as long
16 as I could, and I just put my head -- my ear on his back so
17 I could listen to him breathing and it just kind of slowed,
18 get slower and slower.

19 Q His breathing got slower?

20 A Because first his heart rate was real rapid and his
21 breathing was too but it just started going down.

22 Q Did you -- all right. You say you put your hand on his
23 chest?

24 A Yeah, I was -- I had him on the ground cause I had
25 the -- my other hand had the shirt putting pressure on the

Najee Whitney - Direct examination
by Solicitor Gray

1 bullet wound and I was trying to keep him still. So I was
2 laying on the ground and I had one of my arms around him,
3 and I had my head, my head and my other hand on his back.

4 Q I'm gonna ask you to identify something for me, State's
5 Exhibits 12, 13, and 14 for identification purposes.

6 Do you recognize those, ma'am?

7 Please look over them.

8 A Yes.

9 Q All right.

10 A Is that his shirt?

11 Q That's what?

12 A Is that his shirt?

13 Q What shirt is that, ma'am?

14 A The one that I took off of him to put on the bullet
15 hole.

16 Q Is that in Picture 12, 13, and 14?

17 A I guess. Yes.

18 Q Is that where you found Mr. Fernandez?

19 A Yes, on the side of the road.

20 SOLICITOR GRAY: Your Honor, at this time I'd like to
21 move these pictures into evidence please.

22 THE COURT: Any objections?

23 MS. PRICE: No, Your Honor.

24 THE COURT: Without objections they'll be admitted as
25 they've been marked.

Najee Whitney - Direct examination
by Solicitor Gray

1 (WHEREUPON, State's Exhibit Nos. 12, 13, and 14 were
2 received into evidence at this time.)

3 THE COURT: Do you wish to publish the photos?

4 SOLICITOR GRAY: Yes, sir, Your Honor.

5 THE COURT: All right.

6 THE WITNESS: Thank you.

7 THE COURT: You may do so.

8 Q Ma'am, that's State's Exhibit No. 12.

9 Is that the corner of Wood Street and Pacolet that you
10 were talking about?

11 A Yes.

12 Q How -- what position was Mr. Fernandez in when you
13 found him?

14 A When I first saw him he was kind of sitting -- well, he
15 was laying on his side. He had one arm propping him up and
16 then he rolled over. That's when I saw his back and he was
17 kind of laying like he was just trying to keep moving.

18 Q I'm gonna show you No. 13. That's a little different
19 view.

20 Do you see the shirt in this picture?

21 A Yes.

22 Q All right. Could you please point it out?

23 A Right there.

24 Q Now, is that the shirt you used to apply pressure?

25 A Yes.

Najee Whitney - Direct examination
by Solicitor Gray

1 Q I'm gonna show you State's Exhibit No. 14. Again, just
2 a slightly different view.

3 But is that where you found Mr. Fernandez?

4 A Yes.

5 Q All right. Did Mr. Fernandez ever stand up once you
6 got there?

7 A No.

8 Q Was he able to run?

9 A No.

10 Q Was he able to move at all?

11 A Just like, like I don't know. It just looked like he
12 was in a lot of pain and he was trying to move around to
13 make it feel better. He didn't -- he couldn't get up.

14 Q He couldn't?

15 A He tried but he just kept squirming around on the
16 ground.

17 Q And you said you were putting your hand on his heart.
18 What did you feel?

19 A His heartbeat was going fast at first and then it just
20 slowed down and I really didn't feel much of anything. I
21 didn't know. I kept trying to tell him talk to me. He
22 wouldn't say anything. So I guess he was --.

23 Q Was Mr. Fernandez dead in your arms at that time?

24 A I don't know.

25 Q Was he talking to you?

1 A He wasn't. He stopped talking to me. By the end, he
2 had stopped talking to me and I kept trying to tell him to
3 talk to me. He wouldn't say anything.

4 Q How did he look to you?

5 A Well, when, when the ambulance finally got there and
6 they rolled him over, he had leaves all on the side of his
7 face. His eyes was rolled in the back of his head and then
8 he had foam coming out of his mouth.

9 SOLICITOR GRAY: No further questions, your Honor.
10 Please answer any questions the defense counsel may
11 have.

12 THE COURT: Ms. Price, your witness.

13 MS. PRICE: I have just a few, Your Honor.

14 THE COURT: Yes, ma'am.

15 CROSS-EXAMINATION.

16 BY MS. PRICE:

17 Q Ms. Whitney, you previously testified this morning that
18 Mr. Dewberry came over to Chuck's house?

19 A Yes, ma'am.

20 Q And he did that how many times that day?

21 A Twice.

22 Q Okay. During either one of those times did they get
23 into a physical fight?

24 A I didn't see a physical fight either time, no.

25 Q Okay. Thank you. That's all I have.

1 THE COURT: Redirect?

2 SOLICITOR GRAY: No, sir, Your Honor.

3 THE COURT: Ma'am, you may step down. Thank you very
4 much.

5 Mr. Gray, you may call your next witness.

6 SOLICITOR GRAY: Your Honor, I think we need to
7 approach. We have a matter.

8 THE COURT: All right. Come forward.

9 (WHEREUPON, a bench conference was held out of the
10 hearing of the jury at this time.)

11 THE COURT: All right. Ladies and gentlemen of the
12 jury, it appears that there may be some question about the
13 next witness and the evidence that I need to take up with
14 the lawyers. One of those occasions where I need to take
15 that up outside your presence. So I'm gonna ask you to step
16 back to the jury room while I do that, and, again, I'm going
17 to caution you, during the break, don't discuss anything
18 about this case, even among yourselves, until I ask you to
19 begin deliberations.

20 You may retire to the jury room.

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right. Mr. Gray, you indicated that
24 the state wished to present certain evidence concerning the
25 9-1-1 calls.

Scott Francis - Direct examination
by Solicitor Mabbs

1 SOLICITOR GRAY: Yes, sir, Your Honor.

2 THE COURT: You may proceed, if you would, and make a
3 proffer and then I'll see what the objections are.

4 SOLICITOR MABBS: Yes, sir, Your Honor. That -- we
5 would call Scott Francis.

6 THE COURT: Come forward, sir, right over here.

7 SCOTT FRANCIS, being first duly
8 sworn, testified as follows:

9 THE COURT: Have a seat please. Once you're seated,
10 sir, state your name for me.

11 THE WITNESS: My name is Scott Francis.

12 THE COURT: All right. Ms. Mabbs, if you would,
13 proffer the witness.

14 SOLICITOR MABBS: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY SOLICITOR MABBS:

17 Q Mr. Francis, where are you employed?

18 A I work for Spartanburg County 9-1-1 Communications.

19 Q What are your duties as an employee of that office?

20 A Presently I work in the IT Department or what we call
21 the CAD office and we are responsible for all the computers
22 and records for 9-1-1 Communications as well as the normal
23 IT functions.

24 Q Okay. Can you just briefly describe how that system is
25 set up?

Scott Francis - Direct examination
by Solicitor Mabbs

1 A The recordings for 9-1-1 are, in effect, automatic.
2 Carolina Recording System has a server that connects to all
3 the telephone lines for 9-1-1 except the admin lines, which
4 is office, and all the radio communications.

5 Q So if a caller calls into the system, is that phone
6 call automatically recorded?

7 A Right. It, it starts recording when the, when the call
8 comes in and stops recording if there's a break. If there's
9 a long break in the telephone or somebody puts on hold, then
10 it would stop and create another segment and it timestamps
11 each segment of the recordings.

12 Q Now, can a particular dispatcher choose either not to
13 record a call or to delete portions of a call minus I guess
14 the, the dead space you just mentioned?

15 A No, ma'am. Normally the only time it will stop is,
16 like I said, if it's put on hold or you change formats on
17 the phone and that segment will stop. But the recording
18 system will stamp the time. It has its own code that it
19 puts on the, on the call, which includes the time and date
20 for each segment.

21 Q And are those recorded as the calls come in?

22 A They're -- yeah, they're automatically recorded. The
23 dispatchers, even the supervisors, have -- do not have
24 access to the system. So there's no, no way that somebody
25 can really change anything that's on there.

Scott Francis - Direct examination
by Solicitor Mabbs

1 Q And---

2 A And due to, due to call volume we do, 1500 to or
3 thereabouts average calls a day coming into 9-1-1. So --.

4 Q And after the calls are recorded, what happens to them?

5 A They stay on the server at 9-1-1 Communications in a,
6 in a secure area with the -- we keep our radios.

7 Q So are they maintained as part of the business records
8 for Spartanburg 9-1-1?

9 A They are.

10 Q And would they be complete, accurate depictions of any
11 calls that are made?

12 A Right. It's, it's just whatever comes in it takes.
13 We, we really have no control over what anybody says or no
14 access to edit. We just -- the only thing we can do is, is
15 pull a segment.

16 Q And are you considered to be a custodian of these
17 records?

18 A I am.

19 Q And I believe -- did you bring a copy of some calls
20 related to this tape with you today?

21 A I have it right here.

22 SOLICITOR MABBS: Your Honor, if I may approach---

23 THE COURT: You may approach.

24 SOLICITOR MABBS: ---and have that CD marked for
25 identification purposes.

Scott Francis - Direct examination
by Solicitor Mabbs

1 A Okay. This one. This is---

2 Q Okay.

3 THE COURT: You can mark it for identification.

4 (WHEREUPON, the CD was marked as State's Exhibit No. 27
5 for identification purposes only at this time.)

6 SOLICITOR MABBS: All right. And, Your Honor, that's
7 been marked as State's Exhibit 27 for identification.

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

9 Q So, Mr. Francis, can you explain what that CD is?

10 A The, the CD has three recordings from the recording
11 system and it also has -- we also have a -- whatever the
12 dispatch types in is on a separate record but it's --
13 there's copies of it on this CD.

14 Q And before you came to Court today, have you had an
15 opportunity to review the calls and I guess that log sheet?

16 A I did listen to the calls and looked at the log sheet.

17 Q And was this, or I guess these three calls that are on
18 that, maintained as part of a normal business operations for
19 Spartanburg 9-1-1?

20 A They are.

21 Q Were they complete and accurate?

22 A To the best of my knowledge, yes.

23 SOLICITOR MABBS: Your Honor, at this time, for the
24 purposes of the proffer, we offer Exhibit 27.

25 THE COURT: Any objection?

Scott Francis - Direct examination
by Solicitor Mabbs

1 MS. PRICE: I do have objections to the individual
2 calls that I can make when it's played for you.

3 THE COURT: All right. So there's more than one call
4 on that CD?

5 SOLICITOR MABBS: Yes, Your Honor. So if you---

6 THE COURT: Can you identify which calls you are
7 objecting to?

8 MS. PRICE: Yes, Your Honor. There is one on there
9 that is just yelling and there's no identification of what's
10 going on or anything. So I'm objecting to that one because
11 there's no probative value and that you can't lay a
12 foundation on either except for the fact it came from the
13 same phone number. So we, we don't know what's going on.

14 SOLICITOR MABBS: Your Honor, the State's showing would
15 be that Ms. Whitney did testify that she did hear yelling,
16 which is what caused her to go run to the victim in this
17 case. She also testified that, when she approached him, he
18 was on the phone with, she believed, either the police or
19 9-1-1. So the tape here would tend to show -- provide
20 probative value as to the facts that---

21 THE COURT: You're saying it would confirm the -- her
22 story that there was yelling, a lot of yelling going on at
23 that point?

24 SOLICITOR MABBS: Your Honor, yes, and it would also go
25 to show the jury partially the proximity of all of this

Scott Francis - Direct examination
by Solicitor Mabbs

1 occurring, that you could hear the victim's---

2 THE COURT: All right. And your position as to that?

3 MS. PRICE: Well, if that's true, that's just
4 bolstering testimony, which is not the purview of the State.

5 THE COURT: The call, the call was made from a phone
6 that was a portable phone?

7 SOLICITOR MABBS: Yes, Your Honor. It's made from a
8 cell phone.

9 THE COURT: Okay. So it's a cell phone number?

10 SOLICITOR MABBS: Yes, Your Honor.

11 THE COURT: Whose cell phone?

12 SOLICITOR MABBS: Your Honor, my understanding is that
13 it is the victim's sister, Lanna Fernandez. I believe it
14 was her phone.

15 THE COURT: Okay. And she -- we don't have testimony
16 to this effect at this point in time?

17 SOLICITOR MABBS: Not yet.

18 THE COURT: Where was she located?

19 SOLICITOR MABBS: Your Honor, she, she will testify
20 later today and she was located at the victim's residence,
21 which was pointed out on the map, off of Old Pacolet Road.

22 THE COURT: Okay. I see.

23 Is anything intelligible on that, what's being said?

24 SOLICITOR MABBS: Your Honor, while it is -- I mean
25 since it is from a distance, not as clear, but you can hear,

Scott Francis - Direct examination
by Solicitor Mabbs

1 within the screaming, at least I -- personally when I
2 listened to the tape, you can hear someone screaming for
3 help.

4 THE COURT: I'm gonna overrule the objection. I think
5 it would -- if, if there's, if there's intelligible screams
6 for help on there, that would possibly come to the victim.
7 That testimony's been offered that that was what he was
8 doing. So, I'm gonna overrule the objection and allow it
9 in.

10 SOLICITOR MABBS: Thank you, Your Honor.

11 THE COURT: Anything else you need to show from this
12 witness, Ms. Mabbs?

13 SOLICITOR MABBS: Not at this time, Your Honor.

14 THE COURT: Any other objection?

15 That's the only objection to the 9-1-1 tapes?

16 MS. PRICE: Yes, sir.

17 THE COURT: You're not objecting to their authenticity
18 as being actually recorded by 9-1-1---

19 MS. PRICE: I'm not, Your Honor.

20 THE COURT: ---and from that number?

21 MS. PRICE: No, sir.

22 THE COURT: Okay. All right. Then I'm gonna let it
23 in.

24 SOLICITOR MABBS: Thank you, Your Honor.

25 THE COURT: Bring the jury back.

Scott Francis - Direct examination
by Solicitor Mabbs

1 (WHEREUPON, the following takes place within the
2 presence of the jury.)

3 THE COURT: All right. The record will reflect that
4 the jury has returned to the courtroom.

5 During your absence I did receive some testimony from
6 this witness concerning some of the evidence that they're
7 about to offer into evidence. So he's already been placed
8 under oath.

9 Sir, do you acknowledge you're under oath at this time?

10 THE WITNESS: Yes, sir, Your Honor.

11 THE COURT: All right. And I did make a ruling
12 allowing portions of the recordings into evidence.

13 Ms. Mabbs, you may proceed.

14 SOLICITOR MABBS: Thank you, Your Honor.

15 SCOTT FRANCIS, having been previously
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR MABBS:

19 Q Mr. Francis, can you please introduce yourself to the
20 jury?

21 A My name is Scott Francis. I work for Spartanburg
22 County 9-1-1 Communications.

23 Q And can you explain to the jury some of your duties at
24 Spartanburg 9-1-1?

25 A Presently part of the information technologies called

Scott Francis - Direct examination
by Solicitor Mabbs

1 the CAD office, which handles all the computers at
2 Spartanburg 9-1-1 and the database for 9-1-1.

3 Q So is part of your duty, do you oversee, I guess, the
4 9-1-1 system?

5 A Right. We, we basically are the information
6 technologies for 9-1-1. So we're responsible for servers
7 and networking and that type of thing and as well as we do
8 F-O-I-A, FOIA, Freedom of Information Act requests would
9 be -- Solicitor's Office, as attorneys, as well. If someone
10 asked for a recording or we also have whatever the dispatch
11 type, we call it a CAD sheet, and then if there's no legal
12 objections, then we release that information.

13 Q Can you briefly explain to us how the 9-1-1 system is
14 set up?

15 A Right. Everything in the communication center that the
16 dispatchers take is recorded in -- from both the, the
17 typing, whatever the dispatcher typed in, requests, you
18 know, might be for an ambulance, police, fire, and all the
19 recordings from every 9-1-1 line and every radio is
20 recorded. The only thing we don't record is, is our
21 business office, but everything -- if -- Spartanburg 9-1-1
22 is the primary answering point for all of Spartanburg County
23 except for the City of Greer. So if you, if you call 9-1-1
24 for a police, fire, or ambulance, you're talking to 9-1-1
25 Communications dispatch.

Scott Francis - Direct examination
by Solicitor Mabbs

1 Q So would that include Cowpens?

2 A That would include Cowpens.

3 Q Now, when a caller calls 9-1-1, is that phone call
4 automatically recorded?

5 A Right. We have a, a server that was put in place by
6 Carolina Recordings Systems and it automatically records all
7 of the 9-1-1 trunks and all of the administration lines.

8 Q And if a dispatcher takes a call, can they either
9 choose not to record it or deplete portions of that phone
10 call?

11 A No, every recording that comes in is, as I was
12 explaining earlier, that is a -- it comes in and they'll be
13 a segment and that segment is time and date stamped and that
14 would be the file name for your file. So the only way you
15 would have multiple segments is if there was absolutely no
16 activity on the line or someone was put on hold and then it
17 would recreate a new segment with a new file name.

18 Q Can the calls be altered?

19 A No one has access to it as far as dispatchers,
20 supervisors. So there's no, there's no way that anybody's
21 gonna alter that, and, like I said, the file name defines
22 the files. So each one has a separate name or code to it.

23 Q Are calls recorded as they come in?

24 A Automatically as soon as it, it detects any sound on
25 the line, it will -- it starts recording.

Scott Francis - Direct examination
by Solicitor Mabbs

1 Q And what happens with those recordings?

2 A The recordings are -- they require we keep them for six
3 months, but generally we -- they'll be over five years
4 recordings that just stay on the server. But we handle
5 about 1,500 calls a day to give you an idea of how much data
6 is in there. So, you know, we, most of the time, I don't
7 even know what's on the -- what's on them as to what's been
8 recorded unless I'm specifically asked to go look for it.

9 Q And are these recordings maintained as business records
10 for Spartanburg 9-1-1?

11 A They are. They stay at 9-1-1 Communications.

12 Q And would these recordings be complete and accurate
13 depictions of the phone call that came in?

14 A They would be complete and accurate as, as -- whatever
15 we get is on there.

16 Q And are you considered a record, a custodian of these
17 recordings or records?

18 A I am considered a custodian of the records.

19 Q Now, Mr. Francis, I believe you have State's Exhibit 27
20 up there with you.

21 A That would be the CD.

22 Q And what is, I guess, on that CD?

23 A On the CD is a -- three recording segments along with
24 the CAD information. We put the CAD information on the CD
25 with it so we have a complete package.

Scott Francis - Direct examination
by Solicitor Mabbs

1 Q And what date are those calls from, if you can give us
2 that information?

3 A I'd have to look but I believe it's -- the date
4 showing, May 9th, 2015.

5 Q Where -- were you able to review the calls and the log
6 on that CD?

7 A I did listen to the calls.

8 Q And were those maintained as part of your normal
9 business at Spartanburg 9-1-1?

10 A It is.

11 Q Were those, to your knowledge, all of the 9-1-1 calls
12 that came in in response to this event?

13 A As best as I'm aware of, yes, ma'am.

14 Q Okay. And are those phone calls complete and accurate?

15 A As best as I'm aware, ma'am.

16 SOLICITOR MABBS: Your Honor, at this time, State would
17 move Exhibit 27 into evidence.

18 THE COURT: Subject to your prior objections?

19 MS. PRICE: Yes, sir.

20 THE COURT: All right. Subject to the prior objection,
21 which, again, I've overruled, it will be admitted.

22 (WHEREUPON, State's Exhibit No. 27 was received into
23 evidence at this time.)

24 SOLICITOR MABBS: And, Your Honor, permission to play
25 those calls for the jury?

Scott Francis - Cross-examination
by Ms. Price

1 THE COURT: You may publish it to the jury, yes, ma'am.

2 SOLICITOR MABBS: Thank you, Your Honor.

3 (WHEREUPON, State's Exhibit No. 27 was played for the
4 jury at this time.)

5 SOLICITOR MABBS: Your Honor, I have no further
6 questions at this time.

7 THE COURT: Your witness.

8 MS. PRICE: Briefly.

9 CROSS-EXAMINATION

10 BY MS. PRICE:

11 Q Now, we just heard three calls, three separate calls
12 coming into 9-1-1.

13 Is that correct?

14 A That's correct.

15 Q Is that the order in which they came in to 9-1-1?

16 A The order that they came in is gonna be -- will be on
17 the, stamped on the CD.

18 MS. PRICE: May I approach?

19 THE COURT: You may.

20 Q Let me show you what's previously marked, been marked
21 as State's 27 --

22 A Right.

23 Q -- which you previously identified as the CD.

24 A Yes, ma'am.

25 Q okay. And the time -- the -- which calls are stamped

Scott Francis - Cross-examination
by Ms. Price

1 on there as coming in first?

2 A Like I explained a little bit earlier, it's gonna stamp
3 on the call itself. The file name of the call is going to
4 be the time and date. So unless you bring it up on the
5 computer, I can't tell you exactly which---

6 Q So --.

7 A The way I pulled it was to pull up a timeframe around
8 the time that the sheet says that it happened, like ten
9 minutes before and ten minutes after, and pull all the 9-1-1
10 trunks at the same time, went through there and checked
11 them. But at the time that it actually occurred is the file
12 name on the file --

13 Q Okay.

14 A -- if you want to look at it from there.

15 Q Okay. Is that on the CAD sheet as well or just on the
16 computer file?

17 A On the -- on this CD, it's gonna show on there.

18 Q Okay. But not---

19 A So if you were to bring up the file names, you would be
20 able to see the dates---

21 Q Okay.

22 A ---and times on there.

23 Q Okay. So unless you look at it further, you don't know
24 which one came in first?

25 A I -- no, I just pulled them---

1 Q Okay.

2 A ---the timeframe to make sure that I had the calls that
3 were there.

4 Q Okay. That's all I have. I'll take that back.

5 THE COURT: Redirect, Ms. Mabbs?

6 SOLICITOR MABBS: No, Your Honor.

7 THE COURT: All right, sir. You may down.

8 You wish to excuse this witness?

9 SOLICITOR MABBS: Yes, Your Honor.

10 THE COURT: Any objection to his being excused?

11 MS. PRICE: No, Your Honor.

12 THE COURT: Sir, you're free to go. Thank you very
13 much.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Ladies and gentlemen, we're gonna take a
16 short break now. You had a break but everybody in the
17 courtroom hasn't. So we're gonna let you step back to the
18 jury room. As always, when you leave the courtroom, you'll
19 get tired of hearing me say this, please don't discuss
20 anything about this case until I ask you to begin your
21 deliberations.

22 You may retire to the jury room.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. Court's in recess for about ten

Lanna Fernandez - Direct examination
by Solicitor Gray

1 minutes.

2 (WHEREUPON, a short recess was taken at this time.)

3 THE COURT: All right. Is the State ready to proceed?

4 SOLICITOR GRAY: One moment, Your Honor. I need to get
5 my next witness to come in.

6 THE COURT: Okay.

7 (Pause.)

8 SOLICITOR GRAY: State's gonna call Lanna Fernandez,
9 Your Honor.

10 THE COURT: All right, ma'am. If you'll be seated
11 until we call you and the jury is in the courtroom. Thank
12 you.

13 Are you ready to proceed now, Mr. Gray?

14 SOLICITOR GRAY: Yes, sir, Your Honor.

15 THE COURT: Is the defense ready?

16 MS. PRICE: Yes, Your Honor.

17 THE COURT: Bring the jury in.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE COURT: All right. The record will reflect the
21 jury's returned to the courtroom.

22 We're in the process of the State presenting its
23 witnesses.

24 Mr. Gray, you may call your next witness.

25 SOLICITOR GRAY: Thank you, Your Honor.

Lanna Fernandez - Direct examination
by Solicitor Gray

1 State calls Lanna Fernandez.

2 THE COURT: Come forward, Ms. Fernandez. Step to my
3 left here, your right, and be sworn.

4 LANNA FERNANDEZ, being first duly
5 sworn, testified as follows:

6 THE COURT: Once you're seated, ma'am, state your name.

7 THE WITNESS: Lanna Fernandez.

8 THE COURT: Thank you.

9 Mr. Gray, your witness.

10 SOLICITOR GRAY: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY SOLICITOR GRAY:

13 Q Ms. Fernandez, are you related to the victim in this
14 case?

15 A Yes, sir.

16 Q How are you related to the victim?

17 A He's my brother.

18 Q That would be Jerry Chuck Fernandez?

19 A Yes, sir.

20 Q Do you know the defendant in this case?

21 A Yes, sir.

22 Q How long -- how do you know him?

23 A He's my cousin.

24 Q What's his name, ma'am?

25 A Bernard Dewberry.

Lanna Fernandez - Direct examination
by Solicitor Gray

1 Q could you please point him out?

2 A (Witness points.)

3 Q Let the record reflect that, that the man at the
4 defense table with the tan shirt and black tie.

5 THE COURT: The record will so reflect.

6 You may proceed.

7 Q Is that the same Bernard Dewberry that is accused of
8 shooting your brother?

9 A Yes, sir.

10 Q Now, on the date in question, last year, did you hear
11 anything involving your brother after he was shot?

12 A Did I hear him yell?

13 Q Yes, ma'am.

14 A Yes.

15 Q What did you do when you heard the yelling?

16 A I called 9-1-1. Well, I ran back to my house to get my
17 phone to call 9-1-1.

18 Q And he was yelling what?

19 A Help.

20 Q Once you got your phone, you called 9-1-1?

21 A Uh-huh. (Affirmative).

22 Yes, sir.

23 Q After you called 9-1-1, did you talk to them?

24 A Yes, sir.

25 Q Did you do anything else besides talk to them?

Lanna Fernandez - Direct examination
by Solicitor Gray

- 1 A No.
- 2 Q Did you go to your brother?
- 3 A Yes.
- 4 Q What did you see once you got to your brother?
- 5 A He was yelling for help and he was shot.
- 6 Q What type of injuries did he have?
- 7 A A bullet wound in his back.
- 8 Q Was anybody assisting him?
- 9 A Only but his fiancée.
- 10 Q And what's her name?
- 11 A Najee Whitney.
- 12 Q She was assisting him how?
- 13 A Help talking to him. Calming him down.
- 14 Q Okay. He was excited at this time?
- 15 A No, he was in pain. I guess he was in pain yelling
- 16 help.
- 17 Q He was yelling?
- 18 A Uh-huh. (Affirmative).
- 19 Q And in pain?
- 20 A Yes, sir.
- 21 Q Now, you were on the 9-1-1 call?
- 22 A Yes.
- 23 Q Were you the one asking him to calm down?
- 24 A No, I mean no. She was asking him to calm down. I was
- 25 just calling 9-1-1 making sure that they was on the way

Lanna Fernandez - Direct examination
by Solicitor Gray

1 while she was helping him, calm him, helping his situation.

2 but---

3 Q Did he ever calm down?

4 A No. Well --.

5 Q Explain what happened with your brother's condition
6 from the time you got there until EMS arrived.

7 A Well, he was talking saying help and saying that he
8 needed help cause Bernard had shot him and he wanted us to
9 know that he was just talking to his girlfriend.

10 Q Did he ask for anything?

11 A Water, which we went and got him.

12 Q What did you do with the water?

13 A We gave it to him.

14 Q To drink?

15 A Yes.

16 Q Did you do anything else for him?

17 A No.

18 Q Did you run back and forth to the house giving him
19 water?

20 A I ran back and forth but the people that was in front
21 of where he got shot brought the water from the house.

22 Q Did you see him -- once EMS arrived, what kind of
23 condition was he?

24 A He was turning blue.

25 Q He was turning blue?

Lee Burnette - Direct examination
by Solicitor Gray

1 A Yes.

2 Q Was he still talking at this time?

3 A He was mumbling.

4 Q Were you talking to him?

5 A His girlfriend was. I couldn't, I couldn't just stand
6 by, by him no more. It was too much.

7 SOLICITOR GRAY: One moment, Your Honor.

8 (Pause.)

9 SOLICITOR GRAY: No further questions at this time.

10 Please answer any questions defense may have.

11 A (Witness nods affirmatively.)

12 THE COURT: Your witness, counselor.

13 MS. PRICE: I don't have any questions of Ms.

14 Fernandez.

15 THE COURT: All right, ma'am. You may step down.

16 Thank you very much.

17 Mr. Gray, you may call your next witness.

18 SOLICITOR GRAY: State calls Officer Lee Burnett,

19 Cowpens.

20 THE COURT: Come forward, sir, and be sworn please,
21 sir.

22 LEE BURNETTE, being first duly
23 sworn, testified as follows:

24 THE COURT: Sir, once you're seated, state your name
25 please.

Lee Burnette - Direct examination
by Solicitor Gray

1 THE WITNESS: Lee Burnette.

2 THE COURT: Thank you.

3 Mr. Gray, your witness.

4 SOLICITOR GRAY: Thank you, sir.

5 DIRECT EXAMINATION

6 BY SOLICITOR GRAY:

7 Q Where do you work, sir?

8 A Cowpens Police Department.

9 Q How long have you worked there?

10 A Since 2003.

11 Q What are your primary duties and responsibilities?

12 A Answer police related emergencies.

13 Q As, as result of that, do you do investigations or
14 arrests?

15 A We have to do our own investigations and our own
16 arrests, yes, sir.

17 Q Were you involved with a situation with Mr. Jerry
18 Fernandez and Mr. Bernard Dewberry?

19 A Yes.

20 Q In May 9th, last year, were you called out to a scene
21 involving Mr. Fernandez?

22 A Yes.

23 Q I show you State's Exhibit No. 1 and we'll publish it
24 again. Just one. Upside down. I ask you to take this
25 pointer please.

Lee Burnette - Direct examination
by Solicitor Gray

1 Now, your -- what's your jurisdictional area as an
2 officer of Cowpens?

3 A We cover around three miles across.

4 Q All right. Would the area involving this shooting
5 cover that?

6 A Yes, sir.

7 Q Could you use that laser pointer and show me where the,
8 the shooting occurred?

9 A Up there in the first O in Wood Street.

10 Q All right. And that's your jurisdictional area?

11 A Yes.

12 Q Is that -- I know Cowpens is in partly Spartanburg
13 County, Spartanburg, and partly---

14 A Yeah.

15 Q ---in Cherokee?

16 A Yes.

17 Q What part is that in?

18 A Spartanburg County.

19 Q So this shooting/murder occurred in Spartanburg County?

20 A Yes, sir.

21 Q As such, when you arrived or, or got the call about the
22 shooting, which agency did you contact?

23 A Usually, if we have a serious situation like that,
24 dispatch goes ahead and notifies Spartanburg County as a
25 backup unit to be in route.

Lee Burnette - Direct examination
by Solicitor Gray

1 Q Now, being in Cowpens, were you the first one, officer?

2 A I was the only officer working at that time.

3 Q Were you the first law enforcement officer on the
4 scene?

5 A Yes, sir.

6 Q I'm sorry. That was the question I wanted to ask you.
7 So no Sheriff's Office or anything was there?
8 You were first there?

9 A Yes, sir.

10 Q Once you arrived on the scene, what did you observe?

11 A I observed a, a black male laying face down. He was
12 Jerry Fernandez. That is another black female, Najee
13 Whitney, she was holding what looked like a t-shirt or a
14 cloth over his lower back, and another black female was
15 giving him water, Lanna Fernandez, which is the victim's
16 sister.

17 Q Okay. Did you do anything to assist them with Mr.
18 Fernandez?

19 A I asked him if he was shot here. I couldn't really get
20 anything out of him. So I was asked was we in immediate
21 danger being here and couldn't get anything out of him. So
22 I just kind of checked the perimeter. I didn't see any
23 visible weapons. I went ahead and notified dispatch to send
24 EMS in.

25 Q I want to ask, to ask you a question about that. You

Lee Burnette - Direct examination
by Solicitor Gray

1 say there were no visible weapons.

2 Were there any knives at that corner?

3 A No.

4 Q A gun?

5 A No, sir.

6 Q Anything at all there?

7 A The only thing we found on the asphalt was some blood
8 right there around the victim. I walked down just a little
9 bit below it almost to the stop sign at -- where Wood goes
10 to Carver Street there.

11 Q Right here?

12 A Yep. And checked for blood spots or, you know, any
13 more weapon, possible weapons or anything, and nothing, no.

14 Q No blood --

15 A No.

16 Q -- up or down Wood Street?

17 A No, sir.

18 Q No weapons up or down Wood Street?

19 A No weapons, no shell casings, no knives.

20 Q No shell casings?

21 A (Witness nods negatively.)

22 Q No guns either?

23 A (Witness nods negatively.)

24 Q Now, again, I want to ask you about Mr. Fernandez and
25 what was his condition from the time you got there until EMS

Lee Burnette - Direct examination
by Solicitor Gray

1 arrived?

2 A When I first got there he was complaining of being hot,
3 burning up on the inside, that he was wanting more water.
4 After that he didn't really say a whole lot. He was kind of
5 in and out and he didn't -- I couldn't really get him to
6 answer any questions. Just -- he, he -- a few times he
7 tried to get up but he couldn't get hisself up off the
8 ground. We just kept telling him, you know, stay still, EMS
9 is on the way.

10 Q Once EMS arrived, what could you -- was there a change
11 in his condition that you could notice?

12 A Yes, I, I noted, I remember this very, very clear, when
13 EMS rolled him over to put him on the stretcher, I seen some
14 leaves stuck to his face and I seen -- I remember seeing a
15 leaf stuck to the side of his eyeball but he hadn't spoken
16 or nothing or a couple of minutes before they got there.

17 Q Did you maintain control of the scene and the
18 investigation at that time?

19 A I did and then Master Deputy Moriarty showed up and I
20 think Pearson. They took crime scene tape and roped
21 everything off.

22 Q And, at that point, did Spartanburg County take over
23 the investigation?

24 A Yes, sir.

25 Q Did you do anything else as far as the investigation at.

John Moriarty - Direct examination
by Solicitor Mabbs

1 that point?

2 A I just stayed there on the scene with them till they
3 were finished up.

4 Q No further questions at this time. Please answer any
5 questions the defense counsel may have.

6 THE COURT: Ms. Price, your witness.

7 MS. PRICE: I just got one.

8 CROSS-EXAMINATION

9 BY MS. PRICE:

10 Q No shell casings, no weapons.

11 Is that your testimony?

12 A Yes, ma'am.

13 MS. PRICE: That's all I have.

14 THE COURT: You may step down, sir.

15 THE WITNESS: Thank you.

16 THE COURT: You may call your next witness.

17 SOLICITOR MABBS: Thank you, Your Honor.

18 The State calls Deputy Moriarty.

19 THE COURT: Come forward, sir, and be sworn.

20 JOHN MORIARTY, being first duly sworn,
21 testified as follows:

22 THE COURT: Once you're seated, sir, state your name
23 please.

24 THE WITNESS: John Moriarty.

25 THE COURT: Thank you.

John Moriarty - Direct examination
by Solicitor Mabbs

1 Ms. Mabbs, your witness.

2 SOLICITOR MABBS: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY SOLICITOR MABBS:

5 Q Deputy Moriarty, where do you work?

6 A Spartanburg County Sheriff's Office.

7 Q And how long have you been at the Sheriff's Office?

8 A Ten years.

9 Q What are some of your duties at the Sheriff's Office?

10 A I'm a uniform patrol officer with the Sheriff's
11 Department. I'm one of the guys riding around in the black
12 and white report to or respond to calls, respond to back up
13 for town units. One of my other primary duties is I'm a
14 field training officer.

15 Q And were you working back on May 9th of 2015?

16 A I was.

17 Q Do you recall the events of that day?

18 A I do.

19 Q Can you explain to us how you came to have to go out to
20 Wood Road and Old Pacolet Road in Cowpens that day?

21 A Yes, ma'am, on that day I had a trainee with me, Ms. --
22 Deputy Pearson and we were traveling in our vehicle on North
23 Main Street in Cowpens and we got the call from Spartanburg
24 9-1-1 to respond to back up Cowpens on a shooting. So we
25 responded to Old Pacolet Road and Wood Street.

John Moriarty - Direct examination
by Solicitor Mabbs

1 And upon our arrival there, I saw that Officer Burnette
2 was on the ground with Jerry Fernandez and who I now learned
3 was his fiancée. I didn't know her prior to that. Jerry
4 was facing the dirt. He was on his stomach. She was
5 holding a white t-shirt on, on the wound and I started
6 having people do things.

7 One of the things was get the EMS folks is as fast as
8 we could. EMS won't respond when there's a shooting until
9 they're actually told it's time to come in so that they
10 don't get hurt. Got -- Deputy Pearson started streaming
11 crime scene tape up around, around what we thought was
12 probably the crime scene at the time and then started asking
13 questions about who did this, you know, where he went, do we
14 have any clues of where they are, how it happened.

15 Q So let's back up to a couple of things that you just
16 said.

17 You said that y'all didn't call EMS out until you make
18 sure that the scene is safe?

19 A Right.

20 Q What steps do you do, I guess, to---

21 A We just tell Spartanburg Communications by radio that
22 the scene is safe and to go ahead and send them in. I mean
23 they'll stage out close to by where the actual scene is but
24 they won't come in.

25 Q So what are some of the things you look for at a scene

John Moriarty - Direct examination
by Solicitor Mabbs

1 to determine if it might still be the situation where EMS
2 wouldn't be able to arrive?

3 A Well, one of the things I look for is there's actually
4 people still there, you know, engaged in some sort of
5 assault and batteries, whether or not they're engaged in
6 shooting each other, or they're fighting, things, I guess,
7 whether or not there's guns and knives present, whether or
8 not there's any kind of activity to actually harm the EMS
9 workers. There's nothing going on there. So that's when
10 you call them in, have them come in.

11 Q So when you arrive at the scene, were you able to see
12 any weapons?

13 A No, ma'am, there was no weapons. Again, like Officer
14 Burnett said, a cursory inspection of the crime scene
15 revealed no guns, no knives, no shell casings, and only a
16 few drops of blood very close to where Mr. Fernandez was
17 lying.

18 Q And was the defendant on the scene when you arrived?

19 A No, ma'am.

20 Q And just to clarify, the scene, was that in Spartanburg
21 County?

22 A Yes, ma'am.

23 Q And you also stated that you had them set up crime
24 scene tape?

25 A Yes, ma'am.

John Moriarty - Direct examination
by Solicitor Mabbs

1 Q Can you explain why, why you do that?

2 A Well, we want to rope it off and keep it secure, keep
3 it as pristine as we can. We don't want people getting in
4 there and actually moving what could possibly be evidence
5 around that will point to or from whoever might of done this
6 crime. And so it's just an effort on our part to actually
7 make it so that it's extremely controlled.

8 Q So once the tape itself is set up, how do you make sure
9 that area stays, I guess, within y'all's control?

10 A Well, we, you know, we have family members on the
11 scene. We ask family members not to come inside, to leave
12 Jerry where he's laying because they couldn't do anything
13 for him. We had to wait for the actual EMS guys to show up,
14 who are the professionals in this, and they would take care
15 of what he had to do. I mean because this young lady had
16 that compress on his back. The last thing you want to do
17 here is remove so they don't start bleeding more and so she
18 stayed with him.

19 SOLICITOR MABBS: Your Honor, I am grabbing what has
20 been marked as Exhibits 15 through 26.

21 Permission to approach?

22 THE COURT: You may approach.

23 Q Deputy Moriarty, do you recognize what I've handed you?

24 A Yes, ma'am, I do.

25 Q And what are those pictures of?

John Moriarty - Direct examination
by Solicitor Mabbs

1 A Those appear to be pictures of the crime scene.

2 Q Are those a fair and accurate depiction of the crime
3 scene as you saw it that day?

4 A Yes, ma'am.

5 SOLICITOR MABBS: Your Honor, at this time State would
6 move Exhibits 15 through 26 into evidence.

7 THE COURT: Any objection?

8 MS. PRICE: Without objection.

9 THE COURT: Without objection, they'll be received into
10 the record as marked.

11 SOLICITOR MABBS: Thank you, Your Honor.

12 (WHEREUPON, State's Exhibit Nos. 15 through 26 were
13 received into evidence at this time.)

14 Q Now, deputy, can you show the jury on the map where the
15 crime scene area you roped off was located approximately?

16 A That area there as well as down to about in there down
17 about to the bottom of the D.

18 Q I can, can grab a couple of these photos from you.

19 So if we are looking at Exhibit 15 here, can you --
20 here, I'll show Exhibit 15.

21 what direction would that be facing, I guess, on this
22 map?

23 A That would be facing from Carver Street up to Old
24 Pacolet Road.

25 Q So what, I guess, the -- what's the slope on Wood

John Moriarty - Direct examination
by Solicitor Mabbs

1 Street there in-between Carver up to Old Pacolet Road?

2 A I'm sorry. I didn't hear you.

3 Q What would be, I guess, the slope of Wood Street of---

4 A It's got a little bit of a slope to it. Not -- I mean
5 it's got a little bit of a hill.

6 Q And what, what part of the crime scene is depicted in
7 Exhibit 19?

8 A This would be from the -- could you go back to the
9 first slide?

10 Q Yes.

11 A That would be looking from this single wide trailer
12 towards the O over here where Jerry's head was laying.

13 Q And I guess the, the darker kind of spot on -- what,
14 what was located there when you arrived?

15 A Jerry was here and I can't pronounce this young lady's
16 name. Najee was at the -- at his head and then right around
17 in here was where the blood stains were.

18 Q And, with this picture, what direction was the victim
19 laying in?

20 A Jerry's head was here but his feet were over here.

21 Q So he was, I guess, was in the street?

22 A Yes, ma'am.

23 Q And with -- and here's Exhibit 23.

24 Were there any other people besides those at the crime
25 scene, to your knowledge, who knew any -- who had entered

John Moriarty - Direct examination'
by Solicitor Mabbs

1 the crime scene?

2 A His, his -- Jerry's mom was there. Jerry's sister was
3 there. There was maybe one or so other people there, I
4 don't recall exactly, and then his other sister showed up
5 later.

6 Q Thank you.

7 Now, deputy, I believe -- deputy, you mentioned that, I
8 believe during your cursory search, that you didn't find
9 any, I guess, blood spots or anything except for right
10 around the victim's body?

11 A Yes, ma'am.

12 Q When you had an opportunity, while you're at the scene
13 longer, were any other blood trails or anything like that
14 ever found to your knowledge?

15 A No, we went around and kind of did a look around down
16 from where we thought maybe this had occurred, and there was
17 no indication that it didn't occur anywhere but there.
18 There's no blood trails. There's no, again, anything that
19 would indicate other than that.

20 Q And can you explain to us a little bit about what you
21 saw of the victim's condition while you were at the scene?

22 A When I first arrived, he, he wasn't talking. He was
23 kind of mumbling. Najee was holding him down, telling him
24 to be quiet, telling him to settle down, not to, to get up.
25 And when EMS eventually arrived and they flipped him over

John Moriarty - Cross-examination
by Ms. Price

1 and put him on the stretcher, he had, in my opinion, taken a
2 turn for the worse. When they put him on the stretcher, got
3 him strapped down, and put him onto the -- into the
4 ambulance, it was -- it didn't appear he had any control
5 over his movements. He was kind of like a rag doll.

6 SOLICITOR MABBS: I beg the Court's indulgence, Your
7 Honor.

8 (Pause.)

9 SOLICITOR MABBS: Your Honor, I have no further
10 questions at this time.

11 Permission to publish the photos to the jury?

12 THE COURT: You may do so.

13 Ladies and gentlemen, I'm allow her to pass those
14 photographs among you. You can look at them as we'll
15 continue with the testimony. Try not to let them divert
16 your attention totally from what's going on on the witness
17 stand.

18 Your witness.

19 CROSS-EXAMINATION

20 BY MS. PRICE:

21 Q Deputy Moriarty, you're not a doctor, are you?

22 A I'm sorry, ma'am?

23 Q You're not a doctor, are you?

24 A No, ma'am.

25 Q Okay. But your testimony is, is that, when they put

Michelle Pearson - Direct examination
by Solicitor Mabbs

1 Jerry into the ambulance, you thought he'd taken a turn for
2 the worse?

3 A Yes, ma'am.

4 Q Okay. What's that based on if you're not a doctor?

5 A Just my observation.

6 Q Which is what?

7 A Just that he didn't seem to be doing real well. After
8 all the people I've seen who have been shot and stabbed and
9 other things, that he just didn't seem to be doing well.

10 MS. PRICE: That's all I'd have.

11 THE COURT: Redirect.

12 SOLICITOR MABBS: No, Your Honor.

13 THE COURT: You may step down, sir.

14 Do you wish to excuse the witness?

15 SOLICITOR MABBS: Yes, Your Honor.

16 THE COURT: Sir, you can be excused if you'd like
17 unless there's an objection from the defense.

18 Any objection?

19 MS. PRICE: Oh, no, sir.

20 THE COURT: Thank you.

21 State may call its next witness.

22 SOLICITOR MABBS: Thank you, Your Honor.

23 The State would call Michelle Pearson.

24 THE COURT: Come forward, ma'am, and be sworn.

25 MICHELLE PEARSON, being first duly

Michelle Pearson - Direct examination
by Solicitor Mabbs

1 sworn, testified as follows:

2 THE COURT: State your name please.

3 THE WITNESS: Michelle Pearson.

4 THE COURT: Thank you.

5 Your witness, counselor.

6 SOLICITOR MABBS: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY SOLICITOR MABBS:

9 Q Deputy Pearson, where do you work?

10 A Spartanburg County Sheriff's Office.

11 Q How long have you been there?

12 A Two years.

13 Q Were you working on May 9th of 2015?

14 A Yes, ma'am, I was.

15 Q And can you explain at the time what, I guess what your
16 role at the sheriff's office was?

17 A I was in the field training program. I was a new
18 deputy and Deputy Moriarty was my training officer.

19 Q So were you working with him that day?

20 A I was.

21 Q Did you have an opportunity to go out with him to a
22 call at Wood Street and Old Pacolet Road?

23 A I did.

24 Q All right. Can you explain to us what you saw when
25 y'all got there?

Michelle Pearson - Direct examination
by Solicitor Mabbs

1 A Yes, ma'am. When we arrived on the scene, the Cowpens
2 officer was in the road with the victim who looked to be
3 face down. There was two other females on scene also.

4 while the other officers were looking to secure the
5 scene, I also did a protective sweep to ensure there's no
6 other threats on the scene. I radioed to the sergeant at
7 the time to advise him that a violent crime investigator
8 would be needed to be notified as well as letting him know
9 that EMS was cleared to -- on the scene.

10 As soon as I did that, I asked my training officer what
11 needed to be done next and I went to the -- our vehicle and
12 got the crime scene tape and, again, to secure the scene
13 with the tape.

14 Q So you're the one who actually physically put the tape
15 up?

16 A Yes, ma'am.

17 Q And how do you determine, I guess, what -- where to put
18 the tape?

19 A Well, being that I was in training, this was fresh and
20 it's always said to start big. So we started -- obviously
21 where he was laying is not gonna be the main place. We're
22 gonna start big and then we can narrow it down as the
23 investigation --.

24 Q And during -- you mentioned you did a protective sweep.
25 During the protective sweep, did you find any knives?

Michelle Pearson - Cross-examination
by Ms. Price

1 A No.

2 Q Did you find any guns?

3 A No, ma'am.

4 Q While you're at the scene, was the defendant present?

5 A No, ma'am.

6 Q Once the scene had been taped off, I guess -- what
7 is -- was is it that you said, bigger is --?

8 A Bigger is better. Then you go down.

9 Q During your sweep of that area beyond the initial
10 sweep, were any weapons ever found?

11 A No, ma'am.

12 Q Were you able to see the victim when he was at the
13 scene?

14 A I initially did. I couldn't see too much because the
15 two females were with him initially and then the other
16 officer there and I knew there wasn't too much that I would
17 be able to do. So I just stayed away and tried to make sure
18 that nobody else came to, came onto the scene so the
19 integrity would be keep.

20 Q And while you were there, was the integrity of the
21 scene maintained?

22 A Yes, ma'am.

23 SOLICITOR MABBS: Beg the Court's indulgence, Your
24 Honor.

25 (Pause.)

Michelle Pearson - Cross-examination
by Ms. Price

1 SOLICITOR MABBS: Nothing further at this time, Your
2 Honor.

3 THE COURT: Your witness, counselor.

4 MS. PRICE: Thank you.

5 Do you have a pointer?

6 May we approach, Your Honor?

7 THE COURT: You may.

8 CROSS-EXAMINATION

9 BY MS. PRICE:

10 Q Deputy Pearson, this is a laser pointer. Just hold
11 down that button cause I'm gonna ask you some questions
12 about this map that's up.

13 A (Witness nods affirmatively.)

14 Q What I'm referring to has previously been admitted into
15 evidence as State's Exhibit No. 1.

16 Deputy Pearson, do you recognize this?

17 A I do.

18 Q What is it?

19 A A map.

20 Q Map of what?

21 A Wood Street, Old Pacolet Road, Carver Street.

22 Q How does this map fit into this case that we're here
23 about today?

24 A It is a representation of the area surrounding where
25 the crime scene was located.

Michelle Pearson - Cross-examination
by Ms. Price

1 Q And you were the one who put up the crime scene tape?

2 A I was.

3 Q Can you show us, with that laser pointer, about the
4 approximate location, to the best of your knowledge, that
5 you put up that tape?

6 A The approximate location was, I don't remember exactly,
7 would be there's some trees in this area, across here, down,
8 down to the edge of the street, and, again, that's an
9 approximation because I don't remember exactly.

10 Q Now, did the crime scene tape actually go into the
11 trees that you remember?

12 A Well, you have to have something to attach the crime
13 scene tape to. So whatever was available is what it was
14 attached to.

15 Q Okay. Did you, did you attach that tape closer to the
16 street or closer off of the street if you remember?

17 A You always start bigger and then come in. So it was
18 not right next to where his body was lying. It was in the
19 wood line.

20 Q Okay. And you were the person who did the protective,
21 the -- what you call the protective sweep of that area?

22 A I was not the person. I was one of the people.

23 Q One of the people.

24 But it's your testimony today that when you were doing
25 your part of this sweep that you didn't find any weapons.

David Lewis - Direct examination -
by Solicitor Mabbs

1 Is that correct?

2 A Yes, ma'am.

3 Q No gun?

4 A No, ma'am.

5 Q No knives?

6 A No, ma'am.

7 Q No bullet casings?

8 A No, ma'am.

9 MS. PRICE: That's all I have, Your Honor.

10 You can bring the lights up please.

11 Thank you.

12 THE COURT: Redirect.

13 SOLICITOR MABBS: Very briefly, Your Honor.

14 THE COURT: Yes, ma'am.

15 REDIRECT EXAMINATION

16 BY SOLICITOR MABBS:

17 Q Okay. During your time at the scene, Deputy Pearson,
18 did you ever see the defendant?

19 A No, ma'am.

20 SOLICITOR MABBS: No further questions, Your Honor.

21 THE COURT: Any cross on that question?

22 MS. PRICE: No, Your Honor.

23 THE COURT: All right. Ma'am, you may step down.

24 Do you wish to excuse the witness?

25 SOLICITOR MABBS: Yes, Your Honor.

David Lewis - Direct examination
by Solicitor Mabbs

1 THE COURT: Any objections?

2 MS. PRICE: No objection.

3 THE COURT: You're free to go if you'd like. Thank
4 you.

5 THE WITNESS: Thank you.

6 THE COURT: State may call it's next witness.

7 SOLICITOR MABBS: Thank you, Your Honor.

8 The State calls David Lewis.

9 THE COURT: Come forward, sir.

10 DAVID LEWIS, being first duly
11 sworn, testified as follows:

12 THE COURT: Once you're seated, sir, state your name
13 please.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 THE WITNESS: David M. Lewis.

17 THE COURT: Thank you.

18 Ms. Mabbs, your witness.

19 SOLICITOR MABBS: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY SOLICITOR MABBS:

22 Q Mr. Lewis, where are you employed?

23 A At Spartanburg EMS.

24 Q And what's your role at EMS?

25 A I'm a paramedic.

David Lewis - Direct examination
by Solicitor Mabbs

1 Q And how long have you been working as a paramedic?

2 A Five years.

3 Q Has all that been here in Spartanburg?

4 A As a paramedic, yes. Well, except for a very brief
5 time in Union County.

6 Q Can you explain to us some of your duties as a
7 paramedic?

8 A Yes, ma'am. We primarily take care of patients and
9 transport them to the hospital in emergency situations. We
10 drive and maintain vehicles. We do lots of continuing ed.
11 But our primary role is to transport sick and injured
12 patients to proper -- to emergency rooms.

13 Q And how do you know when you need to go I guess pick
14 somebody up for transport?

15 A When they call 9-1-1.

16 Q And who informs you I guess when they call 9-1-1?

17 A 9-1-1 dispatch.

18 Q And how, how is it that they get in contact with you?
19 Do you get a call?

20 A They contact us by radio. First they set off tones on
21 a -- walkie talkies, which we respond to, and then they send
22 us information and a map for the call on a mobile data
23 terminal which is located in a, a Panasonic Tough Book
24 computer mounted on a stand in the front of our ambulance.

25 Q Now, do you drive the EMS by yourself or do you or are

David Lewis - Direct examination
by Solicitor Mabbs

1 there others?

2 A No, ma'am, we have -- we take turns. One, one person
3 drives and one person provides patient care and we alternate
4 to give our partner a chance to catch up on the reports.

5 Q So y'all usually have, I guess, two of you in the
6 ambulance?

7 A A minimum of two.

8 Q Now, were you working on May 9th of 2015?

9 A Yes, ma'am.

10 Q Can you -- are you familiar with an incident on Wood
11 Street and Old Pacolet Road in Cowpens?

12 A Yes, ma'am, I ran that call.

13 Q And can you tell us, I guess, first how, how you knew
14 to go out to that area?

15 A I was working Medic 2 out of headquarters on Union
16 Street. A call came -- tones dropped. We responded.
17 Dispatch informed us that there was a gunshot wound in Medic
18 4's area. Medic 4 was already engaged on a call. So we
19 drove from EMS headquarters on Union Street Code 3 to the
20 scene in Cowpens.

21 Q Now, when you say Code 3, what does that mean?

22 A Lights and sirens. We're only allowed to go ten miles
23 over the posted speed limit. No faster than 70 miles per
24 hour. But that's lights and sirens going as fast as we can
25 without endangering other people on the road.

David Lewis - Direct examination
by Solicitor Mabbs

1 Q And you mentioned something about Medic 4 was engaged
2 in a call.

3 What, what does that mean?

4 A That means that the truck that is stationed in that
5 area on East Main Street was already running a call. That's
6 why they did not respond with a shorter distance and a
7 shorter response time. We had to come all the way from
8 downtown because we were the next closest available truck at
9 that time.

10 Q And do you remember approximately what time of day it
11 was that you were called out?

12 A No, ma'am, I'm sorry. I do not. I run quite a few
13 calls. Usually about ten a day..

14 Q Do you remember -- was it daytime or nighttime?

15 A It was daytime, ma'am. I'm on 12 hour days from 7:00AM
16 to 7:00PM.

17 Q Okay. And when you arrived at the scene, what
18 happened?

19 A I had been driving. My partner immediately jumped out
20 of the ambulance and responded to the patient. I put us on
21 scene on the mobile data terminal required our on scene --
22 I'm sorry. Record our on scene mileage. Turned my walkie
23 talkie on, jumped out, and followed her. She already
24 reached the patient when I got about halfway there.

25 Q Okay. And where was the -- I guess the patient?

David Lewis - Direct examination
by Solicitor Mabbs

1 A The patient was in a small depression, I think possibly
2 a ditch, face down with his head away from us---

3 Q Okay.

4 A ---and his feet towards us.

5 Q And this here's a---

6 A Yes, ma'am, I've seen this done already.

7 Q All right. Can you point to us on Exhibit 1 where
8 approximately you found the patient?

9 A Ma'am, I'm really not familiar with the area. Like I
10 said, this was a long time ago but I believe it was right
11 around in there.

12 Q All right. And when you saw the, the victim, did you
13 notice -- did he have any injuries?

14 A He appeared to have a small blood stain on the back --
15 on his back. He was laying prone when I saw him.

16 Q So you only witnessed one injury?

17 A At the time, yes, ma'am.

18 Q And where was that injury located approximately?

19 A Somewhere in -- to the best of my recollection,
20 somewhere in the middle of his back.

21 Q And what did you and your partner do after you, I
22 guess, initially got on the scene and saw him there?

23 A My partner immediately called for a backboard. I went
24 and grabbed the stretcher, backboard, the spider straps. I
25 had that and a C-collar---

David Lewis - Direct examination
by Solicitor Mabbs

1 Q Okay.

2 A ---which are things that all go together. If I'm
3 talking too fast, I'm sorry.

4 Q Okay. I was gonna say if you could slow down just a
5 little bit---

6 A Yeah.

7 Q ---just so we can make sure everyone understands you.

8 A Yes, ma'am.

9 Q Now why, why would you need a backboard and C-collar?

10 A Because, with gunshot injuries, we always treat them as
11 spinal injuries until spinal injuries are ruled out. You
12 know, passing a bullet through a body obviously can cause
13 damage to the spinal cord or spinal column. So we take
14 spinal---

15 THE COURT: Sir, if you'll back up off of that
16 microphone just a little bit.

17 THE WITNESS: I'm sorry.

18 THE COURT: That's okay. Now try that.

19 THE WITNESS: Okay.

20 THE COURT: Go ahead.

21 A Anytime there's a gunshot wound with a bullet passing
22 through the body there can be damage to the spine. So we
23 always take spinal precautions until spinal injuries are
24 ruled out.

25 Q So what did you do after you went and got the backboard

David Lewis - Direct examination
by Solicitor Mabbs

1 and its attachments?

2 A Log rolled the patient onto the backboard, secured him
3 with spider straps, placed him on a head bed, lifted the
4 assembled long spine board to the stretcher, secured him
5 with straps, raised the rails, and loaded him into the
6 ambulance as fast as possible.

7 Q And during that time, did you ever observe any injuries
8 other than the bullet wound to his back?

9 A No, ma'am, I did not.

10 Q What was his general state, with the obvious, obvious
11 exception of the bullet wound?

12 what was his general state at that time?

13 A He was not responding to my partner trying to stimulate
14 him with painful stimulation. He appeared to be breathing
15 about four times a minute to me.

16 Q And when you say respond to painful stimulation, why --
17 I guess one, what, what is that to start?

18 A Typically what we do, we start with knuckle on the
19 sternum and try to get a response from the patient.

20 Q And what would a normal response be to that?

21 A Their eyes would open, their head would come up, and
22 typically they object to that.

23 Q Okay. And what response did the victim give in this
24 case?

25 A No response, ma'am.

David Lewis - Direct examination
by Solicitor Mabbs

1 Q Was he speaking?

2 A No, ma'am.

3 Q Was---

4 A He had no purposeful movement at that time.

5 Q And what did you do once you loaded him into the
6 ambulance?

7 A I asked my partner if she needed anything else. Medic
8 5 was up in the back of the truck with her, which is our
9 supervisor. They were already putting him on the monitor
10 and trying to get a set of vitals on him. I shut the doors
11 and lights and sirens all the way to Spartanburg Regional.

12 Q So you were the -- you were driving the ambulance?

13 A That's correct, ma'am.

14 Q And was Spartanburg Regional -- why did you choose I
15 guess that hospital?

16 A Closest trauma center.

17 Q Were there any incidents, either in the ambulance or
18 while you were loading him, that could of caused any further
19 injury or anything like that?

20 A Yes, ma'am, there was a young lady on the scene who was
21 pretty vocal and my partner prevented her from jumping on my
22 back as I was loading the stretcher.

23 Q But to the victim, there was nothing---

24 A No, ma'am. No.

25 SOLICITOR MABBS: Okay. Beg the Court's indulgence,

David Lewis - Direct examination
by Solicitor Mabbs

1 Your Honor.

2 THE COURT: Yes, ma'am.

3 (Pause.)

4 SOLICITOR MABBS: Your Honor, I have -- it's Exhibit
5 22.

6 Mr. Lewis, do you recognize this?

7 A It looks like the scene where we found the patient.

8 Q And now do you see the, I guess, the white, what's been
9 identified as a shirt?

10 A I do see the white, yes, ma'am.

11 Q Okay. When you arrived on the scene, was anyone doing
12 anything with a, with a shirt in regards to the victim that
13 you recall?

14 A Not that I recall, ma'am, but that was many, many moons
15 ago and I run a lot of calls since then. I'm sorry.

16 Q All right. And you said that you took him to a trauma
17 center.

18 Why was it necessary to take him---

19 A He was classified as Code Trauma due to the nature of
20 his injuries and the mechanism of injury.

21 Q And what, what do you mean by that?

22 A He was shot and was breathing four times a minute and
23 it was determined, both by my partner and myself, that he
24 needed a trauma surgeon immediately if not sooner.

25 SOLICITOR MABBS: Thank you, Your Honor. I have no

Reese Dodd - Direct examination
by Solicitor Gray

1 further questions at this time.

2 THE COURT: Your witness, Ms. Price.

3 MS. PRICE: I have nothing for Mr. Lewis.

4 THE COURT: You may step down, sir.

5 THE WITNESS: Thank you, sir.

6 THE COURT: You wish to excuse the witness?

7 SOLICITOR MABBS: Yes, Your Honor.

8 THE COURT: Any objection?

9 MS. PRICE: No, sir.

10 THE COURT: You're free to go if you'd like.

11 THE WITNESS: Thank you, sir. Sorry about the
12 microphone.

13 THE COURT: That's no problem.

14 You may call your next witness.

15 SOLICITOR GRAY: State calls Mr. Reese Dodd.

16 THE COURT: Come forward, sir.

17 REESE DODD, being first duly
18 sworn, testified as follows:

19 THE COURT: Once you're seated, sir, state your name
20 please.

21 THE WITNESS: Reese Nathaniel Dodd.

22 THE COURT: Thank you.

23 Mr. Gray, your witness.

24 SOLICITOR GRAY: Thank you, sir.

25 THE COURT: Yes, sir.

Reese Dodd - Direct examination
by Solicitor Gray

1 DIRECT EXAMINATION

2 BY SOLICITOR GRAY:

3 Q All right. Mr. Dodd, I'm gonna ask you about
4 Mr. Fernandez.

5 A All right.

6 Q How long have you known him?

7 A Like I say, I been knowing him ever since just about a
8 baby. I mean I ---.

9 Q Okay. So---

10 A I would say he might of been a few years old but he
11 wasn't that old. He was still a kid.

12 Q I need you to speak into the microphone please.

13 A Like I say, he was still a kid. He couldn't -- you
14 know, he wasn't---

15 Q How many years is that?

16 A I'd say probably about anywhere from 18 to 20 years.

17 Q And you know Mr. Dewberry?

18 A Yes, I do.

19 Q How long have you known Mr. Dewberry?

20 A Probably about 20.

21 Q Is Mr. Dewberry here in the courtroom?

22 A Yes, he is.

23 Q Point him out please.

24 A Right there.

25 Q Is that him in the tan shirt --

Reese Dodd - Direct examination
by Solicitor Gray

1 A Right.

2 Q -- and the tie --

3 A And the tie.

4 Q -- at the defense table?

5 A Right.

6 SOLICITOR GRAY: Please let the record reflect he
7 identified Mr. Bernard Dewberry please.

8 For Mr. Fernandez and Mr. Dewberry, you've known them
9 for quite a while, what was their relationship?

10 A First cousins and, to me, they was like brothers. They
11 was real tight. Never had no problems since I mean, you
12 know, until that day. Just like I say, they was like
13 brothers.

14 Q May 9th of 2015, were there -- was there any physical
15 fight between these two gentlemen?

16 A No, it wasn't.

17 Q Was there a verbal arguing between these two gentlemen?

18 A Yes, it was, when Brio and Bernard came to his house.

19 Q Now, who is Brio?

20 A Brio, he's sitting right there. You know, right there.

21 Q Now, that gentleman and Mr. Dewberry came to whose
22 house?

23 A They came to Jerry's mother's house.

24 Q Okay. Who was at Jerry's mother's house?

25 A It was just me. It was, at the time before they came,

Reese Dodd - Direct examination
by Solicitor Gray

1 it was just me and, me and Jerry out there right there in
2 the car porch.

3 Q Okay. And these two gentlemen came up to Mr.
4 Fernandez?

5 A Yes, they did.

6 Q And there was a verbal argument?

7 A Well, like I say, when they first came up in there,
8 Bernard wasn't saying nothing. It was all, it was all Brio
9 doing all the talking.

10 Q All right. Did Mr. Fernandez make any threats to Mr.
11 Dewberry?

12 A No, no, no.

13 Q Did Mr. Dewberry make any threats to Mr. Fernandez?

14 A Like I say, Bernard wasn't saying nothing. It was all
15 Brio doing the talking.

16 Q Did Mr. Dewberry have any weapons present?

17 A I did not see none, no.

18 Q Okay. Did Mr. Dewberry make any threats or hand
19 gestures toward Mr.---

20 A Well---

21 Q ---Fernandez?

22 A Well, like I say, when -- he came up on the porch.
23 Brio was asking Jerry questions about I guess the situation
24 at hand, you know, about this girlfriend or whatever and
25 Brio was doing all the, you know, answering the questions.

Reese Dodd - Direct examination
by Solicitor Gray

1 I mean, you know, asking Chuck everything. And, like I say,
2 it led on for a little bit and then, all of a sudden, kind
3 of escalated. That's when Chuck started talking and then,
4 then, after that, back and forth.

5 Then, after that, you know what, Bernard took off his
6 shirt and then that's when I was thinking they was gonna
7 jump him or something like that. So I jumped up. But when
8 I jumped up, that's when Chuck said okay, that's all right.
9 Then he went in the house and then that's when all the --
10 Chuck came back out with the two knives, yeah.

11 Q All right. Let me get this straight.

12 There was a argument involving another gentleman with
13 Mr. Dewberry --

14 A Right.

15 Q -- with Mr. Fernandez?

16 A Right.

17 Q You said they got more and more heated?

18 A Yeah, it kind of got heated then, yeah.

19 Q Mr. Dewberry took off his shirt?

20 A Yeah, he took off his shirt. Then that's when I knew
21 he's, he's getting ready to be on there.

22 Q Now, see, that's, that's what I don't understand.

23 You say he was getting ready to be -- getting ready to
24 be on?

25 A Yeah, like I say, you know, he---

Reese Dodd - Direct examination
by Solicitor Gray

1 Q what does that mean?

2 A Well, what I'm saying is, when he took his shirt off,
3 that's when it started really escalating.

4 Q So what do you do in response to that?

5 A Well, I jumped up cause I was thinking they was gonna
6 jump him and I jumped---

7 Q What do you mean?

8 A I thought they was gonna start fighting.

9 Q All right. And what did you do in response to that?

10 A Well, before I can really, you know, fall into them,
11 that's when Jerry jumped up and said that's all right, I got
12 this, and this, that, and the other thing, you know. They
13 gonna do this and he went in the house. You know what I'm
14 saying? Later they come back out with the knives and then
15 that's when they, they, they went out towards the road.
16 Jerry told them to leave.

17 Q Now, did Mr. Fernandez ever cut Mr. Dewberry?

18 A No, he didn't. No, he didn't. He didn't get close
19 enough to him.

20 Q He didn't get close enough to him?

21 A No, he didn't get close enough to him.

22 Q All right. Please show me approximately where---

23 A Can you---

24 Q ---where Mr. Fernandez's house is, his mother's house.

25 Excuse me.

Reese Dodd - Direct examination
by Solicitor Gray

1 A Get this thing on. Oh, I got it.

2 Right there.

3 Q Right there?

4 A Yeah, my hand's shaking. Right there.

5 Q All right. So you say -- thank you.

6 Were Mr. Fernandez and Mr. Dewberry ever in the yard
7 together?

8 A Well, they was right there in the drive-in. It's like
9 escalating. He went in the house and he came back. And
10 when they seen Chuck come out with the knives, they backed
11 off and they really didn't get that close together. They
12 was more in the drive and they walked -- Brio and Bernard
13 walked towards the road.

14 Q Went to the road?

15 A Yeah.

16 Q Did Mr. Brio -- excuse me. Did Mr. Dewberry ever come
17 into the yard that day again that you saw---

18 A Like I said---

19 Q ---after he---

20 A When Chuck came out with the knives and they went out
21 to the road, no, he didn't come back in, no. That's when
22 Lanna came out and controlled everything. Got, got Chuck
23 back in the house with the knives.

24 Q Lanna is who?

25 A The oldest sister. Chuck's -- well, excuse me.

Reese Dodd - Direct examination
by Solicitor Gray

1 Jerry's oldest sister, Lanna.

2 Q You say she controlled the situation?

3 A Yeah. Well, you know, she came out and calmed Chuck
4 down, told him to come back in with the knives, yeah.

5 Q Now, do you know where Mr. Dewberry lives?

6 A Yes, I do.

7 Q Could you show me approximately?

8 THE COURT: Bring the lights down.

9 A She stay mostly right up in that area right up in
10 there.

11 Q All right. That's no where near Mr. Fernandez's
12 mother's house?

13 A Not really, no. It's walking distance but no, you
14 know.

15 Q All right. Did you ever see Mr. Fernandez -- I mean
16 Mr. Dewberry again that day?

17 A After he had left from walking back down the road, I
18 guess him going to get his car, him and Brio, I never seen
19 him no more after that.

20 Q Did you ever see them drive by the house?

21 A That's -- they drove by the house coming -- they was on
22 Pacolet Road like where Wood Street is. They didn't come
23 out of Wood Street but they was coming down the road passing
24 by, passing by Chuck's and them house and turned down to
25 Bunch Court, Bunch Lane, or whatever it is right there.

Reese Dodd - Direct examination
by Solicitor Gray

1 That road that goes like that---

2 Q Yes, sir.

3 Right there?

4 A ---when you go back -- no, no, not that one. The other
5 road on down. This one right here.

6 THE COURT: Turn the lights down so he can see better.

7 A Yeah.

8 Right, right there.

9 Q All right. Was there another verbal altercation or was
10 that previous?

11 A Well, Chuck, Chuck had told me, when he called me up to
12 the house to tell me---

13 MS. PRICE: Object to the hearsay, Your Honor.

14 THE COURT: I'll sustain the objection.

15 Q Just tell me what you saw and what you heard directly.
16 Do you -- if any altercations.

17 A It was no fight.

18 Q No fight?

19 A It was nobody putting they hands on nobody. Nobody got
20 cut when I was there. There was no shooting or nothing like
21 that when I was sitting out there on the porch with him, out
22 there on the car porch with him. It was just a verbal
23 altercation after it kind of got stimulated, you know what I
24 mean?

25 I mean, you know, as far as when they -- when Brio was

Reese Dodd - Direct examination
by Solicitor Gray

1 asking him the questions, you know, Chuck finally say, man,
2 go on and leave me alone, man, you know, stuff like that,
3 you know, trying to back around him. And then, like I say,
4 I guess some words really got started up and then, I guess,
5 when Chuck was saying go on about your business, leave me
6 alone, you know, bla, bla, bla, I guess, and I don't know --
7 that's when Bernard took his shirt off and then that's when
8 I thought everything was gonna jump off.

9 well, I'm sorry. That's when I thought it was gonna be
10 a fight. Then I jumped up. I said a few words but neither
11 one of them act like -- you know what, I'm telling you the
12 truth. Neither one of them acted like I was out there on
13 the porch. So that's how I know -- that's when Jerry jumped
14 up and say what he had to say and then he went in the house
15 and got the knives to get them off the yard cause they was
16 very, you know, aggressive towards him. But as far as that,
17 it was no fights or nothing like that, you know, no, no.

18 Q Beyond that, were any other threats made by Mr.
19 Dewberry?

20 A Was any threats made by Mr. Dewberry?

21 Q By Mr. Dewberry.

22 A I would say that as far as him taking his shirt off.

23 Q After that?

24 A After that?

25 Q When he was leaving or anything.

Reese Dodd - Cross-examination
by MS. Price

1 A Well -- oh. Before he left, he turned around when
2 Chuck was telling him to go on, and Lanna -- probably this
3 about when Lanna was coming out to get Chuck. He turned
4 around and he said oh, yeah, I got something for you and
5 then he did a hand gesture like that like he say, you know.

6 SOLICITOR GRAY: Nothing further, Your Honor.
7 Please answer any questions defense may have.

8 THE COURT: Your witness.

9 CROSS-EXAMINATION

10 BY MS. PRICE:

11 Q Mr. Dodd, how big were these knives that Jerry
12 introduced?

13 A They were pretty nice size. About like that.

14 Q Pretty nice size.

15 He have one in each hand?

16 A Yeah.

17 Q Do you remember giving a statement to the police in
18 this matter?

19 A Yes, I do.

20 Q Okay. Do you -- it's been a while.

21 Do you remember what that statement read?

22 A Well, like I say, what Chuck had told me that---

23 Q Sir, this is a yes or no answer.

24 A Yes.

25 Q Okay. Do you remember what it said?

Reese Dodd - Cross-examination
by Ms. Price

1 A Yeah.

2 Q Do you remember what it didn't say?

3 A I just, you know, like I say, what I said on there you
4 know.

5 SOLICITOR GRAY: Excuse me, Your Honor. If she's gonna
6 ask him about his statement, maybe she could show it to him
7 or refresh his recollection.

8 MS. PRICE: Your Honor, he already said he remembers
9 what he said.

10 THE COURT: Well -- okay. I'm gonna let you proceed.

11 MS. PRICE: Okay.

12 THE COURT: sir, if you feel that you need to see a
13 document to refresh your memory, let us know.

14 THE WITNESS: I can, you know.

15 Q Would it help, would it help you to see a copy of the
16 statement that you gave the police?

17 A Yeah, I guess I could, you know what I mean.

18 Q okay.

19 A I need my glasses too. I need my glasses back there.

20 Q Are your glasses back there?

21 May I approach, Your Honor?

22 THE COURT: You may.

23 Q Mr. Dodd, here's your glasses and just read over that,
24 and when you're finished, just please look up.

25 A (Witness complies.)

Reese Dodd - Cross-examination
by Ms. Price

1 It says right here Jerry told me---

2 Q Sir, read silently to yourself.

3 A Oh.

4 Q And when you're finished, please look up.

5 A (Witness complies.)

6 That's it right there.

7 Q Okay. Okay. And, Mr. Dodd, you made that statement on
8 May the 9th, 2015.

9 Is that right?

10 A Yes, I did.

11 Q And that is the same day that this incident happened
12 that we're here for today?

13 A Right.

14 Q Okay. In that statement -- and when you talked to the
15 police the same day that this happened --

16 A Right.

17 Q -- you didn't mention anything -- tell them anything
18 about any shooting hand gestures, did you?

19 A Well, I put down right here that he, he turned around.
20 He said---

21 Q You didn't say anything about any shooting hand
22 gestures, did you?

23 A I told him that. I don't know why he didn't put it
24 down cause I said he said he turned around---

25 Q Okay. You didn't say anything, again, about any

Reese Dodd - Cross-examination
by Ms. Price

1 shooting hand gestures, did you?

2 A He didn't put it down but I said it.

3 Q Oh, so this is an incomplete statement?

4 A Well, I told him. I mean, you know, I just said, you
5 know, he said something to him and, you know, he turned
6 around and he said---

7 Q Mr., Mr. Dodd, did you sign this statement?

8 A Yes, I did.

9 Q And did you read it before you signed it?

10 A Yeah, I read it.

11 Q Okay. And you didn't say anything about any shooting
12 hand gestures?

13 A I said it but I don't know.

14 Q It's not in your statement that you signed?

15 A Yeah, I know. I know it.

16 THE COURT: Sir, you're gonna have to speak up so
17 everybody can hear you.

18 A Like I say, I don't know why he didn't put it down but
19 I did say that.

20 Q But it's not in your statement?

21 A Okay.

22 Q The one that you signed.

23 A No, it's not.

24 Q Isn't it?

25 A It's not in there.

Reese Dodd - Redirect examination
by Solicitor Gray

1 Q And these, these knives that Jerry introduced, how big
2 were they?

3 A They were pretty big size. Nice size, you know.

4 Q Okay. And, again, you didn't see Mr. Dewberry with any
5 weapons?

6 A I didn't. No, I didn't see no weapons.

7 MS. PRICE: Okay. May I approach, Your Honor?

8 THE COURT: You may.

9 Q You can keep your glasses.

10 That's all I have, Your Honor.

11 THE COURT: Redirect.

12 SOLICITOR GRAY: Yes, sir, Your Honor.

13 REDIRECT EXAMINATION

14 BY SOLICITOR GRAY:

15 Q Now, she asked you about any gestures or what you saw.

16 A Right.

17 Q Okay. What did they do?

18 A They walked off, and as they got out of the yard,
19 Bernard looked back.

20 Q Okay. And what was Mr. Dewberry's demeanor when he
21 walked off and looked back?

22 A He looked back and looked, looked at Jerry and he said
23 that. You know, he said---

24 Q Did he look scared?

25 A Did---

1 Q Mr. Dewberry.

2 A No, he didn't look too scared when he said it. No, he
3 didn't look too scared, no.

4 Q Did he look angry?

5 A He was mad.

6 Q He was mad?

7 A Yeah, he was mad.

8 Q And what gesture did he make?

9 A Like he turned around. He did just like that, and when
10 he said it, he said it.

11 Q Thank you.

12 Nothing further, Your Honor.

13 RECROSS EXAMINATION

14 BY MS. PRICE:

15 Q But, again, that's not in your report?

16 A No.

17 Q The report you signed the same day?

18 A Well, it's right there on paper.

19 MS. PRICE: That's all I have.

20 THE COURT: All right. You may step down, sir.

21 Do you wish to excuse the witness?

22 SOLICITOR MABBS: Yes, Your Honor.

23 THE COURT: Any objection?

24 MS. PRICE: No, sir.

25 THE COURT: Sir, if you'd like to go, you're free to go

1 or you're free to stay. However you like to handle that.

2 All right. Ladies and gentlemen of the jury, we're at
3 12:15. It's gonna be time to go to lunch.

4 You're leaving the courthouse again. So I -- you
5 probably know what my instructions are gonna be and that is
6 don't listen to, watch, or read media reports about the
7 case. Don't try to gather any information from any source
8 outside of the courthouse. Don't discuss the case with
9 anyone. Don't allow anyone to discuss it with you. Should
10 anyone contact you about your service, please report that
11 upon your return.

12 I'll ask you to be back in the jury room at 1:30. We
13 should be in a position to start shortly thereafter.

14 Hope you have a good lunch. You're free to go.

15 Please remain seated while the jury retires.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. Court's in recess till 1:30.
19 Thank you.

20 (WHEREUPON, Court was in recess for the lunch hour.)

21 THE COURT: All right. I've been handed a sentencing
22 sheet. It appears that Mr. Dewberry intends to offer a
23 plea. I'd ask that you approach the bar please.

24 (Parties comply.)

25 THE COURT: Mr. Dewberry, you have previously been

1 placed under oath concerning your communications with this
2 Court today.

3 Do you recall that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you acknowledge that you're still under
6 oath at this time?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: All right. Mr. Dewberry, I've been handed
9 a sheet, a sentencing sheet. It indicates that you are
10 before me at this time to offer a guilty plea to voluntary
11 manslaughter.

12 THE DEFENDANT: Yes.

13 THE COURT: Now, is that true?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, I will explain to you that the
16 original charge in this case was one of murder. That
17 carried a sentence of 30 years to life, and, of course, in
18 that case, it would be life without parole.

19 Are you familiar with the original charge as far as the
20 death of this individual?

21 THE DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: And it also had a possession of a firearm
23 during the commission of a violent crime.

24 Are you going to dismiss that charge?

25 SOLICITOR MABBS: Yes, Your Honor.

1 THE COURT: So my understanding is that you are here to
2 offer a plea to what's called a lesser included offense.
3 That is the offense of voluntary manslaughter. That carries
4 a possible sentence of two years up to 30 years in prison.

5 Are you aware of that?

6 THE DEFENDANT: Yes, sir, Your Honor.

7 THE COURT: Now, I am informed that there has been a
8 negotiated sentence in this case. That is, the negotiation
9 is that you and the State have agreed that the sentencing
10 range will be from 15 to 30 years.

11 Is that your negotiation?

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: Now, I will tell you that this charge
14 carries with it a designation that it is a, it is a violent
15 and most serious offense. That means, in the future, if you
16 were to plead guilty to other crimes or be found guilty of
17 other crimes that were classified either as violent,
18 serious, or most serious, that this plea could be used in
19 conjunction with those other convictions to enhance those
20 future sentences. It could result in a sentence of life
21 imprisonment without parole for those future cases.

22 So you understand what that designation means?

23 THE DEFENDANT: Yes, sir, Your Honor.

24 THE COURT: And it's what is commonly known as one of
25 your strikes under the law.

1 Do you understand that?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: All right. Now, this case did go to the
4 Grand Jury as under the charge of murder. So you're
5 pleading to a lesser included offense. For that reason, we
6 consider that this lesser charge also went to the Grand
7 Jury.

8 Do you understand that it has been presented to the
9 Grand Jury?

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: All right. Now, Mr. Dewberry, do you
12 suffer from any conditions, be they mental, physical,
13 nervous, or otherwise, that would affect your ability to be
14 able to reason or to make good decisions today?

15 THE DEFENDANT: Your Honor, I do have a disability --

16 THE COURT: Okay. Tell me about that disability.

17 THE DEFENDANT: -- that no one spoke about. I been, I
18 been disabled since I was a child on emotionally
19 handicapped.

20 THE COURT: Yes, sir.

21 THE DEFENDANT: I been, I been drawing a check ever
22 since I was 15 years old.

23 THE COURT: Yes, sir.

24 Well, did -- I don't know whether you have been tested
25 for this trial.

1 I'll ask your counsel, has he had any difficulty in
2 assisting you in preparing for his case?

3 MS. PRICE: Absolutely none, Your Honor.

4 THE COURT: Okay. So he's been able to communicate
5 with you?

6 MS. PRICE: Yes, sir.

7 THE COURT: Been able to answer your questions?

8 MS. PRICE: He has.

9 THE COURT: Understand the issues that are involved?

10 MS. PRICE: Yes, sir.

11 THE COURT: Complex issues?

12 MS. PRICE: Yes, sir.

13 THE COURT: Okay. Mr. Dewberry, she indicates to me
14 that you've been able to function properly. I'll ask
15 Mr. Cheek.

16 Mr. Cheek, you've also consulted with Mr. Dewberry
17 today?

18 MR. CHEEK: Today and before today, Your Honor.
19 Several times, yes, sir.

20 THE COURT: Okay. And have you ever known him not to
21 be able to assist you in his defense?

22 MR. CHEEK: No, sir, Your Honor. Quite astute, quite
23 alert, quite able to interpret and he even suggest defenses
24 and other issues regarding the discovery in the case, Your
25 Honor.

1 THE COURT: Okay. Well, and I too, Mr. Dewberry,
2 communicated with you this morning. You raised some issues
3 concerning the statements that you gave.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And, at that time, you appeared to be lucid
6 to me and be able to discuss matters with me at that time as
7 well.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: So my question was, do you have a condition
10 that would prevent you from being able to reason and make
11 good decisions today?

12 THE DEFENDANT: Oh, no, sir, Your Honor. I, I -- I'm
13 sorry for that, no, sir.

14 THE COURT: Okay. So you are able to handle this plea?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You know what you're doing?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is that correct?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. Now, you're here today with, with
21 your attorney, Ms. Price, and my understanding is that
22 you've also been consulted with Mr. Cheek today.

23 Is that correct?

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: And have you had an opportunity to fully

1 discuss what you needed to discuss with them?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you need to talk with them any further
4 at this time?

5 THE DEFENDANT: No, sir. No, sir, Your Honor. I don't
6 want to waste anymore of your time.

7 THE COURT: Well, no, it's not a question of wasting
8 time. You have a Constitutional right to consult with your
9 lawyer.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: So I'm just making sure that you've talked
12 with them---

13 THE DEFENDANT: Yes, sir.

14 THE COURT: ---about everything you need to talk to
15 them about.

16 THE DEFENDANT: Yes, sir, Your Honor.

17 THE COURT: Is that correct?

18 THE DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: All right. Is there anything that they
20 have not yet done that you think they need to do for you
21 before we proceed with this hearing at this time?

22 THE DEFENDANT: No, sir, Your Honor.

23 THE COURT: So are you satisfied with what they've done
24 so far?

25 THE DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: Okay. Now, Mr. Dewberry, this particular
2 offense that you're pleading to is voluntary manslaughter.
3 I will tell you that, for the State to be able to get a
4 conviction for voluntary manslaughter, the State would have
5 to prove, beyond a reasonable doubt, that you took the life
6 of another person in a sudden heat of passion based on
7 sufficient legal provocation. Both heat of passion and
8 sufficient legal provocation must be present at the time of
9 the killing to constitute a voluntary manslaughter. It must
10 exist at the time of that particular killing and it must be
11 the type that would cause an ordinary person to be unable to
12 coolly reflect on his actions.

13 Do you understand what that -- what the charge is?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand what the State would have
16 to prove?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Now, based on that
19 understanding, you have the right to plead either guilty or
20 not guilty to the charge of voluntary manslaughter.

21 How are you pleading?

22 THE DEFENDANT: So I ain't, I ain't got to plead to
23 that, voluntary manslaughter?

24 If I don't plead to it, it go back to murder?

25 THE COURT: Oh, yes, sir. We're in the middle of a

1 trial. It's not gonna stop the trial.

2 THE DEFENDANT: Okay. Yes, sir, Your Honor. Yes, sir.

3 THE COURT: Well, are you pleading guilty to voluntary
4 manslaughter?

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: Okay. Now, I'm gonna talk with your
7 attorney for just a minute.

8 I'm sure you've consulted with your client about this
9 matter.

10 Am I correct?

11 MS. PRICE: Yes, Your Honor. I've been representing
12 Mr. Dewberry since May of last year.

13 THE COURT: All right. And are you satisfied that he's
14 understood your discussions?

15 MS. PRICE: He has. I've met with him on numerous
16 occasions as I've also met with him with Mr. Cheek as well.

17 THE COURT: I see.

18 And you were present for Mr. Cheek's discussions with
19 him?

20 MS. PRICE: Yes.

21 THE COURT: Did it appear to you that he understood
22 Mr. Cheek's advice?

23 MS. PRICE: Absolutely.

24 THE COURT: And I would assume that, among the many
25 things you would of talked over with Mr. Dewberry, you would

1 of discussed the original charges and the penalties for
2 those charges and whatever his defenses might have been to
3 those original charges. You've discussed with him
4 altered -- alternate charges including this lesser included
5 offense and what's necessary to be proven for that and the
6 possible legal consequences of that charge.

7 Am I correct?

8 MS. PRICE: Yes, sir.

9 THE COURT: And you've also gone over with him, I'm
10 sure, of his Constitutional rights as they relate to these
11 charges.

12 Am I correct?

13 MS. PRICE: Yes, sir.

14 THE COURT: Now, do you feel certain that Mr.
15 Dewberry's understood your advice?

16 MS. PRICE: I do.

17 THE COURT: Did he appear to understand Mr. Cheek's
18 advice?

19 MS. PRICE: He did.

20 THE COURT: And based on what you know about his case,
21 the discovery that you've viewed, do you agree with the
22 decision that he's made to offer a guilty plea to this
23 lesser included offense?

24 MS. PRICE: whole heartily, Your Honor.

25 THE COURT: All right. And has he been able to assist

1 you fully in preparing his case?

2 MS. PRICE: He has. I provided him with a copy of his
3 discovery as well.

4 THE COURT: And he's gone over that with you as well?

5 MS. PRICE: He has, Your Honor.

6 THE COURT: All right. Now, Mr. Dewberry, has anyone
7 done anything to you such as threaten you, put pressure on
8 you, tried to intimidate you, used violence against you?

9 Has anyone done anything of that nature to try to force
10 you to offer this plea?

11 THE DEFENDANT: No, sir, Your Honor.

12 THE COURT: Are you offering this plea of your own free
13 will?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have you had sufficient time to consider
16 the decisions you've had to make?

17 THE DEFENDANT: Not, not really, Your Honor.

18 THE COURT: Well, what else do you need to consider?

19 I'll be glad to stop and let you do that right now or
20 I'll continue the trial. If you need to discuss something
21 else with your lawyer -- you told me you didn't. But if
22 there's something else you needed to consider, step back
23 right now and talk to your lawyer.

24 THE DEFENDANT: Go for it, Your Honor. Go for it.

25 THE COURT: No, sir, I'm gonna -- if you want to talk

1 to your lawyer, this is your chance to do that.

2 THE DEFENDANT: I'll go, I'll go.

3 THE COURT: You don't need to talk to your lawyer?

4 THE DEFENDANT: No, sir, Your Honor.

5 THE COURT: So you're ready to go forward?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Now, has anyone offered you
8 anything of value to get you to plead?

9 THE DEFENDANT: No, sir, Your Honor.

10 THE COURT: And other than the negotiated sentence in
11 this case, which we've talked about already, has there been
12 any promises, guarantees, or assurances about such things as
13 pardon, parole, probation, early release, or length of
14 sentence?

15 Anyone made a promise or guarantee other than the
16 negotiation we talked about earlier?

17 THE DEFENDANT: Well, Your Honor, it was, it was a
18 fifteen to five.

19 MS. PRICE: No.

20 THE DEFENDANT: A 15 year and then five year probation.

21 MS. PRICE: No, it's not.

22 THE DEFENDANT: At, at one point it was, it was, Your
23 Honor.

24 MS. PRICE: That's off the table.

25 THE DEFENDANT: Oh, okay. Okay.

1 THE COURT: Well, again, now you, you -- I talked to
2 you earlier and we talked about the fact that this is a
3 negotiated sentence. The negotiation is a range of 15 to
4 30. I asked you if that was your understanding of the
5 negotiation. You told me it was.

6 THE DEFENDANT: Yes, sir. Yes, sir.

7 THE COURT: So is that your understanding of the
8 negotiation?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Now, again, my question is has
11 there been any promises or guarantees made to you about any
12 of those factors other than this negotiated sentence?

13 THE DEFENDANT: No, sir. No, sir.

14 THE COURT: Nobody made any promises or guarantees
15 about anything?

16 THE DEFENDANT: No, sir, Your Honor.

17 THE COURT: All right. When you plead guilty, Mr.
18 Dewberry, you give up your Constitutional rights. I have to
19 be sure you understand the rights you're giving up before I
20 can accept your plea.

21 I'm going to go over those rights with you. If you do
22 not understand them or if you wish to have further
23 explanation, your attorney will be -- is in a position to
24 give you that information or you can ask me. I'll be glad
25 to tell you about your rights.

1 Now, first of all, you have a Constitutional right to
2 have this case considered by a Grand Jury. That's already
3 happened. They issued a true billed on the murder charge.

4 You have a Constitutional right to a lawyer. You, in
5 fact, have two lawyers consulting with you and you've told
6 me that, up to this point in time, you're satisfied with
7 their services.

8 You have a Constitutional right to a trial by jury.
9 I'm sure you're aware of that because we're in the middle of
10 that trial.

11 THE DEFENDANT: Yes, sir, Your Honor.

12 THE COURT: And, at that trial, you would be presumed
13 to be innocent. That presumption would continue until such
14 time as the State proved your guilt to the jury. They would
15 have to prove that on each of the elements of the crime
16 beyond a reasonable doubt.

17 Now, you would not have to prove anything at the trial.
18 You're presumed innocent. At the trial, if there were
19 witnesses that you felt needed to come forward, you could
20 have the clerk issue subpoenas to them to make them come
21 forward. You would have the right to question or confront
22 anyone who testified during the trial. You'd have the right
23 to present your defenses at the trial and you'd be given the
24 opportunity to try to suppress any evidence the State has
25 against you including statements that you might have

1 previously made.

2 You, at all times, have the right to remain silent,
3 and, during your trial, if you decided to remain silent, the
4 judge handling that trial is required to instruct the jury
5 that your silence could not be used against you in any
6 manner whatsoever.

7 Now, those are your Constitutional rights.

8 Did you understand what I told you?

9 THE DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: Do you have any questions about those
11 rights?

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: All right. I'll be glad to hear what your
14 questions are.

15 THE DEFENDANT: Okay. Like you say that I had the
16 right to be able to cross-examine or ask the witness
17 questions, right?

18 THE COURT: Well, you or your attorney on your behalf.
19 Your attorney speaks for you in court, yes. And so far,
20 every time a witness has testified, your lawyer's had the
21 opportunity to ask questions and we'll continue to do that.
22 Any witness who testifies, you have the right to have
23 questions asked of those witnesses. That's a Constitutional
24 right. You can confront or question any witness.

25 THE DEFENDANT: Well, Your Honor, could I ask another

1 question before I go on with this process?

2 THE COURT: Oh, yes, sir.

3 THE DEFENDANT: Could I had the right to be a
4 co-counsel for myself?

5 THE COURT: Well, sir, that would depend on the
6 circumstances under which you made that request. I can't
7 answer that question just out of the blue.

8 THE DEFENDANT: Well, because I asked before the trial
9 started and they said I couldn't do it. They said I, I
10 either have to represent myself or---

11 THE COURT: South Carolina generally frowns on what's
12 called hybrid representation, representation. In other
13 words, we don't allow more than one attorney of record in a
14 case. So it's very -- would be a very rare situation where
15 the Court would appoint someone to be co-counsel with you.
16 That would be rare. Would very seldom happen.

17 THE DEFENDANT: Well, Your Honor, if---

18 THE COURT: And I can't really imagine a --
19 circumstances under which that would happen.

20 THE DEFENDANT: Okay. Your Honor, I got another
21 question, Your Honor.

22 What if -- not saying this happened. What if, you know
23 what I'm saying, I needed to cross-examine a witness and I
24 asked my lawyer to, to ask that witness a certain question
25 and they didn't.

1 THE COURT: Well, your lawyer is, is representing you
2 and knows more about the procedure and the law and things
3 that are happening. Again, you're asking me a question that
4 I don't know the circumstances. I will tell you that
5 generally the lawyer decides what the appropriate questions
6 are to be asked.

7 Now, if you do not like your lawyer's representation,
8 you have the right to dismiss your lawyer and take over your
9 own defense. You can represent yourself pro se. I don't
10 recommend anyone to do that but you have the right to.

11 THE DEFENDANT: Okay. Now---

12 THE COURT: You don't have to have a lawyer. You have
13 a right to a lawyer.

14 THE DEFENDANT: Okay. I got understanding. We, we
15 continue on. I'm wasting time.

16 THE COURT: Okay. Do you understand then your
17 Constitutional rights?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that, if I accept your
20 plea, at that point in time you will be giving up those
21 Constitutional rights as they relate to this charge?

22 THE DEFENDANT: Yes, sir, Your Honor.

23 THE COURT: Now, does that fact cause you to want to
24 change or withdraw your plea?

25 THE DEFENDANT: I don't know, Your Honor. I'm, I'm

1 scared. I don't, I don't know. I don't know.

2 THE COURT: Well, again, if you need to consult with
3 your lawyer, should this issue change, you can step back and
4 ask them any questions you'd like to ask.

5 All right. You don't have to plead guilty. If you
6 don't plead guilty, I'm gonna call the jury back into the
7 courtroom. We're gonna finish the trial we started.
8 This -- you have a right to a trial by a jury and we're
9 giving you that right at this point in time.

10 Now, I understood that you consulted with the lawyers
11 and you'd made a decision that this was the best way to
12 proceed. But you -- this is -- has to be freely and
13 voluntarily done on your part.

14 So tell me now. If you want me to go forward with the
15 trial, it's available. The jury is waiting as a matter of
16 fact.

17 THE DEFENDANT: If I do, will you, will you be mad at
18 me?

19 MS. PRICE: That's not an issue.

20 THE COURT: That's -- sir, I -- you have a
21 Constitutional right to have a trial but now the, the deal
22 would be off the table and you would be back to the murder
23 charge and you'd be facing 30 to life if you were found
24 guilty.

25 THE DEFENDANT: Oh, Lord, have mercy.

1 THE COURT: Step back and talk to your lawyers.

2 Mr. Cheek, speak to him for a second.

3 (Pause.)

4 THE COURT: All right. Mr. Dewberry, I've given you an
5 opportunity to talk to your lawyers. You've indicated that
6 you're ready to proceed.

7 Have you had a chance to consult with your lawyers?

8 THE DEFENDANT: Yes, sir, Your Honor.

9 THE COURT: Do you need to talk with them any further?

10 THE DEFENDANT: I just needed some air.

11 THE COURT: Well, had -- do you need to talk with them
12 any further?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. My question to you was does the
15 fact that you're giving up these Constitutional rights, does
16 that cause you to want to change your plea?

17 THE DEFENDANT: No, sir, Your Honor.

18 THE COURT: So you're still pleading guilty?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: And are you pleading guilty to the charge
21 of voluntary manslaughter because you are guilty of it?

22 THE DEFENDANT: Yes, sir, Your Honor.

23 THE COURT: All right. I'm gonna ask the solicitor now
24 to tell me their version of the facts.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I want you to listen carefully to what she
2 has to say. I'm gonna ask you about these facts when she
3 finishes.

4 Ms. Mabbs.

5 SOLICITOR MABBS: Thank you, Your Honor.

6 On May 9th of 2015, officers with, originally with
7 Cowpens Police Department are called out to the corner of
8 Wood Street and Old Pacolet Road here in Spartanburg County
9 in response to a shooting. Once they got there they found
10 the victim, Jerry Fernandez, lying on the street. He did
11 have one -- a single bullet wound to the back, Your Honor.

12 While on 9-1-1, the dispatcher did ask the people who
13 were with him, his fiancée and his sister, to ask the victim
14 who shot him. Your Honor, as we did hear during the course
15 of the trial as well through the 9-1-1 calls, you can
16 clearly hear the victim himself say Bernard shot me. Your
17 Honor, he was eventually transported to the hospital,
18 surgery was attempted, and the victim then did pass away.

19 Your Honor, throughout the course of the investigation,
20 various witness statements were collected from people who
21 had been in that neighborhood earlier that day. From those
22 witnesses, investigations were able to conclude that there
23 was some kind of verbal altercation at the victim's house,
24 who's also his mother's house, around the corner from where
25 the victim ended up being shot, Your Honor.

1 The first altercation, the defendant showed up at the
2 victim's house. They were arguing over a woman, Your Honor.
3 The defendant then did leave, come -- came back with another
4 person, a Brio Means. Again, arguments got heated. The
5 defendant took his shirt off, which, according to witnesses,
6 is common in that community to mean that they are about to
7 start a physical altercation.

8 According to witness statements at that time, the
9 victim then went into his residence and did come back out
10 with a couple of knives, Your Honor. Witness statements
11 varies as to whether or not any verbal threats were made at
12 that point. But, Your Honor, it is clear that the defendant
13 and Mr. Means did leave the residence at that point.

14 Your Honor, witness statements indicate that somewhere
15 between a ten to twenty minute window or so happened between
16 that last -- between when the defendant left that last
17 altercation to when witnesses then heard a gunshot and heard
18 screams for help and then did find the victim in the street.

19 Your Honor, eventually the defendant, I believe, went
20 to his children's mother's house. Your Honor, she
21 eventually brought him to the Cowpens Police Department
22 where Doug Smith and Jason Bryant with Spartanburg County
23 Sheriff's Office did meet with the defendant. He did give
24 multiple statements with various facts that did -- some of
25 which changed from statement to statement. But, in all

1 those statements, he did admit to shooting the victim in
2 this case, Your Honor.

3 THE COURT: All right. Mr. Dewberry, did you hear what
4 she told me?

5 THE DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: Was that information true?

7 THE DEFENDANT: Some of it, Your Honor.

8 THE COURT: Tell me what you disagree with.

9 THE DEFENDANT: It was a verbal -- it was a verbal
10 threat. He threatened to kill me on his, you know what I'm
11 saying, on his daddy grave and that gave me reason, reason
12 to -- reasonable doubt.

13 THE COURT: I asked you what are the facts are -- she
14 didn't say anything about your state of mind. She just
15 asked -- she told me the facts.

16 What are the facts that you disagree with that she told
17 me?

18 She indicated there had been an altercation, that you
19 had been at his mother's house. They're been an argument.
20 It ended up with him pulling knives out and you leaving but
21 both of you were still mad at each other.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Apparently you went somewhere. I think
24 your statements indicated that I heard yesterday that you
25 went and got a gun and came back and then a shooting

1 occurred. He ended up getting shot in the back.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: The altercation apparently continued.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is that, is that -- are those facts true?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Now, anything else you disagree with
8 about the facts that she, that she said?

9 THE DEFENDANT: Oh, no, I'm -- no, sir.

10 THE COURT: Okay. Now, have you told me the truth
11 today, Mr. Dewberry?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did anyone tell you what to say to me?

14 THE DEFENDANT: No, sir.

15 THE COURT: So the statements you've made to me and the
16 answers to my questions were your own.

17 Is that right?

18 THE DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: Now, is there any part of this plea that
20 you want to withdraw or change your answers?

21 THE DEFENDANT: I don't know what you mean by that.

22 THE COURT: Well, is there any answer or response
23 you've given me that you want to take back or change?

24 THE DEFENDANT: Oh, no, sir. No, sir.

25 THE COURT: All right. Well, at this point in time,

1 Mr. Dewberry, I'm going to accept your plea as having been
2 given to me freely and voluntarily. You're aware of your
3 rights. You're aware of the charges. You're aware of the
4 possible penalties. You're aware of the negotiation. You
5 had the advice of two attorneys. You've told me you're
6 satisfied with that advice. I find there's a factual basis
7 for you to enter the plea.

8 THE DEFENDANT: Okay.

9 THE COURT: So, at this time, I'm going to hear from
10 your attorneys concerning possible sentencing. I'll give
11 you a chance to address me as well. If anyone wants to
12 speak on your behalf, this will be their opportunity to do
13 that as well.

14 Ms. Price.

15 MS. PRICE: Thank you, Your Honor.

16 As you've heard the facts in this case, there's a,
17 there's a whole lot of witnesses who have a whole lot of
18 different opinions about what happened that day. But,
19 unfortunately, the two people who are actually at the
20 shooting site, one is Mr. Dewberry and one is Mr. Fernandez,
21 who unfortunately he is deceased.

22 But as you heard, they had been arguing throughout the
23 day. Mr. Fernandez introduced some knives. Never had a
24 physical altercation at that point. They both end up
25 leaving the residence where that occurred and about ten,

1 fifteen, twenty minutes later, we have, we have the
2 shooting. It definitely -- hot tempers were flaring all
3 over the place.

4 Mr. Dewberry, I've been representing him since last
5 May. Met with him many, many times. I know James has
6 met -- Mr. Cheek has met with him many, many times as well.
7 When I first met with -- started meeting with Mr. Dewberry,
8 went over his discovery with him once I got it, and just in
9 talking and conversing with him, he did not strike me as the
10 kind of person who would just go, pick up a gun, and go
11 shoot somebody.

12 I know that Mr. Dewberry has always been very cordial
13 with me. We've always been able to have conversations about
14 what happened, his family situation. As you know, these two
15 individuals are first cousins, and, as a matter of fact, he
16 always referred to Chuck as his brother instead of his
17 cousin. They were raised together even though there's about
18 a nine year age difference between the two of them.

19 Mr. Dewberry has one sister. She has been here this
20 week in support of him but they're the only two children.
21 She had to leave at lunchtime. Her husband is posted with
22 the Army in Washington State. So she lives there with, with
23 her family and so -- but I did want the Court to know that
24 she has been here in support of him. I've talked to her
25 about weekly since I got Mr. Dewberry's case back last

1 Spring.

2 Mr. Dewberry made a terrible, terrible decision that
3 day. Oddly enough, when I got the autopsy report, as you've
4 heard, Mr. Dewberry had some allegations that, that Mr.
5 Fernandez had a knife, another knife at the scene. But
6 there was none found along with no gun and no bullet
7 casings, which I don't think I've ever had a case, in nine
8 and a half years, that's been quite like that because the
9 autopsy report indicates a small stab wound to Mr.
10 Fernandez. That was not the cause of his death but it does
11 seem to support that there was a knife involved somehow,
12 Your Honor, even though he was---

13 THE COURT: But there was none found---

14 MS. PRICE: But there was---

15 THE COURT: ---near the scene?

16 MS. PRICE: No, there wasn't. There wasn't a gun
17 either. It's very strange as I've never had a case like
18 that before.

19 We would ask Your Honor to consider taking all this
20 into account and sentencing him on the lesser end of the
21 range here, 15 to 30. He has been continuously incarcerated
22 since last May. He did turn himself in.

23 THE COURT: So we're gonna need to know a time served.

24 Also, have you gone over with him the fact that this is
25 a, a charge on which he will have to serve the majority of

1 the sentence?

2 MS. PRICE: Yes, I have.

3 THE COURT: Right now it would be an 85 percent I
4 believe.

5 MS. PRICE: I have, Your Honor.

6 THE COURT: But parole could change.

7 Have you gone over that with him, Mr. Cheek?

8 MR. CHEEK: I have, Your Honor.

9 THE COURT: Okay. Just wanted to be sure he's aware of
10 that.

11 Is that true, Mr. Dewberry, they've talked to you about
12 that?

13 THE DEFENDANT: Yes, sir, Your Honor.

14 THE COURT: Okay. Now, anything else, Ms. Price?

15 MS. PRICE: That's all, Your Honor.

16 THE COURT: Is there anyone here that wishes to speak
17 on his behalf?

18 (WHEREUPON, an individual stands up in the courtroom.)

19 THE COURT: Then I'll ask Mr. Cheek -- ma'am, if you'll
20 come forward please.

21 MS. PRICE: And while she's coming up, if you're here
22 in support of Mr. Dewberry, if you'll just raise your hand
23 so the judge can see.

24 (WHEREUPON, a number of people in the courtroom raise
25 their hands.)

1 MS. PRICE: Thank you.

2 THE COURT: Thank you very much.

3 State your name please, ma'am.

4 MS. FULLER: Adrienne Fuller.

5 THE COURT: I'll hear from you.

6 MS. FULLER: I'm sorry. I'm a little shaken.

7 THE COURT: I understand.

8 MS. FULLER: I have three children with -- I'm sorry.

9 I feel -- I know that Bernard -- really he loved Chuck.

10 From the whole time I've known him for a little over 20
11 years, when you saw one you saw the other. The events that,
12 you know, led up to this altercation were just mind boggling
13 to me between the two of them and I know, I know, without a
14 doubt, that if Bernard could go back and take all this back
15 that he would.

16 He loves Chuck and he loves his sisters and his mother
17 and Bernard was really trying to make a change in his, in
18 his life at this point and he was discussing attending
19 church activities with our children, just anything that he
20 could do to get more involved, you know. And he would help
21 people. You know, he would give, he would give the shirt
22 off his back to a perfect stranger if he could.

23 So that's why this incident between him and Chuck just
24 really shocks the soul and I, I know that, if he could, he
25 would go back and change everything that he could for that

1 day and the moments leading up to it. And I just want you
2 to, to see that side of him whenever you take into
3 consideration his sentence.

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

5 MS. FULLER: Thank you.

6 MS. PRICE: Thank you.

7 THE COURT: Mr. Cheek, anything you'd like to say?

8 MR. CHEEK: May it please the Court, Your Honor?

9 THE COURT: Yes, sir.

10 MR. CHEEK: When you look at the person before you,
11 you, like I probably, see a big teddy bear and that has been
12 a problem with Bernard Dewberry all his life. Wanted to be
13 hard and tough when it's not his nature. And I regret that
14 he found himself that day in any kind of confrontation,
15 taking his shirt off, flexing his muscles, those kind of
16 things. That's how most fights are usually resolved, most
17 disputes usually resolved in that community.

18 He's not yet told us who put a gun in his hand, and we
19 really frankly don't need to know that, Your Honor. But I
20 don't believe that, had not a gun been introduced, someone
21 suggested he had a gun in his hand, that something was gonna
22 happen, that this would of ever occurred. I don't think
23 that he has the heart to decide I'm gonna kill my brother.

24 I ask the Court to take into consideration that
25 sometimes, when a person's larger stature, they find it hard

1 to say they're fearful of anybody or a situation. But I
2 think, at some point right there before the shooting
3 occurred, certainly our client decided that he was fearful
4 of Chuck. He may never admit it to himself or to the Court.
5 But when you look at him, when you listen to his responses,
6 you look at everything he's said and done over the last year
7 and a couple of months that we've been in contact with him,
8 he's been nothing more than someone who hates that it
9 happened but he really hasn't had any kind of explanation
10 for why it happened, and I think that's because he doesn't
11 know why it happened, Your Honor, and I think that's the
12 result of the fearful situation he finds himself in that
13 day, the emotional upheaval he found himself in.

14 But for all of this happening, the way it played out,
15 Your Honor, I just don't think he would ever have
16 understood, when you take a gun into your hands, someone's
17 life really might be ended and impacted the lives of
18 everybody around him. So the home he grew up in, the family
19 he grew up around, all these people have been devastated by
20 what happened.

21 One of the most pointed moments I had with him was on
22 his grandmother's birthday. I happened to be in the jail.
23 He was trying to make a phone call to his grandmother. He
24 couldn't understand why he couldn't get through to express
25 the celebration of her birth and I had to explain to him

1 that what has happened in here has devastated, torn a family
2 apart.

3 Your Honor, this was probably the first time I think it
4 really impacted him that he really had taken Chuck's life
5 and Chuck was not coming back. I think part of the problem
6 that we deal with is these people with these guns do not
7 understand that, when you pull a gun out, that a bullet is
8 discharged in a heated emotional moment, and you can not
9 take that moment back. If you could take it back, Your
10 Honor, I'm confident he would. But he never saw it coming.
11 He never saw that, when that gun discharged, it would of
12 actually taken a life. I think just, like he took his shirt
13 off, was flexing his muscles, he thought, by introducing a
14 gun into a situation where someone had earlier had knives or
15 pointed knives at him and threatened him with knives, that
16 nothing bad was gonna happen because nothing happened bad
17 earlier. Just two brothers walking away flexing their
18 muscles but this time one died.

19 We wish to God it never happened. I know he does. We
20 just ask the Court to consider that as the Court fashions a
21 sentence. It's not he's not remorseful. He's very
22 remorseful. It's not that he's not been serious about this
23 whole process but he is hoping against hope that some
24 miracle would happen. The miracle, Your Honor, will have to
25 be in him accepting responsibility for what he did so that

1 the healing can start among his family.

2 We've talked with him about that. And so we are here
3 today asking the Court to consider a sentence that would
4 give him an opportunity to show the family he really does
5 not want to go forward any further with the pain this trial
6 is causing and the division and the derision this trial is
7 caused in his family.

8 So we ask the Court to be as merciful as possible in
9 sentencing given that he has come forward, even at this late
10 moment, to end all of this breakup among people who love and
11 care for one another. We ask God to bless him in this
12 process, Your Honor.

13 THE COURT: Thank you. Thank you, sir.

14 Mr. Dewberry, this is your opportunity to speak.

15 Do you wish to say anything?

16 THE DEFENDANT: Can I, can I turn and apologize to
17 them?

18 THE COURT: No, you may talk to me and they can hear
19 you talking but you can't directly address the other side.

20 THE DEFENDANT: I would like to let my family know that
21 I didn't mean, I didn't mean to do that. I want to tell my
22 aunt that I love her and I'm sorry that I took her baby from
23 her. I didn't mean to. I didn't mean to. I didn't mean
24 to. I didn't mean to and I love them and I'm sorry.

25 But I ask they find some way in their heart to forgive

1 me and continue to love me. If I call home, just accept my
2 call. Just don't, don't make this just, this just -- they
3 all I got. I just lost my mama five months before this
4 situation happened.

5 I just ask, Your Honor, you have mercy upon me and my
6 family forgive me and please talk to, you know what I'm
7 saying, be able to talk to me when I call. I just want to
8 make sure my aunt all right. She was like a mama. She
9 raised me and I, I know I hurt her so bad and I wanted to
10 call -- I been here 15 months, Your Honor. I wanted to call
11 her so bad but I was told not to. I just want them to know
12 that love them and I'm truly deeply sorry. I'm sorry.

13 THE COURT: Thank you, Mr. Dewberry.

14 Prior record.

15 SOLICITOR MABBS: Yes, Your Honor.

16 Starting in 1997, resisting arrest, trespassing, and
17 driving under suspension.

18 1998, simple possession of marijuana first.

19 1999, three counts of driving under suspension third
20 and failure to stop for a blue light.

21 2000, driving under suspension and habitual offender.

22 2004, strong armed robbery which was pled down from an
23 armed robbery and then a common law robbery and conspiracy
24 to commit common law robbery out of North Carolina.

25 2006, disregarding -- I'm sorry. Habitual traffic

1 offender, possession of less than one gram of meth and
2 cocaine base third, and another strong armed robbery, Your
3 Honor.

4 Then, 2007, forgery public records.

5 Your Honor, also note on his rap sheet is that he is
6 not allowed to have a handgun or any firearm both federally
7 and in the State of South Carolina.

8 THE COURT: I see.

9 Any of the victims wish to speak to the Court?

10 SOLICITOR GRAY: No, sir, Your Honor, but I will
11 address the Court.

12 THE COURT: Yes, sir.

13 SOLICITOR GRAY: Well, the first thing, the incision
14 that was spoken of, the knife wound, Doctor Wren says that's
15 where a chest tube was placed. So that was not part of
16 any---

17 THE COURT: I see.

18 SOLICITOR GRAY: ---altercation in this situation.

19 As to---

20 THE COURT: That was resuscitation efforts?

21 SOLICITOR GRAY: Yes, sir, Your Honor.

22 THE COURT: I understand.

23 SOLICITOR GRAY: So it's unfortunate in this situation,
24 but what happened was there were knives involved initially,
25 and I'm sure the defendant thought the only way to settle

1 this situation is to bring a gun to a knife fight. There
2 were no knives when the victim was shot in the back, and
3 that is the part that I believe that the family has the
4 biggest problem with.

5 He did use a .22. Not a large barrel gun. Not a large
6 caliber gun. But he wasn't suppose to have a gun in the
7 first place and he -- his anger led him to this point to
8 take the life of his cousin, his own brother.

9 with this particular record, it kept escalating to
10 where they couldn't even settle this with a fight. He had
11 to go to his car, get a gun, and walk basically a quarter of
12 a mile to shoot his own cousin in the back.

13 There's -- what's the next step after this?

14 I -- and I believe that was the problem the family
15 had -- has in this matter. If he'll do this to his own
16 brother, his own cousin, what is next?

17 THE COURT: Thank you.

18 Have they figured up credit for time served?

19 MS. PRICE: Yes, I've added, and the clerk has
20 verified, 474 days.

21 THE COURT: State have any objection to that number?

22 SOLICITOR MABBS: No, Your Honor.

23 THE COURT: 474?

24 MS. PRICE: Yes, sir.

25 THE COURT: Do you agree to that number?

1 THE DEFENDANT: I don't know. I don't---

2 THE COURT: Talk to your lawyer.

3 MS. PRICE: That's what I've added up.

4 THE COURT: I'm gonna write it down. That's the only
5 credit you're gonna get. Talk to your lawyer about it.

6 (Pause.)

7 THE DEFENDANT: Okay. Okay. Yes, sir. Yes, sir, Your
8 Honor.

9 THE COURT: Is that correct?

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: Certainly agree with Mr. Cheek that this is
12 certainly a tragedy for this family. I'm sure it's torn the
13 family apart. I'm sure it will for years to come. It's
14 unfortunate that that's happened. What's even more
15 unfortunate is that someone lost their life in this
16 situation especially, Mr. Dewberry, when I hear that, given
17 your record, and there's several strong armed robberies in
18 that record -- let me finish talking. It's my turn.

19 THE DEFENDANT: Okay.

20 THE COURT: There's several strong armed robberies in
21 that record. There's a, there's a pled down from an armed
22 robbery. As -- I agree with Mr. Gray. It's a very
23 concerning situation where these things continued to
24 escalate, and, in this particular case, I know your claim
25 was that you were shooting in self-defense perhaps or that

1 you had a right to stand your ground while being attacked.

2 I never could figure out though how that worked out
3 with this gentleman being shot in the back. That doesn't
4 make sense to me and I'm -- don't know how the jury would of
5 viewed it but I don't think they would of viewed that very
6 well either especially when there were no weapons found at
7 the scene or around the scene for this particular victim.
8 So I -- it's a very difficult situation to say the least.

9 I appreciate the fact that you decided to end this
10 ordeal by entering this plea with a negotiated sentence and
11 bring some closure hopefully to the, to the family who's
12 here and I, and I do give you some credit for at least
13 taking responsibility at this late stage of the proceedings.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And that's reflected somewhat in my
16 sentence because it would have been otherwise had you not
17 done so.

18 THE DEFENDANT: Okay.

19 THE COURT: The Sentence in this Court is you be
20 confined in the State Department of Corrections for a period
21 of 25 years, 474 days of credit.

22 Good luck to you, Mr. Dewberry. You have ten days from
23 the date that I've entered the sentence to file an appeal of
24 the plea if you wish to do so.

25 That concludes the hearing.

1 MS. PRICE: Thank you.

2 SOLICITOR MABBS: Thank you, Your Honor.

3 SOLICITOR GRAY: Thank you, Your Honor.

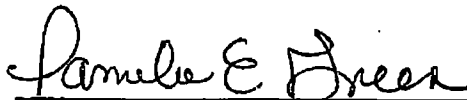
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 22nd, 23rd, and 24th days of August, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

February 6th, 2017



PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

County of SPARTANBURG)BERNARD DELANEY)2017-CP-420-0181

Full name and prison number (if any) of Applicant)

*278949)

) 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 MISCONDUCTS CORP. INST.
2. Name and location of Court which imposed sentence COURT OF GEN. SESSIONS, SPARTANBURG, S.C.
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: 2015 GS 4203593
 - (a) _____
 - (b) _____

SCANNED
more

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 8.24.16 / 25 YRS
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
DIRECT APPEAL
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. REVERSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) N/A

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M. ROSE BLANKLEY

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) FAILURE TO INFORM COURT OF DEFENDANTS
MENTAL HEALTH STATUS AT TIME OF OFFENSE, (Cont
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

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 H. H. BLACKLEY

(10 cont.)

(C.) FAILURE to INFORM that there was any prescribed mental health medication at the time of offense.

(d.) FAILURE to inform the court that both defendant and victim was under the influence of drugs (methamphetamine) at the time of offense.

(E.) FAILURE to subpoena victim's toxicology and medical records.

(F.) FAILURE to request mental health evaluation for defendant.

(G.) FAILURE to ~~properly~~ DO STAND UP FOR SELF DEFENSE HEARING.

(H.) FAILURE to PROPERLY explain what plea of guilty meant.

(I.) FAILURE INTERVIEW defendant's witnesses.

(J.) FAILURE to file motion for reconsideration.

(K.) NEW EVIDENCE G.S. § 15A-1415 (c)

(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. _____

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H. ROPE
ACTIVITY

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) Not able to obtain case file
 (b) Limited access to Prison Law Lib
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions applications with respect to this conviction, which you filed? YES

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. ANDREA L. PRICE
SPRINGFIELD Pub. DEFENDER OFFICE
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. TRIAL / DIRECT APPEAL
 ii. _____
 iii. _____

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 M. BOPE BLACKLEY

19. State clearly the relief you seek in filing this application:

Reduction of Sentence on Vacation
of Sentence.

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Spartanburg)

I, Bernard Dewberry, 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.

Bernard Dewberry

SWORN to and subscribed before me this 11
 day of January, 2017.

M. Hope Slackley (L.S.)
 Notary Public

My Commission Expires: 12-16-2019

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 M. HOPE SLACKLEY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Bernard Dewberry, 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.

Bernard Dewberry
Applicant

SWORN or affirmed to and subscribed before me this

11 day of January, 2017.

J. C. Franck
Notary Public

My Commission Expires: 12.16.2019

2017 JAN 18 AM 9:38
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Bernard Dewberry, #278949,	)	Case No.: 2017-CP-42-0181
	)	
Applicant,	)	
	)	RETURN AND PARTIAL
v.	)	MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on January 18, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In August 2015, the Spartanburg County Grand Jury indicted Applicant for murder and possession of a firearm during the commission of a violent crime (2015-GS-42-3593, counts 1 & 2). Andrea L. Price and James Cheek, Esquires, represented Applicant. Assistant Solicitors Abel Gray and Allison Mabbs prosecuted the case. On August 22, 2016, Applicant proceeded to a jury trial before the Honorable Roger L. Couch. However, the trial ceased when Applicant pleaded guilty pursuant to negotiations on August 24, 2016. Pursuant to the plea negotiations, Applicant pleaded guilty to the lesser included offense of voluntary manslaughter and the charge for possession of a firearm during the commission of a violent crime was nolle prossed in exchange for Applicant's guilty plea. Pursuant to a negotiated sentence range, Judge Couch sentenced Applicant to imprisonment for twenty-five years for voluntary manslaughter.

Applicant filed a timely notice of appeal pursuant to Weathers v. State¹ and State v. Thrift². The South Carolina Court of Appeals dismissed Applicant's appeal by order on November 14, 2016, for failure to provide a sufficient explanation. State v. Dewberry, App. Case No. 2016-001808 (Ct. App. 2016). The remittitur was returned on February 9, 2017.

Attached to this Return and incorporated by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript (including the initial trial), Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Failure to inform court of Defendant's mental health status at time of offense."
 - b. "Failure to inform that [Applicant] was on prescribed mental health medication at the time of offense."
 - c. "Failure to inform the court that both Defendant and victim were under the influence of drugs (methamphetamine) at the time of the offense."
 - d. "Failure to subpoena victim's toxicology and medical records."
 - e. "Failure to request mental health evaluation for Defendant."
 - f. "Failure to properly do 'Stand Your Ground'/self-defense hearing."
 - g. "Failure to interview Defendant's witnesses."
 - h. "Failure to file motion for reconsideration."

¹ Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995).

² State v. Thrift, 378 S.C. 70, 661 S.E.2d 373 (2008).

2. Involuntary Guilty Plea
 - a. "Failure to properly explain what a plea of guilty meant."
3. "Newly Discovered Evidence"

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his 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, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also asserts his plea was involuntary. “[I]n South Carolina, a guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.” State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013) (citing Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal defendant's right to contest the validity of such a plea is usually, but not definitely, foreclosed. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (2007). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). Further, “a defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action.” Brady v. U.S., 397 U.S. 742, 757 (1970).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of

ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771. "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent also submits Applicant's vague claim of newly discovered evidence fails to make a prima facie showing that he is in actual possession of such evidence or that evidence would likely result in his guilty plea being vacated.

Generally, an applicant may raise a newly discovered evidence claim within one year of actual discovery or within one year of when, by the exercise of due diligence, such evidence *could have been* ascertained. S.C. Code Ann. § 17-27-45(c) (2014). When an applicant seeks relief on the basis of newly discovered evidence following a guilty plea, relief is appropriate only when the applicant presents evidence showing (1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea and (2) the newly discovered evidence is of such weight and quality that, under the facts of circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea be vacated. Jamison v. State, 410 S.C. 456, 468, 765 S.E.2d 123, 129 (2014).

In Jamison, the South Carolina Supreme Court noted it would be a "rare case" where the interests of justice require the vacation of a knowing and voluntary guilty plea involving an admission of guilt and a waiver of trial. Respondent submits Applicant's newly discovered evidence claim does not sufficiently or clearly present a "rare case" requiring a vacation in the interest of justice. An applicant requesting a new trial based on after-discovered evidence following a guilty plea must show that;

"(1) the newly discovered evidence was discovered after the entry of the plea and, in the exercise of reasonable diligence, could not have been discovered prior to the entry of the plea; and (2) the newly discovered evidence is of such a weight and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice

outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.”

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

Applicant failed to set forth with any specificity what this newly discovered evidence is, and how its weight and quality require his guilty plea and sentence to be vacated in the interests of justice. Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Respondent submits Applicant has failed to make a *prima facie* showing that he is entitled to relief based on the information set forth and, therefore, is not entitled to an evidentiary hearing in the matter. Therefore, this allegation should be summarily dismissed.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a), SCRPC. All claims should be made well in advance of the evidentiary hearing. If Applicant has is represented by an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted

leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits, witnesses, and materials used to produce potential expert witness testimony be provided to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and involuntary guilty plea. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

[Remainder of page left blank intentionally]

IX.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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July 25, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	2017-CP-42-0181
BERNARD DEWBERRY, #278949	)	
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 and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney Wade Richey, Esquire
Richey & Richey, PA
PO Box 10916
Greenville, SC 29603-0916

DATED this the 25th day of July, 2017.

Jennifer Jennison
Jennifer Jennison, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

} IN THE COMMON PLEAS COURT

3 Bernard Dewberry,
4 Applicant,

} TRANSCRIPT OF RECORD
2017-CP-42-0181

5 -VS-

6 The State.

} November 15, 2017
Spartanburg, South Carolina

7
8
9
10
11 B E F O R E:

12 G. THOMAS COOPER, JUDGE
13
14

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

16 RODNEY W. RICHEY, ESQUIRE
Attorney for the Applicant

17 VALERIE GIOVANOLI, ESQUIRE
18 Attorney for the State
19
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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20	No exhibits entered into evidence.	
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1 THE COURT: Ms. Giovanoli.

2 MS. GIOVANOLI: Thank you, Your Honor.

3 This is Bernard Dewberry vs. the State of South
4 Carolina. It's Docket No. 2017-CP-42-0181.

5 We're before the Court on an application for post
6 conviction relief filed January 18th of 2017. In August of
7 2015 applicant was indicted for murder and possession of a
8 firearm during the commission of a violent crime.

9 Andrea Price represented -- Andrea Price and James
10 Cheek represented applicant, and applicant proceeded to a
11 jury trial on August 22nd of 2016 before the Honorable
12 Roger L. Couch and a jury.

13 However, the trial ceased when applicant pleaded
14 guilty pursuant to negotiations on August 24th of 2016.
15 Pursuant to plea negotiations, applicant pled guilty to the
16 lesser included offense of voluntary manslaughter. And the
17 charge for possession of a firearm during the commission of
18 a violent crime was dismissed in exchange for applicant's
19 guilty plea.

20 Pursuant to a negotiated sentence range Judge Couch
21 sentenced applicant to imprisonment for 25 years for
22 voluntary manslaughter.

23 Applicant thereafter filed a timely notice of appeal
24 pursuant to Weathers vs. State and State vs. Thrift. The
25 South Carolina Court of Appeals dismissed applicant's

1 appeal for failure to provide sufficient explanation.

2 The state is present and ready to proceed. The
3 applicant is also present and represented by Mr. Rodney
4 Richey.

5 The state did include a motion to dismiss in their
6 return, and basically the pro se application included an
7 allegation of newly discovered evidence but didn't include
8 any specific facts. And because they're required to plead
9 a prima facie case in order to be entitled to a hearing on
10 that issue the state moves for a dismissal of that
11 allegation, not of the other allegations of involuntary
12 guilty plea and ineffective assistance of counsel. Those
13 are properly before the Court today.

14 I'll hand it over to Mr. Richey.

15 THE COURT: How about that? Respond to the motion,
16 please, first, please.

17 MR. RICHEY: Your Honor, we're going to -- my client
18 is going to present a case of evidence that he discovered
19 after he was incarcerated, and it's basically discovery.
20 We can -- I can have that information in this case without
21 it being designated as newly discovered.

22 It's basically discovery. I got a copy -- I got
23 counsel's copy and mailed it down to the prison. He went
24 through it. And he says he discovered this evidence that
25 he didn't know about at the time of trial. So I think it's

1 going to be part of the case as evidence anyway.

2 THE COURT: You say you got his defense counsel's
3 file?

4 MR. RICHEY: Yes, sir.

5 THE COURT: And you -- he found evidence in that file
6 that he was unaware of?

7 MR. RICHEY: Yes, sir. That's his position.

8 THE COURT: And does that somehow rise to the level of
9 ineffective assistance?

10 MR. RICHEY: In -- in an individual, no, but I
11 think he wants to make -- this evidence is going to be part
12 of his case, I guess, if the Court wants -- I mean, I don't
13 know if it's after-discovered evidence. It has to do
14 something with the investigation of the case, is his
15 position, so.

16 THE COURT: May not be evidence.

17 MR. RICHEY: Well, it's --

18 THE COURT: I've got no idea.

19 MS. GIOVANOLI: Well, I believe they were using a
20 legal phrase -- after-discovered evidence. That's not
21 proper, because if it was in the discovery it was known
22 prior to trial. And what counsel knows is that it's
23 conveyed that also the applicant knew.

24 And also the statute for newly discovered evidence
25 requires that it be discovered. The application must be

Bernard Dewberry
Direct examination by Mr. Richey

1 filed within one year of the discovery or when in the
2 exercise of due diligence the evidence could not have been
3 found.

4 So of course counsel's representing applicant and
5 they're reviewing their discovery together. At that point
6 he could have reasonably found these pieces of evidence, if
7 you will.

8 So I think what applicant wants to proceed on is that
9 he's finding things in his discovery now that he believes
10 counsel should have pursued as far as his defense in trial
11 and, as such, it's an ineffective-assistance-of-counsel
12 claim.

13 THE COURT: Let's proceed. Motion is denied.

14 BERNARD DEWBERRY, having been
15 first duly sworn, testified as follows:

16 THE COURT: State your full name for the record.

17 THE WITNESS: Bernard Dewberry.

18 DIRECT EXAMINATION BY MR. RICHEY

19 Q Mr. Dewberry, are you incarcerated right now?

20 A Yes, sir.

21 Q And where are you incarcerated?

22 A McCormick.

23 Q And what are you incarcerated for?

24 A Manslaughter.

25 Q Okay. And were you convicted in Spartanburg County?

Bernard Dewberry
Direct examination by Mr. Richey

- 1 A Yes, sir.
- 2 Q Okay. And who represented you on those charges?
- 3 A Ms. Andrea Price.
- 4 Q Okay. And you filed an application because it's your
5 position she did not effectively represent you, correct?
- 6 A Yes, sir.
- 7 Q And one of the issues you have in here, about this
8 plea offer. Okay. Did you and your attorney talk about
9 the plea offer?
- 10 A Not really.
- 11 Q Lean up.
- 12 A Not really.
- 13 Q Okay. And what was that plea offer?
- 14 A At one point in time I had a plea to 15 and -- 15
15 years and five years probation. But they -- they came
16 and/but what you call it -- negotiational, probation,
17 whatever you call it -- plea for 15 to 30.
- 18 Q Okay. So you would do -- so it was a suspended
19 sentence. It was a 30-year sentence suspended to 15 years
20 of probation. Is that what you're saying?
- 21 A I -- I think so.
- 22 Q Okay. So there was a 15-year offer, correct?
- 23 A Yes, sir.
- 24 Q And do you believe that that offer was explained to
25 you properly?

Bernard Dewberry
Direct examination by Mr. Richey

- 1 A I don't think. Not properly.
- 2 Q Do you believe -- do you believe if you had understood
- 3 that plea you would have accepted it?
- 4 A Yeah, I would have accepted it.
- 5 Q You would have took it.
- 6 A Yes, sir.
- 7 Q Okay. Because it's less?
- 8 A Less.
- 9 Q Less time.
- 10 A Yeah, yes, sir.
- 11 Q Okay. And did your -- did you lawyer advise you to
- 12 take it?
- 13 A No, sir.
- 14 Q She did not?
- 15 A No.
- 16 Q What did she tell you to do with it?
- 17 A To be honest with you, we got in a big argument that
- 18 day about the situation. Like I'm saying, I got called
- 19 terrorist. I got -- you know what I'm saying -- because of
- 20 my belief and all of that. And she -- you know what I'm
- 21 saying -- when she left she was like, oh, I'm going to go
- 22 check your facebook page to see if you got ties with -- you
- 23 know what I'm saying -- with terrorist and all of that. So
- 24 that's -- that's why when they came back with that 15 it
- 25 got blew out of proportion that day.

Bernard Dewberry
Direct examination by Mr. Richey

1 Q Terrorist? What is -- is that because of your
2 religion or something?

3 A Yes, sir.

4 Q Okay. And what is that?

5 A I'm a Muslim.

6 Q Okay. And -- and you -- you believe that your counsel
7 was ineffective for not subpoenaing certain medical
8 records, is that right, or medical records, providers, is
9 that right?

10 A Yes, sir. And subpoenaing some of the witnesses that
11 I -- you know what I'm saying -- I -- I had a question for.

12 Q Well, let's go back to your part.

13 Tell me about the medical records that you wanted her
14 to subpoena and evaluate. Do you have those with you?

15 A From my understanding that --

16 Q Well, let me go back so the Court and everybody can
17 understand where we're going.

18 This case was -- this case started out as a murder, is
19 that correct?

20 A Yes, sir.

21 Q Okay. And what happened? Just real briefly, what
22 happened?

23 A What happened in the case?

24 Q Yeah. Real brief. What happened?

25 A The situation I ended up -- you know what I'm

Bernard Dewberry
Direct examination by Mr. Richey

1 saying -- ended up -- you know what I'm saying -- shooting
2 him. He -- he had -- he had a knife and he was approaching
3 me and I shot him. And I think he ran a block, a block or
4 two over, and I think he fell on his own. I think he fell
5 on his own knife.

6 Q Okay. So it's your position you shot him. He fled.

7 A He fled.

8 Q And the knife that he actually has during the
9 confrontation --

10 A He fell on.

11 Q And you're saying that is the basis for the death.

12 A Yeah, basically.

13 Q Okay. And -- and so you have these medical records
14 that -- that you -- so what do -- what do they say?

15 A This -- this medical record say right there, here,
16 that when he got to -- to the hospital he was -- he was
17 admitted for open wound to the chest. My gunshot wound
18 wasn't -- wasn't to his chest.

19 Q And -- and did you -- did you discuss that with your
20 lawyer?

21 A I tried to tell her but -- you know what I'm saying --
22 it just -- I guess it went in one ear and out the other.

23 Q Okay. This supposed altercation y'all had with the
24 guy with the knife and all of this, did y'all discuss a
25 self-defense defense?

Bernard Dewberry
Direct examination by Mr. Richey

1 A It was like a stand your ground, but she told me
2 wasn't no self-defense law in South Carolina.

3 Q There was no self-defense law in South Carolina.
4 Y'all didn't discuss any of the elements of self-defense or
5 anything?

6 A No, sir. Basically, to be honest with you, sir, I did
7 all -- I did all of my -- all the legal work and I gave it
8 to her.

9 Q You did all of what kind of legal work?

10 A All, like, who I needed, who all I needed
11 subpoenaed -- you know what I'm saying -- my -- my main
12 witness -- you know what I'm saying -- I needed to -- to
13 cross-examine and all -- and all of that. But none of them
14 wasn't -- they wasn't subpoenaed.

15 Q And you wanted a toxicology report subpoenaed too?

16 A Yes, sir.

17 Q Okay. Did you discuss that with your lawyer?

18 A Yeah. Because I told her -- I told -- I told them and
19 the detective at the time me and -- me and the victim both
20 was up under the influence of -- you know what I'm
21 saying -- of methamphetamine.

22 Q And -- and is that why you pled guilty?

23 A I pled guilty because I didn't -- really, I didn't
24 have nobody representing me.

25 Q You also allege that you had some mental health issues

Bernard Dewberry
Direct examination by Mr. Richey

1 growing up, is that correct?

2 A Yes, sir. I been -- I been -- been this way since I
3 was 15 years old.

4 Q Okay. And do those issues affect you right now --
5 your testimony?

6 A No, sir.

7 Q Okay. So it's your position in her mitigation she
8 failed to offer to the Court that both of y'all were using
9 drugs, is that correct?

10 A Yes, sir.

11 Q Did you -- did you want counsel to file a motion to
12 reconsider?

13 A I did after that, but I thought she was going to do
14 it. But I know you have, like, ten days after -- you know
15 what I'm saying -- I guess after you plead. You have ten
16 days -- you know what I'm saying -- to put that in.

17 Q And did you ask her to do it?

18 A Yes, sir.

19 Q Okay. If -- if counsel had done the things that you
20 asked would you have pled guilty?

21 A No, sir. I would have continued on with the trial.

22 Q Okay. And you're asking the Court today to vacate
23 your guilty plea, and you ask for a new trial, is that
24 correct?

25 A Yes, sir.

Bernard Dewberry
Cross-examination by Ms. Giovanoli

1 Q Thank you. Answer any questions the attorney general
2 has for you.

3 CROSS-EXAMINATION

4 BY MS. GIOVANOLI

5 Q Good morning. I'm just going to go back to the last
6 thing that you said. You said that if counsel did what you
7 asked her to do you would have continued to trial?

8 A Yes.

9 Q But previously when you said that you had been -- if
10 you had understood the 15-year offer you would have pled
11 guilty.

12 A Yes.

13 Q So which is it? Did you want to plead guilty or did
14 you want to go to trial?

15 A I wanted -- I wanted to go to trial.

16 Q Okay. But if you got 15 years you would plead guilty.

17 A Yeah. That -- that -- that would have saved -- you
18 know what I'm saying -- the family -- you know what I'm
19 saying -- the hurt -- and you know what I'm saying --
20 going through -- you know what I'm saying -- the situation.

21 Q Okay. You said that the plea offer was not properly
22 conveyed to you, is that correct?

23 A Yeah.

24 Q Okay. How was it not properly conveyed to you? How
25 else did she tell you other than the plea offer was 15

Bernard Dewberry
Cross-examination by Ms. Giovanoli

1 years?

2 A About the probation part -- you know what I'm
3 saying -- 15 -- and 15 years and five years probation.

4 Q So the plea offer was 15 years with five years
5 probation?

6 A Yes, ma'am.

7 Q And so what did you not understand about that?

8 A Five -- you know what I'm saying -- five years
9 probation when I got out. When I got through doing the 15
10 years I would have been on two years supervision fee. I
11 didn't know that them two years -- them two years be
12 included with the five-year probation or not.

13 Q Okay. Did you ask your attorney that?

14 A No, because, really, we wasn't -- after -- after the
15 point where I got called a terrorist and everything, I felt
16 like -- you know what I'm saying -- she wasn't -- she
17 wasn't listening to me no way.

18 Q So because she called you a terrorist you refused the
19 15-year offer?

20 A Yeah, because it was a big thing at the court -- at
21 the courthouse. They -- they -- they kicked me outta
22 the -- they kicked me outta the room. And, well, her --
23 her and Mr. Cheeks had the police dismiss me outta the
24 room.

25 Q Okay. Let's go back to something that you testified

1 on direct. You said that the victim had a knife and he was
2 approaching you so you shot him, is that correct?

3 A Yes, ma'am.

4 Q Okay. You realize that he was shot in the back.

5 A It was -- it was, like, in the side, the left -- right
6 flank.

7 Q The bullet hole was in the back, is that not correct?

8 A From my understanding it was the right lower flank.

9 Q Okay. But then you also testified that the bullet
10 hole was in the chest.

11 A No. I didn't ever testify the bullet hole was in the
12 chest. This right here says that he -- he was admitted to
13 the hospital to an open wound to the chest.

14 Q Okay. So did your lawyer not pursue that on -- did
15 they not talk about that on the record, about the cut on
16 the chest?

17 A Not -- no, ma'am.

18 MS. GIOVANOLI: Beg the Court's indulgence while I
19 find the page number.

20 (Pause.)

21 MS. GIOVANOLI: Okay. I'm not going to waste the
22 Court's time. I'll find it at a later date.

23 A It's even -- it's even in the autopsy.

24 Q I understand. You have the autopsy with you right
25 there.

Bernard Dewberry
Cross-examination by Ms. Giovanoli

1 A Yeah, I have it right here.

2 Q Then why did you want a toxicology report?

3 A To prove -- to prove that -- that me and him was up
4 under the influence of -- you know what I'm saying --
5 drugs.

6 Q Okay. How would that help your defense?

7 A Know what I'm saying -- if he would -- know what I'm
8 saying -- the thinking process that me and him went to --
9 you know what I'm saying -- this situation would've never
10 occurred if me and him was known -- you know what I'm
11 saying -- these drugs, because me and him was so close --
12 you know what I'm saying -- so the drug played -- the drug
13 played -- you know what I'm saying -- a major role in the
14 altercation.

15 Q Your lawyer advised you that being high on
16 methamphetamine was not a defense to a murder, is that
17 correct?

18 A I didn't -- yeah. She said that, but I wasn't trying
19 -- I wasn't -- I was saying that it played -- it played --
20 you know what I'm saying -- a major role in the situation.

21 Q Okay. You also testified that you have mental health
22 issues that you've been dealing with since you were 15
23 years old, is that correct?

24 A Yeah.

25 Q But it's not affecting your testimony here today.

Bernard Dewberry
Cross-examination by Ms. Giovanoli

1 A No, no, ma'am.

2 Q Okay. Did it affect your testimony during your
3 pretrial motion?

4 A I'm saying some of the stuff that y'all be talking
5 about I don't comprehend -- you know what I'm saying --
6 what's going on.

7 Q But you testified under oath in your pretrial-motion
8 hearings, didn't you?

9 A Yes, ma'am.

10 MS. GIOVANOLI: I call the Court's attention to page
11 65.

12 Q The first time that you testified, which was actually
13 during a motion to suppress your statements that you gave
14 to law enforcement, is that correct?

15 A If that's what she put in.

16 Q Well, you actually testified. Do you recall that?

17 A I -- I recall testing -- getting up on the stand
18 and -- and testifying, but I didn't know what I was
19 testifying to.

20 Q You don't know what you were testifying to.

21 THE COURT: That's on 55?

22 MS. GIOVANOLI: Sixty-five, Your Honor.

23 THE COURT: Sixty-five.

24 MS. GIOVANOLI: Uh-huh. And he testifies through to
25 page 78.

Bernard Dewberry
Cross-examination by Ms. Giovanoli

1 Q And then you testified again during your motion for
2 immunity under the protections of persons and property act
3 on page 93. Do you recall that?

4 A The what?

5 Q Whenever you testified during your pretrial motion
6 hearings.

7 A Yes, ma'am.

8 Q You had a motion for immunity, didn't you?

9 A Yes, ma'am.

10 Q And that testimony started on page 93.

11 A Yes, ma'am.

12 Q Your testimony was coherent, lucid. You had no
13 problems understanding any questions or communicating your
14 answers in those hearings, is that correct?

15 A Yes, ma'am.

16 Q So mental health really didn't affect anything about
17 this case.

18 A Some of this stuff, like I say, like, some of the
19 stuff, like, the plea and stuff, some of the stuff I didn't
20 comprehend -- you know what I'm saying.

21 All I wanted -- all I wanted to do is let the courts
22 know that they tried to say that I just -- I just hunt this
23 man down and just shot him for no reason.

24 I want the Court to see that this man had a knife and
25 he came at me with a knife and I shot him. He fell on his

1 own knife, and that could have been the cause of death
2 rather than dis -- trying to disclose the reason that he
3 didn't have a stab wound in his chest and saying that it
4 was just my gunshot wound that caused the death when in
5 reality it could have been the knife wound that -- you know
6 what I'm saying -- that inflicted it up to his axil line
7 right above the axil line by his heart where the -- where
8 the stab wound is at. It's right here. It's right here in
9 the autopsy.

10 Q So you read the autopsy report.

11 A I just -- I just went over it and it -- and it was
12 right there.

13 Q And so you understood the autopsy report or you
14 believe you understand the autopsy report.

15 A I -- yeah.

16 Q But you didn't understand what was going on during
17 your guilty plea. You can read that autopsy report and
18 understand it.

19 A I can read some of it. I ain't -- some of the
20 words -- you know what I'm saying -- I know what -- I know
21 the word stab tight when they say there's a stab tight
22 incision slightly above the ax -- axil line -- anterior
23 axil line. I -- I know that.

24 Q Okay. I have no further questions. Thank you.

25 MR. RICHEY: No other questions.

Andrea Leah Price
Direct examination by Mr. Richey

1 THE COURT: All right, sir. You may come down.

2 MR. RICHEY: Call Ms. Price.

3 ANDREA LEAH PRICE, having been
4 first duly sworn, testified as follows:

5 THE COURT: State your full name for the record.

6 THE WITNESS: My name's Andrea Price -- P-R-I-C-E.
7 I'm an assistant public defender in Spartanburg County.

8 DIRECT EXAMINATION BY MR. RICHEY

9 Q Ms. Price, do you recall representing Mr. Dewberry?

10 A I do. I was assigned Mr. Dewberry's case in the
11 spring of 2015.

12 Q Okay. And I'm going to go through this with you first
13 about this plea offer.

14 A Yes.

15 Q Do you believe that he -- do you believe he understood
16 the plea offer?

17 A Yes, sir.

18 Q Okay. And how was it conveyed to him? Were y'all in
19 a room here at the courthouse or jail?

20 A Mr. Dewberry was in -- housed in pod three, as I
21 recall, in our jail.

22 How that came about is I made arrangements to go up to
23 the solicitor's office, and I sat down with the prosecutors
24 in this case who is Mr. Abel Gray, was the lead prosecutor.
25 And he was assisted by Ms. Ali Mabbs.

Andrea Leah Price
Direct examination by Mr. Richey

1 We sat in Mr. Gray's office and talked about the case.
2 And, unfortunately, this is a family type situation. So
3 Mr. Dewberry's family and Mr. Fernandez's family, who is
4 the deceased, were the same group of folks. And they still
5 loved Mr. Dewberry, and even though they had suffered a
6 loss.

7 And so we sat down and we talked, and Mr. Gray made me
8 an offer while I was in his office of 15 years to a
9 voluntary manslaughter plea and followed by five years
10 probation.

11 Mr. Gray even ran off the sentencing sheet and gave it
12 to me, and I took it to Mr. Dewberry. There was a copy of
13 it in my file, which I'm sure you saw when you came to my
14 office.

15 Q Okay. And did you tell him about how much time -- how
16 much of that time he would have to serve and all of that
17 stuff?

18 A Yes, sir. As you know, the Department of Corrections
19 does the actual calculation.

20 Q Right. But he would do at least 85 percent, is that
21 correct?

22 A On this one, yes, sir, I believe that's correct.

23 Q Okay. What -- you heard his testimony. What was with
24 this Muslim stuff? Who -- who encountered him with that?

25 A I have never called a client a terrorist ever.

Andrea Leah Price
Direct examination by Mr. Richey

1 Q Okay.

2 A I did understand that Mr. Dewberry had converted to
3 Islam, well, when he was in the Department of Corrections
4 previously on some totally unrelated charges.

5 Mr. Dewberry, in fact, wanted me to bring him some
6 makeup for trial so he could cover up his tattoos on his
7 face, which I wasn't quite sure what that was about. But,
8 no, I've never called a client a terrorist ever.

9 Q Let me -- let me go now to this case. Did you discuss
10 self-defense with him?

11 A Yes, sir, I did. I discussed that with him on
12 February the -- let's see. February the 5th of 2016.

13 Q Okay. And did you -- based on his testimony did
14 you -- did you tell him there was no self-defense defense
15 in this case?

16 A No. I never told him that, but I did tell him that
17 that is very fact specific, as you know.

18 Q And did y'all go through why his case would not be a
19 self-defense case?

20 A Yes, sir. It was very hard for me to think that there
21 would be a self-defense case with the location of the
22 bullet wound in Mr. Fernandez.

23 Q Was it -- was it on the side flank as he described
24 or --

25 A No, sir. It was in his lower flank in his lower back.

Andrea Leah Price
Direct examination by Mr. Richey

1 Q Okay. Is that the side of -- not the middle, is it?

2 A It's...

3 THE WITNESS: May I stand up, Judge?

4 THE COURT: Yes.

5 (Whereupon, the witness left the stand.)

6 A It was, as I understood it -- granted, I'm not a
7 doctor -- about right here in between the spine, which
8 would be the midline and the side.

9 Q Did you see any evidence that the deceased had a
10 knife?

11 A No, sir. There was no knife on the scene. By all of
12 the accounts in the reports and pictures that I have, there
13 was no knife anywhere.

14 Q You -- these are the reports that he testified from in
15 terms of these open chest wounds, which would be on the
16 front of the chest. You reviewed these. They're in your
17 file.

18 A Oh, yes, sir. What page are those?

19 MR. RICHEY: May I approach the witness, Your Honor?

20 THE COURT: Sure.

21 Q Point to this document from Spartanburg Regional --

22 A Okay. Uh-huh.

23 Q -- and it says an open chest wound. And this would be
24 the information about the 9-1-1 call.

25 A Okay.

Andrea Leah Price
Direct examination by Mr. Richey

1 Q About the chest wound. And this one would also be the
2 autopsy report.

3 A Okay.

4 Q You had all of those documents within your files?

5 A Yes, sir.

6 Q And you reviewed them?

7 A I did, sir.

8 The first time I took them up there was actually the
9 day before Thanksgiving because all of this information was
10 provided to me on C.D.s.

11 Q Okay.

12 A And there was -- it was pretty voluminous. And so
13 what I did was I took my laptop up to the jail and made
14 arrangements to do that and sat down with him that
15 Wednesday afternoon and went over everything with him.

16 Q Okay. So you went over this -- this open wound to the
17 chest. You went over that with him?

18 A Yes, sir. I went over everything that was in these
19 reports.

20 Q Okay. Did you advise him to plead guilty or not?

21 A Yes, sir. I thought it was in his best interest.

22 Q Okay. And it was his decision to not accept the
23 offer?

24 A Yes, sir. I spoke with him, as did Mr. James Cheek,
25 and we -- we sat down with him. And I believe Mr. Cheek

Andrea Leah Price
Direct examination by Mr. Richey

1 also spoke with him separately. And he wanted to proceed
2 with trial.

3 THE COURT: Maybe I missed it or maybe Mr. Richey
4 jumped over it.

5 You said you got the offer from the solicitor, the 15
6 years and five years probation, for voluntary manslaughter.
7 Did you convey that at that time, the time you got it?

8 THE WITNESS: I don't remember if it was the same day
9 or not, but I do know I took it up to the jail to him.

10 Oh, yes, sir. And, like I said, they even gave me the
11 sentencing sheet so that I could sign him up right then and
12 there --

13 THE COURT: Okay.

14 THE WITNESS: -- when I met with him.

15 THE COURT: And what happened then?

16 THE WITNESS: I'm sorry, sir?

17 THE COURT: Did he accept it?

18 THE WITNESS: No, sir, he did not.

19 THE COURT: Okay. Now that was pre -- well pretrial.

20 THE WITNESS: Well pretrial, yes, sir.

21 THE COURT: Go ahead.

22 MR. RICHEY: Okay.

23 Q And let me ask you this. On the day of the trial --
24 well, never mind. Did he ask you to subpoena any of these
25 toxicology reports or anything?

Andrea Leah Price
Cross-examination by Ms. Giovanoli

1 A Not that I recall, no, sir.

2 MR. RICHEY: No other questions.

3 CROSS-EXAMINATION

4 BY MS. GIOVANOLI

5 Q Good morning, Ms. Price.

6 A Ms. Giovanoli.

7 Q I just want to clarify a little bit of your testimony
8 on direct and ask you some other questions.

9 When you said that you could have arranged to have the
10 applicant in the solicitor's office so y'all could do some
11 plea negotiations --

12 A No. He didn't come up to the solicitor's office.

13 Q Okay. Just you and Mr. Cheek?

14 A It was me and Mr. -- Mr. Abel Gray and Ms. Ali Mabbs.

15 Q Okay. And after you got that 15-plus-5-year offer did
16 you advise him to take that plea offer?

17 A Oh, yes, ma'am.

18 Q Okay. And what was his response?

19 A He wanted to proceed to trial based on this allegation
20 that there -- that Chuck -- that's what Mr. Fernandez --
21 had a knife and that he came at him with a knife and he
22 shot him.

23 Q Okay. Wasn't he pretty adamant about pursuing a jury
24 trial?

25 A Very much so.

1 Q So he expressed no interest to you in pleading guilty.

2 A No, no. Very much so, he wanted a trial.

3 Q So you went on to prepare for trial, is that correct?

4 A I did.

5 Q And also there was a great mention about the
6 85 percent, you believe that he's serving an 85 percent
7 sentence. Did y'all actually have any discussions about
8 that -- parole, community release?

9 A What I discuss with my clients is, is that they need
10 to be prepared to serve every single day of the sentence
11 that the judge says from that bench but that the actual
12 calculation of their sentence would be up to the department
13 of corrections. Community supervision thought, as you
14 know, is part of a violent sentence, so.

15 Q Okay. And that's your general practice. That's how
16 you advised Mr. Dewberry in this case?

17 A Yes.

18 Q And then the self-defense claim, why did you think --
19 what did you think about self-defense defense in this case?

20 A The hardest part with a self-defense claim is, number
21 one, as I was looking at all of the evidence and all the
22 photographs, is there was never any knife anywhere in any
23 of these pictures, and also that the location of the bullet
24 wound to Mr. Fernandez was problematic as well.

25 Q Did you explain that to them?

Andrea Leah Price
Cross-examination by Ms. Giovanoli

1 A I did.

2 Q What about a mutual combat defense? Is that something
3 that you were going to pursue?

4 A No. I didn't think that mutual combat was great
5 option either.

6 Q Okay. But you did move under the protection of the
7 persons and property act for immunity, is that correct?

8 A I did, and we did have a hearing before Judge Couch
9 pretrial.

10 Q okay. And did you discuss that with the applicant
11 prior to filing that motion?

12 A I did because, as you know, he has testify.

13 Q Right. And so was he on board with that defense?

14 A He was. And I thought he did quite well actually at
15 his hearing.

16 THE COURT: That's a stand-your-ground hearing?

17 THE WITNESS: Yes, sir.

18 Q And you also made a motion to suppress the statement,
19 is that correct?

20 A Yes, ma'am.

21 Q And there was a pretrial hearing on that.

22 A There was as well, yes.

23 Q You said that you took him his discovery the day
24 before Thanksgiving, is that correct?

25 A That would have been, yes, November the 25th of 2015.

Andrea Leah Price
Cross-examination by Ms. Giovanoli

1 Q And that's when you guys reviewed it all?

2 A We did. We sat down in the interview room at the jail
3 with a laptop.

4 Q Is that the only time or had you previously or after
5 that --

6 A That was when I had got gotten everything in. It was
7 actually I thought the best time to because I needed a
8 large block of time because of the volume of it, of course,
9 and then he also asked for a paper copy as we got closer to
10 trial, and I provided him with that as well.

11 Q Okay. And that's correct. You actually told the
12 judge on page 272 that you had provided the applicant with
13 the discovery as well.

14 A Yes.

15 Q So that was an actual physical copy.

16 A That was an actual physical copy.

17 Q Okay. And you testified that you did advise him to
18 plead guilty because you believed that it was in his best
19 interest.

20 Can you kind of elaborate on that, why you felt it was
21 in his best interest?

22 A Well, I did not feel the trial was going well once we
23 got to that point. And I spoke with Mr. Dewberry and
24 Mr. James Cheek spoke with Mr. Dewberry. And
25 Mr. Dewberry -- they re-extended the voluntary offer except

Andrea Leah Price
Cross-examination by Ms. Giovanoli

1 that it was not going to be a 15-year offer this time, so.

2 Q And the offer was actually arranged 15 to 30.

3 A It was.

4 Q And did you -- it was Mr. Dewberry's decision to
5 accept that offer?

6 A It was.

7 Q Did you promise him anything?

8 A No, absolutely not.

9 Q Did you put any pressure on him to accept the plea?

10 A No.

11 Q Okay. There's been an allegation that you should have
12 requested a toxicology report. Did you think a toxicology
13 report would have been helpful to you in this case?

14 A No.

15 Q And why is that?

16 A Well, he was -- he was still insisting on this
17 self-defense thing. The problem is, is that if you believe
18 his version of events they were still athwart, and so and
19 he -- his contention was, is that he'd been smoking meth as
20 well. So I didn't think that was a good road to go down.

21 Q Okay. Both in trial and as far as sentencing?

22 A Right, right.

23 Q Okay. Well, first, let's talk about trial. Did he --
24 so he actually told you that he was high on meth when this
25 happened.

Andrea Leah Price
Cross-examination by Ms. Giovanoli

- 1 A Yes.
- 2 Q And that wasn't a defense to murder.
- 3 A No, no. It's not.
- 4 Q And in your opinion -- in your practice does it help
5 or harm to put evidence in that a person was on drugs when
6 they committed a violent crime?
- 7 A It very definitely does not help them.
- 8 Q And how about for sentencing mitigation?
- 9 A It really doesn't help them in my experience either,
10 especially Judge Couch who has very strong opinions about
11 methamphetamine.
- 12 Q Did you discuss this with him, why you weren't
13 bringing up the drugs?
- 14 A Yes.
- 15 Q I'm sorry. During cross-examination -- how long have
16 you been practicing law?
- 17 A Almost 11 years.
- 18 Q Eleven?
- 19 A Yes.
- 20 Q So at the time of this trial it would have been closer
21 to nine, nine and a half, ten?
- 22 A Almost ten.
- 23 Q And how much of that has been criminal law?
- 24 A I have been with the public defender's office for the
25 whole of my career.

Andrea Leah Price
Cross-examination by Ms. Giovanoli

1 Q And are you still with the public defender's office?

2 A I am still with the public defender's office.

3 Q Did you ever have any sense that you needed to order a
4 mental health evaluation?

5 A Absolutely not. From the time I started representing
6 Mr. Dewberry he has been able to communicate with me about
7 his case, about theories of his case.

8 He even wrote lists of questions that he wanted me to
9 ask the witnesses. I never ever thought that he had any
10 problems whatsoever that would prevent him from helping me
11 with his case.

12 Q So he was pretty hands on with his case?

13 A He was.

14 Q He alleged that he told you the witnesses to subpoena.

15 A Yes.

16 Q Did you investigate the witnesses that he told you to
17 call?

18 A I did. I wrote them down. I've got them right here.

19 Q Did you talk with them?

20 A I did. And they actually went up to the courthouse,
21 so.

22 Q Okay. Did you subpoena them?

23 A Yes, I did.

24 Q Did he request a motion to -- for you to file a motion
25 to reconsider on his behalf?

Andrea Leah Price
Redirect examination by Mr. Richey

1 A I don't remember him ever asking for that.

2 Q If he had would you have filed it?

3 A If he had I would have filed it.

4 Q Did you see any grounds for a motion for
5 reconsideration?

6 A No.

7 Q I believe that's all the questions I have for you. If
8 you have anything to add, feel free.

9 A No.

10 Q Okay. Thank you. Answer any questions -- well,
11 actually --

12 MR. RICHEY: Just a couple of questions.

13 REDIRECT EXAMINATION

14 BY MR. RICHEY

15 Q Ma'am, in a -- in a self-defense case do you believe
16 that the state of mind of the victim is important?

17 A Generally speaking or in regards to this matter?

18 Q In regards to self-defense -- the victim, alleged
19 victim -- his state of mind, would that be something
20 relevant to you?

21 A Generally speaking, yes.

22 Q Okay. And if that person is under the influence of
23 drugs or alcohol that will be taken into consideration by
24 you, correct?

25 A Yes.

Andrea Leah Price
Recross-examination by Ms. Giovanoli

1 Q Okay. Because that could determine -- that could
2 affect their behavior, correct?

3 A Generally speaking, yes.

4 Q Thank you.

5 RECROSS-EXAMINATION

6 BY MR. GIOVANOLI

7 Q But this wasn't a self-defense case, was it?

8 A No. And there were more facts to the -- the
9 disagreement between Mr. Fernandez and Mr. Dewberry.

10 Q Well, with regard to self-defense, was there a stab
11 wound on the victim that was found during the autopsy?
12 Applicant's alleging that he died from a stab wound.

13 A Can you direct me to a particular page?

14 Q Well, you have the autopsy report up there.

15 A Right.

16 Q I, obviously, don't have it. Do you recall some
17 discussion about a mark on the defendant that was actually
18 made during -- during the proceedings? I don't know what
19 page.

20 A Oh, there was a reference to a stab knife wound on his
21 body that was about one inch in length.

22 Q Did the solicitor explain what that mark was?

23 A That the solicitor's position was that was part of his
24 treatment once he reached the emergency room.

25 Q Okay. And where was -- where did he get that

Andrea Leah Price
Recross-examination by Ms. Giovanoli

1 understanding from?

2 A From the autopsy report, I'm assuming.

3 Q Okay.

4 A You'd have to ask him for sure.

5 Q Okay. No further questions. Thank you.

6 MR. RICHEY: Nothing else, Your Honor.

7 THE COURT: All right. You may come down. Thank you.

8 MR. RICHEY: Your Honor, at this time we rest our
9 case. But I would just have the record -- newly discovered
10 evidence, we withdraw any claim or any issue that we wanted
11 to present.

12 THE COURT: Anything further from the state?

13 MS. GIOVANOLI: Nothing further from the state.

14 THE COURT: Proposed orders in 30 days.

15 MR. RICHEY: Thank you, Your Honor.

16 MS. GIOVANOLI: Thank you, Your Honor.

17 END OF REQUESTED TRANSCRIPT OF RECORD

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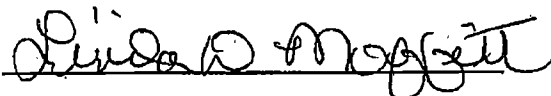
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 15th day of November 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 25, 2018



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Bernard Dewberry, #278949,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2017-CP-42-0181

**ORDER OF DISMISSAL
WITH PREJUDICE**

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 JAN 24 PM 1:20
M. HOPE BLACKBURN

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Bernard Dewberry (Applicant) on January 18, 2017. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on November 15, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by Rodney W. Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Andrea Price, Esquire, (Counsel) also testified. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the trial/plea transcript, Applicant's direct appeal records, the PCR application, and Respondent's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In August 2015, the Spartanburg County Grand Jury indicted Applicant for murder and possession of a firearm during the commission of a violent crime (2015-GS-42-3593, counts 1 & 2). Andrea L. Price and James Cheek, Esquires, represented Applicant. Assistant Solicitors Abel Gray and Allison

GL

Mabbs prosecuted the case. On August 22, 2016, Applicant proceeded to a jury trial before the Honorable Roger L. Couch. However, the trial ceased when Applicant pleaded guilty pursuant to negotiations on August 24, 2016. Pursuant to the plea negotiations, Applicant pleaded guilty to the lesser included offense of voluntary manslaughter and the charge for possession of a firearm during the commission of a violent crime was nolle prossed in exchange for Applicant's guilty plea. Pursuant to a negotiated sentence range, Judge Couch sentenced Applicant to imprisonment for twenty-five years for voluntary manslaughter.

Applicant filed a timely notice of appeal pursuant to Weathers v. State¹ and State v. Thrift². The South Carolina Court of Appeals dismissed Applicant's appeal by order on November 14, 2016, for failure to provide a sufficient explanation. State v. Dewberry, App. Case No. 2016-001808 (Ct. App. 2016). The remittitur was returned on February 9, 2017.

In his application for post conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. "Failure to inform court of Defendant's mental health status at time of offense."
- b. "Failure to inform that [Applicant] was on prescribed mental health medication at the time of offense."
- c. "Failure to inform the court that both Defendant and victim were under the influence of drugs (methamphetamine) at the time of the offense."
- d. "Failure to subpoena victim's toxicology and medical records."
- e. "Failure to request mental health evaluation for Defendant."
- f. "Failure to properly do 'Stand Your Ground'/self-defense hearing."
- g. "Failure to interview Defendant's witnesses."
- h. "Failure to file motion for reconsideration."

CLERK OF COURT
SOUTH CAROLINA
2018 JAN 24 PM 1:20
M. HOPE BLACKLEY

¹ Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995).

² State v. Thrift, 378 S.C. 70, 661 S.E.2d 373 (2008).

2. Involuntary Guilty Plea
 - a. "Failure to properly explain what a plea of guilty meant."

3. Newly Discovered Evidence

At the hearing, Respondent moved for summary dismissal of the newly discovered evidence claim and this Court granted the motion. Applicant did not proceed on his allegation of newly discovered evidence.

CLERK OF COURT
 CARROLL COUNTY
 2016 JAN 24 PM 1:20
 HOPKINS BLANCHLEY

SUMMARY OF TESTIMONY AT PCR

- I. Applicant testified to the following:

Applicant testified Counsel did not properly convey plea offers to him. He testified the original offer from the Solicitor was 15 years plus 5 years' probation, but he did not understand it because Counsel did not explain it. Applicant testified that had he understood the original offer, he would have accepted it and pled guilty. Applicant also testified Counsel advised him not to take the plea offer. Applicant testified he and Counsel had a big argument over it in which she called him a terrorist and had him returned to jail. Applicant claimed she called him a terrorist because he is Muslim.

Applicant also testified Counsel failed to have medical records that he requested subpoenaed. Applicant testified he only received and reviewed discovery after he pled guilty. He claimed that the victim's death occurred when the victim was approaching him with a knife and Applicant shot him in self-defense, but he contests the gunshot being the cause of death. According to Applicant, Applicant then tried to run and fell on his own knife, which caused his death. Applicant believes the autopsy report supports his theory because it indicates a wound to his chest. Applicant also denied the victim was shot in the back. Applicant tried to explain all of this to Counsel prior to trial, but it "went in one ear and out the other."

67-3

Applicant admitted Counsel pursued a stand your ground defense, but she told him there was no self-defense in South Carolina. Applicant testified he did all the legal work and Counsel did nothing. He wanted Counsel to request a toxicology report because he told law enforcement and Counsel he and the victim were high on methamphetamine at the time of the killing. He also believes Counsel should have used that fact as mitigation for sentencing. Applicant testified he pled guilty because he had no representation.

Applicant testified he's dealt with mental health issues since he was 15 years old. However, those issues did not affect his ability to testify. Applicant also testified he requested Counsel file a motion for reconsideration and she failed to do so. Applicant also testified had Counsel done everything he requested, he would have continued to trial instead of pleading guilty.

II. Counsel testified to the following:

Counsel has been practicing criminal law exclusively for 11 years. Counsel is an Assistant Public Defender. She was appointed to represent Applicant. Counsel received all the discovery and reviewed all of it with Applicant. She arranged to meet with both Solicitor Gray and Solicitor Mabbs to negotiate a plea. The first offer was a plea to voluntary manslaughter for 15 years and 5 years' probation. She had a pre-filled sentencing sheet with the terms that she took to Applicant. She fully explained the plea offer. At that time, she advised him to accept the plea, but he was adamant about proceeding to trial. He never expressed a desire to plead guilty prior to the day of trial. Counsel denied having ever called Applicant, or anyone for that matter, a terrorist.

Counsel also denied ever telling Applicant that South Carolina did not recognize the defense of self-defense. She explained to him that the evidence in his case did not support a

defense of self-defense. Counsel explained that the evidence showed the victim was shot in the back, specifically, the lower flank. Counsel demonstrated to this Court where the autopsy indicated the bullet wound to be – the lower back. Counsel explained to him and encouraged pursuing a stand your ground defense. Applicant was fully on board with pursuing the immunity hearing based on the stand your ground defense.

Counsel had the discovery on a disc and took it to him to review the day before Thanksgiving. She sat down with him that day and went over everything. She also provided him a physical copy of all his discovery upon his request and prior to his trial.³ Counsel testified she and his other defense counsel, James Cheek, both advised him to plead guilty because it was in his best interest. Counsel explained she did not request a toxicology report because she did not think Applicant's story of being high was one that would benefit him if presented to a jury. She did not think it would benefit him in sentencing either because Judge Couch has strong feelings against drugs. The intoxication was also not a defense to murder. Although Counsel conceded that generally intoxication can address the state of mind element of a self-defense claim, Counsel strongly believed Applicant's case was not a good case to pursue a defense of self-defense.

With regard to Applicant's mental health, Counsel testified Applicant was very helpful and hands-on with his defense. She never had problems communicating and found Applicant to be very smart. She never felt any reason to seek an evaluation or grounds to pursue mental health as a defense. Counsel agreed Applicant provided her a list of witnesses. She interviewed each one and subpoenaed each one to testify at trial. Counsel testified the people he requested were present the day of trial to testify. Counsel did not recall Applicant ever requesting her to file a motion for reconsideration. Had he requested that, she would have filed it.

³ The record further supports this testimony. (Tr. p. 272).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief application is not a venue for questioning each and every decision of trial counsel in hindsight. Rather, the Applicant must demonstrate by a preponderance of the evidence that trial counsel was deficient and that the deficiency prejudiced the outcome of his trial. Applicant has failed to do so.

I. Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), S.C.R.P.). Where ineffective assistance of counsel is alleged 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 v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117 (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. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Mental Health Allegations

Applicant alleged Counsel was ineffective for failing to address Applicant's mental health at the time of the offense and for failing to request a mental evaluation prior to his trial/plea. Applicant vaguely referenced "mental health issues" he has dealt with since he was 15 years old, but failed to show what those issues were or how they affected him in either his commission of the crime or his ability to go forward with pre-trial hearings and his guilty plea. Additionally, this Court finds Counsel's testimony on the issue credible. She testified Applicant was very helpful and hands-on with his defense. She never had problems communicating and found Applicant to be very smart. She never felt any reason to seek an evaluation or grounds to pursue mental health as a defense. As such, Applicant has failed to meet his burden to prove Counsel was deficient or that he was prejudiced by any alleged deficiency with regard to his mental health allegations. Therefore, these allegations are denied and dismissed.

7 7

Toxicology Allegations

Applicant alleged Counsel was ineffective for failing to subpoena the victim's toxicology records and inform the court that both Applicant and the victim were under the influence of methamphetamine at the time of the killing. Counsel articulated reasons for not requesting a toxicology report and not presenting evidence of intoxication. First, she did not think Applicant's story of being high was one that would benefit him if presented to a jury. She did not think it would benefit him in sentencing either because Judge Couch has strong feelings against drugs. The intoxication was also not a defense to murder. Although Counsel conceded that generally intoxication can address the state of mind element of a self-defense claim, Counsel strongly believed Applicant's case was not a good case to pursue a defense of self-defense — because the medical reports showed the victim was shot *in the back*. This Court finds Counsel's decisions not to use intoxication as a defense or in mitigation to be a reasonable one based on professional judgment. Not only has Applicant failed to prove by a preponderance of the evidence that Counsel was deficient in this regard, he cannot show how he was prejudiced by the alleged deficiency. Therefore, these allegations are denied and dismissed.

Stand Your Ground/Self Defense

Applicant alleged Counsel did not properly defend him based on the stand your ground law and self-defense. However, the record is clear that Counsel made a commendable attempt to secure immunity for Applicant under the Protections of Persons and Property Act. In fact, a full hearing was held on the stand your ground defense. Immunity was denied through no fault of Counsel, but rather because the facts presented at the hearing did not warrant immunity. Additionally, Applicant has not presented any evidence to substantiate his claim Counsel did not properly handle the stand your ground defense and hearing.

2018 JAN 24 PM 1:20
 M. HOPE BLACKLEY
 COURT

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With regard to self-defense, this Court agrees with Counsel's assessment of the case. The facts did not support a claim of self-defense. Although Applicant testified the victim came at him with a knife when he shot him, no knife was recovered at the crime scene and the victim was shot in the back. Therefore, Applicant has failed to persuade this Court that Counsel's decision not to pursue a claim of self-defense was not a reasonable one in light of the evidence against Applicant. Applicant has failed to prove either deficiency or prejudice in this regard. Therefore, these allegations are denied and dismissed.

Failure to interview witnesses

Applicant failed to present any evidence in support of this allegation. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Applicant did not present any witnesses that could help defend his murder charge that Counsel did not interview or investigate. In fact, this Court finds Counsel's testimony on the issue more credible. Counsel agreed Applicant provided her a list of witnesses. She interviewed each one and subpoenaed each one to testify at trial. Counsel testified the people he requested were present the day of trial to testify. Applicant has failed to show what other witnesses could have helped him that Counsel

did not investigate. Therefore, having failed to meet his burden of proof, this allegation is denied and dismissed.

Failure to file motion for reconsideration

Applicant alleges Counsel failed to file a motion for reconsideration after he requested she do so. This Court finds Counsel's testimony more credible on this issue. Counsel testified she did not recall Applicant ever requesting her to file a motion for reconsideration. Had he requested that, she would have filed it. Furthermore, Applicant cannot prove he was prejudiced by any alleged failure to file a motion to reconsider because he has offered no basis for such a motion. Therefore, this allegation is denied and dismissed.

II. Involuntary Guilty Plea

Applicant also asserts his plea was involuntary because Counsel failed to explain what a plea of guilty meant. The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton, 376 S.C. 138, 654 S.E.2d at 874 (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, 376 S.C. at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id.

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(citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record fully supports the knowing and voluntary nature of Applicant's plea. Applicant has failed to give a sufficient reason to be allowed to depart from the truth of his statements

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made during his guilty plea. Counsel testified she and co-counsel, James Cheek, discussed pleading guilty with Applicant at length. The Court also fully apprised Applicant of his rights and the implications of pleading guilty on the record.

To the extent Applicant is attacking his guilty plea based on ineffective assistance of counsel, this Court finds Counsel was in no way ineffective, as more fully addressed above. This Court further finds Counsel's advice to plead guilty was sound in light of the evidence the State had against him and the benefit he received by way of pleading to the lesser included offense of voluntary manslaughter and receiving five years less than the mandatory minimum for his original murder charge. Applicant has failed to meet his burden of proving his guilty plea was involuntary.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a

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Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 22nd day of January, 2017.


G. THOMAS COOPER, JR.
Presiding Judge
Seventh Judicial Circuit

Clauson, South Carolina

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JUL 29 2015

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

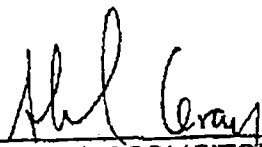
COUNT ONE—MURDER

That Bernard Dewberry, did in Spartanburg County on or about May 9, 2015, feloniously, willfully and with malice aforethought, kill one [REDACTED] by shooting the victim, and that the said victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

**COUNT TWO—POSSESSION OF FIREARM DURING
COMMISSION OF A VIOLENT CRIME**

That Bernard Dewberry, did in Spartanburg County on or about May 9, 2015, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: MURDER, in violation of Code §16-23-490, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

SENTENCE MADE

REPORT ENDED

CARD FILLED

INDEXED

CHECKED WARRANTS

CHECKED SIGNATURE

ASSESSMENT AND

FINE CARD MADE

TRAFFIC VIOLATION COPY

ARREST WARRANT NUMBER

COUNT ONE: 2015A4210201482

COUNT TWO: 2015A4210201483

ACTION OF GRAND JURY

JUL 29 2015

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 16-03-0010-0020-3593

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 03 2015

TERM

THE STATE

vs.

Bernard Dewberry

Indictment for
MURDER AND POSSESSION
OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME

SC Code 16-03-0010, 0020; 16-23-490

CDR CODE: 0116: 0549

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Defender

Mangle
Allis
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