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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Beaufort County

Honorable R. Lawton McIntosh, Circuit Court Judge

MALCOLM BRABHAM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001425

APPENDIX

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STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NUMBERS 2013-GS-07-01230 & 2013-GS-07-01231

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

APRIL 21, 2014

TRANSCRIPT OF PRETRIAL HEARING

BEAUFORT, SOUTH CAROLINA

MALCOLM BRABHAM

DEFENDANT

B E F O R E:

HON. ROGER M. YOUNG, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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EXHIBITS

No exhibits were admitted.

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1 BEGINNING 1:53 P.M.

2 BY THE COURT:

3 THE COURT: All right. Are you ready, Madam Court
4 Reporter?

5 COURT REPORTER: I am, your Honor.

6 THE COURT: All right. We are here on State versus
7 Brabham, and the jury panel, we're still waiting on
8 getting it.

9 MS. LEMPESIS: Yes, Judge.

10 THE COURT: But we're going to handle a *Jackson v*
11 *Denno* and a 404 issue while we're waiting on that.

12 It occurs to me, we could probably save a lot of
13 these jurors a little bit of time if we, rather than
14 have them bring the whole panel back, because I
15 understand they have a large one, let's just have them
16 draw, like, 40. You get five, you get five, and we only
17 need 12. That ought to be more than enough. Just have
18 them draw 40 names, and tell those folks to come back
19 from lunch.

20 It's all computer-generated. That's the way I do
21 it back home. I don't know, I assume you all are on the
22 same computer system. Because they're just going to
23 draw --

24 MS. CAMPBELL: Well, that would, then, I guess,
25 limit the number of jurors that go into the computer to

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1 be drawn out for my client's trial, and --

2 THE COURT: But they're only going to do X number
3 anyway. They're going to print out a list that you're
4 not going to get that I'm going to get. It's going to
5 have, like, 30 names.

6 MS. CAMPBELL: Um-hmm.

7 THE COURT: I put 40, because that would give us --
8 in case we have somebody that needs to be, you know, be
9 excused for cause. But --

10 MS. CAMPBELL: But I'm just not sure how we do that
11 before I voir dire the jury. I'm just not sure.

12 THE COURT: Well, you'd only be voir diring 40, as
13 opposed to a hundred or so that's left. You're only
14 going to get the first ones that are computer-generated
15 just out anyway. You could voir dire the entire panel
16 all day long, but you're still only going to get so many
17 names that spit out. We're just narrowing down the
18 panel.

19 MS. CAMPBELL: Right. And after that --

20 THE COURT: It's going to be done anyway.

21 MS. CAMPBELL: Right. I understand, but if I did
22 it that way, and then we voir dire those 40, and ten of
23 them we have to get rid of --

24 THE COURT: That still leaves us 30. And you get
25 five, she gets five. That's minus ten, and we would

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1 only need 12. So, even if we got two alternates, that
2 would still give us 18 if we're down to 30 that were
3 left over.

4 MS. CAMPBELL: If your Honor wants to handle it
5 that way, I would prefer not to handle it that way on
6 behalf of my client.

7 THE COURT: I'm just trying to figure out where we
8 would stick the entire panel that they have down there.
9 We have to use that jury room to draw a panel.

10 MS. CAMPBELL: I was under the impression that
11 that's what we were going to do anyway.

12 MS. LEMPESIS: That's what the plan was. I
13 certainly see -- understand your Honor's point. We
14 planned to just go in there and pick our jury once they
15 were done picking theirs.

16 THE COURT: Well, I thought, last I heard, they
17 were going to send those folks to lunch, and when they
18 came back from lunch, --

19 MS. LEMPESIS: They were going to bring them in
20 here.

21 THE COURT: -- then we would draw a jury. It's
22 2:00 o'clock, and they still haven't finished, so.

23 MS. LEMPESIS: I don't know if they -- Jody, do you
24 happen to know? Does the bailiff? Or do you know if
25 they plan to send them back, bring them back in here?

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1 BAILIFF: I don't -- I haven't heard anything about
2 coming back in here.

3 MS. LEMPESIS: Okay.

4 BAILIFF: We would only put about 55 in here, max.

5 MS. LEMPESIS: Um-hmm.

6 THE COURT: Let me see what Judge Cooper wants.
7 Just a minute.

8 MS. LEMPESIS: Thank you.

9 THE COURT LEAVES COURTROOM 1:56 P.M.

10 THE COURT RETURNS TO COURTROOM 1:58 P.M.

11 BAILIFF: Come to order, please.

12 THE COURT: Be seated. All right. Well, Judge
13 Cooper is -- they got finally qualified, but they still
14 haven't drawn a jury yet. And so, after they draw, I
15 mean, it's 2:00 o'clock now. They still need to have a
16 lunch break.

17 So, I'm just going to tell them to draw --
18 computer-generate a list of the first 40, and that'll be
19 our panel. And only those 40 have to come back after
20 lunch for drawing for this jury.

21 We do this all the time back home. Obviously, you
22 all don't do it here, because I'm getting a lot of crazy
23 looks. But, I mean, typically, like, say we start a
24 trial on Monday, and then later on in the week we need
25 to bring the panel back. They meet in the jury assembly

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1 room. We just tell the Clerk to bring 40 names up, and
2 we draw it from that. We don't draw it from the entire
3 panel.

4 It's computer-generated, so you're just getting the
5 same thing that you would have gotten if you had just
6 eliminated those other people, and they don't need to
7 come back. They wouldn't have needed to come back
8 anyway. Did you get all that?

9 COURT REPORTER: I did, your Honor.

10 THE COURT: All right. So, let's go ahead, then,
11 with our Jackson hearing and the voluntariness of the
12 statement.

13 MS. LEMPESIS: Your Honor, the State will call
14 Investigator Andrew Rice from the Beaufort County
15 Sheriff's Office to testify.

16 MADAM CLERK: Place your left hand on the Bible and
17 raise your right hand. Do you solemnly swear or affirm
18 that the testimony you give shall be the truth, so help
19 you God?

20 INVESTIGATOR ANDREW RICE: I do.

21 MADAM CLERK: Thank you. If you'll state your name
22 for the record, please, and spell it.

23 INVESTIGATOR ANDREW RICE: Andrew Rice, R/i/c/e.

24 INVESTIGATOR ANDREW RICE

25 DIRECT EXAMINATION BY MS. LEMPESIS:

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1 Q Investigator Rice, who do you work for?

2 A I work for the Beaufort County Sheriff's Office.

3 Q Okay. And just briefly, how long have you worked
4 for them?

5 A Since 2006.

6 Q Okay. And were you working in July of 2013?

7 A I was.

8 Q Okay. And more specifically, were you working on
9 July 15th of 2013?

10 A Yes, ma'am.

11 Q Okay. Were you assigned to an attempted murder
12 investigation?

13 A Yes, ma'am.

14 Q Okay. And did you have an occasion throughout your
15 investigation to determine who the suspect was in that
16 case?

17 A Yes, ma'am, I did.

18 Q And who was that?

19 A Malcolm Brabham.

20 Q Okay. And did you -- Investigator Rice, did you
21 have an occasion ever to speak to Malcolm Brabham?

22 A I did.

23 Q Okay. And when did you speak with Mr. Brabham?

24 A On July 16th, the next day, at Jackville Road,
25 which is Bluffton area of Beaufort, South Carolina.

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1 Q Okay. And at that point, Investigator Rice, was
2 Mr. Brabham under arrest for the charge of attempted
3 murder?

4 A Yes, ma'am, he was.

5 Q Okay. Tell me a little bit about how he came to be
6 arrested that morning.

7 A We were able to determine that he was there in the
8 area working for a company called Horry Well Water.
9 They were installing, I believe, a well or some type of
10 water service at a new residence, a new construction.

11 He was apprehended there by members of the Beaufort
12 County Sheriff's Office, specifically, our SWAT team.
13 And he was served -- or advised at that point he was
14 under arrest for the attempted murder.

15 Q Thank you. When you said he was advised that he
16 was under arrest for the attempted murder. Did you
17 place him under arrest and advise him of his *Miranda*
18 rights?

19 A I did.

20 Q Okay. Investigator Rice, what did you do to advise
21 him of his *Miranda* Rights? Specifically, how did you go
22 about advising him?

23 A I used the *Miranda* card that I keep with my in my
24 wallet, and verbally advised him. There was another
25 investigator that was working with me.

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1 Q Okay. Who was that other investigator?

2 A Master Sergeant Jeff Purdy.

3 Q Thank you. All right. And did you ask him any
4 questions before you advised him of his *Miranda Rights*?

5 A No, ma'am.

6 Q Okay. And you just testified you read from your
7 department-issued card?

8 A Yes, ma'am.

9 Q Okay. Do you have that card with you?

10 A I do.

11 Q Can you go ahead and just read the card to us.

12 A *You have the right to remain silent.*

13 *Anything you say can and will be used against*
14 *you in a court of law.*

15 *You have the right to have an attorney*
16 *present before or during questioning. If*
17 *you cannot afford an attorney, one will be*
18 *appointed for you before any questioning,*
19 *if you wish.*

20 *Do you understand each of these rights*
21 *as I have explained them to you?*

22 *Having these rights in mind, do you*
23 *want to talk to us now?*

24 Q Okay. And what was his response to that?

25 A Yes, that he would speak to us without an attorney

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1 present.

2 Q Okay. And Investigator Rice, were you able to tell
3 from speaking with Mr. Brabham whether or not he was
4 under the influence of any sort of alcohol or drugs?

5 A He didn't appear to be under the influence of
6 alcohol or drugs. Appeared to be in a -- in a right
7 mind.

8 Q Okay. Did he appear to have any trouble
9 understanding you?

10 A No, ma'am.

11 Q Okay. And so, you advised him of his rights, and
12 he agreed to speak with you. Did anyone with you or
13 around you that day threaten him or coerce him in any
14 way prior to him answering questions?

15 A No, ma'am.

16 Q Okay. And can you tell me now what he said to you
17 and what was asked of him.

18 A Basically, after being advised of the arrest
19 warrant, we asked what part he played, or if these
20 allegations were true against him, if he had shot his
21 brother-in-law. And of course, he denied shooting him,
22 saying that he had been with him; they had had an
23 argument, but he left him on the side of the road; that
24 he didn't shoot him; he didn't know who had shot him.

25 Q Okay. Did he say if anybody else was with them the

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1 night before?

2 A He did. He said there was girl. Her name's Elaine
3 Blake, that had been riding with them. Due to the
4 craziness going on, she'd gotten out of the car and
5 left, also.

6 Q Okay. Did he tell you -- did he tell you -- you
7 mentioned the craziness. Did he say anything specific
8 about any sort of setting about the shooting? Were they
9 arguing? What did he tell you?

10 A He said they had just been to an area over there.
11 Everybody refers to as the Hole, which is in the Lady's
12 Island area. Mr. Brabham wasn't as familiar with road
13 names or things like that. He's not actually from that
14 area.

15 He had been driving in his vehicle, a burgundy
16 Impala, Chevrolet Impala, with Chadwick Mitchell, or
17 Chad. And they had picked up Elaine from the Hole, this
18 place they called The Hole, and they were driving away
19 from there.

20 He described the area of Little Capers Road, kind
21 of near Holly Hall Road, and that they began arguing,
22 that Chad was making -- or the victim, Chad, was making
23 accusations against him, basically, that there was
24 something weird going on between him and Elaine, and
25 that they were arguing with each other.

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1 Elaine had gotten out of the car and walked away,
2 and he stated that they couldn't resolve the argument,
3 and that he booted Chad out of the car on the side of
4 the road and drove off, and that was the end of it.

5 Q Okay. Did he say anything else about what he did
6 after that?

7 A He stated that he went home that night;, went and
8 stayed in Ridgeland; and then later, went to work that
9 next day. And that was when we made contact with him.

10 Q Okay. And he said he'd gone home to Ridgeland.
11 Did you ask him anything about that?

12 A I did. I told him I didn't believe that he had
13 stayed in Ridgeland. I believe that contradicted what
14 we had seen that night -- I didn't go to Ridgeland to
15 the house where he was at. I had asked Jasper County
16 officers to -- to go there to try to make contact with
17 him, to find the vehicle, and they advised they didn't
18 make contact with him there and the vehicle wasn't
19 there, either.

20 At that point, he stated that he didn't stay in
21 Ridgeland; that he, in fact, had stayed in an area in
22 Bluffton off of Goethe Road.

23 Q Okay.

24 COURT REPORTER: Goody Road?

25 A Goethe Road, G/o/e/t/h/e.

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1 Q Thank you. Okay. And did he say anything else or
2 make any other statements during this questioning?

3 A No, ma'am. That was it.

4 Q Okay.

5 A Just denied the -- the shooting.

6 Q Okay. And did, at any point, he say he wanted to
7 stop talking, or how did the conversation end?

8 A He was pretty upset that he was being placed under
9 arrest for the attempted murder. At that point, we
10 decided to stop the questioning, and let him be
11 transported him to the Detention Center.

12 Q Okay. And was he standing -- where was he standing
13 when this interview was done? Was in the patrol car?
14 Outside the patrol car? Where?

15 A It was outside of there. I believe it was ■
16 Jackville Road.

17 Q Okay.

18 A Right there, outside.

19 Q All right. And I already asked you about any sort
20 of threats or coercion. Were any promises made to get
21 him to speak with you?

22 A No, ma'am.

23 MS. LEMPESIS: Okay. Nothing further from the
24 State at this point, your Honor.

25 INVESTIGATOR ANDREW RICE

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1 CROSS-EXAMINATION BY MS. CAMPBELL:

2 Q Officer Rice, do you have a copy of your incident
3 report that you generated, in reference to what you just
4 testified about?

5 A No, ma'am, I don't have a copy with me.

6 MS. CAMPBELL: May I approach, your Honor?

7 THE COURT: You may.

8 MS. CAMPBELL: Thank you.

9 BY MS. CAMPBELL:

10 Q Just maybe to refresh your recollection, would that
11 be your incident report?

12 A Yes, ma'am.

13 Q Relative to what you've just testified about,
14 correct?

15 A Yes, ma'am.

16 Q And if I may?

17 A Yes, ma'am.

18 Q This form that's in front of it, that's a computer-
19 generated entry of your details of your conversation
20 with Mr. Brabham. Is that correct?

21 A Yes, ma'am.

22 Q Okay. And the date that you put on the entry is
23 August 23, 2013. Is that correct?

24 A Yes, ma'am.

25 Q Okay. And you indicated that you spoke with Mr.

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1 Brabham on July?

2 A 16th.

3 Q 16th. And then, you wrote your report August 23rd?

4 A Yes, ma'am.

5 Q 2013?

6 A Yes, ma'am. Well, that's when it was submitted,
7 yes, ma'am.

8 Q Over a month later.

9 A Yes, ma'am.

10 Q Okay. Now, to clarify, there is no audio or video
11 of this questioning of Mr. Brabham, correct?

12 A No, ma'am.

13 Q Okay. And did you have a little note pad there
14 that you may have put down his answers on when you were
15 questioning him?

16 A I didn't jot any notes down while we were there.
17 It was a pretty brief conversation. I was preparing, I
18 believe, for a longer interview that would have been
19 recorded at the office, but was unable to do that. And
20 when I get back, I keep a -- I typed it into the system,
21 and then submit everything at once, at the end of the --
22 the investigation, or the end of that period of the
23 innvestigation.

24 Q Okay. And so, on this particular incident date,
25 when you were talking with Mr. Brabham, you took no

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1 handwritten notes, correct?

2 A No, ma'am.

3 Q Okay. You relied on your memory to jot down at
4 some later date what exactly Mr. Brabham had said to
5 you, correct?

6 A Yes, ma'am. I would have typed it up that
7 afternoon.

8 Q And when you say you would have typed it up that
9 afternoon, then, what is the date 8-23-2013 indicate?

10 A That's when --

11 Q Why is the entry date for this report a month
12 later?

13 A I keep a typed Microsoft Word document of my notes.
14 And then, that form is copied and pasted into the
15 Sheriff's Office report system, and that's the date that
16 it ultimately was submitted for review, the August 23rd
17 date.

18 Q So, it's your testimony here today that you left
19 Jackville Road, went back to the Sheriff's Department,
20 typed up this report, and it sat in a Word document on
21 your computer for a month before you submitted it into
22 the case file, correct?

23 A Yes, ma'am.

24 Q Okay. So, you didn't actually wait over a month to
25 write down what your conversation was with Mr. Brabham.

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1 A No, ma'am.

2 Q Okay. You indicated that there was no audio or
3 video, and that Officer Purdy was there. Was he also
4 present when you questioned Mr. Brabham?

5 A Yes, ma'am.

6 Q Okay. But Officer Purdy submitted no report,
7 correct?

8 A No, ma'am.

9 Q Okay. So, was this more of a question-and-answer
10 session, or a monologue?

11 A It was a --

12 Q By Mr. Brabham.

13 A It was a question-and-answer session. Very brief.
14 I was just trying to get his side of the story.

15 Q Okay. So, we don't know the questions that you
16 asked Mr. Brabham. Would that be fair?

17 A Yes, ma'am.

18 Q Okay. Because they're not in the report. So, we
19 don't know how you characterized your questions,
20 correct?

21 A Yes, ma'am, besides what I -- how I tell you it is.

22 Q All we have in the report -- all we have in this
23 report is your recollection of what you believe Mr.
24 Brabham told you. Is that correct?

25 A Yes, ma'am.

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1 Q Okay. Mr. Brabham was handcuffed on the side of
2 the road. Is that correct?

3 A Yes, ma'am.

4 Q The SWAT team was there, correct?

5 A During that time, they weren't. They were just
6 used to effect the arrest.

7 Q Okay. And the patrol units that were there, do
8 they have the cameras in them, and the audio and video
9 within those automobiles, the Sheriff's cars?

10 A There were -- there was one vehicle there with a
11 camera system that didn't capture any audio.

12 Q But you could've, but you didn't, correct?

13 A We would've attempted to, yes, but it -- we didn't.

14 Q And the reason that you decided not to formally
15 question Mr. Brabham is because he told you he didn't do
16 it, right?

17 A That, and he was pretty upset with being placed
18 under arrest for the attempted murder. And based on his
19 actions and his -- the way he was acting, that he didn't
20 want to conduct an interview later on. It would have
21 taken an hour drive to the office to sit down and have a
22 recorded interview.

23 MS. CAMPBELL: That's all I have. Thank you.

24 THE COURT: Re-direct?

25 MS. LEMPESIS: No re-direct, your Honor.

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1 BY THE COURT:

2 THE COURT: You may step down.

3 A Thank you.

4 THE COURT: Do you have another witness?

5 MS. LEMPESIS: That is it. Those are all the
6 witnesses for the State for this hearing.

7 THE COURT: Do you have anything?

8 ARGUMENT ON BEHALF OF DEFENDANT

9 BY MS. CAMPBELL:

10 MS. CAMPBELL: Your Honor, the only argument that I
11 would have for the Court at this point is that, under
12 *State v. Nelson*, that only those portions of my client's
13 statement that are relevant and material to the crime
14 that he's indicted for now should be admitted into
15 evidence. And under that standard, I would submit to
16 you that the portions of his statement that he did not
17 shoot his brother-in-law; that he and Mr. Mitchell had
18 been together earlier in the burgundy Impala; that they
19 were with Elaine Blake; and that Mr. Brabham, you know,
20 put Mr. Mitchell out of his car, would be material and
21 relevant to what the statements prove in this case.

22 Any portions of the statement relevant to any past
23 disagreements between the two of them would not be,
24 speaking, you know, further back than this one incident.

25 And so, under the *State v. Nelson* case, I would

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1 contend that those portions of any statement would not
2 be admissible. Thank you, your Honor.

3 THE COURT: Do you want to be heard?

4 ARGUMENT ON BEHALF OF THE STATE

5 BY MS. LEMPESIS:

6 MS. LEMPESIS: Judge, we just -- Investigator Rice
7 didn't testify about any of Mr. Brabham's statements
8 about the prior instances between he and his brother-in-
9 law, the victim, Chadwick Mitchell. We won't be
10 eliciting anything more than what he testified to today.

11 So, in reference to -- I guess Mr. Campbell's
12 referring to the part where he, in his statement,
13 Investigator Rice's report, he said that Mr. Brabham
14 referenced their prior difficulties. We won't be
15 getting into that, unless your Honor rules otherwise, in
16 reference to our 404(b) motion.

17 THE COURT: Okay. Well, it's clearly a voluntary
18 statement. There's no over-handedness, suggestiveness,
19 indicia of him not knowing what he was doing when he
20 made the statement. Alcohol, education, you didn't get
21 into that, but I didn't hear anything to suggest that it
22 was anything other than a voluntary statement.

23 So, I find the statement itself is admissible. As
24 to what parts go in, it doesn't sound like you all are
25 trying to get into the parts about past disagreement or

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1 prior bad acts, anything like that. So, it sounds like
2 we have an agreement.

3 If the State needs to put it in, it'll be -- or
4 anybody wants to use it, it'll be equal parts about
5 where he denies that he shot the victim; that he had
6 been with him earlier in the evening; and he left him by
7 the side of the road. Okay?

8 MS. CAMPBELL: Thank you, your Honor.

9 THE COURT: Now, you all wanted to go over some
10 prior convictions on the defendant, as well as other
11 witnesses?

12 MS. CAMPBELL: I think at this point, we're just
13 asking to review the State lay witnesses and their
14 record. As far as my client's record, I think that
15 might be a separate issue.

16 THE COURT: Okay. Do you have --

17 MS. LEMPESIS: Yeah.

18 THE COURT: -- witnesses with prior convictions?

19 MS. LEMPESIS: We do, your Honor. One witness is
20 Ms. Elaine Blake, and she is on -- she is the woman
21 who's referenced just in Investigator Rice's statement.
22 She was with Mr. Brabham and Mr. Mitchell, so we will be
23 calling her as a witness.

24 THE COURT: Um-hmm.

25 MS. LEMPESIS: Her prior convictions are from 2008,

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1 an assault and battery third degree; from 2009, a
2 shoplifting charge; from 2013, a simple possession of
3 marijuana and giving false information to the police.
4 And then, in 2014, two failures to appear.

5 THE COURT: Wait a minute. Simple possession of
6 marijuana; false information to police?

7 MS. LEMPESIS: That's correct. And then, 2014 --

8 THE COURT: When was that?

9 MS. LEMPESIS: That was in 2013, Judge.

10 THE COURT: Okay.

11 MS. LEMPESIS: 2014, she was convicted for failure
12 to appear in Magistrate Court.

13 THE COURT: Which of those did you feel like you
14 wanted to get into?

15 MS. LEMPESIS: I think -- oh, I'm sorry.

16 THE COURT: These would be things you wanted to.

17 MS. CAMPBELL: Well, your Honor, I like what Elaine
18 Blake has to say, so I'm not sure that I would
19 necessarily impeach her.

20 THE COURT: Um-hmm.

21 MS. CAMPBELL: But should I need to, I believe that
22 the false information would be a crime that I could get
23 into with her.

24 THE COURT: I would be kind of inclined to agree
25 with you.

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1 MS. CAMPBELL: Okay. And the shoplifting, as well.
2 I'm not --

3 THE COURT: That's a POE, so it's up to ten years.

4 MS. LEMPESIS: No, it was just a magistrate level.

5 THE COURT: A simple shoplifting?

6 MS. LEMPESIS: Yes.

7 THE COURT: I don't think we --

8 MS. CAMPBELL: What?

9 THE COURT: Let's see. Let me look at it.

10 MS. CAMPBELL: Okay.

11 THE COURT: I always like to look at them again
12 before I start pontificating. It might be, let's see,
13 609(a) (1).

14 MS. CAMPBELL: I'm trying to find it here.

15 THE COURT: It wouldn't come in under (a) (1),
16 because it's only a 30-day offense. 609(a) (2):

17 *Evidence that witness has been convicted*
18 *of a crime shall be admitted if it involves*
19 *dishonesty or false statement, regardless of*
20 *the punishment.*

21 So, that would be stealing.

22 MS. CAMPBELL: I believe so.

23 THE COURT: Do you agree that that would come in?

24 MS. LEMPESIS: I do.

25 THE COURT: Okay. So, those two come in.

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1 MS. CAMPBELL: Clearly, the (a) and (b) third, the
2 simple possession of marijuana, and I don't even know
3 what the failure to appear was, I don't believe that
4 those would be permissible for impeachment, and that's
5 all I heard. (a) and (b) third, shoplifting, false
6 information, simple possession of marijuana, and failure
7 to appear. Is that correct?

8 THE COURT: So, you would want to, perhaps, use the
9 shoplifting and the false information?

10 MS. CAMPBELL: Correct.

11 THE COURT: Just those two?

12 MS. CAMPBELL: Correct.

13 THE COURT: Okay. Does that work for you?

14 MS. LEMPESIS: I agree.

15 THE COURT: All right. How about another witness?

16 MS. LEMPESIS: Cedric Wilson is listed on our
17 witness list. He was -- in all candor, we haven't been
18 able to locate him, and we have a subpoena that's out
19 there trying to be served on him. So, I'm not sure if
20 we'll be calling him as a witness or not.

21 But if, in the event he did testify, he has, from
22 2005 a grand larceny conviction, and two convictions for
23 burglary, second degree.

24 THE COURT: When?

25 MS. LEMPESIS: That was 2005.

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1 THE COURT: As well?

2 MS. LEMPESIS: Yes, sir.

3 THE COURT: Okay.

4 MS. LEMPESIS: And then, 2013, he has a DUI first
5 and a driving under suspension. And then, 2014, he
6 had a burglary in the third degree and a grand larceny.
7 So.

8 THE COURT: Well, let's wait and see if we catch
9 him before we go through those.

10 MS. LEMPESIS: Thank you, your Honor.

11 THE COURT: Or track him down, should I say?

12 MS. LEMPESIS: That leaves Reah Gonsalves. That's
13 G/o/n/s/a/l/v/e/s, Madam Court Reporter. She is a
14 witness we will be calling. And she, Judge, has a prior
15 conviction for breach of trust. It's a magistrate-level
16 offense from 2008.

17 THE COURT: Do you know anything about it?

18 MS. LEMPESIS: I don't, Judge. I do know that it
19 was in Magistrate Court, in Bluffton Magistrate's Court.

20 THE COURT: And when was that?

21 MS. LEMPESIS: In 2008.

22 MS. CAMPBELL: I do believe that would fall under
23 the 609(a)(2), your Honor, and would ask to be able to
24 impeach her, should I choose to do so with that
25 conviction.

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1 THE COURT: What are your thoughts on it?

2 MS. LEMPESIS: I agree. I think breach of trust
3 clearly falls under that exception -- or that rule.

4 THE COURT: Okay.

5 MS. LEMPESIS: Okay. Judge, then moving on to the
6 victim in the case, Mr. Chadwick Mitchell, he has a
7 prior conviction of, in 2008, an unlawful carrying
8 charge, Judge. And then, in two thousand and --

9 THE COURT: Is that '08? I'm sorry, the door was
10 closing.

11 MS. LEMPESIS: Yes. And that was 2008. That's an
12 unlawful carrying of a pistol.

13 THE COURT: Um-hmm.

14 MS. LEMPESIS: And then, in 2004, so going
15 backwards, 2004, he was convicted of assault and battery
16 of a high and aggravated nature. That was when it was
17 the ten-year misdemeanor. He pled guilty on August
18 28th, of 2004, to that charge.

19 THE COURT: What are your thoughts on those coming
20 in?

21 MS. CAMPBELL: Well, your Honor, I'd like to be
22 able to impeach Mr. Mitchell with both of those
23 convictions. I believe that they fall under what's
24 permissible for me in reference to the criteria under
25 609(a)(1), and particularly for the ABHAN.

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1 And then, the unlawful carrying, the rap sheet that
2 I have, it's hard to tell, and I could be wrong, you
3 know, whether -- there's several gun charges, I guess.
4 One -- one is -- carries a year. Another one carries up
5 to five.

6 MS. LEMPESIS: I can shed some light on that,
7 Judge. I've got a copy of his sentencing sheet to which
8 he pled guilty to unlawful carrying, and was sentenced
9 to one year, suspended to the service of time served.
10 And he was not placed on probation. It was the --

11 THE COURT: What's the State's position on these?

12 MS. LEMPESIS: Judge, I think that, under the rule,
13 the unlawful carrying does not come in. It's not a --
14 it doesn't -- it's not a crime of dishonesty, first of
15 all. But also, it is not one that carries an excess of
16 one year. So, I do not think that, under Rule 609,
17 either (a) or (b), that it comes in under either one of
18 those.

19 THE COURT: It doesn't sound like it was a -- the
20 five-year one. Unless you can narrow that one down, or
21 figure out something one way or the other, it's off the
22 table, just because the rule says it has to be
23 punishable by imprisonment in excess of one year.

24 MS. CAMPBELL: Correct. And it carries up to one
25 year.

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1 THE COURT: Yes, so.

2 MS. LEMPESIS: And I do have a copy of the
3 indictment from that case, as well, and it was an
4 indictment for unlawful carrying of a pistol, under 16-
5 23-20.

6 THE COURT: Okay.

7 MS. LEMPESIS: So, it's the one-year.

8 THE COURT: All right. So, that one's off. So,
9 then the ABHAN, what's your, State's position, on ABHAN?

10 MS. LEMPESIS: Judge, we would ask that the ABHAN
11 not be allowed in. It is an August 24th -- August 24th,
12 2004 conviction, so we are right at the ten-year mark.
13 It was, at the time, a misdemeanor offense, and it was
14 almost just shy of ten years ago.

15 I would not -- I think it's also not necessarily a
16 crime of dishonesty that would be admitted under that
17 subsection of the rule. And so, because it is -- would
18 be so prejudicial in letting the jury hear that he has
19 this prior conviction, we would ask that it be excluded.

20 It is just, as I said, just on the cusp of that
21 ten-year mark, and it would be highly prejudicial to the
22 jury if they heard he was convicted of an assault and
23 battery of a high and aggravated nature.

24 Your Honor, if it were allowed in, we'd ask that it
25 be -- that perhaps the Defense be limited to asking just

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1 whether or not he's been convicted of a misdemeanor, not
2 being allowed to mention the actual charge. Or perhaps
3 we could clarify that it was a misdemeanor offense at
4 the time.

5 Assault and battery of a high and aggravated nature
6 now, under the revised laws, carries, you know, it's a
7 felony, and it carries more time. And so, I worry that
8 the jury would be improperly influenced by mention of
9 that charge.

10 MS. CAMPBELL: And your Honor, our position is, it
11 would be error to deny my client the right to impeach
12 Mr. Mitchell, with what, clearly, he has the right to
13 impeach him with under our *Rules of Evidence*. As the
14 Solicitor said, 609(a)(1) is within Mr. Brabham's rights
15 under the rules to effect impeachment, should we choose
16 to do that, with the ABHAN conviction from 2004. And
17 we'd ask to be able to do so, with the caveat, --

18 THE COURT: What's the probative value of showing
19 the conviction?

20 MS. CAMPBELL: Mr. Mitchell, you know, makes an
21 assertion in his statements to law enforcement that
22 there was this ongoing argument that evening that was
23 very heated. And, you know, it brings into question
24 what Mr. Mitchell's role as far as his temperament may
25 have been that evening with whomever he was arguing

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1 with. And I believe the fact that he has a conviction
2 for assaulting and beating someone previously bears
3 probatively on his temperament that night.

4 THE COURT: The probative issues that 609 goes to
5 is character, specifically credibility. In other words,
6 we should believe him or not because of his past
7 criminal record.

8 MS. CAMPBELL: Correct. And if he --

9 THE COURT: Not his temperament.

10 MS. CAMPBELL: Right. Well, and -- but if he has a
11 -- if there's a tendency, or as I would assert there
12 would be, to minimize any of his involvement with the
13 proceedings that evening, then I think it is probative,
14 probative as the rule requires it to be, not necessary
15 just for temperament.

16 THE COURT: Well, herein lies -- Okay. I would let
17 it come in, I would tell the jury that they're only to
18 be consider it for credibility, that is, whether or not
19 the witness is telling the truth. You're not going to
20 be allowed to argue that, see, this is evidence that
21 he's got a bad temper. That's specifically not allowed.

22 MS. CAMPBELL: Yes, sir.

23 THE COURT: For the use of the rule.

24 MS. CAMPBELL: I understand.

25 THE COURT: You could say, you can believe him or

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1 not, but I'll tell you he's a convicted felon. All
2 right?

3 MS. LEMPESIS: Well, Judge, he's not a convicted --

4 THE COURT: Or, not a convicted felon.

5 MS. CAMPBELL: Right.

6 THE COURT: But he's been convicted of a crime that
7 carries a punishment of more than one year in prison.

8 MS. CAMPBELL: Thank you. I'll limit myself, yes,
9 sir.

10 THE COURT: Okay?

11 MS. LEMPESIS: And Judge, could we ask if we can --
12 if the State can ask whether or not it was a misdemeanor
13 or a felony?

14 THE COURT: If you'll jog my memory, I'll do my
15 best to do that; tell them that it was a misdemeanor,
16 but the rules say it's in excess of one year.

17 MS. LEMPESIS: Okay.

18 THE COURT: And at the time, while it was in
19 excess, and you can get up to ten years, it was only a
20 misdemeanor. Or I will just say it was a misdemeanor at
21 the time.

22 MS. LEMPESIS: Okay. So, you will address that,
23 and I will -- okay. Thank you.

24 I was going through Chadwick Mitchell's prior
25 record. There are other charges on there that Ms.

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1 Campbell has a copy of his rap sheet. There's
2 trespassing. There's public disorderly conduct.
3 There's nothing that would -- that would be impeachable,
4 so I didn't list those out for your Honor.

5 MS. CAMPBELL: Mr. Mitchell's prior --

6 THE COURT: So, the one thing that you want to try
7 to get in is the pointing and presenting a firearm, that
8 was a conviction in '09?

9 MS. LEMPESIS: Oh, I'm sorry. This is in
10 reference, still, to the victim.

11 THE COURT: And what is your basis for getting that
12 in?

13 MS. LEMPESIS: Well, I was just -- I was speaking
14 just now regarding the victim's prior record.

15 THE COURT: Oh.

16 MS. LEMPESIS: As far as he has convictions for
17 public disorderly conduct and trespassing, which I did
18 not mention.

19 THE COURT: Well, those are all 30 days.

20 MS. LEMPESIS: Thank you. I just wanted to make
21 sure I was very clear for the record.

22 THE COURT: Okay.

23 MS. CAMPBELL: Right. And for the record, I have a
24 copy of Mr. Mitchell's rap sheet provided to me by the
25 State. And all the other convictions on Mr. Mitchell's

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1 record reflect magistrate-level convictions.

2 THE COURT: And you agree --

3 MS. CAMPBELL: They are not probative of honesty or
4 dishonesty, under 609(a)(2).

5 THE COURT: Okay.

6 MS. LEMPESIS: Okay. So, Judge, now moving on to
7 Mr. Brabham's prior record, as we've discussed, he was
8 convicted. In 2009 is when he actually pled guilty.
9 The incident occurred in 2007. He pled guilty on June
10 25th of 2009, to pointing and presenting a firearm. And
11 Judge, I handed you our memo regarding admission of this
12 prior conviction under 404(b).

13 The State would ask that we be able to introduce
14 evidence of this prior conviction. The pointing and
15 presenting charge involved Chadwick Mitchell, the same
16 victim. It was in 2007 that the actual incident
17 occurred. It was an argument regarding Mr. Mitchell's
18 sister, who was involved in a relationship with Mr.
19 Brabham. And Mr. Brabham came to their home on Lady's
20 Island and pulled a gun and threatened to put Mr.
21 Mitchell in his grave, and fired off a shot, one shot,
22 that hit the ground next to Mr. Mitchell, who then got
23 into his car and fled. He was not arrested for some
24 time later, and as I've mentioned, he pled guilty in
25 2009 to the charge.

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1 We think, Judge, that it would fall under 404(b),
2 allowing in prior bad acts to show his motive and
3 intent. Also, while we understand --

4 THE COURT: How does it go to show motive?

5 MS. LEMPESIS: Judge, he has said in the past in
6 the prior incidents, he said:

7 *I'm going to put you in his grave.*

8 They have these prior difficulties between the two
9 of each other, and it establishes his motive is to harm
10 Mr. Mitchell. He's tried to harm him in the past, and
11 this time he did shoot, and left Mr. Mitchell on the
12 side of the road for dead, for all intents and purposes.

13 So, we think it goes to show his motive of intent by
14 linking his prior actions of threatening to kill him,
15 and then this current incident of shooting him.

16 We think it also --

17 THE COURT: Well, as I understand the Defense,
18 they're saying he didn't shoot him. We let him out by
19 the side of the road. So, motive and intent really
20 isn't at issue here.

21 MS. LEMPESIS: Well, and Judge, I think it also
22 goes to show his identity, because he's saying -- and
23 that's one of the exceptions, as you know -- he's saying
24 that it wasn't me. And Mr. Mitchell is the only witness
25 to this incident. There was Ms. Elaine Blake, who puts

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1 them both together in the car during the previous
2 argument, and Ms. Blake will likely testify that they --

3 THE COURT: You're not going to seriously argue
4 there's confusion over who shot him.

5 MS. LEMPESIS: Well, if he's saying it wasn't --

6 THE COURT: It's his brother-in-law, or some form
7 of brother-in-law.

8 MS. LEMPESIS: Mr. Mitchell has never been confused
9 about who shot him, but Mr. Brabham is saying, *I didn't*
10 *shoot him.*

11 THE COURT: Okay. So.

12 MS. LEMPESIS: So, I think it would somewhat go
13 under identity. Obviously, it's clear and convincing
14 evidence; he does have a prior conviction for it; so
15 we've satisfied that standard. We're not just talking
16 about mere accusations here. And it's connected legally
17 because of the same victim. And so, Judge, we think
18 that it could possibly fall under those -- one of those
19 exceptions, under 404(b).

20 THE COURT: Okay. Which one is that?

21 MS. CAMPBELL: May it please the Court, your Honor.
22 I've provided your Honor with *United States of America*
23 *versus McBride*. It's a 4th Circuit case that I feel is
24 controlling.

25 There is a lineage of cases, as your Honor is

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1 familiar, that are CSC cases that deal with bad acts.
2 This is really not the realm that we're in. This is
3 more akin to the *McBride* case, where you have a
4 defendant on trial for a certain crime, and then the
5 State seeking to introduce some previous conduct that's
6 of some similar nature, and that is classic propensity
7 improper character evidence.

8 If you look on Page 14 in the *McBride* case, and
9 then on Page 16 in the *McBride* case, we're given the
10 four-prong test. And in that case, they found, you
11 know, clearly, the State did not meet their burden
12 there. This is not one of those exceptions that the
13 Solicitor's tried to carve out. Nothing that the State
14 has said can stand up to scrutiny when it comes to this
15 being improper character evidence against my client.

16 This, in particular, I think it's on Page 16, or
17 maybe 22 of that case, this is too remote. There's no
18 connectivity in this case. And we'd argue that it would
19 be error to admit the prior conviction of pointing and
20 presenting a firearm in the cases -- excuse me -- in the
21 State's case-in-chief.

22 Now, I'm not saying it couldn't be the subject of,
23 you know, impeachment should he testify. I mean, that
24 might be a whole 'nother argument, but that's not what I
25 believe we're really arguing about at this point.

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1 THE COURT: Were you trying to get it in for
2 something other than as impeachment?

3 MS. CAMPBELL: You know, I mean -- she was --

4 MS. LEMPESIS: You were trying to put it in your
5 case-in-chief?

6 MS. LEMPESIS: I was, yes.

7 MS. CAMPBELL: Yes.

8 MS. LEMPESIS: That's what I'm moving to do.

9 MS. CAMPBELL: She wants to put this in, in her
10 case, and it's inadmissible.

11 MS. LEMPESIS: Under the 404(b) is what I'm moving
12 in my motion to try to admit it.

13 MS. CAMPBELL: Without my client ever taking the
14 stand.

15 THE COURT: Okay. Go ahead.

16 MS. CAMPBELL: So, your Honor, just to sum it up,
17 we stand by the McBride case. We feel it's propensity
18 evidence. It's improper character evidence, and we
19 believe it would be error for the Court to allow the
20 State to do that. Thank you.

21 THE COURT: Well, I don't see common scheme or
22 plan, or absence of mistake or accident being arguments
23 that can be made, or have a chance of applying that.
24 There's really no evidence, based on what I have heard
25 to this point, that there was an accidental shooting.

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1 Common scheme or plan, that five years in between events
2 really just makes the temporal element too tenuous.

3 So, it really, then, boils down -- and identity is
4 not a legitimate argument. This was his brother-in-law,
5 and they'd known each other for years. He knew who it
6 was, and he wasn't confused that it might have been
7 somebody else. And in any event, why would somebody
8 shooting you five years before go to show that it was
9 the same person? So, it really boils down to does it go
10 to motive or does it go to intent?

11 And I guess the argument would be on motive is, as
12 I understand it, the prior conviction was, the victim --
13 same shooter, same victim, and the victim said, well,
14 five years ago, I was giving him a hard time because he
15 was running around on my sister, and so he shot at me.
16 And now, five years later, I was giving him a hard time
17 because he was running around with another woman on my
18 sister, and so he shot me. Is that, in essence, what
19 we're talking about?

20 MS. LEMPESIS: Yes, that would be -- yes. And five
21 years ago, they were arguing about his sister, and he
22 shot at him.

23 THE COURT: Okay. So, --

24 MS. LEMPESIS: And then, fast-forward to the
25 present day, and he's shooting at him about his sister.

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1 THE COURT: Well, I'm just trying to think how --
2 well, you know, if the victim's going to testify that he
3 shot me because, on this date, on this charge, I was
4 giving him a hard time about running around on my
5 sister, that's why he shot me, that is evidence. That's
6 a motive. Goes to show his intent and why he shot him.

7 I struggle with how the proof of the thing five --
8 the same thing five years before, but it's the same
9 argument, the same motive, from the victim's standpoint.
10 The danger is, is that the jury would make it, like,
11 more likely to say, well, he did it once before, so he's
12 more likely to do it again. And I, you know, if the
13 five years in between is just the part that I struggle
14 with is, how -- is what the jury might confuse what it's
15 being offered for, with what it might use it for.

16 And in this case, motive isn't -- there isn't
17 really a confusion about the motive. The defendant said
18 he wasn't there; didn't shoot him. So, it doesn't --
19 the danger would be not that you're using it to show
20 motive, because your motive is the exact same thing, but
21 that you go, oh, it's more likely that he did it. He's
22 denying it now, but because he did this same thing five
23 years ago, it's more likely that he did this same thing
24 five years later. And that's really not going to
25 motive, that's just going to show -- that's going to

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1 show what's expressly prohibited by 404(b), and that is,
2 to prove the character of a person in order to show that
3 they acted in conformity with that. So, I will deny
4 that evidence from coming in.

5 MS. LEMPESIS: And Judge, just so I'm clear that is
6 -- so, we can't put it in our case-in-chief, but if Mr.
7 Brabham were to testify, we would want to use that part
8 of his conviction, obviously, to impeach him. It would
9 -- it's a charge that carries more than a year. It
10 carries up to five years.

11 THE COURT: Well, again, I'd have to do a 403
12 analysis and get back to the exact same thing, and that
13 is the weighing the -- does the probative value of
14 showing that he's a person of very bad character, a
15 convicted felon, in other words, is it outweighed by the
16 prejudicial effect of going, see, he's really a bad guy
17 and he did it before, so you've got to use that against
18 him; you can use that against him.

19 MS. LEMPESIS: I would ask that, if he were to
20 testify, if Mr. Brabham were to testify, we could just
21 -- we don't have to get into the specifics of the prior
22 charge.

23 THE COURT: If you are willing to limit it to,
24 isn't it true that you were convicted of pointing and
25 presenting a firearm back in '09, without getting into

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1 anything other -- anything specific about it, in other
2 words, who the victim was, or what the circumstances
3 were, that would be the first hoop I'd have to get you
4 through. Would you be willing to do that? You've got
5 to verbalize that out loud.

6 MS. LEMPESIS: Yeah, I'm sorry, Judge. Yeah. Yes,
7 we would be willing to do that.

8 THE COURT: What are your thoughts on that?

9 MS. CAMPBELL: Well, my thoughts on it, I believe
10 it's premature.

11 THE COURT: You liked me better when I was willing
12 to hold it out, right?

13 MS. CAMPBELL: Yeah. It's premature. I'd like to
14 argue that, should we decide to put my client up.

15 THE COURT: Well, let me give that a little bit of
16 thought overnight.

17 MS. CAMPBELL: Okay.

18 THE COURT: But that's where I'm headed towards is,
19 it's not exactly splitting the hair, but that would give
20 them the ability to get in that he's got a prior
21 conviction of a felony, --

22 MS. CAMPBELL: Um-hmm.

23 THE COURT: -- and that goes to his propensity to
24 tell the truth or not, to the extent that that is
25 allowed by the law.

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1 But it definitely does not come in for 404
2 purposes. So, if it were to come in under 609, it would
3 definitely be limited to just the fact that he had the
4 prior conviction.

5 MS. CAMPBELL: Right. I mean, obviously, that --
6 I mean, the second prong of the balancing test is where,
7 you know, I would be focusing, the probative value. The
8 prejudicial effect far outweighs the probative value,
9 particularly -- I mean, this is a case where he's
10 accused of shooting a man, and then, to put in evidence
11 that he's got a conviction for pointing and presenting a
12 firearm would be highly prejudicial, unfair to the
13 defendant, and the probative value is not, you know, so
14 significant that it outweighs the prejudicial effect to
15 Mr. Brabham. Thank you.

16 THE COURT: Okay. Well, I'll give that -- I'll
17 sleep on that one. All right. What else do we need to
18 deal with?

19 MS. LEMPESIS: That's everything from the State,
20 your Honor.

21 MS. CAMPBELL: The only final thing I would ask,
22 your Honor, is that the witnesses be sequestered in this
23 case. There are a number of family members and things
24 of that nature that, you know, may be called to testify.

25 MS. LEMPESIS: We would just --

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1 THE COURT: Are they bringing back the whole panel
2 at 3:30, or just 40?

3 BAILIFF: I asked about that, and Bob said he
4 didn't -- he wasn't even paying attention or didn't
5 know. I'll go find out.

6 THE COURT: So, they got the whole panel back?

7 BAILIFF: I will go find out.

8 THE COURT: Okay. Well, 3:30, they're going to be
9 back with either a full panel or partial panel, and
10 we'll draw from that.

11 MS. LEMPESIS: Judge, as to the sequestration of
12 the witnesses, if we could just -- we would ask that
13 Investigator Rice be allowed to stay, and also the
14 victim, Mr. Mitchell, be allowed to stay.

15 THE COURT: I generally let your chief
16 investigating officer and the victim stay in.

17 MS. LEMPESIS: Thank you, your Honor.

18 THE COURT: All right. Does the State have any
19 voir dire?

20 MS. LEMPESIS: We do not, Judge.

21 THE COURT: Okay. Ms. Campbell, I don't usually
22 say you work for the Public Defender's Office, unless
23 you want.

24 MS. CAMPBELL: I'm happy to --

25 THE COURT: I'll usually just say --

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1 MS. CAMPBELL: I'm happy to -- I'm happy to say
2 that.

3 THE COURT: Well, that's fine, too. I just -- it's
4 up to you.

5 MS. CAMPBELL: I know, yeah.

6 THE COURT: It's up to you.

7 MS. CAMPBELL: I usually, when I introduce myself,
8 I do say that. I then, I -- if it's a -- I mean, I know
9 most of the other members of the Public Defender's
10 Office, you know, many of them live here in town, and do
11 have associations. And I usually list my investigators,
12 because they also have associations with the community.

13 THE COURT: Okay. Do you have the indictment?

14 MS. LEMPESIS: I do, your Honor.

15 THE COURT: And I also usually just tell the jury
16 that your client has pled not guilty. Do you all want
17 him to stand up and plead not guilty and have me arraign
18 him? In other words --

19 MS. CAMPBELL: Oh, no. No, that's fine, your
20 Honor.

21 THE COURT: Okay. All right. Well, let's
22 reconvene back at 3:30, then.

23 MS. CAMPBELL: In Courtroom 1, your Honor?

24 THE COURT: That's what time they told the jury
25 panel to be back.

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1 MS. LEMPESIS: I think they're finding out right
2 now.

3 THE COURT: I imagine that what we'll do today is
4 draw a jury, and then break for the day, and start at
5 9:30 tomorrow morning.

6 MS. CAMPBELL: Yes, sir.

7 THE COURT: If that suits everybody, since we're
8 too late to start.

9 MS. LEMPESIS: Thank you, your Honor.

10 MS. CAMPBELL: Thank you, your Honor.

11 BAILIFF: All rise.

END PROCEEDING 2:55 P.M.

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CERTIFICATE OF REPORTER

APRIL 21, 2014 TRANSCRIPT OF PRETRIAL HEARING

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing April 21, 2014 Transcript of Pretrial Hearing is a true, accurate, and complete record of the proceedings had on said date in the case of State of South Carolina versus Malcolm Brabham, Beaufort County, South Carolina, Court of General Sessions, Case Numbers 2013-GS-07-01230 and 2013-GS-07-01231; that no exhibits were admitted.

I further certify that I am of neither kin, counsel, nor interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature July 11, 2014.


Wanda H. Rowe, CVR-M
Official Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NUMBERS 2013-GS-07-01230 & 2013-GS-07-01231

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

APRIL 21, 22, & 23, 2014

TRANSCRIPT OF TRIAL

BEAUFORT, SOUTH CAROLINA

MALCOLM BRABHAM

DEFENDANT

B E F O R E:

HON. ROGER M. YOUNG, JUDGE

AND A JURY

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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1 BEGIN DAY ONE, MONDAY, APRIL 21,
2 2014, 3:43 P.M.
3 JUROR ROLL CALL, BY MADAM CLERK:
4 THE COURT: Do a little roll call there, and see
5 who we're missing.
6 MADAM CLERK: Okay. Juror 479?
7 JUROR NUMBER 479: Here.
8 MADAM CLERK: Juror 257?
9 JUROR NUMBER 257: Here.
10 MADAM CLERK: 126?
11 JUROR NUMBER 126: Here.
12 MADAM CLERK: 33?
13 JUROR NUMBER 33: Here.
14 MADAM CLERK: 382?
15 JUROR NUMBER 382: Here.
16 MADAM CLERK: 31?
17 JUROR NUMBER 31: Here.
18 MADAM CLERK: 337?
19 JUROR NUMBER 337: Here.
20 MADAM CLERK: 14?
21 JUROR NUMBER 14: Here.
22 MADAM CLERK: 85?
23 JUROR NUMBER 85: Here.
24 MADAM CLERK: 53?
25 JUROR NUMBER 53: Here.

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1 MADAM CLERK: 178?
2 JUROR NUMBER 178: Here.
3 MADAM CLERK: 51?
4 JUROR NUMBER 51: Here.
5 MADAM CLERK: 342?
6 JUROR NUMBER 342: Here.
7 MADAM CLERK: 114?
8 JUROR NUMBER 114: Yes.
9 MADAM CLERK: 216? 216?
10 THE COURT: 216?
11 MADAM CLERK: 216? Mr. Hover? 216?
12 JUROR NUMBER 216: 216, yeah.
13 MADAM CLERK: 392?
14 JUROR NUMBER 392: Yes.
15 MADAM CLERK: 476?
16 JUROR NUMBER 476: Here.
17 MADAM CLERK: 307?
18 JUROR NUMBER 307: Here.
19 MADAM CLERK: 378?
20 JUROR NUMBER 378: Here.
21 MADAM CLERK: 354? 354? 52?
22 JUROR NUMBER 52: Here.
23 MADAM CLERK: 213?
24 JUROR NUMBER 213: Here.
25 MADAM CLERK: 20?

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1 JUROR NUMBER 20: Here.
2 MADAM CLERK: 353?
3 JUROR NUMBER 353: Here.
4 MADAM CLERK: 306?
5 JUROR NUMBER 306: Here.
6 MADAM CLERK: 277?
7 JUROR NUMBER 277: Here.
8 MADAM CLERK: 444?
9 JUROR NUMBER 444: Here.
10 MADAM CLERK: 449?
11 JUROR NUMBER 449: Here.
12 MADAM CLERK: 445?
13 JUROR NUMBER 445: Here.
14 MADAM CLERK: 248?
15 JUROR NUMBER 248: Here.
16 MADAM CLERK: 430?
17 JUROR NUMBER 430: Here.
18 MADAM CLERK: 174?
19 JUROR NUMBER 174: Here.
20 MADAM CLERK: 322?
21 JUROR NUMBER 322: Here.
22 MADAM CLERK: 427?
23 JUROR NUMBER 427: Here.
24 MADAM CLERK: 135?
25 JUROR NUMBER 135: Here.

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1 MADAM CLERK: 380?

2 JUROR NUMBER 380: Here.

3 MADAM CLERK: 438?

4 JUROR NUMBER 438: Here.

5 MADAM CLERK: 185?

6 JUROR NUMBER 185: Here.

7 MADAM CLERK: 35?

8 JUROR NUMBER 35: Here.

9 MADAM CLERK: And 186.

10 JUROR NUMBER 186: Here.

11 THE COURT: Are you 354?

12 BAILIFF: We're good. We have 40, your Honor.

13 We're all present.

14 BY THE COURT:

15 THE COURT: Great. All right, folks, welcome back.

16 My name is Roger Young. I am from Charleston. That's
17 my home county, and I am delighted to be here with you
18 this week.

19 You were earlier with Judge Cooper, who is one of
20 the finest judges that you will -- that we've ever had
21 in this state. I know you are glad that you're probably
22 not in a trial the length that that one will probably go
23 on, but I'm telling you, from a judge's standpoint,
24 you'd have been better off with him than me.

25 The best compliment I've ever had paid to me was,

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1 somebody told me one time, *you're doing a good job; if*
2 *you keep at it, in another ten years, you'll be as good*
3 *as Tommy Cooper.* I should take that as high praise,
4 because he is one our retired active judges. He
5 volunteers to judge, which is a great tribute to him,
6 and we certainly appreciate it, because he does a
7 tremendous job. He takes on difficult cases, travels
8 all over the state, and he is still just one of the
9 finest people I've ever met, so.

10 You know, you got me instead, so we're going to go
11 ahead and pick this jury for a case that we're going to
12 start in the morning. We'll draw it today, but since
13 the hour is getting late, by the time we get finished
14 up, there's really no need to start. So, we'll start it
15 at 9:30 tomorrow.

16 If you don't get picked for this one, there's a
17 pretty good likelihood you're not going to get picked
18 for a trial this week, because, unless something happens
19 with one of these two cases, we'll probably finish out
20 the rest of the week with pleas and motions and things
21 like that. But my experience is, most people like to be
22 on a jury, once they get into this process. And so,
23 from that standpoint, I hope you get your chance. I
24 think most people do enjoy jury service.

25 The process that we go through now, the heavy

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1 lifting, got done by Judge Cooper. You got qualified,
2 and you all made the cut. Congratulations. And so,
3 we're doing a much less -- a much more abbreviated
4 version of the second part, and that is, we're just
5 trying to find 12 people who don't know anything about
6 this case, such that it would affect your ability to be
7 fair and impartial jurors in this case.

8 I take it, having just showed up here this week,
9 you knowing nothing about this case or that case, that
10 that case had some publicity. And so, that's why they
11 had a bigger panel and it took longer to get through.
12 We'll probably be done in 30 minutes or less on this one
13 here, so.

14 The process that we're going to go through is just
15 to simply ask you the questions that determine if you
16 have any knowledge of the case or any of the witnesses,
17 or the parties involved, such that it would affect your
18 ability to be fair and impartial. We don't ask that you
19 come in, in a vacuum and not know anybody, or -- but the
20 real question is, is that, do you know anybody such that
21 it would affect your ability to be fair and impartial.

22 All we are trying to do, really, is just get 12
23 people who can come over, take an oath in which they
24 promise they will sit in the jury panel here or sit in
25 the witness stand, listen to those people who testify,

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1 make their decision based on the evidence that is
2 presented in this courtroom, and utilize the law that I
3 tell them applies; and then, that's how they come up
4 with a verdict.

5 We don't want anybody to bring any outside
6 influences on their decision-making or anything like
7 that. We're not trying to find a magic bullet of
8 people. We are just -- we want 12 people that represent
9 the community, that promise that they can come in, make
10 their decision based on what they hear this week in this
11 courtroom, and be fair and impartial, and then you get
12 to go back about your business.

13 So, I'll tell you a little bit about this case, and
14 then I'll read you the names of some people that are
15 going to be called as witnesses in this case. This case
16 is the case of the State of South Carolina versus
17 Malcolm Brabham.

18 Mr. Brabham, would you stand and face the jury
19 panel there?

20 In the green shirt there is Mr. Malcolm Brabham,
21 and he has been charged with two crimes.

22 Mr. Brabham, you can have a seat for right now.
23 All right?

24 He has been indicted by the Grand Jury for
25 attempted murder and for possession of a weapon during

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1 the commission of a violent crime.

2 Indictments are not evidence. Indictments are
3 handed down by the Grand Jury. What they do is two
4 things: they give, first of all, this court
5 jurisdiction to hear the matter. And then, they put the
6 defendant on notice that he's been charged with a crime,
7 so that he knows what to show up to trial for.

8 Indictments go back to -- all the way back to the
9 early years of the kings of England. It pre-dates the
10 *Great Charter*, the *Magna Carta*, if you will. Kings used
11 to have a lot more power than they do now, and whatever
12 the king said, well, that was the law. And if the king
13 didn't like it, he could send somebody out, pick you up,
14 come back, throw you in the court, put you in the dock,
15 is what they call it over there, and put you on trial.

16 And you really didn't even know what you were
17 charged with, didn't have, really, much of a way of
18 defending yourself. You didn't have any notice. It was
19 really a harsh thing, and a lot of people got upset
20 about it. It led to the *Magna Carta*, if you folks
21 remember that or those terms, and start remembering
22 something from history. And it was our precursor to our
23 current *Constitution*, and more particularly, the *Bill of*
24 *Rights* that we have in our *Constitution*.

25 But one of the things that the *Magna Carta* said

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1 was, you know what; the king doesn't just get to pick
2 people up and throw them in jail and throw them in
3 trial; put them up for trial without telling them what
4 they were charged with, and they didn't even know how to
5 defend themselves. So, they agreed that, from that
6 point on, they would have these things called a Grand
7 Jury. And the way we have a grand jury today is sort of
8 similar to the way they had a Grand Jury then.

9 What we are doing this week is called a Petit jury.
10 The Grand jury is 12 people or 18 people who meet
11 typically once a month here, and they review arrest
12 warrants. It's a very brief kind of process, but
13 somebody tells them a little bit about the case, and
14 then they make a decision as to whether or not a case or
15 a crime probably occurred, and whether or not there's
16 any evidence to suggest that the defendant is the person
17 who probably did it. That is not the standard proof for
18 conviction, which I'll get into with you here in a
19 little bit, but it's enough to start the ball rolling.

20 So, they come back with an indictment, which they
21 spell out, this is what you're charged with, and this is
22 what you're going to stand trial for. Again, this
23 document, when it has this little stamp on the back of
24 it, true-billed, just means that 12 of those 18 grand
25 jurors voted to true bill it, so that gets the ball

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1 going. And so, it is the notice of the charges that Mr.
2 Brabham has to stand trial for this week.

3 These two documents are not evidence. They're not
4 considered to be evidence. They don't raise any
5 inference of guilt. He is presumed to be innocent of
6 these charges. He was presented with the indictments,
7 and he pled not guilty to them.

8 Therefore, under our set of laws, the State, when
9 they charge somebody with a crime, -- it's the State now
10 instead of a king -- but when the State charges you with
11 a crime and you pled not guilty, they have to provide
12 you with a jury trial. That gets us here today in this
13 room. So, we have jurisdiction in this case, and it has
14 provided Mr. Brabham full notice of what he is to stand
15 trial for.

16 The first indictment is for attempted murder, and
17 it alleges that, in Beaufort County, South Carolina, on
18 or about July the 15th, 2013, the defendant, with malice
19 aforethought, did attempt to kill the victim, Chadwick
20 Mitchell, to wit: the defendant did shoot the victim in
21 the chest, all in violation of *Section 16-3-29*, of the
22 *South Carolina Code of Laws*.

23 Mr. Brabham's pled not guilty to that charge.

24 The second indictment alleges that he possessed a
25 weapon during the commission of a violent crime.

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1 Specifically, it alleges that, in Beaufort County, South
2 Carolina, on our about July the 15th, 2013, the
3 defendant, Malcolm Brabham, did possess a pistol, or
4 visibly displayed what appeared to be a pistol, during
5 the commission or attempted commission of attempted
6 murder or violent crime. This is in violation of
7 *Section 16-23-490 of the South Carolina Code of Laws.*

8 Again, Mr. Brabham's pled not guilty to these
9 charges.

10 So, that brings us here today. Since he's pled not
11 guilty, and again, he now has his day in court. The
12 State must prove his guilt of these charges. He does
13 not have to prove his innocence. That is an important
14 constitutional concept, and a right that he possesses,
15 and you and I possess, as well. If we are ever charged
16 with a crime, just like Mr. Brabham, we don't have to
17 come to the court and prove that we're innocent. The
18 State brought the charges. The State has to prove
19 guilt. He doesn't have to prove innocence. They have
20 to prove he's guilty.

21 VOIR DIRE BY THE COURT:

22 THE COURT: So, these indictments I read to you for
23 the purpose of asking, does anybody know anything about
24 these cases? I read you the date, the time, the place
25 in which they were alleged to have taken place. Does

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1 anybody know anything about these cases?

2 All right. Mr. Brabham stood in front of you a
3 minute ago. Would you go ahead and stand back up?

4 Is there any member of the jury panel who is
5 related by blood or marriage, or acquainted in any way
6 with Mr. Brabham? If so, would you please stand?

7 Yes, ma'am. Your name and number?

8 JUROR NUMBER 342: Courtney Pate, 342.

9 THE COURT: Courtney what?

10 JUROR NUMBER 342: 342.

11 THE COURT: Okay. And how do you know him?

12 JUROR NUMBER 342: I went to high school and middle
13 school with Malcolm.

14 THE COURT: All right. You look like you might
15 have graduated from high school last year, maybe.

16 JUROR NUMBER 342: No, no, no. I wish.

17 THE COURT: How long ago was it you went to high
18 school?

19 JUROR NUMBER 342: I'm sorry?

20 THE COURT: How long ago was it you went to high
21 school together?

22 JUROR NUMBER 342: 2002, is when I graduated.

23 THE COURT: Okay. The fact you knew him back in
24 high school, would that affect your ability to be fair
25 and impartial in this case?

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1 JUROR NUMBER 342: No, it would not.

2 THE COURT: Either for or against the State, or for
3 or against him?

4 JUROR NUMBER 342: No, it would not.

5 THE COURT: Okay. Thank you. Anyone else? All
6 right.

7 He was standing with his lawyer, Ms. Trasi
8 Campbell. She's with the Public Defender's Office here
9 in Beaufort County. Is there any member of the jury
10 panel that's related by blood or marriage, or acquainted
11 in any way with Ms. Campbell? Or perhaps you have been
12 represented by her or another member of the Public
13 Defender's Office in Beaufort County, either you or an
14 immediate family member. If so, would you please stand?
15 Okay. I find none.

16 Would you like to read out a name of any of the
17 other lawyers working in that office, and I'll ask them
18 if they know any of the folks that are represented in
19 that office? All right?

20 MS. CAMPBELL: I'll be happy to.

21 THE COURT: She's going to call out a name of the
22 people that work in the office. If any of them you are
23 related to by blood or marriage, or acquainted in any
24 way with any of these folks, or have been represented by
25 them, would you please stand when she calls the name

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1 out?

2 MS. CAMPBELL: Thank you, your Honor. Gene Hood is
3 the 14th Circuit Public Defender, which covers the five
4 counties: Beaufort, Hampton, Colleton, Allendale, and
5 Jasper Counties. I'm the public defender for Beaufort
6 County, just Beaufort County.

7 In my office, we have Lauren Carroway, Ari Bax,
8 Jessica Saxon, James Bell, Helen Roper Dovell, Kimberly
9 Jordan. And I usually have two investigators that work
10 usually with me the cases. The first one is Rick
11 Chapman. He's retired from the Sheriff's Department.
12 And Bob Harris, retired from the FBI. And those two, I
13 think you may see with me here during the course of the
14 trial.

15 THE COURT: All right. Now, in South Carolina, our
16 cases are prosecuted by what we call a Solicitor, and we
17 have a Solicitor that presides over a circuit. This is
18 the 14th circuit, and Beaufort County is part of that
19 circuit. And Duffie Stone is the Circuit Solicitor, and
20 he has designated these two Lady's sitting right here,
21 who I'd ask now to stand and introduce themselves to
22 you. They are assistant solicitors in his office, and
23 they will be prosecuting the case on behalf of the State
24 of South Carolina and Mr. Stone this week.

25 MS. LEMPESIS: And my name is Mary Jordan Lempesis.

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1 MS. CONCANNON: And I'm Mary Concannon.

2 THE COURT: Any member of the jury panel related by
3 blood or marriage, or acquainted in any way with any of
4 these folks or either of these folks? Yes, your name
5 and number, please?

6 JUROR NUMBER 476: Diedra White, 476. My brother-
7 in-law, Steve Murphy, works for Duffie Stone.

8 THE COURT: What does he do with the Solicitor?

9 JUROR NUMBER 476: He is head investigator for the
10 Solicitor's Office.

11 THE COURT: Now, it's your brother-in-law?

12 JUROR NUMBER 476: Yes.

13 THE COURT: Okay. Have you talked about this case
14 with him?

15 JUROR NUMBER 476: No.

16 THE COURT: All right. The fact that your brother-
17 in-law worked for the Solicitor's Office, would that
18 affect your ability to be fair and impartial in this
19 case, either for or against the State, or for or against
20 the defendant?

21 JUROR NUMBER 476: It may.

22 THE COURT: In what way?

23 JUROR NUMBER 476: It just depends. It's his job.

24 THE COURT: Does that mean you'd be more likely to
25 convict, or believe whatever the Solicitor's Office or

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1 the police say?

2 JUROR NUMBER 476: I don't know that I could be
3 impartial.

4 THE COURT: I'm sorry. Speak up.

5 JUROR NUMBER 476: I don't know that I could be
6 impartial.

7 THE COURT: Okay. Well, then, I will excuse you
8 from service on this case.

9 JUROR NUMBER 476: Okay, sir. Thank you.

10 THE COURT: Was it Number 476? Diedra White?

11 COURT REPORTER: Yes.

12 THE COURT: Thank you. Okay. Any member of the
13 jury panel, either you or an immediate family member,
14 either now or in the past, ever worked for the
15 Solicitor's Office, or any law enforcement agency,
16 either in South Carolina or outside of South Carolina,
17 at either the federal or state level? If so, would you
18 please stand? Okay. Let's start over here with you.
19 Your name and number, please?

20 JUROR NUMBER 378: Brenda Rupert, 378.

21 THE COURT: 378?

22 JUROR NUMBER 378: Yes, sir. I worked for the
23 Beaufort County Sheriff's Office, Family Court, and
24 Probate Court from '93 to 2000.

25 THE COURT: Okay. Would that affect your ability

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1 to be fair and impartial in this case, either for or
2 against the State, or for or against the Defense?

3 JUROR NUMBER 378: No, sir.

4 THE COURT: All right. Thank you. Okay. Your
5 name and number, please?

6 JUROR NUMBER 427: 427, Patricia G. Sneed.

7 THE COURT: Okay.

8 JUROR NUMBER 427: I work for Beaufort County
9 Detention Center. Retired.

10 THE COURT: I'm sorry, could you speak up?

11 JUROR NUMBER 427: I worked for Beaufort County
12 Detention Center, but I'm retired.

13 THE COURT: All right. Would that affect your
14 ability to be fair and impartial in this case, either
15 for or against the State, or for or against the Defense?

16 JUROR NUMBER 427: Yes.

17 THE COURT: You think it would?

18 JUROR NUMBER 427: (Nodded head.)

19 THE COURT: All right. I will excuse you from
20 service, then. Thank you.

21 COURT REPORTER: Number what?

22 MADAM CLERK: Ms. Sneed, was your number 427?

23 JUROR NUMBER 476: Yes, ma'am.

24 MADAM CLERK: Yes, ma'am. 427. Thank you.

25 THE COURT: Yes? Your name and number, please?

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1 JUROR NUMBER 277: Nicole Mark, 277.

2 THE COURT: Okay.

3 JUROR NUMBER 277: My father, uncle, and
4 grandfather are police officers in New York.

5 THE COURT: In where?

6 JUROR NUMBER 277: New York, where I just moved
7 from a couple months ago.

8 THE COURT: Would that affect your ability to be a
9 fair and impartial juror in this case, either for or
10 against the State, or for or against the Defense?

11 JUROR NUMBER 277: No.

12 THE COURT: All right. Thank you.

13 THE COURT: Yes, your name and number?

14 JUROR NUMBER 35: Reece Bertholf, Number 35. From
15 2005 until about 2008, I was a SLED security officer at
16 Fripp and had all the responsibilities and jurisdiction
17 of a deputy sheriff.

18 THE COURT: Would that affect your ability to be
19 fair and impartial in this case, either for or against
20 the State, or for or against the Defense?

21 JUROR NUMBER 35: No, your Honor.

22 THE COURT: Could I get your number again?

23 JUROR NUMBER 35: 35.

24 THE COURT: Thank you.

25 COURT REPORTER: Where was it you worked?

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1 JUROR NUMBER 35: Fripp Island.

2 THE COURT: All right. Anyone else? I'm going to
3 call the names of some folks who might be called as
4 witnesses in this case. When I call the names out, if
5 you're related by blood or marriage, or acquainted with
6 them, or know them in any way, in any capacity, would
7 you please stand when I call the name out?

8 First is, LaSundra Christian, with Berkeley -- or
9 Beaufort County Sheriff's Office. I find none.

10 Corporal Andrew Rice, with Beaufort Sheriff's
11 Office. I find none.

12 Sergeant Jonathon Collier, Beaufort Sheriff's
13 Office. I find none.

14 Sergeant Christopher -- or Chris Wilson, Beaufort
15 Sheriff's Office. I find none.

16 Sergeant Jeff Purdy, Beaufort Sheriff's Office. I
17 find none.

18 Corporal --

19 BAILIFF: Judge, one standing.

20 THE COURT: Whoops. I'm sorry. Yes, your name and
21 number again, please?

22 JUROR NUMBER 378: Acquaintances. Brenda Rupert,
23 378. Acquaintances when I worked there.

24 THE COURT: I'm sorry. Could you speak up?

25 JUROR NUMBER 378: Acquaintances when I worked

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1 there, at the Sheriff's Office.

2 THE COURT: Would that affect your ability to be
3 fair and impartial in this case, either for or against
4 the State, or for or against the Defense?

5 JUROR NUMBER 378: No, sir.

6 THE COURT: All right. Thank you. Let's see.

7 Corporal Jason Malphrus. Corporal Adam Zsamar,
8 Z/s/a/m/a/r, Beaufort Sheriff. I find none.

9 Corporal Chad Seronka, Beaufort Sheriff. Private
10 Jose Garcia, Beaufort Sheriff. Corporal Travis Hovest,
11 Beaufort Sheriff. I find none.

12 Captain Scott Johnson, Beaufort Sheriff. I find
13 none.

14 Eileen Rios, Beaufort Sheriff. Yes, your name and
15 number again, please?

16 JUROR NUMBER 378: Brenda Rupert, 378.

17 THE COURT: Okay. And who do you know?

18 JUROR NUMBER 378: Eileen Rios.

19 THE COURT: And would that affect your ability to
20 be fair and impartial in this case?

21 JUROR NUMBER 378: No, sir.

22 THE COURT: How do you know her?

23 JUROR NUMBER 378: Friends and acquaintances, when
24 I worked at the Sheriff's Office.

25 THE COURT: Okay. Thank you.

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1 JUROR NUMBER 378: Um-hmm.

2 THE COURT: Matthew Perkins, Beaufort Sheriff. I
3 find none.

4 Nancy Harvey, out of Beaufort, a resident.
5 Chadwick Mitchell, lives in Beaufort. Rhea Gonsalves,
6 out of Beaufort. Elaine Blake, lives in Beaufort.
7 Cedric Wilson, lives in Bluffton.

8 BAILIFF: One standing, Judge.

9 THE COURT: Yes, your name and number?

10 JUROR NUMBER 342: Courtney Pate, 342. I know
11 Cedric Wilson and Elaine Blake.

12 THE COURT: And would that affect your ability to
13 be fair and impartial in this case, either for or
14 against the State, or for or against the Defense --

15 JUROR NUMBER 342: No, sir.

16 THE COURT: -- if he's called as a witness?

17 JUROR NUMBER 342: No, sir.

18 THE COURT: Thank you. That was Cedric Wilson,
19 right?

20 MADAM CLERK: And Elaine Blake.

21 THE COURT: And Elaine Blake. All right. Anyone
22 else?

23 John Horry, lives in Ridgeland. Dr. Ty McElveen,
24 Beaufort Memorial Hospital. Might be a patient of Dr.
25 McElveen?

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1 Todd Cockerham, Beaufort Sheriff. Jeremiah Fraser,
2 Beaufort Sheriff. Robert Tuten, Beaufort Sheriff.
3 Michael Moskal, M/o/s/k/a/l, SLED, South Carolina Law
4 Enforcement. I find none.

5 Grace Hudson. And Jonathon Harrison. All right.

6 Any member of the jury panel ever been employed by
7 any civilian or military law enforcement, and you
8 haven't already stood up? No?

9 Any member of the jury panel either a member of or
10 a contributor to any group which has as its primary
11 concern the promotion of law enforcement or victims'
12 rights? That would include such groups as CAPA, CAVE,
13 CADRE, MADD, OR SADD. I find none. Let's see.

14 Any member of the jury panel ever been a witness in
15 a criminal trial? If so, would you please stand? I
16 find none.

17 Any member of the jury panel read in the newspaper
18 or seen on any television program or radio anything
19 about this case today, or know anything about the case
20 from any source? All right. I find none.

21 Any member of the jury panel formed an opinion
22 about this case? I find none.

23 Any member of the jury panel posted online opinions
24 about crime and punishments that would be appropriate
25 for certain crimes, in particular, placed comments on

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1 the Island Packett or the Beaufort Gazette online
2 comments section? All right. If so, would you be
3 willing to disclose your pseudonym so that you could use
4 -- so that you would place -- or, would you be willing
5 to disclose -- I guess you have to come up with a
6 pseudonym to post something on there. Anybody use their
7 real name or a pseudonym to post online comments like
8 that?

9 Anybody think that there is anything about these
10 charges, being attempted murder, possession of a weapon
11 during the commission of a violent crime, that in and of
12 itself, those charges would cause them problems sitting
13 as a fair and impartial juror in this case?

14 Has any member of the jury panel, either your or an
15 immediate family member, ever been a victim of a violent
16 crime? If so, would you please stand? Yes, your name
17 and number, please?

18 JUROR NUMBER 479: Victoria White, 479.

19 THE COURT: 417?

20 JUROR NUMBER 479: 479.

21 THE COURT: 479, I'm sorry. Okay. Is that
22 something you want to share out loud, or do you want to
23 come forward?

24 JUROR NUMBER 479: When I was in my twenties, my
25 father's best friend was murdered.

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1 THE COURT: All right. Do you think that would
2 affect your ability to be fair and impartial in this
3 case?

4 JUROR NUMBER 479: No.

5 THE COURT: Either for or against the State, or for
6 or against the Defendant?

7 JUROR NUMBER 479: No.

8 THE COURT: Thank you. Any member of the jury
9 panel know of any reason why they don't think they could
10 be a fair and impartial juror in this case, for any
11 reason?

12 Sometimes you have folks -- and I'm just using
13 these as an example. It could be any reason, but these
14 are just ones I've heard before. Sometimes you have
15 people that say, well, there's parts in the *Bible* that
16 says you shouldn't sit and judge a fellow person.

17 Sometimes you have folks that belong to political
18 groups or loosely-affiliated groups of some public
19 group, and they basically have said, well, you know, we
20 think the government's on the wrong track. And they
21 have decided as part of their group's mission, that the
22 legal system needs to be fixed, and in essence, if you
23 get on a jury, you've already decided how the outcome
24 should be or what the outcome should be.

25 These are all beliefs that you can have. I don't

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1 care. I'm not trying to convince you otherwise. What I
2 am trying to do today is find 12 people who can put
3 aside any preconceptions that they have, any prejudices,
4 any feelings about victims, any feelings about crimes,
5 anything that would keep them from being a fair and
6 impartial juror, that's something that we need to
7 discuss.

8 The State of South Carolina is a party to this
9 case. Mr. Brabham is a party to this case. Both of
10 these parties are entitled to a fair and impartial
11 juror. Not just the State, not just the Defense, but
12 both of them.

13 So, as I've told you, our sole purpose in asking
14 these questions is to find 12 people who will sit over
15 there, take an oath that they will make their decision
16 based on what they hear ?in this courtroom as evidence,
17 apply the law that I tell them applies, whether or not
18 they agree with it, whether or not they think that's
19 what the law ought to be. But they say, that's what I
20 promised that I will use to make my decision on whether
21 or not the State has met its burden of proving Mr.
22 Brabham's guilt.

23 Anybody have any reason whatsoever that they think
24 they need to discuss with me, now's the time. Anybody
25 have any reason why they don't think they can be fair

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1 and impartial to either party? If so, please stand.

2 Okay. I think I've covered everything that
3 everybody asked me. Was there anything else from the
4 State?

5 MS. LEMPESIS: Nothing further from the State, your
6 Honor.

7 THE COURT: Was there anything else from the
8 Defense?

9 MS. CAMPBELL: No, your Honor.

10 THE COURT: All right. Any challenges for cause
11 from the State?

12 MS. LEMPESIS: None, your Honor.

13 THE COURT: From the Defense?

14 MS. CAMPBELL: No, your Honor.

15 THE COURT: All right. Now, the way we do this, I
16 assume it's some variation of what Judge Cooper did, but
17 I'm going to have the State -- the Clerk call out names.
18 All right? And if your name gets called, bring your
19 belongings with you, come through that little gate right
20 there, and you come stand in front of the lady sitting
21 right in front of me, and face back towards the back.

22 The State has the right to choose first, and they
23 will go either, present the juror or seat the juror -- I
24 mean, strike the juror. If they strike the juror, you
25 turn back and go back to your seat. If they say,

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1 present the juror, then, that means the selection goes
2 over to the Defense. And the Defense can do the same
3 thing. Either present the juror, or seat -- I mean,
4 strike the juror. If both sides agree, you come sit
5 over here, in the box. If either of the two decline,
6 you go back, have a seat.

7 They don't have to tell us why. It could be any
8 reason. But if you don't get picked this trial, maybe
9 your next one. Don't get hurt. There's a lot of
10 reasons why people get picked. There's a lot of reasons
11 why people don't get on a jury. Don't let it hurt your
12 feelings. Okay?

13 So, we do that until we get 12 jurors, and then I'm
14 going to have one alternate. We're going to start this
15 case tomorrow morning. I think everybody agrees, we
16 should finish it by Wednesday. So, we're going to be
17 done. This is not a case that's going to last into the
18 week, the weekend, or next week. I think the worst case
19 scenario is Thursday morning, but from what I talked to
20 the people, everybody this morning, I think we'll
21 probably get it done easily by Wednesday. But we'll put
22 in a full day tomorrow, and we'll get it finished up
23 Wednesday, some time.

24 So, Madam Clerk, if you're ready.

25 JUROR SELECTION:

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1 MADAM CLERK: Yes, your Honor.

2 THE COURT: Five and five each.

3 MADAM CLERK: Five and five. Yes, Judge. Judge --
4 I'm sorry. Juror Number 479, Victoria White. What says
5 the State?

6 MS. LEMPESIS: Please present this juror.

7 MADAM CLERK: What says the Defense?

8 MS. CAMPBELL: Just one moment. Please excuse the
9 juror from this trial.

10 MADAM CLERK: Juror Number 257, Carol Kzenovitz.
11 What says the State?

12 MS. LEMPESIS: Please present this juror.

13 MADAM CLERK: What says the Defense?

14 MS. CAMPBELL: Please swear the juror.

15 THE COURT: Have a seat, ma'am.

16 MADAM CLERK: Juror Number 126, Ellen Dounn. What
17 says the State?

18 MS. LEMPESIS: Please present this juror.

19 MADAM CLERK: What says the Defense?

20 MS. CAMPBELL: Please excuse the juror from this
21 trial.

22 MADAM CLERK: Juror Number 33, Mary Bennett. What
23 says the State?

24 MS. LEMPESIS: Please excuse this juror.

25 MADAM CLERK: Juror Number 382, Kent Rustad. What

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1 says the State?

2 MS. LEMPESIS: Please present this juror.

3 MADAM CLERK: What says the Defense?

4 MS. CAMPBELL: Please excuse the juror from this
5 trial.

6 MADAM CLERK: Juror Number 31, Cynthia Beaupre.

7 MS. CAMPBELL: I'm sorry, 31?

8 MADAM CLERK: 31, yes.

9 MS. CAMPBELL: Thank you.

10 MADAM CLERK: What says the State?

11 MS. LEMPESIS: Please present this juror.

12 MADAM CLERK: What says the Defense?

13 MS. CAMPBELL: Please swear the juror.

14 MADAM CLERK: Juror Number 337, Angela Owens. What
15 says the State?

16 MS. LEMPESIS: Please present this juror.

17 MADAM CLERK: What says the Defense?

18 MS. CAMPBELL: Please swear the juror.

19 MADAM CLERK: Juror Number 14, Madeleine Arata.

20 What says the State?

21 MS. LEMPESIS: Please excuse this juror.

22 MADAM CLERK: Juror Number 85, Phillip Coffey.

23 What says the State?

24 MS. LEMPESIS: Please present this juror.

25 MADAM CLERK: What says the Defense?

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1 MS. CAMPBELL: Please swear in the juror.

2 MADAM CLERK: Juror Number 53, Robin Brutschy.

3 What says the State?

4 MS. LEMPESIS: Please present this juror.

5 MADAM CLERK: What says the Defense?

6 MS. CAMPBELL: Please excuse the juror from this
7 trial.

8 MADAM CLERK: Juror Number 178, Wendy Gudz. What
9 says the State?

10 MS. LEMPESIS: Please present this juror.

11 MADAM CLERK: What says the Defense?

12 MS. CAMPBELL: Please swear the juror.

13 MADAM CLERK: Juror Number 51, Steven Brown. What
14 says the State?

15 MS. LEMPESIS: Please present this juror.

16 MADAM CLERK: What says the Defense?

17 MS. CAMPBELL: Please swear the juror.

18 MADAM CLERK: Juror Number 342, Courtney Pate.

19 What says the State?

20 MS. LEMPESIS: Please excuse this juror.

21 MADAM CLERK: Juror Number 114, Thomas Dean. What
22 says the State?

23 MS. LEMPESIS: Please present this juror.

24 MADAM CLERK: What says the Defense?

25 MS. CAMPBELL: Please swear the juror.

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1 MADAM CLERK: Juror Number 216, John Hover.

2 THE COURT: Is it Hover or Hover?

3 MADAM CLERK: Is it Hover or Hover?

4 MS. LEMPESIS: Sir, they're asking how you, how do
5 you pronounce your last name?

6 JUROR NUMBER 216: Hover.

7 THE COURT: Hover.

8 MADAM CLERK: Hover. What says the State?

9 MS. LEMPESIS: Please present Mr. Hover.

10 MADAM CLERK: What says the Defense?

11 MS. CAMPBELL: Please swear the juror.

12 MADAM CLERK: Juror Number 392, Mark Schwartz.

13 What says the State?

14 MS. LEMPESIS: Please present this juror.

15 MADAM CLERK: What says the Defense?

16 MS. CAMPBELL: Please swear the juror.

17 MADAM CLERK: Juror Number 307, Juan Molina. What
18 says the State?

19 MS. LEMPESIS: Please present this juror.

20 MADAM CLERK: What says the Defense?

21 MS. CAMPBELL: Please swear in the juror.

22 MADAM CLERK: Juror Number 378, Brenda Rupert.

23 What says the State?

24 MS. LEMPESIS: Please present this juror.

25 MADAM CLERK: What says the Defense?

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1 MS. CAMPBELL: Just one second. Please excuse the
2 juror from this trial.

3 MADAM CLERK: Juror Number 354, Sonya Prater. What
4 says the State?

5 MS. LEMPESIS: Please present this juror.

6 MS. CAMPBELL: Please swear the juror.

7 MADAM CLERK: Juror Number 52, Samuel Brusco. What
8 says the State?

9 MS. LEMPESIS: Please present this juror.

10 MADAM CLERK: What says the Defense?

11 MS. CAMPBELL: Please present the juror.

12 MADAM CLERK: Now, we'll be striking for alternate.
13 Juror Number 213, Cynthia Horne. What says the State?

14 MS. LEMPESIS: Please present this juror.

15 MADAM CLERK: What says the Defense?

16 MS. CAMPBELL: Please swear in the juror.

17 THE COURT: Okay. Now, let me -- the rest of you
18 folks here that are on our jury panel. If you would,
19 right now I'm going to send you back with the bailiffs
20 so that they can show you where to report to tomorrow
21 morning. You don't come right back in here. You go
22 back into the jury room. They'll show you how to get in
23 and out.

24 Now, you're jurors on this case. You don't know a
25 whole lot about it. As far as I know, there hasn't been

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1 any publicity, but you never know if there will be now
2 any. So, please don't discuss this case with anybody
3 tonight. You can go home, and of course, somebody's
4 immediately going to ask you, hey, were you picked on
5 the jury? And you can say, yes, I did; it's an
6 attempted murder case and a possession of a weapon case;
7 but that's all I know about it, and I don't -- the Judge
8 told me, first of all, don't talk to anybody about it;
9 and second, we didn't do anything today; I don't know
10 anything about it. That's all you can talk about the
11 case.

12 And why we do this rule, it's really kind of
13 simple, when you stop and think about it. Tomorrow
14 morning when you get back, the first thing you're going
15 to do is take an oath, and it's going to say, you
16 promise to make your decision based on what you hear in
17 this courtroom.

18 It's not fair to either of these sides that you've
19 got somebody else that's not even in the courtroom
20 telling you what they think about the case, and
21 influencing your decision in that way. They're not
22 here. They're not going to hear what you hear. The
23 most they'll be getting is just little tidbits here and
24 there. And they're outside influences which you've said
25 you either don't have or you can put aside, might start

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1 affecting you. So, that's very important to abide by
2 that rule and not talk to anybody about the case. That
3 includes your fellow jurors.

4 During the trial, I've been giving you these
5 instructions in some form or another whenever we break.
6 But until you've heard all of the evidence, it's not
7 proper to begin your deliberation. So, don't talk to
8 each other about the case, either.

9 Sometimes we get these situations where -- it just
10 goes to show you, modern technology, people get in a
11 jury and they get invested in it, and they do things
12 like, start looking up the Internet, let's see if there
13 was ever anything written about the case on the news.
14 See if they can Google where it is. That wouldn't apply
15 right now, but as you go on. People do all kinds of
16 things, which is why I have to tell you, don't do them.
17 People and their ability to do goofy things outstrips
18 our ability to think what goofy things they might do.

19 But don't do these goofy things. All right? Don't
20 do things like, go on Facebook and say, oh, I'm a juror,
21 and start -- people start doing all these things, and
22 they start talking about the case and all that. It's
23 improper to do that. Don't Tweet. Don't use social
24 media. Don't do the Internet. Don't email your
25 friends. All of these things are outside influences.

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1 They're not proper things to do.

2 You can do all of them after the jury -- after the
3 case is over. When it's done, you can talk to anybody
4 you want. You can Tweet. You can Facebook. You can do
5 whatever you want after it's over with, and you come up
6 with a verdict. But until it's over with, just resist
7 that urge. All right?

8 Go home. Have a good evening tonight. Enjoy the
9 evening. We'll get started back tomorrow morning. And
10 if you would, try to be here by about 9:15, because that
11 way, you can get together and meet each other and talk
12 about whatever you want to. Just introduce yourself.
13 You can talk about whatever you want to, except the
14 case.

15 And I always like to let the jury pick their own
16 foreperson, and anybody can be the foreperson except the
17 alternate. She can't be the foreperson, but anybody
18 else can be. So, if you've got a deep-down urge to, you
19 know, run a meeting, you can do it. You don't get any
20 extra money for being the foreperson, but you know. If
21 you can agree on somebody, great. If not, I'll pick
22 somebody before we get started.

23 But thank you so much for your patience today. I
24 know it's been a very long day for you. Go and relax.
25 It's nice outside, so hopefully you'll get to spend a

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1 little bit of time in the sunshine before it goes away,
2 and we'll see you at 9:30 in the morning.

3 MS. CAMPBELL: May it please the Court, your Honor?
4 I do have a motion on a jury selection process.

5 THE COURT: Hold on. Hold on. Hold on just a
6 second.

7 OFF-THE-RECORD BENCH CONFERENCE.

8 END BENCH CONFERENCE.

9 THE COURT: Okay. You can go. Thank you.

10 JURORS LEAVE COURTROOM 4:31 P.M.

11 THE COURT: All right. The rest of you folks, I
12 believe you're probably going to be finished for the
13 rest of the week. But just to be sure, call back
14 tomorrow night after 6:00 o'clock, and it will tell you
15 whether or not you are free for the rest of the week.
16 Or it may say, call back, but realistically, I know this
17 will be the only trial I do, and when we finish it, I've
18 got to leave and go to Columbia Thursday afternoon.

19 Unless something happens with Judge Cooper's, it's
20 going to probably take the vast majority of the week, so
21 we probably will not be calling another jury. But we
22 should know for sure tomorrow, Wednesday, at the latest.
23 So, while you're probably finished for the week, please
24 call the telephone number after 6:00 o'clock, just to
25 confirm. And whatever it tells you, it may say you're

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1 done for the week; it may say, call back tomorrow night.
2 But eventually, it will say either, come in or you're
3 done for the week.

4 So, thank you very much for your patience. It's
5 been a long week, and we appreciate your assistance.
6 It's been a long day. Let's put it that way.

7 JURORS LEAVE COURTROOM 4:33 P.M.

8 BAILIFF: You know the drill; I need your badge.
9 Jury pool is clear, your Honor.

10 BATSON MOTION:

11 THE COURT: All right. We had us that side bar.
12 Ms. Campbell wanted to put a Batson motion on the
13 record. So, Ms. Campbell, if you'd like to, go ahead.

14 MS. CAMPBELL: May it please the Court, your Honor?
15 First, I'd like the Clerk to make part of the record of
16 this case the list that your Honor has where the 40
17 jurors were pulled. And I believe that will preserve
18 the record for my client, that there was just one black
19 juror in that 40-person panel.

20 DOCUMENT DESCRIBED AS LIST OF

21 40 JURORS PULLED MARKED COURT'S

22 EXHIBIT NUMBER 1.

23 My client is a black male. The juror was a black
24 female. When that black, female juror was called during
25 voir dire, she disclosed that she knew my client, that

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1 she knew a couple of the witnesses. And when asked by
2 your Honor: *would that prevent you from being a fair*
3 *and impartial juror*, she said, *no, I can be fair, and I*
4 *can be impartial.*

5 When she was called up, selected to come forward,
6 the State struck her, in effect, denying, you know, any
7 possibility whatsoever that my client, Mr. Brabham, a
8 black man, would have a member of his own race on his
9 jury. There was absolutely no possibility that was
10 going to happen after the black female was stricken by
11 the State, because there were none others.

12 And I'm sure the State, in giving their race-
13 neutral reason, would say it was because, you know, she
14 knew some of the witnesses. However, we would contend,
15 you know, in reply to that, that the fact that she said
16 she could be fair and impartial makes that a moot point.

17 And we would contend that my client has been denied
18 his constitutional rights by the State of South
19 Carolina, in their manner of handling this jury
20 selection. Thank you, your Honor.

21 THE COURT: All right. What would the State like
22 to say?

23 MS. LEMPESIS: Thank you, your Honor. I believe we
24 actually had two African-Americans on the -- in our 40-
25 person jury pool. With that being said, I did strike

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1 that Juror Number -- and I've lost her number and her
2 name, but it was based on the fact that she responded to
3 the questions during voir dire that she knows not only
4 knows Mr. Brabham, also Elaine Blake, who is on our
5 witness list, and Cedric Wilson, also on our witness
6 list. So, that was the reason for the striking of those
7 -- of that juror.

8 MS. CAMPBELL: Well, your Honor, in response to
9 that, we had another juror who came forward who said
10 that she knew people in this case, potential witnesses,
11 and the State didn't strike her. The State wanted to
12 put her on the jury, a white female. I had to strike
13 her.

14 THE COURT: Which one was that?

15 MS. CAMPBELL: 378. Am I incorrect?

16 THE COURT: 3 what?

17 MS. CAMPBELL: The last strike the defendant had to
18 use was on Juror Number 378. And Juror Number 378 said
19 she had previously worked at the Sheriff's Department,
20 and was friends with Officer Purdy, and knew Eileen
21 Rios. And yet, the State said, oh, she's fine; let's
22 put her on the jury, this white female. But the black
23 female that may know my client from going to high school
24 with him, and one or two of the witnesses in the case,
25 oh, no, the State wants to strike her.

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1 THE COURT: Go ahead.

2 MS. LEMPESIS: Judge, she referred to Mr. Brabham
3 by his first name when she responded. It seemed like
4 more than just an acquaintance, which is what the other
5 woman said her relationship was with the Sheriff's
6 Office, where she had worked. This was somebody that
7 she said she went to high school with, and she called
8 him by his first name.

9 There was no race -- no, I didn't -- I wasn't
10 thinking of her race at all when I struck her, but the
11 fact that she apparently knows three of my maybe 13
12 witnesses.

13 THE COURT: All right.

14 MS. CAMPBELL: And again, your Honor, just for the
15 record, these are similarly-situated jurors. One is
16 black and one is white. My client is black. She chose
17 to strike the black juror, and chose to put the white
18 juror on the jury and made us use a strike.

19 THE COURT: Well, the distinction is, of course, is
20 that she went to high school with the defendant. And
21 that, I don't think, is a pre-textual reason for a
22 strike. I think it's a valid reason, and that is not --
23 while the other witness that you referred to, Number
24 378, stated that she knew other witnesses, she didn't
25 know him, and that is a valid distinction.

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1 And so, I find that her strike was not pre-textual.
2 And so, your motion is denied.

3 Just, again, for the record, so that there's not
4 any confusion as to how we went from that large panel to
5 this smaller panel is, whatever algorithm would have
6 chosen these 40 jurors, had they all been in the same
7 room or had we moved down to there, the same algorithm,
8 would have spit out these exact same names, in the exact
9 same order. It's just, we did it before they got down
10 here, before we split them off, rather than us move down
11 there, so they can move that trial down there.

12 So, there's absolutely no reason why this method of
13 taking this 40 jurors out of the larger panel would have
14 affected the production or the mix or the make-up of the
15 jury panel.

16 And Number 34 [sic], the other black female in the
17 40-person panel, which we didn't get that far down to
18 on the strike, she was struck for cause. As I recall,
19 she --

20 MADAM CLERK: She was an officer at the Detention
21 Center. That would make her --

22 THE COURT: That's right. That's right. She
23 didn't think she could be a fair and impartial juror
24 because of her previous law enforcement contacts. All
25 right. So, motion is denied, and we will start up

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1 tomorrow morning at 9:30.

2 MS. CAMPBELL: Thank you, your Honor.

3 MS. CONCANNON: Thank you, your Honor.

4 END DAY ONE, MONDAY, APRIL 21,

5 2014, 4:40 P.M.

6 BEGIN DAY TWO, TUESDAY, APRIL 22,

7 2014, 9:40 A.M.

8 BY THE COURT:

9 BAILIFF: All rise, please. Court is now back in
10 session.

11 THE COURT: Be seated. Are you all ready to go?

12 MS. LEMPESIS: The State's ready, your Honor.

13 THE COURT: Defense ready?

14 MS. CAMPBELL: Defense is ready, yes.

15 THE COURT: All right. Well, let's see. I got the
16 note from the jury that they have picked their
17 foreperson, and it is Number 52, Samuel Brusco.

18 All right. Mr. Brabham, we are -- stand up, please
19 -- we are ready to start your trial, and I'm sure your
20 lawyer has talked with you about this, but I'm going to
21 go over it with you on the record at the beginning of
22 trial. We'll talk about it again, later on in the
23 trial, but part of my instructions will be is to the
24 jury, is that, you know, the State has the burden of
25 proof in this case. They have to prove you're guilty.

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1 You don't have to prove your innocence. And you don't
2 have to do, really, anything, other than show up, and
3 you've done that. So, you have no obligation to put up
4 a defense. You don't have to call any witnesses, and
5 you don't have to testify if you don't want to. You do
6 have the right to call witnesses and to testify if you
7 want to. If you testify, your lawyer will call you, ask
8 you questions, you will be put under oath, and you have
9 to truthfully answer them. By the same token, the State
10 will have the opportunity to cross-examine you, and you
11 will have an obligation to truthfully answer those
12 questions, as well.

13 However, you don't have to testify. You don't have
14 to tell me, even at this point, if you want to testify.
15 I am just bringing this to your attention so that you
16 have some -- that you'll be thinking about it over the
17 next day or so. We will probably not be to the point
18 where you need to make that decision until tomorrow
19 morning. However, at the point when the State has
20 called all of their witnesses, you will need to make a
21 decision as to whether or not you want to testify.

22 This is a constitutional right that you have. It
23 is your right. You should consult with your lawyer
24 about whether or not you want to testify. You can
25 consult with any friends or family that you want to, to

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1 get advice. But ultimately, it is your decision and
2 your decision alone as to whether you exercise the right
3 to testify or not. All right?

4 So, I'm bringing this to your attention. I want to
5 put it in your thoughts. Tomorrow morning, we'll have
6 this discussion again, and at that point, you'll have to
7 tell me whether or not you want to testify. But I want
8 you just to be thinking about it now. All right?

9 DEFENDANT BRABHAM: Yes, sir.

10 THE COURT: All right. Is there anything else that
11 we need to deal with before we bring the jury in?

12 MS. LEMPESIS: Not from the State, your Honor.

13 MS. CAMPBELL: No, your Honor.

14 THE COURT: Okay. Well, let's bring the jury in,
15 then. Do you have all of your witnesses ready?

16 MS. LEMPESIS: We do. They're outside and
17 sequestered, and Mr. Mitchell is in the courtroom.

18 BAILIFF: The jury is entering the courtroom, your
19 Honor.

20 JURY ENTERS COURTROOM 9:40 A.M.

21 BAILIFF: The jury is seated, your Honor.

22 THE COURT: All right. Well, before I begin my
23 instructions, I need to have the Clerk place you under
24 oath. So, if you would, stand and raise your right hand
25 while the Clerk administers the oath to you.

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1 JURORS SWORN BY MADAM CLERK:

2 MADAM CLERK: Do you solemnly swear or affirm that
3 you shall well and truly try and true deliverance make
4 between the State of South Carolina and the accused at
5 the Bar, and a true verdict give, according to the
6 evidence, so help you God?

7 RESPONSES FROM JURORS.

8 MADAM CLERK: Thank you. If you'll have a seat,
9 please.

10 INTRODUCTION TO CASE, BY THE COURT:

11 THE COURT: All right. Well, folks, I want to give
12 you a little overview of what we'll be doing over the
13 next day or so, so that you'll have some idea of what to
14 expect and how we do things. We have, you know, in our
15 courts, our own special little ways of doing things.
16 For the most part, they all make sense. Occasionally,
17 we have one or two that I disagree with, but nobody's
18 actually taken a poll and asked my opinion on them, so I
19 just plug right on through, and we go with it that way.
20 But it really does work.

21 We have an adversarial system in which both sides
22 present evidence. The Defense doesn't have to, but both
23 sides have the opportunity to. You'll hear examination
24 of witnesses, cross-examination of witnesses, and then
25 you'll hear a conflict in the difference between the

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1 stories, and you'll get to decide what to believe and
2 what not to believe. And then, you'll apply the law
3 that I tell you that applies to a case like this. And
4 then, you'll go back, come up with a verdict, and we'll
5 live with it. It's really a fairly simply system, when
6 you get right down to it, but that's what it boils down
7 to.

8 So, I just want to go over a couple of things with
9 you now. And the first thing I want is, one of the
10 bailiffs mentioned, if anybody needs to go and take a
11 restroom break prior to the time that I call for one,
12 just get my attention, get a bailiff's attention, and
13 just -- we'll take a break. I usually take one about
14 every hour and 15 minutes or so. Anyway, just, you
15 know, because everybody needs to go to the bathroom.
16 And if you need to take one sooner than that, just get
17 my attention, or get her attention, and they'll bring it
18 to my attention, and we'll take a break. Not a problem
19 at all.

20 Now, this is a criminal case. As I told you
21 yesterday, the State charged Mr. Malcolm Brabham with
22 attempted murder and possession of a weapon during the
23 commission of a violent crime. He pled not guilty to
24 these charges. Therefore, the State must prove to the
25 twelve of you jurors that he is guilty beyond a

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1 reasonable doubt. If they prove to your satisfaction of
2 his guilt beyond a reasonable doubt, then you come up
3 with a verdict of guilty.

4 On the other hand, if they do not prove guilt to
5 your satisfaction, guilt beyond a reasonable doubt that
6 he is guilty of this, then it is your duty to find him
7 not guilty. His plea of not guilty means he has no
8 burden whatsoever. The State must prove he's guilty.
9 He does not have to prove that he is innocent, and
10 that's an important constitutional right. That is not a
11 legal theory. That is something that you are bound by
12 under the oath that you just took, to presume that he is
13 an innocent man. And unless and until all twelve of you
14 are convinced beyond a reasonable doubt that he is
15 guilty of these charges, he is innocent. All right?

16 Now, I told you about the Grand jury system a
17 little bit yesterday. The Grand Jury came up with these
18 charges. Again, these are simply instruments that give
19 this court jurisdiction to hear the trial, and it puts
20 him on notice of what he is to stand trial for. These
21 two documents are not evidence. The fact that, again,
22 he was arrested doesn't create any presumptions of
23 guilt. He, again, remains innocent throughout the
24 trial. These documents are not considered evidence, and
25 won't be considered by you as evidence of guilt. They

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1 are the only two pieces of paper that are going to go
2 back to the jury room with you that are not evidence.
3 Everything else that goes back in the jury room is
4 evidence. But these two documents are not evidence, and
5 the only reason that they're going back is so that you
6 can write what the verdict is on it. All right? So,
7 right there where it says verdict, you, Mr. Foreman,
8 will write down whether or not he's guilty or not
9 guilty, as per the jury's finding.

10 Now, because the State has the burden of proof,
11 they get to go first, and this is where we get into our
12 rules of procedure. We have rules of procedure, and we
13 have rules of evidence. Your job is you're judges, like
14 I'm a judge, but we're different kinds of judges. You
15 are considered the judges of the facts. You're going to
16 hear evidence from the witness stand, people telling you
17 what they heard, they saw, they touched, they felt, they
18 smelled. You're going to hear a conflict in evidence.
19 It's up to you to decide how to resolve that conflict by
20 weighing witness testimony, weighing credibility, things
21 like that. That is your job, and whatever you folks
22 come up with on a factual dispute, we're bound by that.

23 On the other hand, I'm a judge, as well, but a
24 different kind of judge. My job is to preside over the
25 trial and make sure that both sides get a fair trial.

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1 Excuse me, I've got a bug in my throat.

2 So, I have two jobs: one, to make sure that all
3 our rules and procedure of evidence are followed; and
4 the other job is to instruct you on the law at the end
5 of the trial. But during the course of the trial, I
6 have to make sure we follow our procedure, and that we
7 follow our rules of evidence to make sure that what you
8 hear throughout the trial is considered to be legally
9 competent evidence. Now, I'll touch back on that in a
10 minute.

11 The weather's cleared up a little bit, and the
12 pollen's back, and so, it's going straight into my
13 throat.

14 So, we have these procedures that we follow, and
15 because the State had the burden of proof, they put
16 their evidence up first. So, they'll call witnesses
17 first, and they get to ask the questions first to the
18 witness. So, whenever a party calls a witness, they put
19 them up on the stand, and they're put under oath, and
20 that party that calls them, gets to ask questions.
21 That's called direct examination. Then, the other side
22 gets to ask questions of the same witness. That's
23 called cross-examination. So then, I usually allow one
24 little follow-up round of re-direct, and then re-cross.
25 And this is what we call our adversarial system. You've

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1 heard that before, probably, and this is it in action.

2 Cross-examination is one of the best time-tested
3 methods of coming up with the truth that's ever been
4 devised by mankind, this process of direct examination
5 and cross-examination. And by that, you get to hear
6 both sides of the story. Because you're often going to
7 hear one side first, and it's going to make an
8 impression on you. But then, you'll hear another little
9 bit of information, and that'll change your mind, and
10 that's going to happen all throughout a trial. Happens
11 every single trial. It's happened every trial I've ever
12 been in, and I've probably been in, I don't know, a
13 hundred of them by now. I lost count a long time ago.
14 Every trial we're at, I go, wow, you know? That's my
15 first impression.

16 But I've learned, the hardest part in doing a --
17 watching a trial is what sounds like the easiest part,
18 and that is keeping an open mind until you've heard all
19 of the evidence, because I absolutely guarantee you that
20 your mind is going to change more than once throughout
21 this trial. So, it's not proper for you to begin your
22 deliberations until you've heard all of the evidence and
23 both sides of the story.

24 That's just common sense, and it's really the best
25 kind of way to go through life, you know. If you've

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1 ever had children, you know, you hear them say one
2 thing, and then you go a little bit more, and then you
3 hear something else. And after a while, you sift
4 through it, and then you make your judgment as to, you
5 know, what really happened. Well, this is common sense.
6 We're not telling you anything new. I'm just reminding
7 you, you're going to hear two sides to the story, and
8 just wait until you get to the end, before you begin to
9 make up your mind. That's one of the reasons why, every
10 time we take a little break, I go, don't begin
11 deliberations; don't talk about witness demeanor.
12 Because until you hear both sides, it's not proper to
13 begin talking and making up your mind.

14 So, the State will get to go first, put their
15 evidence up first. At that point, after the State's put
16 up all their evidence, the defendant can put up a
17 defense, if he wants to. All right? An important
18 constitutional right is, he does not have to prove his
19 innocence. The State has to prove he is guilty. So, he
20 doesn't have to put up a defense. He doesn't have to
21 call witnesses. He doesn't have to testify. And you
22 know what? He doesn't even have to tell me now if he
23 wants to. He can make up his mind later on. All right?

24 If he decides to call witnesses, then they'll be
25 put up. His lawyer will call, you know, ask questions;

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1 the other side will get to cross-examine, and we go
2 through that. Same thing. If he wants to testify, he
3 can. If he doesn't want to testify, he doesn't have to.

4 And this is important: if he does not testify, you
5 are not to consider that in any way, shape, or form
6 while you are discussing the verdict later on. That is
7 not to be considered by you in any way if he doesn't end
8 up testifying. That is an important constitutional
9 right. You have it, I have it, and he has it. So, if
10 he doesn't testify, don't consider that.

11 Now, that's how we begin our trial is, in a couple
12 of minutes, the lawyers are going to get up and make
13 opening statements. And opening statements are
14 basically the lawyers doing what I call giving you a
15 little *Reader's Digest* condensed version of what this
16 case is about. And they're not testifying. They're
17 only going to give you like, a little five-minute
18 summary of what it is you're likely to hear, and what
19 this case is really about. We keep it brief, because it
20 helps you understand and follow what you are hearing.
21 Because some cases are more complicated than others, and
22 it might take you a day or two or three or four of
23 testimony in some cases to figure out, where are we
24 going with this. This gives you an ability to go, okay,
25 I see where we're going. But again, they have to prove

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1 it. So what, what they say in opening statements is not
2 evidence. It's the lawyers talking about what evidence
3 you're likely to hear. That's why we keep it short. We
4 don't let them testify. And that's an important thing
5 that you need to remember. Again, during the trial,
6 lawyers aren't witnesses. They're not testifying. If
7 they were there and saw whatever happened, they wouldn't
8 be allowed to be a lawyer in the case. They would be
9 brought up, put under oath and tell you what they heard,
10 they saw, they touched, they felt, they smelled. So,
11 whatever they say is not to be considered as evidence by
12 you.

13 When the lawyers asks a witness questions, that's
14 not evidence. The answer to the question is evidence.
15 Okay? So, keep that in mind as you go throughout the
16 trial. Because frankly, the lawyers do more talking
17 than just about anybody when it comes to a trial. So,
18 just remember, whatever they say isn't evidence.

19 So, we do the opening statements. State goes
20 first. The Defense has a chance to ask -- do one, as
21 well. Then, we move into the actual calling witnesses.
22 We go through that. When we get to end, after all the
23 evidence comes in, we then have closing arguments. And
24 then, the lawyers get up at that point and review the
25 evidence that you've now heard. They give you --

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1 they'll be talking in terms of trying to convince you to
2 render a verdict on their client's behalf, and they'll
3 be giving you a little preview of what the law is, so
4 that you will be able to understand what they're saying
5 and come up with a verdict. After that, I will then
6 charge you on the law; tell you this is the law that
7 applies. You take it -- the facts that you've heard,
8 the law that I've told you, and you go back and come up
9 with a verdict. That's how we conduct a trial.

10 The only other thing that I think I would like to
11 cover at this point is rules of evidence. You're going
12 to hear, probably, throughout the trial, almost every
13 trial, some lawyer says objection. All right? Part of
14 my job, I told you was, follow our rules of procedure,
15 make sure both sides get a fair trial, follow our rules
16 of evidence. Basically, when we're putting evidence in
17 for you to hear, it's one of our time-tested methods, we
18 come up with these rules. And we're trying to put
19 before you what we call legally competent evidence. In
20 other words, evidence that you're supposed to be allowed
21 to hear. Some things are just other people coming in
22 and telling you what they heard somebody say. We don't
23 want that to come in. That's called hearsay. There's a
24 few exceptions to the hearsay rule, but by and large, if
25 somebody saw something, we bring them in and they tell

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1 you what they saw. We don't let somebody else come in
2 and say, oh, so-and-so told me that they saw this. Very
3 rarely does that sort of evidence come in.

4 So, we have all of these evidentiary rules.
5 Lawyers standing up and saying objection, is kind of
6 like our code for, judge, you have to make a decision
7 here. We don't think that this is proper for the jury
8 to hear. They're not trying to hide anything. They're
9 doing their job. Because really, when it boils right
10 down to it, we only want to do this one time. All
11 right? So, I want to try to make sure I do it right the
12 first time, and make sure that you hear only what you're
13 supposed to hear, but hear all of what you're supposed
14 to hear, as well. So, when the lawyers say objection,
15 that's kind of like, judge, make him stop; think about
16 what this person's getting ready to say; make a ruling
17 as to whether or not the jury can hear.

18 Sometimes I can make that decision just based on
19 the context of what's being said. And the lawyer may
20 stand up and say objection and hearsay. I can go
21 sustained or overruled. Sometimes, I might have them
22 come over to the side, just out of your earshot, and
23 say, tell me just a little bit more about this, and then
24 I can make a ruling. But sometimes, it's necessary for
25 me to send you all out, so that I can hear what a

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1 witness may actually be getting ready to say, so that I
2 can make that decision; and then bring you back in; and
3 then, we'll either get to say what they were going to or
4 not, depending on what the context is. Again, that's
5 just part of the job that I need to do, part of the job
6 that they need to do, because, again, we only want to do
7 this one time.

8 And you know, I told you at the first, you're the
9 judges of the facts. Basically, if, later on, when you
10 come up with a verdict, whatever you decide, if there's
11 any factual basis whatsoever in the record to uphold
12 your verdict, Courts of Appeal are bound by that. All
13 right? The only time that an appeal really gets made,
14 or 99.99 percent of the time, is to say the judge made a
15 mistake. The judge either charged you the law
16 incorrectly, or he didn't follow the rules of procedure
17 properly, or he let you hear something that you weren't
18 supposed to hear, or he kept you from hearing something
19 you are supposed to hear. So, that's why I try to just
20 do it right. We get through it. We're going to be here
21 a couple of days. We've got our rules, our procedures.
22 They make sense. Just bear with us. But we're not
23 going to be here all day or all week. From everybody's
24 talking yesterday, we'll probably be finished with this
25 case by the end of the day tomorrow. But I suppose

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1 there's always a chance it'll go over into Thursday, but
2 we're going to get it done this week.

3 So, just bear with us, and I hope you will enjoy
4 the experience. Again, if you need to go to the
5 restroom or take a break for any reason, if you just
6 need to stretch, stand up and stretch, you can do that.

7 Now, we've given you some note pads, and you're
8 welcome to take notes throughout the trial. Did you
9 give them the note pads?

10 BAILIFF: I did.

11 THE COURT: Okay. Thank you. Now, the thing about
12 taking notes is this. Everybody hears things a little
13 differently than everybody else. The first thing you
14 want to remember is, don't be so intent on taking the
15 note that it distracts you from listening to what the
16 witness is going to say. Some people are better note-
17 takers than others. So, don't let it distract you from
18 hearing what's being said.

19 The other thing is, is that, while it may be
20 helpful for you to have your notes to refresh your
21 memory later, when you do go back to deliberate, I don't
22 let you take your notes with you. Because then, it
23 becomes a point of, well, this is what my notes reflect.
24 And somebody else says, well, this is what my notes
25 reflect they said. And then, you just get into a big

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1 fight.

2 If you get into a dispute or you need to re-hear
3 some testimony when you get back and deliberate, all
4 you've got to do is let me know, and we'll have the
5 court reporter read it back. Or if it's a video or
6 something along that lines, you know, we'll play it
7 back. So, don't -- take the notes, they're helpful for
8 some people, but you won't be allowed to have them
9 during the deliberations. And please, most of all,
10 don't let it distract you from the testimony as we're
11 going through the trial. All right.

12 So, at this point, the State, again, has the burden
13 of proof, so the State would make the first opening
14 argument. Madam Solicitor?

15 MS. LEMPESIS: Thank you, your Honor. May it
16 please the Court?

17 OPENING STATEMENT ON BEHALF OF THE

18 STATE BY MS. LEMPESIS:

19 MS. LEMPESIS: Malcolm Brabham shot his brother-in-
20 law, Chadwick Mitchell. In the blink of an eye, he
21 pulled out a gun and he fired one shot, hitting Chad in
22 the chest.

23 Malcolm Brabham shot Chadwick Mitchell, and after
24 he shot him, he left Chad standing in the middle of a
25 road on Lady's Island, alone and bleeding. And he left

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1 him there; he got back into his car; and he drove away,
2 and he left Chad to die.

3 But Chad didn't die that night. July 15, 2013, he
4 didn't die, and you're going to hear from him today, and
5 he's going to tell you his story. He's going to tell
6 you what happened that night, what happened before the
7 shooting, what happened afterwards, and you will see
8 him. He will sit there, and he will tell you what
9 happened.

10 He'll tell you about how he and Malcolm Brabham, a
11 man that he refers to as his brother-in-law, a man that
12 has been in a long-time relationship with Chad's sister,
13 he'll tell you about how he and Malcolm were hanging out
14 together on this day, that they were drinking beer,
15 having a good time together, how they went to a place on
16 Lady's Island that everyone refers to as The Hole. And
17 they were hanging out there and, you know, drinking,
18 having a good time.

19 He'll tell you about how they got into an argument.
20 He'll tell you about how they were in a car together, in
21 the defendant's car together, and they got into an
22 argument, and how he got out of the car, and how Mr.
23 Brabham got out of the car, and that's when the shooting
24 occurred. Malcolm Brabham shot Chadwick Mitchell.

25 Chad will tell you about how, after he was shot and

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1 after Mr. Brabham left him standing there, he walked to
2 the nearest house that he saw with lights on. He
3 happened upon a home on River Drive on Lady's Island,
4 where some just random people were having a dinner
5 party, and he called out for help, and they -- these
6 strangers assisted him. They called 911. They aided
7 him, helped to stop the bleeding, applied pressure, and
8 waited for the police and EMS to arrive. And you'll
9 hear from the woman who called 911, who made that
10 initial phone call to report the shooting.

11 You're going to hear from several people during the
12 course of this trial. You'll hear from the officers who
13 first responded to the scene, who also aided Chadwick as
14 he was -- as he was suffering from injury. You'll hear
15 how they identified who the shooter was. They
16 identified Malcolm Brabham. Chadwick said, *Malcolm*
17 *Brabham shot me*, and they looked for him that night, but
18 couldn't find him. You'll hear how they arrested him
19 the next day.

20 You're going to hear from a woman named Elaine
21 Blake, who was with both the defendant, Mr. Brabham and
22 Chadwick Mitchell, that night. She was with them right
23 before the shooting. She didn't observe the shooting.
24 She heard some of the argument that took place, and she
25 left before the shooting occurred. She's going to tell

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1 you how the last time she saw them that night, Malcolm
2 Brabham and Chadwick Mitchell were together, right
3 before the shooting.

4 You're going to hear from several different
5 investigators with the Beaufort County Sheriff's Office.
6 Several people are involved. Investigator Rice is our
7 lead investigator in this case, and we'll hear from him,
8 and several other investigators who aided him in the
9 investigation.

10 You're also going to hear from Dr. Ty McElveen.
11 He's the Beaufort Emergency Room doctor who treated
12 Chadwick Mitchell at the hospital. He's going to tell
13 you about the sort of injury that Chad suffered, and
14 what sort of damage it caused, and how it could've
15 resulted in death.

16 You're going to hear from a lot of people during
17 this trial, and I ask you to do what you've already been
18 doing yesterday and this morning, just to pay close
19 attention, and listen and watch and observe the people
20 that you hear testify.

21 The judge talked to you yesterday, and he talked to
22 you this morning again about the burden that the State
23 bears, the burden to prove to you all beyond a
24 reasonable doubt that Malcolm Brabham is guilty of these
25 two charges, attempted murder and possession of a weapon

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1 during the commission of a violent crime.

2 After you hear all of the testimony and see the
3 evidence in this case, you will find the State has met
4 its burden. It's not a burden that I take lightly, and
5 it is one that we face full-on.

6 These are serious charges, and you all have a very
7 important job to do. So, again, we just ask that you
8 listen carefully. And at the end of this case, I'm
9 going to come back, and I'm going to ask you, after
10 hearing everything and seeing everything, that you find
11 the defendant guilty of these charges. Thank you.

12 THE COURT: Ms. Campbell?

13 OPENING STATEMENT ON BEHALF OF

14 DEFENSE BY MS. CAMPBELL:

15 MS. CAMPBELL: Thank you, your Honor. Good
16 morning. As I said yesterday, or I think his Honor
17 said, my name is Trasi Campbell. I'm the Public
18 Defender for Beaufort County, your county. I represent
19 Malcolm Brabham, and his Honor did a great job of
20 telling you how this whole system works. I'm not going
21 to go all into that, although that's usually part of my
22 opening statement, as well.

23 What I will focus in on is that the fact that you,
24 in your role, sit as individuals. Each one of you in
25 your own chair, and with your own mind, and that

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1 individuality you carry with you throughout this entire
2 trial. And your own experiences in life allow you to
3 bring your common sense and your judgment to what you
4 hear from the witnesses in this case and judge their
5 credibility. Do they have a prejudice? Do they have a
6 bias? Do they have some ax to grind? All of that, you
7 take into account when you make a decision as to whether
8 or not you can believe what that witness is telling you.

9 What the Judge didn't explain to you, and not his
10 responsibility to do that, but the role of the State
11 prosecutor is to get a conviction. That's what they're
12 here to do, and that is their focus, and that is their
13 sole focus.

14 I have a little bit different role here. Part of
15 the role that I have to assume in representing Mr.
16 Brabham is actually in protecting and defending
17 essentially all of us, our *Constitution*, and any man or
18 woman that sits at the Defense table. We have lives
19 hanging in the balance, and we have sort of the sacred
20 realm of this courtroom to protect. You become a part
21 of that protection, and that is an essential element for
22 you to remember as you go through this process.

23 His Honor was correct. Just like in basketball,
24 you know, you can't charge. In tennis, you know, if
25 you're playing tennis, you've got to keep the ball

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1 inside the lines. In football, you know, you can't have
2 a late hit. There are rules to follow, and I'm going to
3 object. If I believe that a rule is being violated, I'm
4 going to stand up. I'm going to make a record, because
5 as I said, life and liberty are on the line, and that's
6 essential for me to do what I have to do to protect all
7 of us, not just Mr. Brabham.

8 I'll tell you a little bit about the players in
9 this case. Obviously, Malcolm. Chad, who's seated back
10 here in the courtroom. He's allowed to be in here, as
11 he's classified by the State as the victim in this case.
12 There are other individuals who are not in here right
13 now, because the Judge has sequestered the witnesses,
14 and that's so they can't listen to what the other
15 person's saying. So, although, you know, they may want
16 to be in here, they can't be in here right now. So, Mr.
17 Mitchell, Mr. Brabham, brothers-in-law, if you will.

18 Malcolm is married to Leah, and they have three
19 children together. She carries the last name Gonsalvez,
20 but in effect, they're a family unit.

21 Elaine Blake, a family member, to some extent, in
22 the family tree, with Mr. Brabham, I believe. She may
23 tell you differently. But, you know, they call
24 themselves cousins, and that term may actually mean
25 there's blood relation or not. I'm not really sure.

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1 There were a couple of people at this place called
2 The Hole, on Lady's Island. Interestingly enough, I
3 think what you'll find is, The Hole is actually a road
4 called the Dehill D-e-h-i-l-l, or the Hill. And I
5 guess, in loose terminology, it's kind of been broken
6 down to The Hole.

7 Elaine Blake, I believe, based upon the information
8 the State has given me, will tell you that she was at
9 the Hill, the Hill Road, ■ Dehill Road. That's where
10 Norman Singleton lives. Now, Norman Singleton is also a
11 player in this. He's the ex-boyfriend of Elaine Blake.
12 And at this little hangout place was Norman Singleton,
13 Elaine Blake, and a woman named Sheena.

14 Elaine's going to tell you that, when Malcolm and
15 Chad drove up to the Hill, or The Hole, that Chad was in
16 rare form. He was drunk, and he was high, and he was
17 looking for an argument or a fight. He accosted Norman
18 Singleton, her ex-boyfriend. He accosted her. He
19 accosted Sheena. Throwing out all kind of accusations
20 about, you're sleeping with this person and you're doing
21 this to this person. It got so bad that his brother-in-
22 law, Malcolm, said, in a care-taking role, you know, we
23 need to leave; get in the car. And he -- they then
24 left. Elaine was going to catch a ride, and she did.
25 It was also so bad in the car, because Chad was so out

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1 of control, she said, you need to let me out, and she
2 got out.

3 At that point, that's where you have a situation.
4 Chad says, *Malcolm shot me*. Malcolm says, *I didn't*
5 *shoot him; I left him on the side of the road near The*
6 *Hole, or the Hill. I was trying to help him; he was so*
7 *out of control; left him there.* Now, those are the
8 players as I believe you'll hear from today.

9 Now, how do I know, how will you know that Chad was
10 drunk? Very drunk, two times the legal limit to drive
11 in South Carolina. How do you know he was almost to the
12 point of being in what I would categorize, and I think
13 the E.R. doctor would tell you, was a cocaine psychosis,
14 almost. They drew his blood at the hospital.

15 Now, if you have any scientific or mechanical
16 background, you'll know there's a cutoff point. So, 300
17 is the cutoff point to show just the presence of cocaine
18 in the blood. Chad's blood result showed nearly 6,000.
19 That level of cocaine in his system, and we'll talk with
20 the doctor about it, can lead to hallucinations, can put
21 him in the state of psychosis.

22 I believe the evidence as you get it, as you
23 receive it, as you in your own mind analyze it, you will
24 find, in fact, at the time that Chad was shot, Malcolm
25 was at home, with Reah, not with Chad. Thank you.

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DIRECT - NANCY HARVEY

1 THE COURT: All right. Madam Solicitor, call your
2 first witness.

3 MS. CONCANNON: Thank you, your Honor. State calls
4 Nancy Harvey.

5 MADAM CLERK: If you'll place your left hand on the
6 Bible, please. Raise your right hand. Do you solemnly
7 swear or affirm that the testimony you give shall be the
8 truth, so help you God?

9 NANCY HARVEY: Yes, I do.

10 MADAM CLERK: Thank you. If you'll have a seat,
11 please. And if you'll state and spell your name for the
12 record, please.

13 NANCY HARVEY: Nancy Harvey, N/a/n/c/y,
14 H/a/r/v/e/y.

15 NANCY HARVEY

16 DIRECT EXAMINATION BY MS. CONCANNON:

17 Q Ms. Harvey, where do you currently live?

18 A I currently live in Port Royal.

19 Q Okay. Where were you living last July? July of
20 2013?

21 A I've been in the same house.

22 Q Okay. And what do you do?

23 A I work for a financial planning company.

24 Q Okay. What did you do prior to working for a
25 financial planning company?

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DIRECT - NANCY HARVEY

1 A Before that, I worked for Dell Web Corporation.

2 Before that, I was a 911 dispatcher.

3 Q Okay. How long were you employed as a 911
4 dispatcher?

5 A Ten years.

6 Q Ten years. Okay. Do you remember July 15th of
7 last year?

8 A I do.

9 Q Okay. What were you doing on that day?

10 A I was at a friend's house for a dinner party.

11 Q Okay. Where is this house located?

12 A On Lady's Island.

13 Q Do you know the exact address?

14 A ■ River Drive, I believe it is, or River Road.

15 Q Thank you. What were you all doing that night?

16 A We were -- it was ten or twelve of us having a
17 dinner party.

18 Q Okay. What time were you over at this house?

19 A I think I got there 7:00, 7:30.

20 Q Okay. Did anything happen at this dinner party
21 that sticks out in your memory?

22 A Yes. We were grilling our dinner, and a gunshot
23 victim appeared.

24 Q Okay.

25 A So, that stands out a little.

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DIRECT - NANCY HARVEY

1 Q Where did he appear from?

2 A Actually, the way it happened, most of us were
3 inside, and the owner of the home was outside on the
4 grill. And she came in and told us that someone was
5 outside that said they had been shot. We went out, and
6 he was actually about 50 feet from their house, so we
7 went and got him, and brought him back up to the steps.

8 Q Okay. Did you speak with him?

9 A I did speak with him.

10 Q What was his demeanor when you were speaking with
11 him?

12 A He was afraid, and he was in a great deal of pain.

13 Q Was he coherent? Did he seem to --

14 A He was extremely coherent.

15 Q Okay. And what did you do when you saw this
16 gunshot victim?

17 A We got him on the steps, and we got a cloth to
18 apply pressure to his wound, and I called 911.

19 Q Okay. And why did you call 911?

20 A I guess, since I was a dispatcher, I got elected
21 unanimously.

22 Q Okay. Thank you.

23 MS. CONCANNON: Your Honor, permission to approach?

24 THE COURT: Um-hmm.

25 MS. CONCANNON: Thank you.

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DIRECT - NANCY HARVEY

1 BY MS. CONCANNON:

2 Q Ms. Harvey, I'm going to show you what's previously
3 been marked as State's Exhibit 1. Do you recognize
4 that?

5 A Yes, I do.

6 Q And how do you recognize it?

7 A I initialed it after I listened to it earlier.

8 Q Okay. Did you review this because I requested that
9 you review this?

10 A I did.

11 Q And what is this a disc of?

12 A This is the 911 call I placed that night.

13 Q Is it a true and accurate depiction of the 911 call
14 you made?

15 A Yes, it is.

16 Q Okay.

17 MS. CONCANNON: Your Honor, at this time, the State
18 moves Exhibit 1 into evidence.

19 MS. CAMPBELL: No objection.

20 THE COURT: Admitted.

21 MS. CONCANNON: Permission to publish to the jury,
22 your Honor.

23 THE COURT: You may.

24 MS. CONCANNON: Thank you.

25 ITEM IDENTIFIED AS DISC OF 911

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DIRECT - NANCY HARVEY

1 CALL MARKED STATE'S EXHIBIT NUMBER 1,
2 ADMITTED AS EVIDENCE.
3 STATE'S EXHIBIT NUMBER 1, DISC OF
4 911 CALL, BEING PLAYED.
5 END PLAYING STATE'S EXHIBIT NUMBER 1.

6 BY MS. CONCANNON:

7 Q Ms. Harvey, was that your voice we just heard
8 calling 911?

9 A It was.

10 Q And you were speaking to 911 Dispatch.

11 A Yes.

12 Q Who was the -- who was the voice of the man that we
13 heard belong to?

14 A That was the victim.

15 Q The victim?

16 A I was speaking to him. I was right next to him,
17 speaking to him as I called.

18 Q Okay. So, you were -- you were pretty close to
19 him? Did he appear intoxicated?

20 COURT REPORTER: I'm sorry, did you say yes?

21 A Yes. I'm sorry.

22 Q Did he appear intoxicated to you?

23 A He did smell of alcohol, but he did not come across
24 as inebriated, no.

25 Q Okay. He was coherent and was able to relate to

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DIRECT - NANCY HARVEY

1 you?

2 A Extremely.

3 MS. CONCANNON: Okay. I have no further questions
4 for you at this time. If you could answer any questions
5 Ms. Campbell may have.

6 MS. CAMPBELL: No questions.

7 THE COURT: You may step down.

8 A Thank you.

9 THE COURT: You're also excused.

10 A Thank you.

11 THE COURT: Thank you. Next witness.

12 MS. CONCANNON: State calls Deputy Hovest. My
13 apologies. State calls Deputy Chad Seronka.

14 THE COURT: What's the name of this witness?

15 MS. CONCANNON: Chad Seronka.

16 THE COURT: Go ahead.

17 MADAM CLERK: Place your left hand on the Bible and
18 raise your right hand. Do you solemnly swear or affirm
19 that the testimony you give shall be the truth, so help
20 you God?

21 CORPORAL CHAD SERONKA: I do.

22 MADAM CLERK: Thank you. If you'll have a seat,
23 please. State your name, and spell your last name for
24 the record, please.

25 CORPORAL CHAD SERONKA: Corporal Chad Seronka, last

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DIRECT - CORPORAL SERONKA

1 name, S/e/r/o/n/k/a.

2 CORPORAL CHAD SERONKA

3 DIRECT EXAMINATION BY MS. CONCANNON:

4 Q Corporal Seronka, I see that you're in a uniform
5 today. Where are you employed?

6 A Beaufort County Sheriff's Office.

7 Q And in what capacity do you work for the Sheriff's
8 Office?

9 A Patrol division.

10 Q What are some of your duties in the patrol
11 division?

12 A Responding -- typically, first responder to most
13 calls. Pretty much anything that comes out, I'm the
14 first one dispatched.

15 Q Okay. How long have you been employed with the
16 Sheriff's Office here in Beaufort County?

17 A Seven years.

18 Q Seven years? Okay. Did you respond to an incident
19 on July 15th of 2013?

20 A I did.

21 Q Can you tell the Court a little bit about that,
22 about your initial response there?

23 A It was a call dispatched to us in regards to some
24 individuals that were having a dinner party. A
25 gentleman showed up on the front step of the house

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DIRECT - CORPORAL SERONKA

1 claiming that he had been shot.

2 Q Okay. Do you know where you responded?

3 A I believe it was -- the exact address, I want to
4 say ■ River Drive, I believe.

5 Q Where is that located?

6 A Lady's Island, located --

7 Q Here?

8 A Beaufort County.

9 Q Thank you. When you arrived at ■ River Drive,
10 what did you observe?

11 A There was a -- appeared to be a late-20's, early-
12 30's, black male on the steps of the house. He had a
13 towel over his chest, and he claimed that he had been
14 shot. The towel was removed, and there was what
15 appeared to be one single gunshot wound to the chest.

16 Q Okay. What was the demeanor of Mr. Mitchell when
17 you arrived?

18 A Conscious, alert. He was obviously in pain, but he
19 was able to answer questions. He could give a little
20 bit of information. But again, at that time, there
21 wasn't a whole lot of interviewing going on. It was
22 more trying to figure out his state so that we could get
23 him to the hospital.

24 Q Okay. And after you spoke with him, what happened?

25 A He was put in an ambulance and taken to the

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CROSS - CORPORAL SERONKA

1 hospital.

2 MS. CONCANNON: Beg the Court's indulgence.

3 BY MS. CONCANNON:

4 Q When you responded to this incident, were you able
5 to obtain the identity of the defendant, the alleged
6 suspect in this case?

7 A I believe he stated it was his brother-in-law.

8 Q Okay. Was a name provided?

9 A At that time, I believe he did give the last name
10 of Brabham or Brabham. I'm -- I may not be pronouncing
11 it correct.

12 MS. CONCANNON: Thank you. I have no further
13 questions for you at this time. If you would answer any
14 Ms. Campbell may have.

15 A Yes, ma'am.

16 CORPORAL CHAD SERONKA

17 CROSS-EXAMINATION BY MS. CAMPBELL:

18 Q Good morning.

19 A Good morning, ma'am.

20 MS. CAMPBELL: Your Honor, may I approach the
21 witness?

22 THE COURT: You may.

23 MS. CAMPBELL: Thank you.

24 BY MS. CAMPBELL:

25 Q Officer Seronka, you prepare reports of your

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CROSS - CORPORAL SERONKA

1 activities while you're out on patrol, correct?

2 A I do, ma'am. Yes, ma'am.

3 Q I'm going to hand you what I believe are some pages
4 from your report in this case. Would that be accurate?

5 A It does, ma'am.

6 Q Okay. And on those pages -- well, first, let's
7 establish this. You would characterize yourself as a
8 competent deputy sheriff, correct?

9 A I would like to think so, yes.

10 Q Thank you. And you make every attempt to be
11 accurate in your reporting, right?

12 A As much as possible.

13 Q Thank you. And so, when you write a report, or you
14 notate something in a report, you're going to rely on
15 that report, right?

16 A Correct.

17 Q Okay. And you know that others will rely on that
18 report. The State, the Defense, correct?

19 A Yes, ma'am.

20 Q Okay. So, as we approach your report, I'm going to
21 ask you to let me direct your attention to, I think it's
22 Page 2, perhaps, of 16, where you make a notation that
23 victim was using alcohol, and you checked yes, right?

24 A Correct.

25 Q Okay. Now, there's a notation there for victim

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CROSS - CORPORAL SERONKA

1 using drugs, and you checked unknown, because you don't
2 have any way to know --

3 A No, ma'am.

4 Q -- what he might be using illegally, correct?

5 A Correct.

6 Q Okay. You were dispatched at around 9:15, correct?
7 Nine --

8 A Yeah, around that time, yes, ma'am.

9 Q Perfect. And you arrived about 9:23ish?

10 A Several minutes later, yes.

11 Q Perfect. Now, you were able to speak to Chadwick
12 Mitchell, correct?

13 A Yes.

14 Q Okay. Now, you make a notation that, during your
15 involvement in this case, you could never actually
16 locate what you would call a crime scene, right?

17 A Correct.

18 Q Okay. You make notations, also, that there had
19 been some activity taking place with Chad and with
20 Malcolm at a place called The Hole, correct?

21 A That's the description that was given to us. Yes,
22 ma'am.

23 Q Okay. And you make a notation that a woman by the
24 name of Elaine Blake may have been a witness to what was
25 happening with Chad and Malcolm.

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RE-DIRECT - CORPORAL SERONKA

1 A Correct.

2 Q And at The Hole, correct?

3 A Yes, ma'am.

4 Q Okay. Now, when you arrive at the scene of a
5 gunshot case, is it your responsibility, I would assume,
6 to try and secure evidence, right?

7 A If there's evidence to secure, yes.

8 Q Great. Now, part of securing evidence in a gunshot
9 case might be preserving evidence of what you might call
10 in the field gunshot residue, correct?

11 A If we believe that the individual fired a weapon,
12 yes. In my capacity, I am not the one that collects
13 that.

14 Q Okay. So, in this instance, it would not have been
15 your responsibility to secure the evidence of any
16 gunshot residue on or around Chad, right?

17 A No, that is -- that is not one of my
18 responsibilities.

19 MS. CAMPBELL: May I approach, your Honor?

20 THE COURT: You may.

21 MS. CAMPBELL: That's all I have. Thank you.

22 THE COURT: Re-direct?

23 MS. CONCANNON: Briefly, your Honor.

24 CORPORAL CHAD SERONKA

25 RE-DIRECT EXAMINATION BY MS. CONCANNON:

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RE-DIRECT - CORPORAL SERONKA

1 Q Corporal Seronka, Ms. Campbell asked you about you
2 checking the box referencing alcohol usage.

3 A Yes, ma'am.

4 Q Did you get this information from the statement
5 made to you, or by observing Mr. Mitchell?

6 A No, I believe, during our brief conversation, he
7 had stated that they had went down to The Hole and had
8 consumed alcohol.

9 Q Okay.

10 A And that was -- that -- the indication of yes to
11 alcohol was based solely on that.

12 Q Did he appear intoxicated to where he didn't
13 understand his surroundings?

14 A No, not at all. He was -- he was very -- he was
15 very aware of his surroundings. He was aware enough
16 that he could go down the road and identify the first
17 house to which had lights on, which is how he ended up
18 at that house. So, he was very aware. I believe that
19 he had consumed alcohol, but was not anywhere near
20 intoxicated.

21 Q Okay. So, the alcohol box was checked because he
22 told you he had been drinking.

23 A Correct.

24 MS. CONCANNON: I have no further questions for you
25 at this time.

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DIRECT - CHADWICK MITHCELL

1 THE COURT: Re-cross?

2 MS. CAMPBELL: No.

3 THE COURT: You may step down.

4 A Thank you, your Honor.

5 THE COURT: Any objection to the witness being
6 excused?

7 MS. CAMPBELL: No objection.

8 THE COURT: You're free to go. Thank you.

9 A Thank you, your Honor.

10 THE COURT: Next witness.

11 MS. LEMPESIS: The State calls Chadwick Mitchell.

12 MADAM CLERK: If you would place your left hand on
13 the Bible, please. Raise your right hand. Do you
14 solemnly swear or affirm that the testimony you give
15 shall be the truth, so help you God?

16 CHADWICK MITCHELL: Yes, I do.

17 MADAM CLERK: If you'll have a seat, please. And
18 if you'll state your name and spell it for the record,
19 please.

20 CHADWICK MITCHELL: My name is Chadwick Mitchell.
21 It's C/h/a/d/w/i/c/k, M/i/t/c/h/e/l/l.

22 CHADWICK MITCHELL

23 DIRECT EXAMINATION BY MS. LEMPESIS:

24 Q Good morning, Chad.

25 A Good morning.

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DIRECT - CHADWICK MITHCELL

1 Q Chad, we're going to start just talking about your
2 background a little bit. Tell me where you're from.

3 A I was born in Beaufort, South Carolina.

4 Q Okay. And did you grow up here in Beaufort?

5 A We moved to Rhode Island when I was around two,
6 came back when I was ten. So, yeah, I grew up -- I grew
7 up down here.

8 Q Okay. Did you go to school around here?

9 A Yes, ma'am.

10 Q Okay. You went to middle school and high school
11 here?

12 A Yes, ma'am.

13 Q Okay. And have you lived here ever since high
14 school, or?

15 A I left -- I left after high school. Off and on a
16 couple of times, but you know, this is my home, so.

17 Q Okay. And so, you're living here in Beaufort now.

18 A Yes, ma'am.

19 Q And were you living here in July of last year,
20 2013?

21 A Yes, ma'am, I was.

22 Q Okay. And what do you do for a living?

23 A I am a cook.

24 Q Okay.

25 A Doing it 18 years, so.

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DIRECT - CHADWICK MITHCELL

1 Q Eighteen years of cooking?

2 A Yes, ma'am.

3 Q Where are you working right now?

4 A I work down at Plum's.

5 Q Okay. Where is that?

6 A It's on Bay Street.

7 Q All right. Chad, tell me, when did you first meet
8 Malcolm Brabham?

9 A I met Malcolm Brabham, I want to say, probably
10 2003. Yeah.

11 Q Okay. And how was it that you met him.

12 A He was seeing my little sister, my youngest sister.

13 Q Your youngest sister. What's her name?

14 A Reah Gonsalvez.

15 Q Okay. And so, in 2003, when you met Malcolm
16 Brabham, were you all friends at that point, or did you
17 hang out often? What was your relationship like?

18 A Not at all. He was my sister's boyfriend, and that
19 was the extent of it.

20 Q Okay. Did you -- what did you -- how do you refer
21 to Malcolm? Did you call him your -- are you just
22 friends? Did you call him your brother-in-law? How did
23 you refer to him?

24 A As far as what? The night that everything
25 happened, or?

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DIRECT - CHADWICK MITHCELL

1 Q Just in general.

2 A He was just Malcolm Brabham. He was Malcolm. That
3 was my sister's boyfriend. That's -- that's how I
4 referred to him.

5 Q Okay. And do they have children together?

6 A Yes, ma'am, they do.

7 Q Okay. All right, Chad. Let's talk about -- about
8 the day of the incident.

9 A Okay.

10 Q Do you remember July 15th of last year?

11 A Yes, ma'am.

12 Q Okay. Do you remember what you were doing that
13 morning?

14 A I went to work about 5:00 o'clock.

15 Q 5:00 o'clock in the morning?

16 A 5:00 o'clock in the morning. I got up probably
17 between 11:00 and 11:30, took a -- took a nap.

18 Q Where were you working at that time?

19 A Albergotti Grill. It's in Holiday Inn.

20 Q Okay.

21 A So.

22 Q Also here in Beaufort?

23 A Yes, ma'am.

24 Q Okay. So, I interrupted you. You said you got off
25 work.

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DIRECT - CHADWICK MITHCELL

1 A Got off work. I usually take a nap, because 5:00
2 is kind of early. After my nap, I woke up. He was --
3 underneath -- it's a oak tree in our yard, the way the
4 -- our yard is set up, because it's like, three houses
5 in the yard. So, it's my uncle; then the house my
6 mother owns; and then, my mother owns another house,
7 which my sister was residing in, and he was underneath
8 the tree, you know.

9 Q You said he. Who's --

10 A Mr. Brabham.

11 Q Okay.

12 A He was underneath the big oak tree, having a few
13 drinks and called me over, *hey, you want a drink?* I
14 said, *yeah*. So, you know, I went over there and we
15 started drinking.

16 Q Do you remember, Chad, about what time this was in
17 the day?

18 A 5:00, 5:30, maybe.

19 Q Okay. Okay. So, so you and Chad were hanging out,
20 and went and were drinking.

21 A Yes, ma'am.

22 Q Okay. Drinking beer, or you drinking liquor? What
23 are you drinking?

24 A You know, a little bit of both.

25 Q Okay. Tell me, were you working again that night?

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1 A I had been -- no, I was off the next day.

2 Q You were off the next day.

3 A Yes, ma'am.

4 Q So, just like your Fri -- is this like, your
5 weekend night, basically.

6 A It was -- it's like my weekend. Yes, ma'am.

7 Q Okay. Okay. So, you all start drinking together.
8 What did you do after that?

9 A He replied he had to go see a friend of his on
10 Saint Helena Island, and asked if I wanted to ride. And
11 being that I didn't have anything to do, I agreed. I
12 was like, *sure, yeah, no problem, so.*

13 We went to see his friend. We were out there
14 hanging out, just chit-chat. And on the way back from
15 leaving his friend's house, I don't know if he got a
16 text message or a phone call, because he was *fingering*
17 with his phone the whole time we were in his car on the
18 way back -- on the way back to Lady's Island. And he
19 says, *well, I have to make a little detour; do you want*
20 *to come?* I'm like, *yeah, I don't have anything to do*
21 *tomorrow; let's go.* So, we go to The Hole, and --

22 Q And let's talk about what The Hole is.

23 A It's a -- I guess it's a hangout off of Holly Hall
24 Road, and --

25 Q And where is that located? Like, is it on Lady's

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1 Island, or is it?

2 A It's on Lady's Island, yes, ma'am.

3 Q Okay. All right. Tell me about what happened when
4 you all went to The Hole.

5 A Okay. So, we get down to The Hole, you know, we
6 were just conversating down there. It was a bunch of
7 people that -- bunch of people down there conversating.
8 And, you know, Ms. Blake, Ms. Elaine Blake, you know,
9 she was out there. They were conversating and, you
10 know, just -- I started noticing a little bit of
11 flirting going on, a little -- too much flirtation, you
12 know, really, and, you know, I didn't say nothing about
13 it.

14 Well, got to the point we were going to leave. So,
15 Ms. Blake jumps in the car. She jumps in the front
16 seat.

17 Q Did you know Elaine Blake?

18 A I -- I didn't know her. I knew her through him.
19 But no, I didn't know her.

20 Q You knew her through Malcolm?

21 A Yeah.

22 Q Brabham?

23 A Yeah.

24 Q Okay. Okay. Chad, about what time do you think it
25 was when you all were at The Hole that night? Do you

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1 know what time you arrived, roughly?

2 A It was probably just starting to get dark.

3 Q Okay.

4 A We weren't out there very long.

5 Q Okay.

6 A So, you know, I know it was dark when we left, but
7 it was just starting to get dark.

8 Q Okay. And you were still drinking at this point?

9 A Yes, ma'am.

10 Q Okay. Okay. So, you were saying that you all were
11 going to leave The Hole.

12 A Yes, ma'am.

13 Q Continue on.

14 A So, we leave The Hole. We come --

15 Q And -- well, who was with you when you left The
16 Hole?

17 A Okay. I'm sorry. It was Mr. Brabham, Elaine
18 Blake, and me.

19 Q Okay. And what car did you leave in?

20 A We were in a Impala. I believe it was burgundy.

21 Q Okay.

22 A A burgundy Impala.

23 Q Whose car was that?

24 A It was Mr. Brabham's Impala.

25 Q Okay. Who was driving?

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1 A Mr. Brabham was driving.

2 Q And where were you sitting?

3 A I was in the back seat.

4 Q Okay. And where was Ms. Blake sitting?

5 A She was in the front seat.

6 Q Okay. Okay. So, you all left The Hole in the car,
7 with the three of you.

8 A Yes, ma'am.

9 Q Tell me what happened next.

10 A So, on the way down the road, you know, I start to
11 notice that, you know, they touchy-feely, back and forth
12 with each other, so I made a comment about it, you know.
13 I said:

14 *I mean, you guys cousins. What, are*
15 *you kissing cousins? You know, what's going*
16 *on?*

17 And that clearly infuriated him and hurt at the
18 same time, so all three of us started arguing.

19 So, she replies, you know, *let me out of the car;*
20 *I'm getting out* He's like, *no, you're not getting out*
21 *of the car; he's gonna get out.* She jumps out of the
22 car.

23 Q Okay. Do you remember where you were, about, on
24 what road you were on?

25 A I think it's called Little Capers.

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1 Q Okay.

2 A I'm really not familiar -- I'm pretty sure it was
3 Little Capers. But you know, she jumps out of the car.
4 He jumps out and chases behind her. He comes back to
5 the car. I'm still in the back seat at this time. He
6 comes back to the car. You know, we start arguing and
7 he's driving off, you know.

8 *You need to get the F out of my car,*
9 *duh, duh, duh, duh, duh. You're always*
10 *running your mouth.*

11 *I'm like, you know what? Just pull over. Let*
12 *me out.*

13 Q Okay.

14 A So.

15 Q All right. Chad, I'm going to stop you there. I
16 want to show you, just so we're clear.

17 MS. LEMPESIS: Your Honor, may I approach the
18 witness?

19 THE COURT: You may.

20 BY MS. LEMPESIS

21 Q Chad, I'm going to hand you what's been marked as
22 State's Exhibit 2.

23 A Okay.

24 Q Do you recognize that?

25 A Yes, ma'am.

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1 Q Okay. And what is that a picture of?

2 A That's a picture of Mr. Brabham's car.

3 Q Is that the car that you were riding in that night?

4 A Yes, ma'am.

5 Q On July 15, 2013?

6 A Yes, ma'am.

7 Q Okay.

8 MS. LEMPESIS: All right. Your Honor, we'd move to
9 admit this into evidence as State's Exhibit 2.

10 MS. CAMPBELL: No objection.

11 THE COURT: Admitted.

12 MS. LEMPESIS: And move to publish it to the jury,
13 your Honor.

14 THE COURT: You may.

15 ITEM IDENTIFIED AS PHOTOGRAPH

16 OF MR. BRABHAM'S CAR MARKED

17 STATE EXHIBIT NUMBER 2, ADMITTED

18 AS EVIDENCE.

19 BY MS. LEMPESIS:

20 Q All right. So, this is the car that you were
21 riding in with Malcolm Brabham and Elaine Blake.

22 A Yes, ma'am.

23 Q Okay. So, I want to sort of break down what you're
24 -- what you're talking about here with the argument in
25 the car with Elaine and yourself and Malcolm Brabham.

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1 A Okay.

2 Q So, you all are -- you said you all are arguing,
3 and that Ms. Blake got out of the car.

4 A Yes, ma'am.

5 Q Mr. Brabham, did he get out of the car and go after
6 her?

7 A He -- yes, ma'am. He jumped up and chased after
8 her, because he was, like, *no, you're not going nowhere.*
9 So, he jumped out and chased behind her. I guess she
10 just kept walking. So, he come -- he came back to the
11 car. Like I said, I was still in the back seat. He
12 came back and jumped in the front seat and drove a
13 little bit down the road, not -- not far, but we
14 continued arguing as he was driving.

15 He was like, you know, *you need to get out of the*
16 *car, this, that and there; you're constantly running*
17 *your mouth.* And so, I was like, *you know what; pull*
18 *over; let me out.* He pulls over on the left-hand side.
19 I jump out of the back seat. He proceeds to jump out of
20 the front seat.

21 Q Which side -- which side of the car did you exit
22 out of? The driver's side?

23 A I exited out of the left side.

24 Q Okay. So, the driver's side of the car?

25 A Yes, ma'am.

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1 Q Okay. And Mr. Brabham got out of the front
2 driver's seat?

3 A Yes, ma'am.

4 Q Okay. And tell me what happened next.

5 A As I was walking off, he jumped out. We started
6 throwing more obscenities at each other, you know. *F*
7 *you, F this, this, that and there.* And, you know, it
8 was basically, he kind of pulled the gun like a -- it
9 was like a western movie. I didn't even really see it
10 coming. Between us arguing, he just pulled out and,
11 boom, shot me, you know.

12 Q Do you remember about how far you were standing
13 from him?

14 A I want to say probably from here to -- from here to
15 where this lady is right here, maybe a little further
16 back.

17 Q Okay.

18 MS. CAMPBELL: I'm sorry, your Honor. I wasn't
19 clear on his answer.

20 THE COURT: Okay. You want to repeat that and give
21 us a definite feet or yards?

22 A Five feet, is that? Maybe six feet?

23 BY MS. LEMPESIS:

24 Q Okay. Okay.

25 A Okay.

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1 Q And were you all standing -- were you standing --
2 how close to the car were you standing?

3 A He was in front of the car door, and I was in front
4 of him, away from the car door.

5 Q Okay.

6 A So.

7 Q Okay. So, you're farther from the car than Mr.
8 Brabham.

9 A Yes.

10 Q Okay. And you said he just pulled out a gun and
11 fired a shot?

12 A Pulled it out and fired a shot.

13 Q What do you remember -- what do you remember next?

14 A I remember him looking around like this, looking
15 down at me, because I guess he thought I was dead. I
16 don't know, you know. After -- after he shot me, I
17 grabbed my chest. It was like, *I can't believe you shot*
18 *me*, and just kind of collapsed. And he looked around
19 like this, and he jumped in the car and just peeled out,
20 just left, left me on the side of the road.

21 Q Chad, I'm going to show you, just for -- to help --
22 to help show where this happened, a map of the area.

23 A Okay.

24 Q All right. Chad, --

25 MS. LEMPESIS: Your Honor, permission for the

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1 witness to stand down from the stand so we can --

2 THE COURT: You may step down.

3 MS. LEMPESIS: Thank you.

4 MS. CAMPBELL: Your Honor, if the State is going to
5 move that where we can't see it, may my client and I
6 move over to this table where we can view the evidence?

7 THE COURT: Well, you can move over there.

8 MS. LEMPESIS: We'll move it back once we're done.

9 MS. CAMPBELL: I'm sorry, your Honor.

10 THE COURT: You can.

11 MS. LEMPESIS: Okay. Thank you.

12 MS. CAMPBELL: I think he wants you to stay over
13 there.

14 THE COURT: He can just stay there.

15 MS. LEMPESIS: Just one second, Judge.

16 THE COURT: I tell you what. It's going to be --
17 it's really hard for everybody to see. I can't see it.
18 How about, moving it back

19 MS. LEMPESIS: Okay.

20 THE COURT: And Mr. Mitchell, if you could, just
21 stand over here to the side, instead of in front of the
22 jurors, so that won't block their view off. Can you all
23 see over there?

24 JUROR: He's kind of in the way.

25 BY MS. LEMPESIS:

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1 Q Scoot back just a little bit, Chad. And I just
2 want to do this, Chad, so that you can see. Can you
3 point out to us, without blocking everybody's view, if
4 you can sort of point on this map where you estimate you
5 were on Little Capers Road. There's Holly Hall Road.
6 If you can point to us.

7 A Okay. I'm going to have to say --

8 Q Point, and then you can step back.

9 A I would have to say it was -- it probably had been
10 around this general area here, right at the Sandy --

11 COURT REPORTER: I'm sorry, I need you to speak up,
12 please. *Right around this general area here?*

13 A Around this general area here, Sandy Lane. It
14 used to be a trailer park. I'm not sure if it's there
15 now, --

16 Q Okay.

17 A -- but around this general area right here.

18 Q Okay.

19 A Is where it happened.

20 Q And then, Chad, do you remember what you did after
21 you were shot and after Mr. Brabham left?

22 A I remember laying there thinking, *I can't believe*
23 *I'm dying; I can't believe this is going to -- I*
24 *remember saying, I cannot believe this is happening, and*
25 *I can't believe I'm dying. And you know, something just*

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1 told me to get up, get up. I just remember getting up,
2 holding my chest and walking down the road. And it
3 seemed like -- it seemed like forever, you know, walking
4 down the street. But you know, I came to the first
5 house I seen with lights and just -- *could you please*
6 *call 911.*

7 Q Okay. You can go on back up to the stand. Okay?
8 Okay, Chad. So, you showed us on the map, and you said
9 you just remember walking.

10 A Right.

11 Q Do you remember how far you walked?

12 A I know it was long. I know it was a very long
13 walk. It seemed like forever.

14 Q Okay. And you stopped at the house -- the first
15 house you saw lights on?

16 A Yes, ma'am.

17 Q Tell me what you did, what you said to the people
18 there.

19 A I basically just walked into the driveway and said,
20 *can you please call 911; I've just been shot; I've just*
21 *been shot.* And, you know, I fell on the steps, and the
22 fellow automatically just ran down and applied pressure
23 to my chest. And he was like, *who shot you; who shot*
24 *you?* And I was like, *my brother-in-law, Malcolm Brabham*
25 *shot me, you know.*

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1 Q Okay. How much time do you estimate, if you can
2 estimate, had elapsed between the shooting and you
3 getting to these people's house?

4 A Maybe 15 minutes? Ten, 15. Like, I don't know.
5 Like I said, it seemed like a very long walk.

6 Q Okay.

7 A So.

8 Q And were you -- were you bleeding this whole time?

9 A I was bleeding profusely. Like, my -- the whole
10 front of my shirt was covered. It was down to my legs
11 and my socks. I mean, I was soaked, so.

12 Q Once you were at the people's house, and the
13 emergency -- the EMS people arrived, and the police,
14 what happened next?

15 A The police officer asked -- asked me who shot me.
16 I told him the same, Mr. Malcolm Brabham, my brother-in-
17 law. They asked where he stayed at. I gave them the
18 address. Then, they took me to Beaufort Memorial. And
19 from there, you know, they cut my clothes off. I
20 remember talking to, I think it was Detective Rice. I'm
21 not sure, because I was kind of in and out of it at that
22 point. And I just, after that, remember waking up being
23 wheeled into MUSC, and --

24 Q Okay. And so, at some point, you got transported
25 to MUSC?

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1 A Yes.

2 Q Okay. How long did you stay at MUSC?

3 A Say, five days. And I just really didn't feel
4 comfortable there, you know. They -- it was really
5 against their wishes for me to be released, but like I
6 said, I didn't feel comfortable there. And you know,
7 once it got to the point where I was able to use the
8 bathroom on my own and, you know, my mother and my
9 sisters agreed to help, you know, change the bandages
10 and take care of me and whatnot. So, it was about five
11 days.

12 Q Okay. Did you have any surgeries while you were --

13 A I had two surgeries, actually. I had -- the first
14 surgery was the -- the third say I was there, because
15 they couldn't stop the bleeding. And you know, I got
16 extensive nerve damage now. The bullet went in and tore
17 my artery up, and tore some other nerves up. Then, I
18 had another surgery on September 18th, an angiogram,
19 which they went in to make sure the valves were working
20 straight. And, you know, so, even to this day, I still
21 have limited movement in my right side.

22 Q And are you right-handed or left-handed?

23 A I'm right-handed.

24 Q Has it affected your ability to use that right
25 hand?

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1 A It's affected my life drastically. It's, you know,
2 yes.

3 Q You mentioned some of the long-term -- or some of
4 the damage you suffered, nerve pain. What were some of
5 the other long-term damage?

6 A I get muscle spasms real bad. I don't have
7 individual control of -- of my fingers. Like, they all
8 move in one. Like, I can't -- you know, if I want to
9 point at you, I can't point at you, because it's just,
10 like, all -- all of the tendons, I guess, just healed
11 together or whatnot.

12 Q Let's go back to the day, to July 15th, and we've
13 talked about you all drinking.

14 A Right.

15 Q And we've heard Ms. Campbell say that you had
16 alcohol and cocaine in your system.

17 A Right, right.

18 Q Chad, did you do cocaine that day?

19 A Yes, ma'am, I did.

20 Q Where were you when you did it?

21 A I was probably in his car.

22 Q Okay. Were at The Hole, or was it before The Hole?
23 After? When?

24 A Maybe right before we got to The Hole.

25 Q Okay.

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1 A So.

2 Q Okay. And you were also drinking alcohol.

3 A Yes, ma'am.

4 COURT REPORTER: Speak up, please.

5 A Yes, ma'am.

6 Q Okay. Do you remember the incident? Do you
7 remember the shooting?

8 A Yes, ma'am, I do.

9 Q The fact that you were under the influence of
10 alcohol and cocaine, does that affect your memory?

11 A No, ma'am, it did not.

12 Q Was there anybody else with you and Malcolm Brabham
13 in that car besides Elaine?

14 A During the shooting, or?

15 Q During the shooting.

16 A No, ma'am. It was me, Malcolm Brabham, and Elaine
17 Blake.

18 Q Okay. And you said Elaine -- where -- Elaine had
19 left, or she was there at the time of the shooting?

20 A She had jumped out prior to the shooting, because
21 we had all been arguing, you know, with the comment I
22 made about, you know, her and him messing around. And
23 you know.

24 Q You obviously upset Ms. Blake, you'd say?

25 A Yes. Yes.

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1 Q Do you think you might have been a little
2 argumentative?

3 A Yes, I was. But we -- we were all going back and
4 forth, you know. It was everybody, you know. There's
5 not, you know, just -- so.

6 Q Okay. So, even though you were under the influence
7 of those drugs and alcohol, you remember clearly what
8 happened with the shooting.

9 A Yes. Yes, I do.

10 Q And there was nobody else around that would have
11 seen it besides you and Mr. Brabham.

12 A No, ma'am. Nobody else. Just me and him.

13 Q Okay. We're -- we're going to talk about something
14 else unpleasant that you probably don't want to mention.
15 But you've been convicted of a crime before; haven't
16 you, Chad?

17 A Yes, ma'am.

18 Q Do you remember what year it was?

19 A 2004, I want to say.

20 Q 2004?

21 A Yes.

22 Q So, that's ten years ago. How old would you have
23 been at that time?

24 A Twenty-four.

25 Q Twenty-four years old?

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DIRECT - CHADWICK MITHCELL

1 A Yes, ma'am.

2 Q Was that here in Beaufort?

3 A Yes, ma'am.

4 Q And do you recall what the charge was?

5 A It was an ABHAN, assault and battery.

6 Q Okay.

7 A High and aggravated, I think.

8 Q Okay. So, you said ABHAN. That's assault and
9 battery high and aggravated.

10 A Okay.

11 Q Do you remember if that was a misdemeanor or a
12 felony offense?

13 A It was a misdemeanor.

14 Q Okay. Do you remember what sentence you received
15 for that?

16 A It was a one-year probation.

17 Q One year probation?

18 A Yes, ma'am.

19 Q Okay. All right.

20 THE COURT: Let me stop for a second. Folks, when
21 -- in the course of testimony sometimes like this, you
22 get to hear whether or not somebody's been convicted of
23 a crime in the past. The only reason that this is
24 allowed is for the purposes of you deciding whether or
25 not that in any way affects his ability to tell the

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1 truth or not.

2 We have these rules that we decide. I make a
3 decision as to whether you can hear it, and I've made a
4 decision that you could hear evidence of this. This is
5 only to be used for you, by the -- for the purpose of
6 determining whether or not, in your opinion, that
7 affects his ability to tell the truth or not to tell the
8 truth. In other words, his believability.

9 At the time, while the crime was punishable by up
10 to ten years in prison, it was only considered a
11 misdemeanor in South Carolina at that time. So, for
12 purposes of determining whether or not that prior
13 conviction affects his ability to tell the truth or not
14 tell the truth, or whether or not you believe him is
15 more or less is totally up to you. But that is the sole
16 purpose for which you can consider that evidence that
17 you just heard. All right. You may continue.

18 MS. LEMPESIS: Thank you, Judge.

19 BY MS. LEMPESIS:

20 Q I forgot to ask you, at the shooting, did you have
21 a cell phone with you?

22 A I did have cell phone, actually.

23 Q Why didn't you use your phone to call the police?

24 A I was -- I had a code on the phone, and I was
25 locked out of it, and I couldn't remember my email. So,

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1 you know.

2 Q So, could you receive calls on the phone?

3 A I could receive calls, but I couldn't make them.

4 Q You couldn't make them because you'd locked
5 yourself out of them?

6 A Exactly.

7 Q Okay.

8 MS. LEMPESIS: A moment of the Court's indulgence.

9 THE COURT: Um-hmm.

10 BY MS. LEMPESIS:

11 Q Chad, you've identified Malcolm Brabham as the
12 person who shot you. Do you see Mr. Brabham in the
13 courtroom today?

14 A Yes, ma'am, I do.

15 Q Okay. Can you indicate where he is sitting?

16 A He is sitting all the way to the left, with the
17 dreads.

18 Q Okay. The long -- with dreads?

19 A The long dreads.

20 Q Okay. And what -- we'll just let the record
21 indicate he's indicated Mr. Malcolm Brabham.

22 THE COURT: So ordered.

23 MS. LEMPESIS: No further questions at this time.

24 THE COURT: All right. Before we begin our cross-
25 examination, or the Defense begins cross-examination, I

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1 think it would be time to take a restroom break. So, go
2 back to the jury room. Don't do any deliberations or
3 discussions, or discuss witness demeanor or anything
4 like that, and we'll see you in about ten or 15 minutes.
5 Thank you.

6 BAILIFF: The jury is clear, your Honor.

7 JURY LEAVES COURTROOM 11:01 A.M.

8 THE COURT: Okay. Let's meet back at 11:15. If
9 you need to go to the restroom, they can take you to the
10 restroom. If you want to just sit here, you can, but
11 you're not allowed to talk with anybody once you're on
12 the stand. Don't talk to any lawyers or witnesses, or
13 anyone else. But if you need to go to the restroom, --

14 A Yes, sir.

15 THE COURT: -- one of the bailiffs will escort you
16 to the bathroom.

17 A All right. Thank you.

18 OFF THE RECORD 11:01 A.M.

19 BACK ON THE RECORD 11:20 A.M.

20 BY THE COURT:

21 BAILIFF: All rise and come to order, please.
22 Court is now back in session.

23 THE COURT: Be seated. All right. Let the record
24 reflect, the defendant is back in the courtroom. The
25 witness is on the stand. State ready?

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1 MS. LEMPESIS: State's ready, your Honor.

2 THE COURT: You ready?

3 MS. CAMPBELL: Yes, sir.

4 THE COURT: All right. Bring the jury back in.

5 BAILIFF: The jury is entering the courtroom, your
6 Honor.

7 JURY ENTERS COURTROOM 11:21 A.M.

8 THE COURT: All right. Be seated. Okay, folks.
9 We are going to resume now with the cross-examination of
10 the witness. Ms. Campbell, whenever you're ready.

11 MS. CAMPBELL: May it please the Court?

12 CHADWICK MITCHELL

13 CROSS-EXAMINATION BY MS. CAMPBELL:

14 Q Chad, you are Reah Gonsalves' brother?

15 A Yes, ma'am.

16 Q Okay. And Reah and Malcolm are a couple with three
17 children, correct?

18 A Yes, ma'am.

19 Q Now, the home where Malcolm and Reah's three
20 children live is at a place called ■ Sangster Road,
21 right?

22 A Yes, ma'am.

23 Q Now, you and your mother live at ■ Sangster Road,
24 correct?

25 A Yes, ma'am.

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CROSS - CHADWICK MITCHELL

1 Q Okay. Which is basically in the same yard, right?

2 A Yes, ma'am.

3 Q Okay. Now, when you first met Malcolm, was that
4 before or after he got out of the Navy?

5 A You know, I don't recall.

6 Q When you testified earlier about a 2004 conviction
7 for assault and battery of a high and aggravated nature,
8 that relates to an aggravated assault on someone?

9 A Yes, ma'am.

10 Q Okay. Now, you would tell this jury that you went
11 to a place called -- that you knew as The Hole, on July
12 15, 2013, right?

13 A Yes, ma'am.

14 Q And at The Hole, do you remember Elaine Blake being
15 there?

16 A Yes, ma'am.

17 Q Do you remember Norman Singleton being there?

18 A Yes, ma'am.

19 Q Do you remember a woman by the name of Sheena being
20 there?

21 A Yes, ma'am.

22 Q Okay. Were there other people there, too, Chad?

23 A Yes, ma'am, there were.

24 Q Okay.

25 MS. CAMPBELL: May I approach?

4-23-14 STATE V BRABHAM

CROSS - CHADWICK MITCHELL

1 THE COURT: Um-hmm. When was this?

2 MS. CAMPBELL: I'm sorry?

3 THE COURT: The event you're talking about? When
4 was it?

5 MS. CAMPBELL: July 15, 2013.

6 THE COURT: Okay.

7 BY MS. CAMPBELL:

8 Q Do you recognize this photo? Is that Norman
9 Singleton?

10 A Yes, ma'am. I think it is.

11 Q Okay. Thank you. Chad, isn't it true that July
12 15, 2013, the person that you went to see on Saint
13 Helena is actually a fellow by the name of Coley, who is
14 your drug dealer?

15 A He is not my drug dealer. That is a friend of
16 Malcolm Brabham's. I just happened to be riding with
17 him.

18 Q Well, where did you get your gram of cocaine that
19 you used on July 15, 2013?

20 A I got it from a fellow in Beaufort.

21 Q Okay. You didn't drive to Saint Helena to get it
22 from Coley that day, correct?

23 A No, ma'am.

24 Q Okay. And when you tell this jury that you
25 probably did all that cocaine in Malcolm's car, is that

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CROSS - CHADWICK MITCHELL

1 because you don't really remember where you did it?

2 A No, I said I did it in the car with Malcolm.

3 Q I'm sorry, I thought you said probably did it in
4 his car. So, are you now saying that you definitely did
5 it, all that cocaine, in Malcolm's car?

6 A Yes, ma'am.

7 Q Okay. And that would be over the course of an
8 hour?

9 A That would be the course of a couple hours.

10 Q A couple of hours?

11 A Um-hmm.

12 Q You've testified that, when you left The Hole with
13 Malcolm and with Elaine, it was already dark, right?

14 A Yes, ma'am.

15 Q Okay. You've also testified that, in your mind, it
16 was just sort of like a western movie, right?

17 A Yes, ma'am.

18 Q That you said Malcolm did -- he didn't reach in the
19 car for the gun. He just pulled it out and shot you,
20 right?

21 A Yes, ma'am.

22 Q Okay. Now, when he pulled it out, did he pull it
23 out from a jacket?

24 A I believe he pulled it from behind his jeans, like,
25 you know, one of those.

4-23-14 STATE V BRABHAM

CROSS - CHADWICK MITCHELL

1 Q When you say, *pulled it out*, was it tucked in the
2 back of his jeans, or on the side?

3 A It was -- he pulled it from his jeans.

4 Q Okay. And you're using your left hand. Did he
5 pull it with his right hand or his left hand?

6 A I'm pretty -- I'm thinking it was his right.

7 Q Okay.

8 A I'm pretty sure it was his right.

9 Q But you're not sure?

10 A I'm not sure.

11 Q Okay. Now, you testified that you were
12 approximately five to six feet from the person that shot
13 you, correct?

14 A Yes, ma'am.

15 Q Okay. Now, were the car doors open or closed?

16 A Again, I do not remember. It just -- it happened
17 so fast. But if I had to say, I'd say the door -- the
18 door was closed, because after he shot me, he had to
19 open the door and speed off.

20 Q Okay. So, the door, his door, is closed.

21 A His door was closed.

22 Q He had to actually get to his door, open his door,
23 get in is car and leave, correct?

24 A He was standing in front of his door.

25 Q But the door was closed.

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CROSS - CHADWICK MITCHELL

1 A Yes.

2 Q Thank you. Now, --

3 MS. CAMPBELL: May I approach, your Honor?

4 THE COURT: You may.

5 BY MS. CAMPBELL:

6 Q Now, this is just a smaller version of the large
7 version that you worked with, with the Prosecutor.

8 A Okay.

9 Q Up here at the top, this is Holly Hall Road,
10 correct?

11 A Yes, ma'am.

12 Q And this is Little Capers Road, correct?

13 A Yes, ma'am.

14 Q Okay. And there's sort of an intersection at Holly
15 Hall and Little Capers, right?

16 A Yes, ma'am.

17 Q Okay. Oh, one more second. I believe you
18 testified here for this jury that the area where you got
19 shot was around -- did you say Singleton Drive?

20 A It was around --

21 Q Around here?

22 A -- it was around Sandy Lane. There used to be a
23 trailer park there.

24 Q Right around Sandy Lane.

25 A So, it was around that area.

4-23-14 STATE V BRABHAM

CROSS - CHADWICK MITCHELL

1 Q Okay. Which is much closer to River Drive than the
2 intersection of Holly Hall and Little Capers, right?

3 A Correct.

4 Q Okay. Do you remember when this officer, Detective
5 Rice, talked with you about what you say happened that
6 night? Do you remember talking to him about this?

7 A I was in the hospital. Pretty -- I was pretty
8 banged up at the time. I had lost so much blood, and
9 between the 20 or 30 people that were in the room
10 working on me, you know, I remember speaking to him, but
11 I was kind of coming in and out of consciousness, if you
12 will.

13 Q Okay. So, sort of remember talking to him,
14 correct?

15 A Sort of remember him, yes.

16 Q Okay. Do you remember telling Detective Rice that
17 this all occurred where you got shot, at the
18 intersection of Holly Hall Road and Little Capers Road?
19 Not way down the map, like you did today.

20 A I don't -- I don't remember telling him that. I
21 remember telling him that it was off of that
22 intersection. Maybe it was a misunderstanding.

23 Q Do you remember telling Officer Rice that Malcolm
24 reached into the open driver's door, retrieved a gun,
25 and shot you, like that?

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CROSS - CHADWICK MITCHELL

1 A Again, like I said, I was in the hospital, kind of
2 in and out of it, so.

3 Q Did Officer Rice explain to you that it was
4 important that you tell him where this happened, so he
5 might be able to find some evidence that this even --
6 that this happened or that Malcolm was involved?

7 A I do not remember that. Again, I was in the
8 hospital, in and out of it, loss of blood, you know, so.
9 I do remember walking down to the people that saved my
10 life and telling them who shot me, and also telling the
11 EMT and the deputy on duty, before everything started
12 getting hazy.

13 Q Everything started getting hazy?

14 A Yes, as far as --

15 Q At that point?

16 A At that point. When I started --

17 Q Okay. So, after all the alcohol you consumed.
18 Were you drinking gin or vodka?

19 A I was drinking vodka.

20 Q Okay. So, you were drinking vodka, and you've done
21 a gram of coke, and nothing was hazy, right?

22 A Correct. Not at that time, no.

23 Q All right. Now, do you remember arguing with
24 Norman Singleton and Elaine Blake and Sheena, down at
25 The Hole?

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RE-DIRECT CHADWICK MITCHELL

1 A I remember we were all arguing.

2 Q When you say all, who do you mean by all, Chad?

3 A I mean all of us. Me, Mr. Brabham, Elaine Blake,
4 Norman, because of the whole situation with him being
5 with my sister, and then coming down here and flirting
6 and whatnot. So, it was -- it was an altercation.

7 Q Okay. And you had words with Norman about his
8 relationship with Elaine, too; did you not?

9 A Not -- not with -- nothing with his relationship.
10 We just -- we had some words, but it wasn't anything
11 serious, Ms. Campbell.

12 MS. CAMPBELL: That's all I have.

13 THE COURT: Re-direct?

14 MS. LEMPESIS: Yes, just briefly, your Honor. I
15 think we --

16 CHADWICK MITCHELL

17 RE-DIRECT EXAMINATION BY MS. LEMPESIS:

18 Q Chad, do you usually hang out at The Hole?

19 A I do not.

20 Q Okay. And so, on this night where you all went to
21 The Hole, where you went to The Hole with Mr. Brabham?

22 A Right.

23 Q And you saw Elaine Blake, and then this fellow,
24 Norman Singleton that Ms. Campbell showed you a picture
25 of. Norman Singleton, was he in the car with you and

4-22-14 STATE V BRABHAM

RE-DIRECT CHADWICK MITCHELL

1 Elaine Blake?

2 A No, ma'am, he was not.

3 Q And Malcolm Brabham?

4 A No, ma'am, he was not.

5 Q So, did he stay at The Hole after the three of you
6 all left together?

7 A Yes, he did. Yes, ma'am.

8 Q Did you see him again that night?

9 A I did not.

10 Q Is he the one who shot you?

11 A He is not the one who shot me.

12 Q Okay. And you said you were drinking vodka, and
13 you did cocaine.

14 A Exactly.

15 Q Did the two of those things -- how do the two of
16 those things interact together?

17 A It's like a --

18 MS. CAMPBELL: Objection, your Honor. Does she
19 mean on him, or chemically in general?

20 Q I mean the effect that had on you.

21 MS. CAMPBELL: He is not an expert.

22 A The --

23 THE COURT: Well, what kind -- maybe you should
24 rephrase this question.

25 MS. LEMPESIS: Thank you.

4-22-14 STATE V BRABHAM

RE-DIRECT CHADWICK MITCHELL

1 BY MS. LEMPESIS:

2 Q What kind of effect did the cocaine and alcohol
3 have on you, Chadwick?

4 A I -- I had a buzz, but I wasn't falling down,
5 sloppy drunk, you know. I had a buzz and I was aware of
6 my surroundings, very much aware of my surroundings.

7 Q Okay. Were you even more aware after you got shot?

8 A Yes, I was. I was trying to --

9 MS. LEMPESIS: Those are all the questions I have
10 for you.

11 A Okay.

12 THE COURT: Re-cross?

13 MS. CAMPBELL: That's all I have.

14 THE COURT: You may step down.

15 A Thank you.

16 THE COURT: All right. Next witness.

17 MS. LEMPESIS: State calls Elaine Blake.

18 MADAM CLERK: If you'd place your left hand on the
19 Bible, please, and raise your right hand. Do you
20 solemnly swear or affirm that the testimony you give
21 shall be the truth, so help you God?

22 ELAINE BLAKE: Yes.

23 MADAM CLERK: Thank you. If you'll have a seat,
24 please. And if you'll state your name and spell it for
25 the record, please.

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DIRECT - ELAINE BLAKE

1 ELAINE BLAKE: Elaine Blake, E/l/a/i/n/e,
2 B/l/a/k/e.

3 ELAINE BLAKE

4 DIRECT EXAMINATION BY MS. LEMPESIS:

5 Q Good morning, Ms. Blake.

6 A Good morning.

7 Q Ms. Blake, how do you know Malcolm Brabham?

8 A He's my cousin.

9 Q He's your cousin? He's your first cousin, second
10 cousin?

11 A Third or fourth.

12 Q Third or fourth? Do you know which it is?

13 A No, ma'am. Third or fourth.

14 Q So, you're a distant relative?

15 A Yes.

16 Q Do you know Chadwick Mitchell?

17 A No. I know of him, but I don't know him.

18 Q Okay.

19 A I've met him.

20 Q Do you remember hanging out at a place called The
21 Hole on July 15, 2013?

22 A Yes.

23 Q Yes?

24 A Yes.

25 Q Did you actually used to live there?

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DIRECT - ELAINE BLAKE

- 1 A Yes, I've stayed there.
- 2 Q You've stayed there?
- 3 A Yes. I was staying there during that time.
- 4 Q Who were you staying there with?
- 5 A With Vera Singleton.
- 6 Q Vera Singleton?
- 7 A Yes.
- 8 Q Okay. And is this place called The Hole, what road
9 is it located on?
- 10 A Down Holly Hall, Shepherd. Down Shepherd, Holly
11 Hall and Shepherd.
- 12 Q Okay. Where is that located in Beaufort?
- 13 A Lady's Island.
- 14 Q Okay. And do you remember on July 15, 2013, was
15 there a party happening at The Hole that night?
- 16 A No, it was just a bunch of us in the yard.
- 17 Q A bunch of us in the yard. So, like, how many
18 people?
- 19 A I would say about seven, eight of us.
- 20 Q Okay. And do you remember seeing Malcolm Brabham
21 and Chadwick Mitchell that night?
- 22 A Yes.
- 23 Q Okay. And did they arrive together?
- 24 A Yes.
- 25 Q What car did they arrive in?

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DIRECT - ELAINE BLAKE

1 A A burgundy car.

2 Q Okay. Do you know whose car it was?

3 A Malcolm.

4 Q Okay. And what were they coming to The Hole to do?

5 A Well, he called me and say, *cuz, what you doin'?*

6 And I say, *we were sitting here chilling in The Hole*
7 *drinking.* So, he said they were going to stop by.

8 Q Okay. Talk a little bit slowly for the court
9 reporter.

10 A He called me and said that they were going to come
11 by.

12 Q Okay. And who's he?

13 A Malcolm.

14 Q Malcolm Brabham.

15 A Um-hmm.

16 COURT REPORTER: Is that yes?

17 A Yes.

18 Q And so, they did come by, and how long did they
19 hang out?

20 A When they got there, we probably, like I said, was
21 there roughly 20, 30 minutes before everything took
22 place with Chad.

23 Q Okay. And what did everything take place with
24 Chad?

25 A He got into it with me, Sheena Singleton, and

4-22-14 STATE V BRABHAM

DIRECT - ELAINE BLAKE

1 Norman Singleton.

2 Q Okay. Got into it. What do you mean?

3 A Arguing.

4 Q Okay.

5 A Drunk. Like I said, arguing with everyone. It
6 started with him and Norman. Then, it started with me
7 and him. And then, it started with he and Sheena.

8 Q Okay. And who's Sheena?

9 A Sheena Singleton, my friend.

10 Q Okay. So, you all are all arguing. What was the
11 argument over?

12 A Well, him and Norman was arguing about me.

13 Q Who's him?

14 A Chad. Chad and Norman was arguing about me,
15 because he said some derogatory things amongst where
16 Norman heard it. So, Norman didn't like it, so him and
17 him had some words, Chad and Norman. So --

18 Q Okay. And tell me again, you -- how are you
19 related to Norman?

20 A I'm not related to Norman. That was my ex-
21 boyfriend. At the time, he was my boyfriend.

22 Q Okay.

23 A But he's my ex-boyfriend now.

24 Q Okay. So, Chad had words with Norman, and then
25 there were words exchanged between you and Chad, as

4-22-14 STATE V BRABHAM

DIRECT - ELAINE BLAKE

1 well?

2 A Yes.

3 Q Okay. And so, at some point, did you all decide to
4 leave?

5 A Yes.

6 Q Okay. And whose car did you leave in?

7 A In Malcolm's car.

8 Q Okay. And where did you sit in the car?

9 A In the front seat.

10 Q Okay.

11 A Passenger.

12 Q All right. And tell me where you all headed from
13 there.

14 A We were heading to take Chad home.

15 Q Okay. And what happened in the car?

16 A Me and Chad kept having words, because he was
17 calling me out of my name, saying I'm sleeping with
18 Malcolm; I'm not his cousin. And like I said, I was --
19 we were going back and forth. So, it started drizzling,
20 and I told Malcolm I wanted to get out. He stopped the
21 car, and as I was about to get out, he said, *cuz, you're
22 not getting out of the car; you're not walking.*

23 So, as I got back in the car, Chad opened his door
24 to get out of the car. So, that's when Malcolm told
25 him, *no, get back in the car, he would take him home.*

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DIRECT - ELAINE BLAKE

1 So, just don't say anything to me. So, when he got back
2 in the car, that's when he -- excuse my French -- he was
3 like, you still a nasty bitch. So, I told him, stop the
4 car. I'm not riding with him. Let me out, because
5 nobody going to call me out my name, before, you know,
6 we into it in here.

7 And that's when he stopped the car and let me out,
8 and I walked right there. It's a green house that was
9 right there. A man named Beasley. And I went right
10 there. He let me sit there 'til the rain eased up,
11 because it started raining a little harder. And then, I
12 walked back to The Hole.

13 Q Okay. So, it started raining pretty hard after you
14 got out of the car.

15 A Yes, ma'am.

16 Q And so, when you got out of the car -- you got out
17 of the car; Malcolm and Chadwick were still in the car.

18 A Yes.

19 Q And did they drive down the road?

20 A Yes.

21 Q Okay. Was anybody else in the car with them?

22 A No.

23 Q Was anybody else in that area?

24 A No.

25 Q Okay. Did you have plans with -- with Malcolm

4-22-14 STATE V BRABHAM

DIRECT - ELAINE BLAKE

1 Brabham for later on that night?

2 A Yes, yes.

3 Q Yes? What were you all going to do?

4 A We were supposed to go to Ridgeland to the G Spot.

5 Q To the G Spot?

6 A G Spot. Yes, that's what they call it.

7 Q Cheese, or?

8 A G Spot. G Spot.

9 Q G Spot. Okay. And that -- what is that?

10 A A little bar.

11 Q Okay. So, you all were supposed to go the G Spot
12 in Ridgeland together?

13 A Yes.

14 Q Did you see Malcolm Brabham again that night?

15 A No.

16 Q Was there a plan for him to come back and get you,
17 or what was the plan?

18 A Well, that was the plan while I was riding with
19 him, because he was coming back. We were going to have
20 a few more drinks and then go. But like I said, once me
21 and Chad had words or whatever, he said, well, cuz, I'm
22 a call you once I get out of the car.

23 Q So, Malcolm was drinking, too?

24 A No, he wasn't.

25 Q Okay. Were you drinking?

4-22-14 STATE V BRABHAM

DIRECT - ELAINE BLAKE

- 1 A Yes. I was.
- 2 Q Okay.
- 3 A When they pulled up, we were already -- we had a
- 4 few drinks.
- 5 Q You had a few drinks. So, did you -- were you
- 6 feeling pretty good, or?
- 7 A I had two drinks, two beers.
- 8 Q Okay. Okay. So, you all were supposed to go to
- 9 The Hole. Did you see Malcolm Brabham again that night?
- 10 A No.
- 11 Q Okay. Did you talk to him again?
- 12 A Yes.
- 13 Q What did you talk to him about?
- 14 A He called me and say he was going home.
- 15 Q He was going home?
- 16 A Yes.
- 17 Q Do you know where his home was?
- 18 A Ridgeland.
- 19 Q Okay. So, did he explain why he wasn't going to
- 20 come back, and you all aren't going to go to the G Spot?
- 21 A No.
- 22 Q Okay. Did you see Chadwick Mitchell again that
- 23 night?
- 24 A No.
- 25 Q No. So, the last time you saw him was when Chad

4-22-14 STATE V BRABHAM

CROSS - ELAINE BLAKE

1 and Malcolm were in the car together.

2 A Yes.

3 Q Okay. Ms. Blake, you've been convicted of a crime
4 before; haven't you?

5 A Yes.

6 Q Were you convicted in 2009 of shoplifting?

7 A Yes.

8 Q Were you also convicted in 2013 of giving false
9 information to the police?

10 A Yes.

11 Q Yes?

12 A Yes.

13 MS. LEMPESIS: Thank you. Nothing further from the
14 State.

15 THE COURT: Again, folks, evidence of prior crimes
16 such as that are introduced only for the purpose of
17 determining -- your determining whether or not it would
18 affect her credibility or propensity to tell the truth
19 or not. All right. Cross?

20 ELAINE BLAKE

21 CROSS-EXAMINATION BY MS. CAMPBELL:

22 Q Good morning.

23 A Good morning.

24 Q Ms. Blake, would it be fair to say that, during
25 this night, at no time did you hear any gunshots

4-22-14 STATE V BRABHAM

CROSS - ELAINE BLAKE

1 anywhere?

2 A No, I didn't.

3 Q Okay. Would it be also fair to say that, around
4 9:15, you got a phone call from Malcolm saying he was
5 heading to Ridgeland, right?

6 A Yes.

7 Q Okay. Where he would spend the night with his mom,
8 right?

9 A Yes.

10 Q Okay. Now, Norman Singleton --

11 MS. CAMPBELL: May I approach?

12 THE COURT: You may.

13 BY MS. CAMPBELL:

14 Q Is that a picture of Norman?

15 A Yes, ma'am.

16 COURT REPORTER: I'm sorry, what did you say?

17 Q I asked her if that was a picture of Norman.

18 A Yes, ma'am.

19 Q And the street where Norman lives, do you also know
20 that to be called The Hill?

21 A Yes.

22 Q Okay. Do you know that if his street address is ■
23 The Hill?

24 A Yes. It's ■ The Hill Road. Um-hmm.

25 Q Okay. Do you know that sometimes people call it,

4-22-14 STATE V BRABHAM

CROSS - ELAINE BLAKE

1 or spell it, D/e/h/i/l/l, Dehill?

2 A Well, that's how people pronounce it, Da-Hill, but
3 it's The Hill.

4 Q Right. Okay. Now, you've lived at The Hill,
5 right?

6 A Yes.

7 Q And while you've lived at The Hill, have you ever
8 had an opportunity to know whether or not there are guns
9 or weapons kept there?

10 A No.

11 Q Or see Norman with anything like that?

12 A No, ma'am.

13 Q How about seeing Malcolm with a gun?

14 A No, ma'am.

15 Q Okay. Now, have you ever seen Chad with a gun?

16 A No, ma'am.

17 Q Okay. What you would say or, I guess, characterize
18 about that night was that Malcolm didn't want either you
19 or Chad --

20 A To have an altercation.

21 Q Well, let me just finish first. He didn't want
22 either one of you all to have to get out and walk in the
23 rain, even though both of you all were trying to get out
24 of the car, right?

25 A Yes, he didn't want that.

4-22-14 STATE V BRABHAM RE-DIRECT - ELAINE BLAKE

1 Q And Malcolm was trying to, I guess, carry you all
2 to your destination, right?

3 A Well, I was going with him to take Chad to his
4 destination.

5 Q Right. And his destination would have been
6 Sangster Road, right? Is that where Chad lived? Do you
7 know?

8 A I don't know where he live.

9 Q You never saw a gun in the car, right?

10 A No, ma'am.

11 Q And you were sitting right next to Malcolm --

12 A Yes, ma'am.

13 Q -- that night.

14 A Yes, ma'am.

15 Q And you never saw a gun on him.

16 A No, ma'am.

17 MS. CAMPBELL: Okay. That's all I have.

18 THE COURT: Re-direct?

19 MS. LEMPESIS: Just briefly, your Honor. Thank
20 you.

21 ELAINE BLAKE

22 RE-DIRECT EXAMINATION BY MS. LEMPESIS:

23 Q Ms. Blake, you said he called -- Mr. Brabham called
24 you at 9:15?

25 A Between 9:00 and 9:30, yes.

4-22-14 STATE V BRABHAM

RE-DIRECT - ELAINE BLAKE

1 Q Between 9:00 and 9:30.

2 A Yes.

3 Q So, you don't really know for sure?

4 A Like, no, it was between 9:00 and 9:30.

5 Q Okay. So, but it was after he left you there on
6 the side of the road.

7 A Um-hmm. Because, like I say, we were supposed to
8 be going to the G Spot.

9 Q All right.

10 COURT REPORTER: I'm sorry. You said Um-hmm. Was
11 that yes?

12 A About what?

13 COURT REPORTER: When she asked you --

14 A Oh.

15 COURT REPORTER: So: *He left you on the side of*
16 *the road;* and you went, *um-hmm.* I need a yes or no.

17 A Oh. Yes, ma'am.

18 Q So, he called you some time after that to say he
19 wasn't coming back as planned.

20 A He never said he wasn't coming back. He said he
21 was on the way home.

22 Q Okay.

23 A Yeah.

24 Q But the plans had changed, and --

25 A Yes.

4-22-14 STATE V BRABHAM

DIRECT - DEPUTY HOVEST

1 Q -- you all weren't going to the G Spot?

2 A Yes, we weren't going to go.

3 MS. LEMPESIS: Okay. Thank you. No further
4 questions.

5 THE COURT: You can step down. Anybody need her
6 again? Anybody need her again? Can she be excused?

7 MS. CAMPBELL: She can be excused.

8 THE COURT: You're free to go. Thank you. You're
9 welcome to stay, but free to go. Next witness.

10 MS. CONCANNON: State calls Deputy Travis Hovest.

11 THE COURT: What's the name?

12 MS. CONCANNON: Hovest. H/o/v/e/s/t.

13 MADAM CLERK: Do you solemnly swear or affirm the
14 testimony you give shall be the truth, so help you God?

15 DEPUTY TRAVIS HOVEST: I do.

16 MADAM CLERK: Thank you. If you'll have a seat,
17 please. If you'll state your name for the record,
18 please.

19 DEPUTY TRAVIS HOVEST: Travis Hovest.

20 DEPUTY TRAVIS HOVEST

21 DIRECT EXAMINATION BY MS. CONCANNON:

22 Q Good morning, Deputy Hovest. Where are you
23 currently employed?

24 A The Beaufort County Sheriff's Office.

25 Q And how long have you been employed with the

4-22-14 STATE V BRABHAM

DIRECT - DEPUTY HOVEST

1 Sheriff's Office?

2 A Nine years.

3 Q Nine years? And in what capacity do you work for
4 the Sheriff's Office?

5 A I do road patrol, answer calls, traffic stops, that
6 kind of thing.

7 Q Were you involved in that capacity on July 15th of
8 this past year?

9 A I was.

10 Q Did you respond to an incident of a report of a
11 gunshot victim?

12 A I did.

13 Q Okay. And what did you do when you responded?

14 A I responded immediately to the incident location,
15 which was, I believe, River Drive and Little Capers.

16 Q Do you know what time you responded?

17 A I don't recall. I know it was in the evening,
18 because it was dark.

19 Q Okay. Thank you. Sorry to interrupt.

20 A That's fine. When I got there, I just immediately
21 started checking the area for any evidence and speaking
22 to some of the residents in the area, to see if they'd
23 heard or seen anything. A short time after that, we
24 were told where the incident might have actually
25 occurred, in the area of Holly Hall and Little Capers

4-22-14 STATE V BRABHAM

DIRECT - DEPUTY HOVEST

1 Road. I then responded to that area and checked it for
2 evidence.

3 Q When you say you checked it for evidence, what does
4 that entail?

5 A Got out of my car with my flashlight, started
6 walking around the area looking for blood evidence,
7 shell casings, any evidence that could have been
8 involved in the case.

9 Q Were you alone?

10 A No, I had another deputy with me, PFC Garcia.

11 Q And did you observe him doing the same sort of
12 thing?

13 A Yes.

14 Q Were you all able to locate any evidence?

15 A No.

16 Q What was the weather like that night?

17 A It was wet and rainy.

18 Q Was it raining while you all were searching?

19 A I don't believe it was. I think the road was just
20 wet.

21 Q As in, it had just rained prior?

22 A Yes.

23 Q Thank you. After you searched the area of Holly
24 Hall and Little Capers, what did you do next?

25 A If I recall correctly, I responded to Sangster

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1 Road, and met with -- I can't recall the name of who I
2 met with, but I believe it was ■ Sangster Road, is
3 where I went to.

4 Q Why would you have responded to ■ Sangster Road?

5 A We were told that the Defendant may possibly be in
6 that area, or just left that area recently.

7 Q Okay.

8 A I believe it was maybe his girlfriend's house or
9 his sister's house. I can't recall.

10 Q Were you able to locate Mr. Brabham at that
11 residence?

12 A No.

13 MS. CONCANNON: Deputy Hovest, I have no further
14 questions for you. If you could answer any Ms. Campbell
15 may have.

16 DEPUTY TRAVIS HOVEST

17 CROSS-EXAMINATION BY MS. CAMPBELL:

18 Q Good morning.

19 A Good morning.

20 Q Officer Hovest, why did you go to the intersection
21 of Holly Hall and Little Capers to look for evidence of
22 the crime?

23 A The initial officer on-scene who was talking to the
24 victim, he was trying to describe where it happened, and
25 that was one area that we could possibly figure out

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1 where it may have happened.

2 Q When you say, *that was one area*, were you ever
3 given another area to look at?

4 A No, that's the only area I searched.

5 Q All right. And you talked to some people along
6 River Drive, down near where Chad had knocked on
7 somebody's door, and nobody heard any gunshots, right?

8 A If I recall, one person said they heard gunshots,
9 but they couldn't tell where they'd come from. But
10 nobody else had heard anything else.

11 Q Okay. Well, Officer Hovest, when you issue your
12 reports, they're accurate, correct?

13 A Yes.

14 Q And if your report says:

15 *Stated they did not hear any gunshots*
16 *or see anything suspicious,*
17 *that would be accurate, right?*

18 A Yes.

19 Q Okay. Thank you. Now, so, you've got no gunshots
20 down on River Drive. You've got no evidence of a crime
21 scene at Holly Hall and Little Capers. But when you
22 went to ■ Sangster Road, you talked to a woman, I
23 believe, named Reah Gonsalvez, correct?

24 A I believe that was the name.

25 Q And Reah gives you some very important information

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1 that you include in your report, which is, yes, Malcolm,
2 the father of my children, was here with me this
3 evening, correct?

4 A Yes.

5 Q Right. And you were at her house at 10:00 o'clock,
6 right?

7 A If that's what the report says. I don't have it in
8 front of me, but.

9 Q Okay. I'll be happy to bring it up to you.

10 MS. CAMPBELL: May I approach?

11 THE COURT: You may.

12 MS. CAMPBELL: Thank you.

13 BY MS. CAMPBELL:

14 Q I actually have it highlighted.

15 A Okay.

16 Q Right here. 10:00 o'clock.

17 A About 10:05.

18 COURT REPORTER: I need you to speak up, Trasi.

19 Q You were at her house about 10:00 o'clock, five
20 minutes after 10:00 o'clock that night.

21 A Yes.

22 Q On 7/15/2013, correct?

23 A Yes.

24 Q Okay. And Ms. Gonsalvez also told you Malcolm had
25 been there, and he had left her home about 45 minutes

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1 before you got there, which would be about 9:15, right?

2 A Yes.

3 MS. CAMPBELL: Thank you. That's all I have.

4 THE COURT: Re-direct.

5 MS. CONCANNON: Nothing from the State, your Honor.

6 THE COURT: You may step down. Next witness.

7 MS. LEMPESIS: The State calls Sergeant Chris
8 Wilson.

9 MADAM CLERK: Do you solemnly swear or affirm that
10 the testimony you give shall be the truth, so help you
11 God?

12 SERGEANT CHRISTINE WILSON: I do.

13 MADAM CLERK: Thank you. If you'll just state your
14 name for the record, please.

15 SERGEANT CHRISTINE WILSON: Christine Wilson.

16 SERGEANT CHRISTINE WILSON

17 DIRECT EXAMINATION BY MS. LEMPESIS:

18 Q Good morning, Sergeant Wilson. Can you tell me who
19 you work for?

20 A I work for the Beaufort County Sheriff's Office.
21 I'm a sergeant.

22 Q Thank you. And how many years have you been with
23 the Sheriff's Office?

24 A I've been in law enforcement about 23 years.

25 Q Great. And you already said your rank. You're a

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1 sergeant.

2 A Yes.

3 Q And what do your current duties include?

4 A I'm a criminal investigator for the Northern
5 Investigations Branch of the Beaufort County Sheriff's
6 Office. Investigate all types of criminal offenses, as
7 well as analyze latent fingerprints.

8 Q And were you working on July 16th of 2013?

9 A I was.

10 Q Okay. And did you have some involvement in the
11 investigation regarding an attempted murder charge,
12 defendant being Malcolm Brabham?

13 A I did.

14 Q Okay. Can you tell us about your involvement with
15 that case.

16 A On July 16th, 2013, I received a phone call from
17 Investigator Andrew Rice, who was in Bluffton doing his
18 investigation into this case, and he had contacted me
19 and asked if I could draft a search warrant and have it
20 sworn to in front of a magistrate for the search of a
21 vehicle that he was currently out with in Bluffton.

22 Q Okay. Do you know who the vehicle supposedly
23 belonged to?

24 A The vehicle was registered to a Malcolm Brabham.

25 Q Okay. And so, did you get -- did you get the

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1 search warrant?

2 A I did.

3 Q And what was the search warrant specifically for?

4 A The search warrant was for a 2009 Chevrolet Impala
5 four-door, red/burgundy in color, bearing South Carolina
6 registration 1446-FT. And that search was to include
7 any forensic evidence that was possibly contained within
8 the vehicle that would have been related to a shooting,
9 which would have included, but not limited to, firearms,
10 spent/unspent projectiles, shell casings, gunshot
11 residue, biological fluid.

12 Q Okay. And do you know where the property -- the
13 car was located?

14 A The vehicle was located at [REDACTED] Goethe Road in
15 Bluffton, and there was an event-style tent on the
16 property.

17 Q An event-style tent? Okay. All right. Do you
18 know if the car was under the tent?

19 A Yes, it was.

20 Q Okay. And so, was that the extent of your
21 involvement?

22 A Yes, it was.

23 Q Okay. What did you do with the search warrant once
24 you got it signed?

25 A Once I swore to the facts of the search warrant

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1 before the Honorable Rob Sproat at the Magistrate's
2 Office, I handed the search warrant over to Sergeant
3 Adam Zsamar.

4 Q Okay. And did you have any other involvement with
5 the case?

6 A No, that was it.

7 MS. LEMPESIS: Okay. Thank you, Sergeant Wilson.

8 MS. CAMPBELL: Briefly?

9 THE COURT: I'm sorry?

10 MS. CAMPBELL: Briefly, your Honor.

11 THE COURT: Go ahead.

12 SERGEANT CHRISTINE WILSON

13 CROSS-EXAMINATION BY MS. CAMPBELL:

14 Q Sergeant Wilson, some of the things that you put in
15 the search warrant that you were looking for, I just
16 wanted to touch on those briefly. The spent casings or
17 shell casings that you were looking for in Malcolm's
18 car, can you explain to the jury what that is, just so
19 they know what it is you're looking for.

20 A Oh, I put these items, the description of property
21 to be sought at the request of Investigator Rice. But
22 when -- when shell casings are listed in a search
23 warrant, you're looking for those items in the vehicle
24 to be searched. Shell casings would be the result of a
25 fired bullet, where all you have left is the shell

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1 casing.

2 Q Thank you. That's what I was trying to get at.
3 When you fire a gun, the shell casing would pop out,
4 correct?

5 A That's correct.

6 Q Out of that? Out of a revolver?

7 A Not out of a revolver.

8 Q Okay. Tell us how -- explain this.

9 A A semi -- a semi-automatic handgun that has the
10 slide action, once the round is fired, the resulting
11 shell casing is ejected from the port on the slide.
12 Whereas, a revolver, the -- the spent shell case -- the
13 spent shell casing remains in the cylinder until it's
14 physically ejected.

15 Q Thank you. And so, you're looking for -- because
16 the allegation was that there was a shooting in or by
17 the car, and so, you're looking for some evidence,
18 right?

19 A My only involvement in this was what was asked of
20 me to put in the search warrant, but --

21 Q Right.

22 A -- I'm assuming that Investigator Rice had these
23 items listed.

24 Q Again, in your experience, you're an investigator
25 with 23 years experience, I'm just trying to help the

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1 jury understand what it is you've got in the search
2 warrant, what you're looking for. You're looking for
3 shell casings, gunshot residue. Explain to them what
4 gunshot residue is and why you're looking for that.

5 A Gunshot residue, when a weapon is fired, there is a
6 blast of different particles, and I can't tell you
7 exactly what those are, but it's several different types
8 of particles that are ejected that can adhere to the
9 hands of the person that fired the round. If a weapon
10 is fired inside of a vehicle, sometimes that gunshot
11 residue will remain, like, in a headboard or the seat of
12 the car, or that sort of thing.

13 So, when -- when you're looking for gunshot
14 residue, there's -- there's ways that we can collect
15 that evidence to preserve that, to have that sent off
16 for trace evidence analysis. And so, that's what, you
17 know, gunshot residue is.

18 Q And that spray from firing a gun can get on
19 clothing, correct?

20 A Correct.

21 Q Okay. Can get on the area around where the gunshot
22 was fired, correct?

23 A If it's a contained area, it could absorb that,
24 yes.

25 Q And on the hands of the person who was shooting,

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1 correct?

2 A Correct. Within the -- the -- with what we go by,
3 what SLED mandates us is, if you're doing a gunshot
4 residue kit on a person, that the shooting had to have
5 happened within six hours of the time that you're doing
6 the test. Because of the activities of the person,
7 those -- that evidence can diminish. So, there's about
8 a six-hour time frame where between the event and the
9 time that you actually collect the gunshot residue from
10 a person's hands.

11 Q Thank you. See, I knew you knew the answer to
12 those questions. And so, firing a gun, gunshot residue
13 on your hand, immediately opening a car door or touching
14 a steering wheel, you could have some transference,
15 right?

16 A I would imagine, maybe. Yes.

17 MS. CAMPBELL: Okay. Thank you so much.

18 end cross-examination of SERGEANT CHRISTINE WILSON

19 THE COURT: Re-direct?

20 MS. LEMPESIS: No re-direct, your Honor. Thank
21 you.

22 THE COURT: You may step down. Anybody have any
23 reason why she can't be excused?

24 MS. CAMPBELL: No objection.

25 MS. LEMPESIS: No.

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DIRECT - JOHN HORRY

1 THE COURT: You're free to go. Thank you. Next
2 witness.

3 MS. LEMPESIS: The State calls John Horry.

4 THE COURT: What's the name?

5 MS. LEMPESIS: John Horry, H/o/r/r/y.

6 MADAM CLERK: If you'll place your left hand on the
7 Bible, please, and raise your right hand. Do you
8 solemnly swear or affirm that the testimony you give
9 shall be the truth, so help you God?

10 JOHN HORRY: I do.

11 MADAM CLERK: Thank you. If you'll have a seat,
12 please. And if you'll state your name for the record,
13 please.

14 JOHN HORRY: John Horry.

15 JOHN HORRY

16 DIRECT EXAMINATION BY MS. LEMPESIS:

17 Q Good morning, Mr. Horry.

18 A Good morning.

19 Q Thank you for being here. Mr. Horry, tell us,
20 where do you live.

21 A Grandville.

22 Q Where is that?

23 A Grandville.

24 Q Okay. Where is - what county is that?

25 A Jasper.

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- 1 Q Thank you. And do you own -- do you own a company?
- 2 A Yes, I do.
- 3 Q What kind of company?
- 4 A A well-drilling company.
- 5 Q Okay. What's the name of that company?
- 6 A Horry's Well Drilling, Incorporated.
- 7 Q Thank you. And do you know Malcolm Brabham?
- 8 A I do.
- 9 Q Okay. And how do you know him?
- 10 A He worked for me.
- 11 Q He worked for you. Do you know about how long he
- 12 worked for you, estimating?
- 13 A Probably two or three years, I guess.
- 14 Q Okay.
- 15 A Maybe longer.
- 16 Q Okay. Do you remember if he was working for you in
- 17 July, 2013?
- 18 A Yes.
- 19 Q Okay. Do you remember if he was working -- if he
- 20 came to work on July 16th of 2013?
- 21 A Yes.
- 22 Q Okay. How would Malcolm Brabham usually get to
- 23 work?
- 24 A Usually, he drove his car.
- 25 Q Okay.

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DIRECT - JOHN HORRY

1 A Different ways, you know.

2 Q Okay.

3 A It depends.

4 Q It's been a little while.

5 A It has.

6 Q Okay. Do you remember on July the 16th of 2013,
7 did Malcolm arrive to work that morning on time, or was
8 -- did he come to work that morning?

9 A Yes.

10 Q Okay. Yes, he did. And do you remember -- do you
11 remember where you all were working that day?

12 A Yes, I do.

13 Q Where was that?

14 A At Palmetto Bluff.

15 Q Palmetto Bluff. Where is that?

16 A Palmetto Bluff?

17 Q Yes, sir. Just for the jury.

18 A It's between Pritchardville and Bluffton, Old
19 Bluffton.

20 Q Okay. So, you all were doing a job out there.

21 A Right.

22 Q Okay. And so, Malcolm came to work that morning.
23 Do you remember if you all talked at all?

24 A I'm sure we did, yeah.

25 Q Okay.

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1 A But to tell you I remember the conversations, no.

2 Q Okay. Did you all ride to the work site together?

3 A I would say so, yes. We always did, yeah.

4 Q Okay. You just don't remember specifically, or?

5 A Well, I just know we probably did, because the
6 equipment was already on job site, and we would go back
7 and forth in a pickup truck, you know.

8 Q Okay. Okay. So, do you remember talking -- do you
9 remember talking to Malcolm that morning about any
10 incident that occurred between he and his brother-in-
11 law?

12 A No, ma'am.

13 Q Okay. So, do you remember the incidents of later
14 on that morning when the police arrived?

15 A Oh, yes, ma'am.

16 Q So, you remember that clearly.

17 A Oh, yeah.

18 Q But you don't remember your conversation with
19 Malcolm Brabham that morning.

20 A No, I don't.

21 Q Tell me when the police first contacted you that
22 morning.

23 A When?

24 Q Yes, when. Where were you when they called?

25 A I was operating a drill rig.

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DIRECT - JOHN HORRY

1 Q Okay. Was it still the morning hours?

2 A Yeah, I'm pretty sure it was, yeah.

3 Q Okay. Do you remember who called you?

4 A I know I spoke a lot to Jason Malphrus.

5 Q Okay. Does he work for the Sheriff's Office?

6 A Yes, he does.

7 Q Okay.

8 A I remember that, because his mother used to work
9 for me.

10 Q Okay. So, you remember speaking to him.

11 A Right.

12 Q And were you informed that Mr. Brabham was wanted
13 for a charge of attempted murder?

14 A I knew that they were coming to pick him up. I
15 would imagine they told me why, but I don't remember
16 that for certain. I really don't.

17 Q Okay. So, they told you -- Investigator Malphrus
18 told you that they were going to be coming and picking
19 him up.

20 A Um-hmm.

21 Q Okay.

22 COURT REPORTER: Is that yes?

23 A Yes.

24 Q Did you tell Malcolm Brabham that they were coming
25 -- that the police were coming to pick him up, or did

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1 you keep that to yourself?

2 A No, ma'am. I didn't, because I didn't want -- I
3 didn't want it to get any worse than it was for him.
4 You know, if he was in trouble, I didn't want him to --
5 to run. I mean, actually, I care about Malcolm, you
6 know.

7 Q You do? Okay. So, tell me about when the police
8 arrived there at that work site in Palmetto Bluff.

9 A Well, I was on the drill rig, and Malcolm was on
10 the drill rig, also. He was -- we work together, you
11 know, you have to have two people on a drill rig. And I
12 noticed the guys coming in, which, I was -- I was
13 actually shocked at what I was seeing. It was a SWAT
14 team. I was expecting a couple of deputies, you know.
15 And I watched them come in on one side, and Malcolm was
16 on -- on my right, and he couldn't see what I was
17 seeing.

18 But they came in, and they went around, and went
19 underneath this house, because the house was elevated.
20 It was one of those, you know, where you could walk
21 under the house, and they disappeared under the house.
22 And then, I noticed, you know, because I was looking for
23 them, and I noticed they came up, which would have been
24 behind him, where he still couldn't see them. And then,
25 when some other deputies came in on his side that he

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1 didn't -- obviously didn't notice.

2 My brother-in-law was with me on the job site,
3 also. There was three of us on the job site. He didn't
4 have a clue about what was happening, either, because,
5 you know, I didn't want Malcolm to leave. You know,
6 because I just didn't think that was a good thing for
7 him to do, so I didn't tell anybody anything.

8 Anyhow, they came in behind him, and when I saw
9 that they were fixing to make their move, I told Malcolm
10 -- I don't even know if he heard me -- but I told him,
11 you know, *don't run*. And I think they told him to lay
12 down, hit the ground, or whatever.

13 Q Okay.

14 A Of course, they wanted me to quit, too, which I
15 couldn't, because I was in the middle of drilling.
16 You'd have to understand, you can't just stop a drill
17 rig. All kind of bad stuff happens if you do that.

18 Q Sure. Okay. So, they come and they arrest Malcolm
19 Brabham.

20 A Right.

21 Q Okay. Do you remember talking to Investigator Rice
22 that morning, after Malcolm had been arrested?

23 A No. No, I mean, I'm sure I did. I just don't
24 remember. There was a lot of guys there, you know. I
25 don't know who I spoke to.

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CROSS - JOHN HORRY

1 Q Okay. So, do you remember what you told
2 Investigator Rice that morning?

3 A No, ma'am.

4 Q Okay. Do you remember telling Investigator Rice
5 that morning, July 16th, that the defendant had told you
6 about an argument he had with his brother-in-law the
7 night before?

8 A No, I don't remember that. But that wouldn't
9 surprise me. I mean, he -- he could have, you know. I
10 just -- it just, you know.

11 Q Okay. So, you don't remember telling Investigator
12 Rice that Malcolm Brabham had told you that morning that
13 he had been in an argument with his brother-in-law and
14 that he had hurt him?

15 A No, I don't remember that.

16 MS. LEMPESIS: Okay. Mr. Horry, I don't have any
17 more questions for you right now. If you can answer any
18 questions that Ms. Campbell has.

19 A Okay.

20 MS. LEMPESIS: Thank you.

21 JOHN HORRY

22 CROSS-EXAMINATION BY MS. CAMPBELL:

23 Q Good afternoon.

24 A Good afternoon.

25 Q Mr. Horry, I've never met you before. Is that

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CROSS - JOHN HORRY

1 right? Or, I don't recall meeting you.

2 A Not that I recall, no.

3 Q But do you remember sending me a letter about
4 Malcolm?

5 MS. LEMPESIS: Objection.

6 THE COURT: What's the objection?

7 MS. LEMPESIS: I believe Ms. Campbell's going to
8 try to introduce this letter that Mr. Horry wrote.

9 MS. CAMPBELL: No.

10 THE COURT: No.

11 MS. LEMPESIS: Okay. We withdraw our objection at
12 this point.

13 THE COURT: Okay.

14 BY MS. CAMPBELL:

15 Q Do you recall at all that you sent me a letter
16 about Malcolm and him working for you, and --

17 A Ma'am, I don't know where the letter went.

18 Q Okay.

19 A I sent a letter. It was kind of like a form
20 letter. It was Malcolm's mother asking me if I would
21 write something in his character type thing. And yes, I
22 did that.

23 Q Okay.

24 A If it came to you, I didn't know it.

25 Q Right. I appreciate that. You trust Malcolm

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END CROSS - JOHN HORRY

1 completely; don't you?

2 A I do.

3 Q Okay. You trust him with your car, with your
4 credit card, with your kids?

5 A You know about that.

6 Q I do know about that.

7 A Okay.

8 Q I do know that you trust Malcolm so much, you gave
9 him your car, your credit card, and he'd pick up things
10 for you. You'd even let him take your kids around.

11 That's what you think of Malcolm Brabham, right?

12 A That's true.

13 MS. CAMPBELL: That's all I have. Thank you.

14 THE COURT: Re-direct?

15 MS. LEMPESIS: Nothing further for this witness.

16 THE COURT: You may step down. You're free to go.

17 A For the day?

18 THE COURT: You're welcome to stay, but you're free
19 to go.

20 A No, I'm good.

21 THE COURT: Next witness.

22 MS. CONCANNON: State calls Captain Scott Johnson.

23 MADAM CLERK: If you'll place your left hand on the
24 Bible, please. Thank you. And raise your right hand.
25 Do you solemnly swear or affirm that the testimony you

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DIRECT - CAPTAIN SCOTT JOHNSON

1 give shall be the truth, so help you God?

2 CAPTAIN SCOTT JOHNSON: I do.

3 MADAM CLERK: Thank you. If you'll have a seat,
4 please. And if you'll state your name for the record.

5 CAPTAIN SCOTT JOHNSON: Scott Johnson.

6 CAPTAIN SCOTT JOHNSON

7 DIRECT EXAMINATION BY MS. CONCANNON.

8 Q Good afternoon, Captain Johnson.

9 A Good afternoon.

10 Q Where are you currently employed?

11 A The Beaufort County Sheriff's Office.

12 Q How long have you been employed with the Sheriff's
13 Office?

14 A For 23 years.

15 Q Twenty-three years? And what role do you played in
16 the Sheriff's Office?

17 A I am the tactical operations captain, which
18 commands the SWAT team.

19 Q Okay. That was a lot of big words there real
20 quick. What is the Tactical Operations --

21 A It's a branch in the Sheriff's Office that runs the
22 special teams of the Sheriff's Office.

23 Q What are examples of some of these special teams?

24 A SWAT, Bomb Squad, Dive Team, and Bloodhound
25 Tracking Team.

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DIRECT - CAPTAIN SCOTT JOHNSON

1 Q Okay. You mentioned the SWAT team. What is a SWAT
2 team?

3 A It is a group of individuals trained beyond the
4 average deputy to deal with armed and dangerous
5 suspects.

6 Q Okay. What does -- the SWAT stand for something?

7 A Special Weapons and Tactics.

8 Q Okay. Why would the SWAT team be called out to a
9 call?

10 A To deal with violent crimes or armed and dangerous
11 individuals.

12 Q Okay. Did the SWAT team respond to a call on July
13 16th of 2013?

14 A Yes, ma'am.

15 Q And as you, being part of the SWAT team, did you
16 respond, as well?

17 A Yes, ma'am.

18 Q Do you know how many other deputies and Sheriff's
19 Office responded?

20 A SWAT was myself and five other.

21 Q Five others. Was that typical size?

22 A Depending on the situation. Obviously, this one
23 dictated six SWAT officers.

24 Q Okay. So, you know before going in, typically what
25 you all are getting yourselves into.

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DIRECT - CAPTAIN SCOTT JOHNSON

1 A Yes, ma'am.

2 Q Okay. Where did you respond?

3 A We went to Jackfield Road at Palmetto Bluff

4 Plantation, in Bluffton.

5 Q In Bluffton? Is that here in Beaufort County?

6 A Yes, ma'am.

7 Q Okay. And what did you all do when you responded?

8 A We had two teams of officers. My team would take
9 the front of the area that the suspect was supposed to
10 be located, and another team of officers went around the
11 back. And it just so happened that the suspect, I
12 located in the front of the location, which was a
13 construction site.

14 Q Okay. Do you know what time of day this occurred?
15 Morning, afternoon?

16 A 11:00, 12:00. It was 11:00, 12:00, 1:00 o'clock in
17 the afternoon, somewhere around there.

18 Q Okay. And I see you're in a uniform right now. Is
19 this what you would have been wearing?

20 A No, ma'am. I would wear a BDU tactical uniform
21 with a vest.

22 Q What is a BDU?

23 A It's a green uniform with a black, bullet-proof
24 vest, and I was armed with a rifle.

25 Q Okay. And why would you wear that, as opposed to

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CROSS - CAPTAIN SCOTT JOHNSON

1 what you're wearing?

2 A That's what our field -- the SWAT field uniform is.

3 Q Okay. And why does it differ from the typical
4 deputy uniform?

5 A It is a work duty uniform. We don't go out and do
6 SWAT operations in the nice shirt and pants and that
7 type of thing.

8 Q Okay. And why did you respond to this particular
9 incident?

10 A We were requested by the Northern Investigations
11 Unit to arrest a wanted suspect for attempted murder.

12 Q Okay. Is it typical for SWAT to respond to help
13 apprehend suspects?

14 A When -- when there is a violent crime or a weapon
15 involved, yes, ma'am.

16 Q Okay. And did that apply in this incident?

17 A That met the criteria, yes, ma'am.

18 Q Okay. Violent crime and weapon?

19 A Yes, ma'am.

20 MS. CONCANNON: Thank you. I have no further
21 questions for you at this time, Captain Johnson.

22 CAPTAIN SCOTT JOHNSON

23 CROSS-EXAMINATION BY MS. CAMPBELL:

24 Q Good afternoon.

25 A Good afternoon.

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CROSS - CAPTAIN SCOTT JOHNSON

1 MS. CAMPBELL: May I approach the witness?

2 THE COURT: You may.

3 MS. CAMPBELL: Thank you.

4 BY MS. CAMPBELL:

5 Q Officer Johnson, you didn't write a report in this
6 case, right?

7 A No, ma'am.

8 Q Okay. I'm going to hand you Bobby Tuten's report.

9 A Yes, ma'am.

10 Q If I can get you to take a look at that.

11 A Yes, ma'am.

12 Q Refresh your memory as I ask you just a couple of
13 questions about it.

14 A Yes, ma'am.

15 Q So, if I understand correctly, you guys get a call
16 from the Northern Division; there's an allegation that a
17 man's been shot; and that you've got a suspect you want
18 to go get. So, you guys put on all your gear and come
19 on out to Palmetto Bluff with us and let's do it; do
20 this thing, right?

21 A Correct.

22 Q Okay. And so, Bobby Tuten wrote the report for
23 what SWAT did that day.

24 A Correct.

25 Q It's about four lines, maybe five lines long,

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RE-DIRECT - CAPTAIN SCOTT JOHNSON

1 right?

2 A One, two, three, four. Five.

3 Q Five lines long. Okay. And in the last line --
4 maybe it's the last line -- it says:

5 *All dressed up and taken into custody*
6 *without incident.*

7 Right?

8 A Yes, ma'am. Yes, ma'am.

9 MS. CAMPBELL: That's all I have.

10 MS. CONCANNON: Briefly, your Honor.

11 CAPTAIN SCOTT JOHNSON

12 RE-DIRECT EXAMINATION BY MS. CONCANNON:

13 Q Captain Johnson, who is Bobby Tuten?

14 A He's a team leader on my SWAT team.

15 Q On your SWAT team? What does that mean?

16 A I'm the commander. He is the second in charge.
17 I'm in charge. He's the second man in charge of the
18 team.

19 Q So, is it fair to say you're his supervisor?

20 A Yes.

21 Q Okay. Is it typical for only one member of the
22 SWAT team to write a report?

23 A Yes.

24 MS. LEMPESIS: I have no further questions at this
25 time.

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1 THE COURT: You may step down. You're free to go.
2 Do you have another short witness, or this is a good
3 time to break for lunch?

4 MS. LEMPESIS: Judge, I think this would be a good
5 time to break.

6 THE COURT: Okay, folks. We will break for lunch
7 now. Again, don't begin deliberations or discussions
8 with anyone, including other members of the jury panel.
9 If anybody attempts to contact you or talk to you during
10 the break, please report that when you get back. You
11 can go to lunch with any member of the jury panel, but
12 again, let me caution you, don't talk about the case,
13 comment on witnesses or witness demeanor or anything
14 like that. (But if you would, be back in the jury room
15 at 1:45, and we will get started, hopefully, right on
16 time. See you in a little bit. Enjoy your lunch.

17 JURORS LEAVE COURTROOM 12:18 P.M.

18 BAILIFF: The jury is clear, your Honor.

19 THE COURT: All right. How many more witnesses are
20 you going to have today?

21 MS. LEMPESIS: Judge, we will certainly -- I think
22 we're going to finish today. We have four witnesses
23 left.

24 THE COURT: Okay. Do you think that'll take us on
25 to about what time, if we start back at just before

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1 2:00?

2 MS. LEMPESIS: Probably take us 'til about 4:30,
3 maybe 5:00 o'clock at the latest.

4 THE COURT: Okay. All right. Well, then, if you
5 want to be ready in the morning, we'll -- if you can
6 make --

7 MS. CAMPBELL: And just for planning purposes, may
8 I inquire as to who those four witnesses are?

9 MS. CONCANNON: Investigator Zsamar, Reah
10 Gonsalvez, Investigator Rice, and Dr. McElveen.

11 COURT REPORTER: And who? And who?

12 MS. CONCANNON: Dr. McElveen.

13 THE COURT: If anyone has any proposed jury charges
14 that they would like to submit, please get them to my
15 law clerk when we get back. You can send them via
16 email. It might even be the best way to do it. We've
17 got some that we do, but if you do have something that
18 you do want to submit, feel free. Okay. See you back
19 at 1:45.

20 MS. LEMPESIS: Thank you.

21 MS. CAMPBELL: Thank you.

22 OFF THE RECORD 12:19 P.M.

23 BACK ON THE RECORD 1:55 P.M.

24 BY THE COURT:

25 BAILIFF: All rise. Court is back in session.

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1 THE COURT: Would you bring the foreman, Mr.
2 Brusco, in?

3 BAILIFF: Juror Number 52, your Honor.

4 THE COURT: All right. Good afternoon.

5 JUROR NUMBER 52: Good afternoon.

6 THE COURT: Mr. Brusco, I got your message. Let me
7 make sure I'm reading this right and I understand it.
8 The message says:

9 *The time line is a little fuzzy, with*
10 *references to quote, unquote, 'after dark.'*
11 *It would be helpful to know what time sunset*
12 *was on the date in question.*

13 And that's your signature, right?

14 JUROR NUMBER 52: That's me.

15 THE COURT: Okay. Help me understand how you all
16 came up with this question?

17 JUROR NUMBER 52: All right. We heard from a
18 number of different witnesses, and excuse me if I don't
19 remember all their names, but the 911 operator arrived
20 at the dinner party at 7:00. I think Mr. -- the
21 gentleman who got shot, said that they had started
22 drinking at 5:00 or 5:30. So, we hear a bunch of times,
23 and then I hear:

24 *Well, we left the bar. I don't know what*
25 *time, but after dark.*

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1 And so, I wanted to kind of, you know, July, after
2 dark's probably 8:00 or 8:30.

3 THE COURT: Um-hmm.

4 JUROR NUMBER 52: But there's a period of time
5 there where a gentleman said, *I was taking cocaine*, but
6 I needed -- he took that over a period of two hours.

7 THE COURT: Um-hmm.

8 JUROR NUMBER 52: How does that two hours fit
9 within all of those other times? That's -- that was my
10 question..

11 THE COURT: Okay. So, the question that you've
12 come up with and asked here, is this something that you
13 all came up with back there, or is it just your
14 question?

15 JUROR NUMBER 52: It is my question.

16 THE COURT: Have you discussed this issue with
17 anybody back there?

18 JUROR NUMBER 52: Other people have heard me as I
19 talked about that question, yes.

20 THE COURT: Who were you talking to about it?

21 BAILIFF: He started to ask me --

22 JUROR NUMBER 52: I started --

23 BAILIFF: -- and I told him to write it down, your
24 Honor.

25 JUROR NUMBER 52: Right.

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1 THE COURT: Okay. So, you all were -- this is when
2 you were coming back from lunch?

3 JUROR NUMBER 52: No, this is before we went to
4 lunch. As we departed here, I held back, and I said,
5 I've got a question. And I did not, you know, -- so, I
6 started asking her the question, time line's fuzzy. I
7 know that there were some other people around who heard
8 that.

9 THE COURT: All right. Did you mention this to any
10 other jurors when you went back after lunch?

11 JUROR NUMBER 52: No.

12 THE COURT: Or before lunch?

13 JUROR NUMBER 52: No, just what they may have
14 overheard before I wrote that note.

15 THE COURT: So, nobody else asked the same question
16 or brought it to your attention?

17 JUROR NUMBER 52: To my knowledge, no.

18 THE COURT: Has anybody else been discussing the
19 question?

20 JUROR NUMBER 52: We have purposely not, per your
21 orders, been discussing this case at all.

22 THE COURT: Okay. So, this was just you bringing
23 this question to our attention on your own?

24 JUROR NUMBER 52: Yes.

25 THE COURT: Okay.

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1 JUROR NUMBER 52: It will help me make my decision.

2 THE COURT: All right. Just wanted to clarify
3 that..

4 JUROR NUMBER 52: Okay.

5 THE COURT: Go ahead and go back and, again, please
6 don't discuss this with anybody.

7 JUROR NUMBER 52: All right.

8 THE COURT: Thank you.

9 JUROR NUMBER 52 LEAVES COURTROOM.

10 THE COURT: Okay. Anybody have any comments that
11 they want to make, based on that?

12 MS. LEMPESIS: You want to go first?

13 MS. CAMPBELL: Well, I can tell you, your Honor, I
14 do have a section in my notebook about premature
15 deliberations. It does not sound like the jury engaged
16 in premature deliberations, based upon your questioning
17 of the foreman. But, you know, it does require your
18 Honor to make that -- ascertain whether or not they did
19 on the record; and then, to try and make a finding as to
20 whether or not what has occurred with the foreman has
21 been prejudicial to the defendant; and if it has been
22 prejudicial to the defendant, then your Honor would need
23 to declare a mistrial.

24 And so, I would just say, in prejudice, you know,
25 in prejudicing my client -- and it's not necessarily

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1 that the jury may be have begun deliberations, is that,
2 by virtue of the foreman providing this note to your
3 Honor and providing it to the State, and the State has
4 not finished their case yet, the foreman has provided
5 the State the opportunity to answer one of his
6 questions, and that is prejudicial to my client. And on
7 that basis, I'd move for a mistrial. Thank you.

8 THE COURT: What's the State's position?

9 MS. LEMPESIS: As we heard, the foreman said they
10 have not been deliberating. So, I think that was the
11 question here, whether they have had premature
12 deliberations. That's clearly answered, no. I guess he
13 did say that maybe somebody might have overheard him
14 speaking to the bailiff, but I think we could clear that
15 up, I guess, by just giving the jury an instruction.

16 I don't think a mistrial would be appropriate. I
17 can't really say much, but, I mean, obviously, we do
18 know that this question exists in this one man's mind,
19 and --

20 THE COURT: Well, you can't call anybody back. We
21 can only go forward.

22 MS. LEMPESIS: I can't call any other witnesses.
23 We have two or three witnesses left to call, so.

24 THE COURT: Yeah. Here's the way I view it. I
25 think he's being conscientious. You know, it's one of

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1 these things where, occasionally, you will get a
2 question, or the jury wants to ask a question, and we
3 have to deal with that. So, you know, in the context of
4 juror questions, we got one.

5 I think the examination of the foreman indicates
6 that he was not discussing it with anyone, nor was the
7 jury engaged in any premature deliberations. So, I take
8 this to be more in the nature of a jury question. It
9 was submitted to the Court; it's not prejudicial. I'm
10 not going to allow you to recall anybody to address the
11 time line, but I don't know who you have left coming in.
12 If there's any way to address the issue, well, then,
13 that can be addressed.

14 But I don't see that this question, in and of
15 itself, excuse me, was prejudicial. There's no -- I
16 don't find that there's any indication that the jury's
17 engaged in any premature deliberations. So, I will deny
18 the motion for a mistrial.

19 All right. Have you been able to uncover or get to
20 Mr. Horry's testimony, Madam Court Reporter?

21 COURT REPORTER: I have, your Honor.

22 THE COURT: Okay. Could you see if you could find
23 that point in questioning that we were talking about
24 earlier, where this -- it would have been -- was it
25 during your direct or re-direct?

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1 MS. LEMPESIS: It was during the direct.

2 THE COURT: Direct. Where she asked him if he, Mr.
3 Horry, remembered making a statement to whom?

4 MS. LEMPESIS: To Investigator Rice.

5 THE COURT: To Investigator Rice. It would have
6 been a question about did you make it to Mr. Rice; do
7 you remember making it; what date it was, the time and
8 place? So, if you could take a minute and see if you
9 could find that.

10 COURT REPORTER: Yes, your Honor. Getting ready.
11 Just one second.

12 Mr. Horry said:

13 *Don't run. And I think they told him*
14 *to lay down or hit the ground, or whatever.*
15 *Of course, they wanted me to quit, too,*
16 *which I couldn't, because I was in the middle*
17 *of drilling. You'd have to understand, you*
18 *can't just stop a drill rig. All kind of bad*
19 *stuff happens if you do that.*

20 MS. LEMPESIS:

21 *Sure. So, they come and they arrest*
22 *Malcolm.*

23 And he answers:

24 *Right.*

25 MS. LEMPESIS:

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1 Do you remember talking to Investigator
2 Rice that morning after Malcolm's been arrested?

3 ANSWER:

4 No. But I mean, I'm sure I did. I
5 just don't remember. There was a lot of guys
6 there, you know. I don't know who I spoke to.

7 MS. LEMPESIS:

8 Okay. So, do you remember what you told
9 Investigator Rice that morning?

10 ANSWER:

11 No, ma'am.

12 MS. LEMPESIS:

13 Okay. Do you remember telling Investigator
14 Rice that morning, July 15th, that the
15 defendant had told you about an argument he
16 had with his brother-in-law the night before?

17 ANSWER:

18 No, I don't remember that. But that
19 wouldn't surprise me. I mean, he -- he -- he
20 could have, you know. I just -- it just,
21 you know.

22 MS. LEMPESIS:

23 Okay. So, you don't remember telling
24 Investigator Rice that Malcolm Brabham had
25 told you that morning that he had been in an

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1 argument with his brother-in-law?

2 ANSWER:

3 Right. I don't remember that.

4 COURT REPORTER: He said:

5 No, I don't remember that.

6 COURT REPORTER: Excuse me.

7 Mr. Horry, I don't have anymore
8 questions for you right now.

9 THE COURT: Good. Go ahead and bring me back on
10 the record.

11 COURT REPORTER: We're on the record.

12 THE COURT: All right. Then, you have met the
13 basis for a 613(b). You can call Investigator Rice in
14 to say that Mr. Horry told him, presumably, something
15 other than nothing. Because that's what he said: I
16 don't remember making a statement; I'm not denying that
17 I did; I don't remember what it was.

18 So, if he does anything under 613, other than admit
19 that he made the prior inconsistent statement, you told
20 him the time, the date, the place, to whom it was to be
21 made, and he didn't admit it. So, you can return
22 Investigator Rice in for that purpose.

23 MS. LEMPESIS: Thank you, your Honor. And we
24 intend to call Investigator Rice, not next, but the
25 second witness, next in line.

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1 THE COURT: Okay.

2 MS. LEMPESIS: Thank you.

3 THE COURT: Is there anything else before we bring
4 the jury in?

5 MS. CAMPBELL: No.

6 MS. LEMPESIS: Nothing from the State, your Honor.

7 THE COURT: Okay. Let's bring the jury in.

8 BAILIFF: The jury is entering the courtroom, your
9 Honor.

10 JURY ENTERS COURTROOM 2:08 P.M.

11 THE COURT: All right. Welcome, back folks. Be
12 seated. We're going to start back with the next
13 witness.

14 I want to address the matter of the witness -- the
15 juror question. We don't, generally speaking, encourage
16 juror questions during the course of a trial. If you do
17 want to submit one, do it as Mr. Brusco did. Write it
18 down. Give it to the bailiff. They'll bring it to my
19 attention, and then, I have to bring the attorneys in
20 and ask them how they want to respond, et cetera. We
21 try to cover things the best we can, but one of the big
22 problems is, is that it suggests that you may be
23 deliberating the case before you've heard all of the
24 evidence. And so, it's necessary for me to ask if
25 there, in fact, did anybody talked about this case

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1 during the lunch break or deliberate with each other.

2 I know that Mr. Brusco said he had talked to the
3 bailiff to ask her a question. She told him to write
4 that down. But did anybody overhear that? And if you
5 did overhear it, did that affect you in any way? First
6 of all, did anybody hear Mr. Brusco ask the bailiff the
7 question?

8 JUROR NUMBER 354: I was kind of wondering the same
9 thing.

10 THE COURT: Could you give me your name and number?

11 JUROR NUMBER 354: Sonya Prater, 354.

12 THE COURT: Okay. Does that affect your thoughts
13 on the trial thus far?

14 JUROR NUMBER 354: No, sir.

15 THE COURT: Okay. And you think you could continue
16 on and without that impacting your opinion?

17 JUROR NUMBER 354: Yes, sir.

18 THE COURT: All right. And yes, ma'am. And your
19 name and number?

20 JUROR NUMBER 337: Angela Owens, 337. And yes, I
21 did hear the question myself, too.

22 THE COURT: Okay. You heard it? Do you think that
23 would affect your deliberations?

24 JUROR NUMBER 337: No. No, sir.

25 THE COURT: Okay. Anyone else? Yes, ma'am. Your

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1 name and number?

2 JUROR NUMBER 257: 257, Carol Zimmerman Kzenovitz.

3 THE COURT: Okay. You heard him ask the question?

4 JUROR NUMBER 257: Um-hmm.

5 THE COURT: Does that affect your deliberations in
6 any way?

7 JUROR NUMBER 257: No, no. No, your Honor.

8 THE COURT: Okay. Thank you. Anyone else? Okay.

9 All right. Thank you so much, and we will proceed.

10 Next witness by the State.

11 MS. LEMPESIS: Thank you, your Honor. The State
12 calls Rhea Gonsalves.

13 End 4-22-14-v36 (37?) Begin 4-22-14-v38 (v37 only 2
14 seconds long, but m37 was used on the above jury
15 questioning.)

16 MADAM CLERK: If you'll place your left hand on the
17 Bible, please, and raise your right hand. Do you
18 solemnly swear or affirm that the testimony you give
19 shall be the truth, so help you God?

20 RHEA GONSALVES: Yes.

21 MADAM CLERK: Thank you. If you'll have a seat,
22 please. And if you'll state and spell your name for the
23 record, please.

24 RHEA GONSALVES: Rhea Gonsalves, R/e/a/h,
25 G/o/n/s/a/l/v/e/s.

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DIRECT - REAH GONSALVES

1 REAH GONSALVES

2 DIRECT EXAMINATION BY MS. LEMPESIS:

3 Q Thank you, Reah. Let's start by asking you a few
4 questions about your background. Where are you from?

5 A From Beaufort.

6 Q From Beaufort. And how old are you?

7 A Twenty-eight.

8 COURT REPORTER: I'm sorry, twenty?

9 A Twenty-eight.

10 Q And what do you do for a living?

11 A I'm the front office manager at the Hampton Inn,
12 Beaufort.

13 Q Okay. How long have you worked there?

14 A I've been there since June of last year.

15 Q Okay.

16 A Yes, ma'am.

17 Q And do you have any children?

18 A Three children.

19 Q How old are they?

20 A Jeremiah will be ten. So, he's nine. Eight, and
21 five.

22 Q And where do you live?

23 A At ■ Sangster Road, on Lady's Island.

24 Q Okay. Reah, how do you know Malcolm Brabham?

25 A Actually, me and Malcolm have been together since

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DIRECT - REAH GONSALVES

1 2002.

2 Q Okay. 2002. So, a long time. How old were you
3 when you met him?

4 A Sixteen.

5 Q Okay. And when did you become in a relationship
6 with Malcolm Brabham?

7 A Well, we met in June of 2002. We started dating
8 by, like, July of 2002.

9 Q Okay. And your children, are those his children?

10 A Yes, ma'am.

11 Q Okay. And have you ever lived with Mr. Brabham?

12 A Yes.

13 Q Okay. Where have you lived?

14 A Our first home together was at [REDACTED] Talbert Road,
15 Wilderness Cove Apartments. Our second home was in
16 Ridgeland, at [REDACTED] Hill Road. And then, we lived here,
17 in Beaufort.

18 Q Okay. Have you all been dating continuously for
19 all of this time, or have you --

20 A We -- we had a few breaks. First time was in 2007,
21 when I left. And then, in 2000 -- we got back together
22 by 2008. I had my daughter in 2009, and from there, we
23 -- we kind of had it rocky.

24 Q Okay.

25 A You know, for about three years, until about 2012.

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DIRECT - REAH GONSALVES

1 That's when we actually re-kindled.

2 Q Okay.

3 A Yes, ma'am.

4 Q Okay. All right. And we've heard something about
5 Mr. Brabham being in the Navy. Was he in the Navy at
6 some point when you all were dating?

7 A Um-hmm. 2002 'til about 2003, maybe.

8 Q Okay. So --

9 A Almost '04.

10 Q Was he in for a year, or less than a year? Do you
11 know?

12 A I really don't know when he got out, per se.

13 Q Okay.

14 A I mean, I just know when he moved back home, I had
15 already had our son and everything. So, yes, ma'am.

16 Q Okay. All right. You told us about how long
17 you've known him. Do you consider Malcolm Brabham a
18 trustworthy person?

19 A To tell you the truth, I -- I really don't. I
20 mean --

21 Q Okay. That's fine. Reah, let's talk about -- I
22 want to go to July 15th, of 2013. So, last year. You
23 were working at the Hampton Inn at that time?

24 A Um-hmm.

25 Q Okay.

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DIRECT - REAH GONSALVES

1 COURT REPORTER: Is that yes?

2 A Yes, ma'am.

3 Q You have to say yes or no for the court reporter.
4 Okay.

5 And so, in July of 2013, was Malcolm living with
6 you then, at Sangster Road?

7 A He was there, but then, he wasn't there. Like, you
8 know, we were living together. All of his stuff was
9 there and everything, but he would take some nights and
10 go to his mom's house, or, you know. So, it was sort of
11 like, he was there, but then, he wasn't there.

12 Q Okay. And do you remember -- did you see Malcolm
13 during the daytime on that day of July 15th?

14 A No. Actually, he went back to work that day. You
15 know, we woke up. I was working breakfast bar. He
16 came, got a plate of food, and went to work. That's --
17 next time I saw him was that afternoon when he got off.

18 Q Okay. So, he came to your hotel, where you were
19 working?

20 A Um-hmm.

21 COURT REPORTER: Yes?

22 A Yes, ma'am.

23 Q Okay. And he had breakfast there?

24 A He took a plate with him. I fixed him a plate, and
25 he was able to take it with him.

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DIRECT - REAH GONSALVES

1 Q Oh, okay. All right. Okay. So, when you saw him
2 that afternoon, was that at your home?

3 A Yes.

4 Q Okay. And what was he -- was he with your brother
5 at that time?

6 A He was actually, like, under the tree. You know,
7 he would come home and just kind of sit under the tree
8 and, you know, just sit there. You know, have his
9 drinks or whatever, and that was it.

10 Q Okay. Do you know if he was drinking that day?

11 A He -- he did have some drinks, yes.

12 Q Okay. And were he and your brother Chadwick
13 hanging out?

14 A Not until, like, you know, kind of right before
15 they left.

16 Q Okay. They left. Did they leave together, though,
17 from your home?

18 A Yes.

19 Q Okay. Do you remember who was driving?

20 A It was Malcolm.

21 Q It was Malcolm?

22 A Yes.

23 Q Do you remember what kind of car he had?

24 A He had a Impala.

25 Q Okay.

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DIRECT - REAH GONSALVES

1 A Yeah.

2 Q All right. And then, did you stay home that night?

3 A Yes.

4 Q Okay. Do you take care of the kids?

5 A Yes, ma'am.

6 Q Do you remember seeing Mr. Brabham again that
7 night?

8 A He did not come back until -- it might have been,
9 like, 9:48, 9:50ish. I just remember because I was
10 watching a television show, and so.

11 Q Okay.

12 COURT REPORTER: I'm sorry, I was watching a
13 television?

14 A I was watching a television show, and --

15 Q Okay. And so, you remember him -- he came back to
16 the house, and you said around 9:48 or 9:50?

17 A Around 9:48, 9:50, somewhere around there.

18 Q Okay.

19 A Yes, ma'am.

20 Q How are you so able to remember that time?

21 A Well, I was watching Devil Girls. And so, that's
22 something I do on a weekly ritual, but as soon as they
23 were fixing to, you know, cut to commercial, that's when
24 I clicked on the guide and started to go through and see
25 what's coming on next.

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DIRECT - REAH GONSALVES

1 Q Okay. All right. And when he came home, was he by
2 himself?

3 A Yes.

4 Q Okay. And what did he do when he came home?

5 A He went to the room, went in there for just a
6 second, and came back out.

7 Q He went into whose room?

8 A He went into our room, came back out, said:

9 *Reah, let's go outside and smoke a*
10 *cigarette.*

11 So, we went outside on the porch, and he went on to
12 say:

13 *I had to --*

14 Q Okay. I'm going to stop you there. Well, did he
15 tell you -- so, you all went outside to smoke a
16 cigarette.

17 A Um-hmm. Yes.

18 Q And you said at this point, Chad was not with him?

19 A No, ma'am.

20 Q Okay. Did he tell you where Chad was?

21 A He said he had left him down in The Hole.

22 Q That he had left him down in The Hole.

23 A Um-hmm. Yes.

24 Q Do you know what The Hole is?

25 A It's like a little place that they have where they

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1 sell drinks or whatever. You know, go down there, whole
2 bunch of guys, girls, whoever.

3 Q Hanging out?

4 A Yes.

5 Q Okay. So, Malcolm told you that he had left Chad
6 at The Hole.

7 A Yes.

8 Q What else did Chad say to you while you all were
9 out on the front porch? Did he -- I mean, did he --

10 A You said Chad.

11 Q I'm sorry.

12 A Malcolm?

13 Q I meant Malcolm.

14 A Um-hmm.

15 Q What else did Malcolm tell you while you were out
16 there?

17 A He just said that he had left him down in The Hole.
18 And I said, well, you know:

19 *What happened?*

20 And he said:

21 *Well, your brother was telling people*
22 *about how --*

23 Q I'm going to stop you right there.

24 A Go ahead.

25 Q I don't want to get into too much about what

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1 exactly was said, about what was being said at The Hole,
2 but just to be clear, you said Malcolm was telling you
3 things about what was happening at The Hole.

4 A Um-hmm.

5 Q Okay.

6 A Yes.

7 Q All right. And did he tell you anything else?
8 Anything else, like, out of the ordinary? Did he say
9 anything to you or refer to your relationship at all?

10 A He said that he wanted me to be there for him
11 through with ever -- whatever, you know. He wanted me
12 to be there, basically, for him, and you know, just
13 stand by his side.

14 And I just was wondering, you know, why. Why? Why
15 are you saying this now, you know. He asked me for a
16 kiss. I gave him a kiss. He asked me for a hug. I
17 gave him a hug. And after that, he said he was leaving,
18 and he would see me later, so.

19 Q Okay. Was that normal behavior for Malcolm?

20 A Not really for him to just say, *I need you to be*
21 *there for me.* You know, like, he would, you know, on a
22 daily basis, you know, he would be, like, you know, *I*
23 *love you, have a good day, whatever.* But for him to
24 just come out and say, *I need you to be there for me; I*
25 *need to know that you're going to be there; you know, it*

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1 wasn't ordinary, so.

2 Q Okay. Okay. And then, he told you that -- where
3 was he going when he left?

4 A He said he was going to Ridgeland.

5 Q Okay.

6 A Yes, ma'am.

7 Q Do you remember after that, did the police come to
8 your house?

9 A They did.

10 Q Okay. Do you remember about what time that was?

11 A I would say it had to be at least 10:15, somewhere
12 around then, you know, 10:00. It was after 10:00, you
13 know, maybe quarter after 10:00.

14 Q Okay.

15 A So, yes, ma'am.

16 Q Okay. So, the police came to your house, and who
17 were they asking after? Who were they looking for?

18 A Well, they were looking for Malcolm.

19 Q Okay. And did you tell the police where -- that he
20 had been there?

21 A I said that he was there earlier.

22 Q Okay.

23 A Yes, ma'am. And he had left.

24 Q Okay. Were you informed at that point why they
25 were looking for him?

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1 A No, they would not tell me. I asked, you know,
2 what was going on. They just said it was an accident
3 that happened, and they needed to speak with him.

4 Q Okay. All right. And had you, at this point,
5 talked to your brother, Chad, at all?

6 A No, ma'am.

7 Q Okay. Did you speak to Malcolm again that night,
8 after the police came to your house?

9 A Yes, ma'am. I spoke to him it might have been,
10 like, maybe about 12:00, 1:30 in the morning, something
11 like that, maybe a little bit later. I ended up talking
12 to him, and I asked him, you know:

13 *Malcolm, what's going on? The police*
14 *are looking for you. What's, you know, what's*
15 *going on?*

16 And from there, he was -- he was, like:

17 *Well, I don't know what's going on.*

18 You know.

19 Q Okay. When did you find out that your brother was
20 in the hospital?

21 A It was almost 4:00 o'clock in the morning.

22 Q Okay.

23 A Yes, ma'am.

24 Q So, did you go to sleep at some point that night?

25 A I did not. I actually went to stay with my sister

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1 for about three days. I couldn't even sleep in our
2 house.

3 Q Well, so, how did you learn about your brother
4 being shot?

5 A Actually, a friend of his actually called and told
6 us about it.

7 Q Okay.

8 A Yes.

9 Q Did you go and see your brother in the hospital?

10 A Yes, ma'am.

11 Q Okay. Did you speak to Malcolm again that next
12 day?

13 A I did. I spoke to him it was almost 12:00 noon,
14 maybe a little bit later. And that was after I actually
15 spoke to the detectives, because I really didn't know
16 what to say to him. You know, I was just --

17 Q You didn't know what to say to him, the detective
18 or Malcolm?

19 A To Malcolm.

20 Q Okay.

21 A Because he was calling, but I just didn't know what
22 to say to him after I found out this information.

23 Q The information about your brother being shot?

24 A Yeah. Yes.

25 Q Okay. And did you get information that Malcolm was

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1 the one who had shot him?

2 A Yes.

3 Q Okay. So, did you speak to him again just on the
4 phone, or how did you speak to him?

5 A Yes, ma'am. I spoke to him on the phone.

6 Q Okay. And was this -- do you know if this was
7 before his was arrested?

8 A Yes, it was.

9 Q Okay.

10 A Yes, ma'am.

11 Q So, some time in the morning time or?

12 A It was about 12:00 noon. Like I say, because I
13 didn't get any sleep, really, that night before, so when
14 I did get to sleep, I kind of slept in, you know.

15 Q Okay.

16 A Yes, ma'am.

17 Q Before this incident, before this July 15th
18 incident, in the weeks leading up to it, had you ever
19 seen Malcolm Brabham with a gun?

20 A Um-hmm.

21 Q Do you remember what kind of gun it was?

22 A It was a revolver.

23 Q Okay. Do you remember what color it was?

24 A Black.

25 Q Reah, one other thing. You have been convicted of

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1 a crime before, right? Do you remember when that was?

2 COURT REPORTER: Is that yes?

3 A That -- yes. That was -- it actually happened in
4 2006, --

5 Q Um-hmm.

6 A -- but I didn't know about the warrant until 2008.
7 So, you know, that's when they brought me in and --

8 Q Okay. Was it for a breach of trust in Magistrate
9 Court?

10 A Um-hmm. Yes.

11 Q Do you remember if you were -- did you get a fine
12 or jail time?

13 A I was fined.

14 Q It was a fine?

15 A Yes, ma'am. Yes, ma'am.

16 MS. LEMPESIS: Okay. Thank you.

17 THE COURT: Again, Lady's and gentlemen,
18 convictions of prior crimes in instances like this are
19 introduced solely for the purpose of you determining
20 whether or not it affects her credibility or
21 believability in telling the truth or not. All right?
22 Go ahead.

23 MS. LEMPESIS: Nothing further at this time, Reah.
24 Please answer any questions that Ms. Campbell may have.

25 MS. CAMPBELL: Thank you. May it please the Court?

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1 THE COURT: Yes.

2 REAH GONSALVES

3 CROSS-EXAMINATION BY MS. CAMPBELL:

4 Q Reah, Malcolm, during some point in the early part
5 of your relationship, was in the United States Navy,
6 right?

7 A Yes.

8 Q Malcolm's been a hard worker for your family,
9 right?

10 A Yes.

11 Q Earning money, taking care of you and the kids,
12 right?

13 A He wasn't the sole provider, but he was.

14 Q Well, no, I'm not minimizing.

15 A Yes, yes.

16 Q Obviously, everybody works two jobs these days.
17 But you know, he provided for you and the kids.

18 A Yes.

19 Q And one of the last places he was working was a
20 really good job, the Horry Well Drilling, right?

21 A Um-hmm. Yes.

22 Q And in anticipation of your having to testify here
23 today, I'm sure it's very difficult, you met with this
24 prosecutor; didn't you?

25 A Yes, ma'am.

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1 Q And you were going over your testimony with her,
2 and getting down exactly what you needed to say, right?

3 A Yes, ma'am.

4 Q You talked about the times and things like that,
5 and what your testimony was going to be, right?

6 A Yes, ma'am.

7 Q Okay. Now, do you recall that you also met with an
8 officer on the very night that this was supposed to have
9 happened, right there at your house at ■ Sangster Road?

10 A Yes, ma'am.

11 Q Okay. And do you recall telling that officer that:

12 *Yes, Malcolm had been here at the house*
13 *with me and the kids this evening, and then*
14 *he left from our home about 45 minutes ago.*

15 A Um-hmm.

16 Q And so, you're telling this jury that you do recall
17 that, back then, before you met with the prosecutor to
18 talk about your testimony today, you're telling the
19 officer Malcolm's at your all's home about 9:15,
20 correct?

21 A No. I didn't say 9:15. I didn't give him any
22 times. I said about 30 to 45 minutes.

23 Q Okay. So, about --

24 A Yes, ma'am.

25 Q Okay. So, the officer said 45 minutes from the

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1 time he's at your door talking to you --

2 A Um-hmm.

3 Q -- Malcolm was there. All right. Now, Malcolm was
4 there 45 minutes before the officer was at your door.
5 Now, what you've described happening is Malcolm being
6 home, going into your all's bedroom. Did he check the
7 kitchen for -- you usually have a pot of food cooking on
8 the stove. Did he check that and see what was cooking,
9 or anything like that?

10 A No.

11 Q Okay.

12 A Not that I remember. I mean, but I was -- the way
13 our furniture faces, it doesn't face the kitchen or
14 anything, so, and when he comes in the house, I'm not
15 going to just, you know, turn around.

16 Q Right.

17 A I just sort of -- if he comes in, he comes in, he
18 tells me hi.

19 Q Were the children awake?

20 A Yes, ma'am.

21 Q Okay. Did he speak to his children?

22 A I believe [REDACTED] was in the living room, --

23 Q Um-hmm.

24 A -- if I'm correct. Yes.

25 Q Right.

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1 Q And, and then, he kind of wanted to have a heart-
2 to-heart with you. Is that right?

3 A Yes.

4 Q And it was sort of like a man or husband saying to
5 his wife, you know, you know, you might need to stand by
6 my side. Is that what you're telling us? I think the
7 words you used were, *stand by my side*.

8 A Yeah.

9 Q Okay. And so, if Chad had come home to your all's
10 place that night and told you that he thought Malcolm
11 was cheating with Elaine, --

12 A Um-hmm.

13 Q -- you might need to stand by his side, and not
14 believe what Chad was saying about him messing around
15 with Elaine, right?

16 A Honestly? Me and him had already went through
17 something dealing with Elaine.

18 Q Exactly.

19 A So, therefore, I probably wouldn't have taken his
20 word for it.

21 Q Right. I understand.

22 A Yes.

23 Q Thank you. But, you know, in an effort to maybe
24 lay the groundwork, --

25 A Um-hmm.

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1 Q -- if you hear something bad, I might -- I might
2 need you to hear me out on this, right?

3 A Um-hmm. Yes.

4 Q Okay. Now, he said, you know, when he asked about
5 Chad and where he was, you know, *I left him down at The*
6 *Hole with those people*, right?

7 A Um-hmm. Yes.

8 Q Okay.

9 MS. CAMPBELL: That's all I have. Thank you.

10 THE COURT: Re-direct?

11 MS. LEMPESIS: Nothing further for this witness.

12 THE COURT: You may step down.

13 A Thank you.

14 THE COURT: Do you think you'll need her again, Ms.
15 Campbell?

16 MS. CAMPBELL: No.

17 THE COURT: You're free to go. Thank you. Next
18 witness.

19 MS. LEMPESIS: State calls Investigator Rice.

20 MADAM CLERK: Do you solemnly swear or affirm that
21 the testimony you give shall be the truth, so help you
22 God?

23 INVESTIGATOR ANDREW RICE: I do.

24 MADAM CLERK: Thank you. Have a seat. And if
25 you'll state and spell your name for the record, please.

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1 INVESTIGATOR ANDREW RICE: Andrew Rice, R/i/c/e.

2 INVESTIGATOR ANDREW RICE

3 DIRECT EXAMINATION BY MS. LEMPESIS:

4 Q Good afternoon, Investigator Rice. We talked about
5 you a lot already today, but just tell us who you are
6 and who you work for.

7 A Andrew Rice. I'm an investigator with the Beaufort
8 County Sheriff's Office. I've been with them since
9 2006.

10 Q Thank you. And what's your current rank?

11 A Corporal.

12 Q Corporal?

13 A Yes, ma'am.

14 Q And your current duties with the Sheriff's Office?

15 A The current duties, I'm an investigator with the
16 drug investigation section. And at that time of this
17 incident, I was an investigator with the Northern
18 Investigations section.

19 Q Okay. So, you work with Chris Wilson, who we heard
20 from earlier today.

21 A Yes, ma'am.

22 Q Okay. And Investigator Rice, were you working on
23 -- you were working on July 15th of 2013?

24 A Yes, ma'am.

25 Q Okay. And what was your assignment that day?

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1 A I was the on-call duty investigator. Most of our
2 office works normal hours during the day, such as maybe
3 an 8:00-to-5:00-type schedule, but there's some of us in
4 the office that are on an on-call status. We come in
5 later. If there's any emergency during the night that
6 we need assistance with, or such as a violent crime or a
7 crime scene needs to be worked, we are called out. And
8 that evening, I was the on-call investigator.

9 Q And so, were you called out to an incident that
10 night on Lady's Island?

11 A Yes, ma'am. I was called by the road supervisor in
12 reference to a shooting incident. They had a gunshot
13 victim at ■ River Drive, and I was asked to respond to
14 take over the investigation.

15 Q Okay. And do you recall where you responded first
16 that night?

17 A I first responded to ■ River Drive. This is where
18 the initial 911 call was placed. The victim was also
19 there being treated by EMS. When I arrived, he was in
20 the back of the ambulance. They were preparing him for
21 transport to the hospital. That's where I began my
22 investigation that evening.

23 Q Okay. And did you speak to the victim, Chadwick
24 Mitchell, before he was transported?

25 A I did. I had a brief moment to speak with him as

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1 they were preparing him for transport.

2 Q Were you able -- in speaking with him, were you
3 able to identify the suspect in your case, in this case?

4 A Yes, ma'am, I was able to identify Malcolm Brabham
5 as a suspect.

6 Q Okay. Did you have any other suspects that were
7 identified?

8 A I had no other suspects at that time.

9 Q When you spoke to Chad in the back of the EMS
10 truck, what was his demeanor?

11 A Chad was obviously in a pretty good bit of pain.
12 He had a gunshot wound to his chest. I wasn't able to
13 see the actual wound. I was able to basically see the
14 compression bandages that had been placed on him. They
15 were hooking him up to -- to different things in the
16 back of the ambulance, his lifesaving measures. Besides
17 the pain, he was in fear and scared, but he was coherent
18 at the moment, and able to answer any direct questions I
19 had for him.

20 Q Okay. Did you notice if Chad seemed to be impaired
21 or under the influence of alcohol or drugs?

22 A He didn't appear to be impaired.

23 Q Okay. And at that point, did you determine where
24 this shooting had occurred?

25 A Not the exact location. We had a general area to

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1 try to go search to figure out where the shooting
2 happened.

3 Q Okay. What was that general area?

4 A The general area we had was an intersection that's
5 not far down the road. It's called Little Capers road.
6 We were right off of the Little Caper. I believe the
7 ambulance was actually parked right near Little Capers
8 Road; and then, the intersection which is further, I
9 guess, north of where we were, which is Holly Hall Road.

10 Q Thank you. And is that in Beaufort County?

11 A Yes, ma'am, it is.

12 Q Okay. Did you establish, from your conversation
13 with Chadwick, what the relationship was between Chad
14 and the suspect, Malcolm Brabham?

15 A Yes, ma'am. He was referred to as his brother-in-
16 law that evening.

17 Q Okay. And then, where did -- do you know where
18 Chad was taken once he was taken by EMS?

19 A He was taken by EMS to Beaufort Memorial Hospital.
20 And then, from there, he was prepped for transport by
21 LifeFlight to Charleston.

22 Q Okay. Going back to when you spoke with Chad at ■
23 River Drive and you determined the general area, did you
24 go that general area and conduct any kind of search?

25 A Yes, ma'am, I did. I actually took a few other

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1 deputies that were there that I kind of delegated some
2 of the areas, and we all canvassed that area of the
3 roadway, with flashlights on foot. We had some people
4 driving vehicles, trying to find anything, any blood,
5 shell casings we might have. We didn't -- weren't sure
6 we would find any -- any casings or any blood. It had
7 been raining just prior to that.

8 Q It had been raining. And do you recall the
9 weather? It was raining. Was it raining hard? What
10 was the --

11 A I do. It was a pretty significant downpour. It
12 was just, like, a thunderstorm in the evening that you
13 get, lasts ten, twelve minutes. And just the whole
14 area, there was a lot a standing water and the grass was
15 still very wet. The roadway was wet.

16 Q Okay. So, when you went to search for items in
17 that area, the road was wet, and it had just recently
18 rained?

19 A Yes, ma'am.

20 Q Investigator Rice, I was going to get you to look
21 at the map that we put up before. I'm going to wheel
22 this forward.

23 MS. LEMPESIS: And your Honor, may the witness step
24 down for a moment?

25 THE COURT: He may.

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1 BY MS. LEMPESIS:

2 Q Investigator Rice, if you can just show us -- and
3 hopefully, we're not blocking any people's views -- if
4 you can show us on this map the area that you identified
5 as the possible location of the shooting and the area
6 that you searched.

7 A Yes, ma'am. That evening, when I was contacted to
8 respond, I met here at ■ River Drive. The ambulances
9 parked right next to Little Capers Road, which is this
10 long road. It intersects here with Holly Hall. This is
11 the main road at Sams Point, or Highway 802. Many
12 people are familiar with that on Lady's Island. The
13 intersection that was given, the general area where it
14 may have happened was on Little Capers Road, somewhere
15 along Holly Hall Road. We didn't have an exact
16 location.

17 We searched the whole length of that roadway. Not
18 all of it on foot, which, the majority of the time on
19 foot was spent near the intersection of Holly Hall Road
20 and Little Capers. And we had individuals drive up and
21 down the road with spotlights, flashlights, trying to
22 locate any kind of evidence of a crime scene.

23 Q Okay. But again, you didn't find anything that
24 night.

25 A No, ma'am.

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1 Q Okay. And do you know the approximate distance
2 between this intersection and ■ River Drive?

3 A Yes, ma'am. This was a -- it's a little less than
4 a mile. It's probably about eight-tenths of a mile.

5 Q Okay.

6 A Sandy Lane, between Gumwood and Sandy is about the
7 halfway point, maybe four-tenths of a mile.

8 Q Okay. Okay. Thank you, Mr. Rice. You can step
9 back. So, you identified -- at this point, you've
10 identified the suspect in the case as being Malcolm
11 Brabham. Did you determine possible addresses for --
12 for Mr. Brabham?

13 A I did. Officers had already responded to Sangster
14 Road. That address had come up, which that -- we didn't
15 know if that was an address where he lived. We knew
16 Chad lived in that same address, the victim, and that
17 his sister was still living there at one of those
18 addresses. So, several deputies were sent to those
19 locations to try and make contact with Mr. Brabham.

20 I also did a -- got a check of our South Carolina
21 Department of Motor Vehicle records, and there was an
22 address in Ridgeland, Hill Road, I believe it is. And I
23 contacted the working supervisor that night for the
24 Jasper County Sheriff's Office, and asked them to please
25 go to that location and look not only for Mr. Brabham,

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1 but also for the burgundy Impala that was reported to
2 have been in the middle of all of this.

3 Q And was he located? Did Mr. Brabham -- was he
4 located that night?

5 A No, ma'am. He wasn't located, nor did Jasper
6 County have any luck finding that burgundy Impala.

7 Q Okay. Okay. And to your knowledge, Jasper County
8 was looking at his house there in Ridgeland?

9 A Yes.

10 Q The address listed for him in Ridgeland?

11 A Yes, ma'am. They were looking not only at his
12 house, but asked to maybe to set up in areas of the
13 roads that would commonly be used to get to the Hill
14 Road, to maybe intercept the vehicle if it was driving
15 in the area, and none of the officers from there had any
16 success.

17 Q Okay. Okay. Did you -- what did you -- what else
18 did you do that night, the night of the incident?

19 A Besides searching the crime scene, trying to locate
20 Mr. Brabham, met with Mr. Mitchell again there at the
21 hospital to try and conduct a little bit more in-depth
22 interview and to -- to get a better positive ID, that --
23 making sure we were talking about the same Malcolm
24 Brabham. We just kept conducting the searches that we
25 were trying to find the crime scene, weren't able to

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1 find it. Also secured several pieces of evidence, too.

2 Q Okay. When you went to the hospital, you went to
3 Beaufort Memorial Hospital?

4 A Yes, ma'am.

5 Q And you met with Chad again there?

6 A Yes, ma'am.

7 Q And what was his stat -- what was Chad's status at
8 the hospital when you -- when you saw him there?

9 A At that time, he was in serious condition, critical
10 condition, just due to the severity of the gunshot wound
11 in his chest, what was relayed to me there. It was kind
12 of a chaotic scene. There was lots of nurses and
13 doctors working and trying to bandage him and to prep
14 him, to be able to make the flight from Beaufort to
15 Charleston.

16 Q But you were able to talk to Chad, at least for a
17 moment. And did you show him a picture of Malcolm
18 Brabham?

19 A I did. I had a photograph of Malcolm. It's
20 actually a Facebook photograph that I obtained from our
21 Intel unit, and was able to use that. It was an
22 unmarked photograph. I didn't feel comfortable using
23 the DMV driver's license printout, because it contains a
24 lot of information about Mr. Brabham. So, I used an
25 unmarked photograph from Facebook.

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1 Q Okay. And did Chad identify that as being the
2 Malcolm Brabham he was talking about, his brother-in-
3 law?

4 A He did, and the -- the Facebook photograph was very
5 similar-looking to the individual on the DMV photograph.

6 Q Okay. Did you also learn at that point about
7 anybody else that was with Chad and Malcolm on the night
8 of the -- earlier that evening?

9 A I did. I learned that the name Elaine Blake had
10 come up, saying that she was a passenger in the vehicle.
11 I attempted to maybe locate her and didn't have any
12 success.

13 Q Okay. And you actually didn't have any success
14 locating Elaine until much later, correct?

15 A Yes, ma'am.

16 Q When was the first time you were able to find her?

17 A About a week ago.

18 Q Okay. When you were at the hospital, you mentioned
19 you collected some items. I'm going to show you a
20 couple of things now. First, I'm going to hand you --

21 MS. LEMPESIS: Your Honor, may I --

22 MS. CAMPBELL: I think we need to approach.

23 OFF-THE-RECORD BENCH CONFERENCE,

24 OUT OF HEARING OF JURORS. PRESENT:

25 THE COURT, MS. LEMPESIS, MS. CONCANNON.

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1 END BENCH CONFERENCE.

2 BY MS. LEMPESIS:

3 Q Okay. Investigator Rice, I'm going to hand you
4 what's been previously marked --

5 MS. LEMPESIS: May I approach, your Honor?

6 THE COURT: You may.

7 BY MS. LEMPESIS:

8 Q -- as State's Exhibit 3. Do you -- or, do you
9 recognize from this packaging what this is?

10 A Yes, ma'am. This is a paper evidence bag that
11 basically contains a shirt that I took from Beaufort
12 Memorial Emergency Room. It was the shirt was on
13 Chadwick when he was shot, that he came in with.

14 Q Okay. And I'm going to go ahead and get you to
15 open up that bag for us.

16 A Would it be okay if I stood up?

17 Q That would be fine.

18 A I might make a little mess. I'm sorry.

19 Q Okay.

20 Q So, that's the shirt that was cut off of Chad at
21 the hospital?

22 A Yes, ma'am.

23 Q Sort of hard to --

24 A On the top side of it.

25 Q Okay. Okay.

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1 A It was cut off of him.

2 Q All right. And it's black in color, but that --
3 what looks to be blood, is that blood, to your
4 knowledge?

5 A Yes, ma'am.

6 MS. CAMPBELL: Objection. It calls for
7 speculation. He doesn't know what it is.

8 Q When you collected it --

9 THE COURT: If he has -- if you can lay the
10 foundation for him to be able to answer the question.

11 MS. LEMPESIS: Thank you.

12 BY MS. LEMPESIS:

13 Q Investigator Rice, when you collected it from the
14 hospital, was that -- was that a shirt -- did it have
15 blood on it?

16 A Yes, ma'am, it did.

17 MS. CAMPBELL: Objection again. She still hasn't
18 laid the foundation.

19 BY MS. LEMPESIS:

20 Q Investigator Rice, is that the shirt you collected
21 from the hospital?

22 A It is.

23 Q Okay. And that's the shirt you submitted into
24 evidence?

25 A Yes, ma'am.

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1 Q And that' was the shirt you determined -- you were
2 -- who did you receive this shirt from?

3 A I actually took it off of the floor, right next to
4 Malcolm when they took him to the E.R., as they were
5 working on him. They had to cut if off of him, cut all
6 of his clothing off.

7 Q Okay. And you bagged it and put it into evidence?

8 A Yes, ma'am.

9 Q At this point, we would move to admit State's
10 Exhibit 3 into evidence.

11 THE COURT: Over the Defense's objection, it is
12 admitted.

13 MS. LEMPESIS: Thank you.

14 ITEM IDENTIFIED AS SHIRT WORN

15 BY CHADWICK MITCHELL MARKED

16 STATE'S EXHIBIT NUMBER 3,

17 ADMITTED AS EVIDENCE.

18 BY MS. LEMPESIS:

19 Q What did you have to do with this shirt once you
20 collected it?

21 A We have to take any clothing like that when it's
22 wet and has some kind of fluid on it, such as blood, it
23 has to be hung in a dryer, and it takes awhile for it to
24 dry out. If we turn it in before that, a lot of times,
25 it'll mold, and mildew will ruin whatever the item of

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1 evidence is.

2 Q Okay. So, did you collect anything else at the
3 hospital?

4 A Yes, ma'am. I collected his cell phone.

5 Q All right.

6 A That was the only --

7 MS. LEMPESIS: Your Honor, may I approach the
8 witness?

9 THE COURT: You may.

10 BY MS. LEMPESIS:

11 Q Investigator Rice, I'm going to hand you what's
12 been marked as State's Exhibit 4.

13 A Okay.

14 Q Do you recognize that item?

15 A I do.

16 Q And how are you able to recognize it?

17 A When I filled out the evidence bag and signed it,
18 and it's the -- noted as being the cell phone that I
19 seized from -- or took from the hospital. I mean, I
20 took it for safe keeping.

21 Q Okay. And that was the phone that Mr. Mitchell --
22 Chad Mitchell had on him? Is that correct?

23 A Yes, ma'am.

24 Q The State would move to admit victim, Mr.
25 Mitchell's cell phone, State's Exhibit 4.

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1 MS. CAMPBELL: No objection.

2 THE COURT: Admitted.

3 MS. LEMPESIS: Thank you.

4 ITEM IDENTIFIED AS CELL PHONE

5 BELONGING TO CHADWICK MITCHELL

6 MARKED STATE'S EXHIBIT NUMBER 4,

7 ADMITTED AS EVIDENCE.

8 BY MS. LEMPESIS:

9 Q Okay. Investigator Rice, did you do anything else
10 that night after you left the hospital?

11 A I don't recall any other steps taken, besides the
12 ones I've already talked about.

13 Q Okay. And the next morning, were you still working
14 on this case?

15 A Yes, ma'am. The main objective at that point was
16 trying to locate Mr. Brabham. When I ended the
17 investigation, I needed to get a few hours of sleep, or
18 early the next morning on the 16th. We already had
19 other officers that were out working in their normal
20 shifts trying to locate him, or locate the vehicle. Had
21 issued a BOLO out to all of the surrounding agencies to
22 -- to kind of -- for one, for officer safety, to make
23 them aware that there could be someone related to this
24 case that we needed to talk to.

25 The next day, was able to learn through Ms.

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1 Gonsalves that -- where he might work, where he might
2 be. And working with my partner there, Investigator
3 Malphrus, was able to determine that he worked for Horry
4 Well Water, and we had made contact with Mr. Horry, and
5 determined that they were -- Jackfield Road is -- the
6 area of ■ Jackfield Road is a new construction, as they
7 were installing a well. And so, we went there to make
8 efforts to arrest Mr. Brabham.

9 Q Okay. And is that in Bluffton, the Jackfield Road?

10 A It is. It's the Palmetto Hall Plantation, I
11 believe, is what it's called, in Bluffton. It's
12 Beaufort County.

13 Q Okay. Investigator Rice, did you have assistance
14 in arresting Malcolm Brabham?

15 A I did. We -- at that point, the supervisors that
16 were involved felt that we should contact our SWAT team.
17 And so, Captain Scott Johnson was contacted, and we
18 asked for their assistance in detaining him and
19 arresting him.

20 Q Okay. And were you there when he was arrested?

21 A Yes, ma'am, I was.

22 Q Okay. And, I guess, was he arrested without
23 incident, really?

24 A Yes, ma'am.

25 Q Okay. Once Mr. Brabham was arrested, did you have

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1 occasion to speak to him?

2 A I did. I was able to conduct and interview with
3 Mr. Brabham there.

4 Q Okay. Did you advise Mr. Brabham first of his
5 *Miranda Rights*?

6 A I did.

7 Q Okay. How did you go about doing that?

8 A I used a card that I keep with me in my wallet.

9 Q Okay. Is that a card everybody at the Sheriff's
10 Office has?

11 A Maybe not the same exact one, but everybody's
12 issued one or given one at some point when they're
13 hired.

14 Q Okay. Do you have that card with you?

15 A Yes, ma'am.

16 Q Can you -- can you read that to us?

17 A Yes, ma'am. Let me find it. It says, you have the
18 *right to remain silent. Anything you say can and will*
19 *be used against you in a court of law. You have the*
20 *right to have an attorney present before or during*
21 *questioning. If you cannot afford to hire an attorney,*
22 *one will be appointed for you before any questioning if*
23 *you wish. Do you understand each of these rights as I*
24 *have explained them to you? Having these rights in*
25 *mind, do you wish to talk to us now?*

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1 Q And what was his response to those -- to that -- to
2 the questions?

3 A He stated he understood his rights, and he waived
4 his right to counsel and spoke with us.

5 Q And spoke with you there? Who else was with you
6 when he was speaking with you?

7 A Master Sergeant Jeff Purdy is my supervisor of
8 investigations.

9 Q Okay. And was Mr. Brabham -- where were you all
10 standing when this interview occurred?

11 A We were still out there on Jackfield Road, on the
12 side of the road, just kind of right off of the side
13 where he had been arrested.

14 Q Okay. And so, after you advised him of his rights
15 and he agreed to talk to you, what did you -- what did
16 you ask him?

17 A Basically asked him, *did you do it?* Asked him if
18 he understood why he was being placed under arrest, kind
19 of gave him the reason why we were placing him under
20 arrest. That kind of upset him. And then, asked him,
21 did he shoot Chadwick Mitchell, did he shoot his
22 brother-in-law.

23 Q And what was his response to that question?

24 A He stated that he hadn't shot his brother-in-law,
25 Chad.

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1 Q Did you ask Malcolm Brabham if he was -- where he
2 was the night before, if he was with Chad?

3 A Yes, ma'am. He -- he stated that he and Chad had
4 been together, that they were in his burgundy Impala,
5 that they had been in the area of Lady's Island. He
6 recognized The Hole, said they had been there. He
7 stated that they had left, and he had talked about
8 Elaine Blake being in the vehicle, and that after they
9 had left, Chad had started an argument with the two of
10 them, that he was making accusations that he felt were
11 unfounded and uncalled for. That Elaine got upset by
12 the -- kind of, the confrontation that was going on, and
13 she got out of the vehicle and left, walked away, and
14 that they continued to argue, and that he put him out on
15 the side of the road and drove away, and that was the
16 end of it. Didn't see him again the rest of the
17 evening.

18 Q So, he had told you that he had left Chad on the
19 side of the road.

20 A Yes, ma'am.

21 Q Okay? And did he say which road that was?

22 A He didn't know the road names. He just said it was
23 kind of near the intersection from The Hole, because he
24 described Little Capers Road.

25 Q Okay. Did you ask Mr. Brabham about where he had

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1 stayed the night before, the night of the 15th?

2 A Yes, I did. He said that he had gone to Ridgeland
3 and stayed there in Ridgeland. Which, then, I confronted
4 him with the fact that we had officers go there and try
5 to locate him, and then he changed his story and said
6 that he actually stayed in Bluffton, off of Goethe Road,
7 with another friend.

8 Q Okay. Did he identify who that friend was that he
9 stayed with?

10 A Not by name.

11 Q Okay. Did you ask Mr. Brabham any other questions,
12 besides what we've talked about?

13 A I asked him basically if he had a gun, if he had
14 used a gun, and then asked him where I could locate his
15 vehicle, since it wasn't there with him. And we didn't
16 believe it was there at his place of employment, Horry
17 Well Water.

18 Q Okay. And did he tell you where his car was?

19 A He said it was still in that area of Bluffton, off
20 of Goethe Road.

21 Q Okay.

22 A So, went sent officers there trying to find it.

23 Q Did he tell you anything else about the incident
24 from the night before?

25 A He did. He stated that there was an argument, and

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1 that he put him out on the side of the road, and that
2 was the end of it.

3 Q Okay. Okay. And what did you do after this
4 interview? Where -- what did you do with Mr. Brabham?

5 A I had him transported to the detention center.

6 Q Okay. Was he interviewed again?

7 A No, ma'am.

8 Q Okay. So, based on the information you got from
9 Malcolm about his car, did you -- did you initiate a
10 search for that car?

11 A I did. I contacted Investigator Wilson, who worked
12 out of our office, and had her draft a search warrant.
13 When we're there on-scene, you're tied up, it's -- it's
14 difficult to type a search warrant and print it, and
15 then go meet with the magistrate to have it signed. So,
16 I asked her to do that while officers had located that
17 car at [REDACTED] Goethe Road.

18 It was parked underneath kind of a -- like a tent
19 you would use for maybe a wedding dinner or something
20 like that, like an event-style tent. That property is
21 used as like, an auto repair place. It's like a shade
22 tree shop, basically. The people that live there that
23 own the property. And one of the officers there, I was
24 able to spot the vehicle, and I was able to go there and
25 seize the car and get a search warrant to search it.

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1 Q Okay. I'm going to --

2 MS. LEMPESIS: Your Honor, may I approach the
3 witness?

4 THE COURT: You may.

5 BY MS. LEMPESIS:

6 Q Investigator Rice, I'm going to hand you what's
7 been marked as State's Exhibit 5. Do you recognize that
8 picture?

9 A Yes, ma'am. This is actually the photograph of, as
10 you would sit underneath that tent and look out. Just
11 behind this vehicle is Goethe Road, which is there in
12 Bluffton, Beaufort County.

13 Q Is that a picture of where the car was found?

14 A Yes, ma'am.

15 Q Did you -- and is that a true and accurate
16 depiction of -- of where the car was found?

17 A Yes, ma'am.

18 Q Thank you.

19 MS. LEMPESIS: State would move to admit State's
20 Exhibit 5 into evidence.

21 MS. CAMPBELL: No objection.

22 THE COURT: Admitted.

23 MS. LEMPESIS: And move to publish it to the
24 jurors.

25 THE COURT: You may.

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1 MS. LEMPESIS: Thank you.

2 ITEM IDENTIFIED AS PHOTOGRAPH

3 OF DEFENDANT'S CAR MARKED

4 STATE'S EXHIBIT NUMBER 5,

5 ADMITTED AS EVIDENCE.

6 BY MS. LEMPESIS:

7 Q So, Investigator Rice, just to be clear -- not
8 everyone can see it -- tell me again, where was the car
9 -- Mr. Brabham's car, located?

10 A As you -- basically, right where you're standing
11 looking out, that was the back side of the vehicle. The
12 car that's covered up by the mulch pile, where you can
13 just see the roof of it, that is right near the roadway.
14 I believe that was actually one of our vehicles that was
15 parked there.

16 Q Okay. So, if you were standing -- well, did you
17 have occasion to see the car parked in this location?

18 A Yes, ma'am.

19 Q Okay. So, if you were standing on the roadway
20 looking at this property, could you see the car, Mr.
21 Brabham's car, clearly from the road?

22 A You couldn't see it clearly. All you'd be able to
23 see was the -- from about the license plate, down. The
24 rest of it, there's a flap that hangs over. The flap is
25 what you're looking at, and that flap hangs down to

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1 right about where the tag level on that was, on the
2 Chevrolet Impala.

3 Q So, was it -- was the tent concealing most of the
4 car, or part of the car?

5 A Yes, ma'am. It was concealing.

6 Q Okay. Okay. I want to go back -- well, I want to
7 go back to when you were asked -- the work site in
8 Bluffton where Mr. Brabham was arrested. Did you have
9 occasion at that location to speak to John Horry?

10 A Yes, ma'am, I did.

11 Q Okay. And did you determine who Mr. Horry was, in
12 relation to this whole setting?

13 A I did. He was the owner of the well company, Horry
14 Well Water, or Horry Well Drilling, and he was the
15 employer for Mr. Brabham.

16 Q Okay. And did you interview Mr. Horry at that
17 location?

18 A I did.

19 Q Okay. And do you recall what Mr. Horry told you
20 about a conversation he had with Mr. Brabham that day?

21 A I explained, kind of, what was going on to Mr.
22 Horry. We really kind of explained some of what was
23 going on with the case before we got there, trying to
24 figure out what the layout was, how we'd be able to
25 maybe safely take Mr. Brabham into custody. We didn't

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1 want any problems, or anyone to get hurt.

2 When we actually was there on-scene and had time to
3 talk to him face-to-face, he had described that he
4 thought it was odd, because Mr. Brabham was late to work
5 that morning, that he had kind of gotten onto him about
6 being a little late, and that he had told him he had an
7 incident with his -- his brother-in-law the night
8 before, and that his brother-in-law had gotten hurt.

9 Q Okay. So, that's Mr. Brabham's statement to Mr.
10 Horry?

11 A Yes, ma'am.

12 Q Okay. Did Mr. Horry give you a written statement?

13 A He didn't. He didn't feel comfortable there at
14 the time because of all the craziness that was going on.
15 I left him with a written statement and asked him to
16 please, if he could fill it out and I'd come back and
17 pick it up from him. He didn't feel comfortable filling
18 the statement out for me, and he never did that for me.

19 Q Okay. Going back to -- well, fast forward now to
20 the car, to the car that was located there on Goethe
21 Road. We've heard about the search warrant that was
22 obtained by Sergeant Wilson. Did you all search the
23 burgundy Impala?

24 A Yes, ma'am, we did.

25 Q Okay. Did you find anything -- anything inside the

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1 car, any sort of bullets or shell casing?

2 A I didn't -- we find any of that. Typically, with a
3 -- if you have a shooting incident or if someone --
4 where someone is injured, there are specific things
5 we're looking for -- for any, maybe, shell casings, or
6 projectiles. Projectiles is the bullet that actually
7 leaves the gun. Sometimes, depending on the type of
8 pistol used, any shell casing might be ejected. If it's
9 a revolver, it won't be ejected. Looking for gunshot
10 residue, which is different metals that may be ejected
11 from a gun, and that we can collect those, basically
12 with either swabs or sticky pads, and then we submit
13 them to the State Law Enforcement Division to process
14 it. Look for any kind of biological material or fluid
15 that might be there, that might indicate someone was
16 shot inside of that vehicle, or injured inside the
17 vehicle. I didn't find any of that in there -- no shell
18 casings, bullets. I did collect a gunshot residue kit.

19 Q Okay. And that gunshot residue kit you just
20 mentioned, did you send that to SLED for testing?

21 A I did. I sent that kit to -- for testing to SLED
22 there in Columbia, South Carolina. It came back with no
23 gunshot residue found.

24 Q Okay. What were the parts on the car that you
25 tested for gunshot residue? Do you recall?

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1 A What we knew that evening was that Mr. Brabham, it
2 was his vehicle, registered to him, and that Chad stated
3 that he had been driving it. I basically processed the
4 -- the area of the driver's seat and the door -- door
5 paneling, areas he may have been touching while he was
6 driving.

7 Q You also -- what else did you learn in your
8 investigation about where this shooting occurred, in
9 reference to the car?

10 A The investigation showed -- an interview showed
11 that the shooting happened outside of the vehicle, out
12 on the roadway.

13 Q Okay. So, the reason for the GSR kit on the car
14 was what?

15 A Just to cover our bases. Maybe there would be some
16 kind of transfer. When you fire a weapon, typically
17 you're going to have gunshot residue that -- that mainly
18 is focused around your arm area, and you have a very
19 limited amount of time to capture that evidence. It
20 will fall off, shake off, or be transferred very
21 quickly. One of the -- usually right after the shooting
22 happens, sometimes you may find gunshot residue in areas
23 that you would have touched, maybe on the seat, a
24 steering wheel, a door handle, things of that nature.

25 Q Okay. Is it, in your experience in investigations,

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1 is it common to find --

2 MS. CAMPBELL: Objection, your Honor.

3 MS. LEMPESIS: I'll withdraw the question.

4 THE COURT: Sustained.

5 BY MS. LEMPESIS:

6 Q Did you test Mr. Brabham when he was arrested? Did
7 you do any sort of GSR testing on Mr. Brabham?

8 A No, ma'am. I didn't -- we didn't locate him until
9 -- it was a good time after. It was the next day before
10 lunch, right around lunchtime, when he was placed under
11 arrest, which is far outside the period of time you have
12 to collect that type of evidence.

13 Q Okay. Are you familiar with this Norman Singleton?

14 A Yes, ma'am.

15 Q Okay. Do you know where Norman Singleton lives?

16 A Norman Singleton and his whole family, the
17 Singleton family, live in that area off of where we
18 described the intersection with Little Capers Road and
19 Holly Hall Road. If you continue past Little Capers on
20 Holly Hall, you find a road on your left that's called
21 Shepherd Road. There's a neighborhood back there,
22 several houses, and the Singleton family owns a lot of
23 property. And many of that family lives on what's
24 called the Hill Road, and it's the same area that people
25 earlier were describing as The Hole.

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1 Q And what is Norman, Norman Singleton, what are his
2 physical attributes?

3 A Norman Singleton, he was injured several years ago
4 in a shooting incident. He was a gunshot victim. He
5 was shot in the head. He survived it, miraculously, but
6 as a result of that, he lost a lot of function in his
7 body, and has since been left handicapped, and it's
8 difficult for him to move around. He has to have the --
9 use the aid of maybe crutches or a walker to be able to
10 move.

11 Q Based on your investigations and everything we've
12 heard, did you get warrants for Mr. Malcolm Brabham?

13 A I did. I obtained two warrants.

14 Q And what were they for?

15 A For attempted murder, and then, also, the
16 possession of a pistol during the commission of a
17 violent crime.

18 Q Just one more thing about the GSR kit that you did.
19 Do you know about how long after the shooting incident
20 occurred when -- the time frame between when the
21 shooting occurred and when you tested or swabbed the car
22 for possible GSR?

23 A I don't have the time in front of me. It was
24 probably about -- it was at least the day after. I
25 don't remember the exact time frame. I'd have to see

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1 the time we served the search warrant.

2 Q Okay. But it --

3 COURT REPORTER: Would you repeat that? *I don't*
4 *have the exact time?*

5 A I don't have the exact time. I'd have to have --
6 see the search warrant.

7 Q Okay. If I show the search warrant, will you be
8 able to remember?

9 A Yes, ma'am.

10 MS. LEMPESIS: May I approach the witness?

11 THE COURT:

12 BY MS. LEMPESIS:

13 Q Take a look at that and see if you can remember the
14 time frame.

15 A Yes, ma'am. We seized that car on July 16, 2013,
16 from [REDACTED] Goethe Road, there in Bluffton, and then
17 actually executed the warrant on the 17th, at 10:45
18 hours.

19 Q Okay. So, you didn't swab it for GSR until the
20 17th?

21 A No, ma'am. We secured the vehicle until we could
22 get to it and process it.

23 Q Okay.

24 MS. LEMPESIS: Nothing further for Investigator
25 Rice at this time.

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CROSS - INVESTIGATOR RICE

1 THE COURT: Cross?

2 MS. CAMPBELL: Yes, sir. Thank you.

3 INVESTIGATOR ANDREW RICE

4 CROSS-EXAMINATION BY MS. CAMPBELL:

5 Q Investigator Rice, I want to take you first to
6 Jackfield Road. And Investigator Zsamar, who the State
7 has not, I don't think, calling to testify here, but
8 you had Zsamar go to this pickup truck and retrieve a
9 pair of pants that you believed Malcolm Brabham was
10 wearing at the time of the incident. Isn't that
11 correct?

12 A We seized a pair of pants. We weren't sure if he
13 wore those during the incident or not.

14 Q Well, your reports say you believe he was wearing
15 these pants at the time of the incident. Would you
16 like to see a copy of it?

17 A No, ma'am. He could have been wearing them, but
18 we weren't sure he was wearing them. We just thought
19 maybe he could have been.

20 MS. CAMPBELL: May I approach the witness?

21 THE COURT: You may.

22 MS. CAMPBELL: Thank you.

23 BY MS. CAMPBELL:

24 Q The third line, if you could, read that. The
25 pants were.

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1 A Believed to belong to Brabham and worn at the time
2 of the incident.

3 Q Thank you. Now, those pants that you took from
4 Jackfield Road, where are they today?

5 A In evidence.

6 Q Correct. In evidence. Did you try and process
7 them for any gunshot residue, or any forensic evidence
8 whatsoever?

9 A No, ma'am.

10 Q Okay. So, there's a piece of evidence that you
11 have that you've done absolutely nothing with in this
12 case, right?

13 A Yes, ma'am.

14 Q Okay. Now, when you -- because we're going to
15 talk about cell phones, too; let's go to those next.
16 The car on Goethe Road, there were -- were there two or
17 three cell phones that you located in the burgundy
18 Impala?

19 A I believe there were two.

20 Q You want to look at your evidence submittal form?

21 A Yes, ma'am. There was two cell phones turned in
22 from the vehicle. The third phone was from the victim.

23 Q From Chad?

24 A Yes, ma'am.

25 Q From the hospital?

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1 A Yes, ma'am.

2 Q Okay. And on your evidence submittal form for the
3 two cell phones, you have an LG T-Mobile cell phone,
4 belonging to Mitchell, correct? And then, a Samsung
5 cell phone and a palm cell phone, correct?

6 A Yes, ma'am.

7 Q Okay.

8 A Both Verizon.

9 Q Correct. And then, you have a Samsung cell phone
10 touch screen from Brabham, correct?

11 A I'd have to see the submittal, but I believe
12 that's correct.

13 Q Okay. At any point in your investigation in this
14 case, because, you know, what you had at this point was
15 Chad saying, *Malcolm shot me*, did you go into those
16 phones -- any of those phones -- and look for evidence
17 to substantiate what Chad was saying?

18 A No, ma'am.

19 Q Okay. And they're still in evidence, correct?

20 A Yes, ma'am.

21 Q Okay. Now, isn't it true that when you initially
22 talked with Chad, he told you that *Malcolm Brabham went*
23 *back into the car, retrieved the gun, came back out of*
24 *the car, and that's when he shot me*, right?

25 A Yes, ma'am.

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CROSS - INVESTIGATOR RICE

1 Q Okay. Now, you said that Chad was taken by Life
2 Flight to MUSC, right?

3 A That's what I was told by Beaufort Memorial staff,
4 that he was going to be LifeFlighted.

5 Q So, you don't know if he actually went up there in
6 a helicopter or was sent in an ambulance. You don't
7 know the answer to that, right?

8 A I don't.

9 Q Okay. Now, it sounded like in your testimony with
10 the prosecutor that, you know, based on picture and his
11 -- Malcolm's car being at the mechanic's, that there
12 was some attempt to conceal the car. Is that what you
13 believe?

14 A Yes, ma'am.

15 Q Okay. Okay. So, we have this belief on your part
16 that he's trying to conceal this car at the mechanic's
17 house. Yet, he goes to work the very next day, where
18 everybody knows he's going to be, right?

19 A Yes, ma'am.

20 Q And that's where you find him.

21 A Yes.

22 Q Okay. Now, you never, even though you were right
23 there, I mean, there's no delay -- there's no six-hour
24 delay or anything -- you never bagged Chad's hands to
25 determine whether or not he had fired a weapon; did

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1 you?

2 A No, ma'am.

3 Q Okay. In fact, you took what Chad said, which is,
4 *Malcolm shot me, and he shot me at this intersection*
5 *here of Little Capers Road and Holly Hall, and that's*
6 where you focused your investigation, right?

7 A Yes, ma'am.

8 Q And in fact, you found nothing, correct?

9 A No, ma'am.

10 Q And in fact, the Hill, where the Singleton clan
11 lived, is just right there, right around the corner
12 from that intersection, correct?

13 A Yes, ma'am.

14 Q Okay. Did you ever ask Malcolm how he got from
15 Bluffton, if he left his car in Bluffton, got all the
16 way back to Ridgeland to go to work the next day? Did
17 you explore that, who took him, or anything like that?

18 A I remember asking about how he got from Point A to
19 Point B, and I believe he told me that someone had
20 dropped him off.

21 Q Did you follow up on who that might have been?

22 A No, ma'am. I didn't have a name.

23 Q Okay. You found no projectiles in the car,
24 correct?

25 A No, ma'am.

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1 Q No shell casings in the car.

2 A No, ma'am.

3 Q You found phones in the car that are still in
4 evidence, never processed.

5 A Yes, ma'am.

6 Q Well, let me ask you this. Did you ever make an
7 attempt, through the use of an expert or some analysis
8 to determine, in fact, how far away the person was that
9 shot Chad?

10 A No, ma'am.

11 Q Okay. So, we don't have an answer to that
12 question.

13 A No, ma'am.

14 Q Could have been two feet. Could have been twenty
15 feet. We don't know.

16 A Yes, ma'am. We don't know.

17 Q You never submitted Chad's shirt to SLED for GSR,
18 correct?

19 A No, ma'am.

20 Q Could be gunshot residue on the shirt right now,
21 but we don't know.

22 A I don't believe there is, but we don't know.

23 Q Okay. I understand you don't believe there is.
24 However, a piece of evidence in a gunshot case not
25 submitted to SLED, correct?

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1 A Yes, ma'am.

2 Q You've got the arrest warrant for Malcolm because
3 Chad told you, *Malcolm shot me*, right?

4 A Yes, ma'am.

5 Q Okay. After you got the arrest warrant, and after
6 the investigation, you have no gunshot residue anywhere
7 in this case, correct?

8 A No, ma'am.

9 Q You have no gun.

10 A No gun.

11 Q No shell casings.

12 A No shell casings.

13 Q No evidence forensically whatsoever that links
14 Malcolm to the accusation by Chad, correct?

15 A No, ma'am.

16 Q Okay. Potentially in evidence, but we don't know.

17 A Yes.

18 Q Nothing's been processed.

19 A Yes, ma'am.

20 Q And the one piece of evidence that has been
21 processed, which is Malcolm's car that he was in, told
22 you *I was in my car*, that came back, no sign whatsoever
23 that a gun has been fired in around this car at all,
24 right?

25 A Yes, ma'am. No GSR.

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1 MS. CAMPBELL: That's all I have at this time.

2 THE COURT: Re-direct?

3 INVESTIGATOR RICE, RE-DIRECT BY MS. LEMPESIS:

4 Q The -- Investigator Rice, just briefly. The cell
5 phone that you collected from Mr. Brabham's car from
6 the search warrant --

7 A Yes, ma'am?

8 Q Were they new or old, or what kind of phones were
9 they?

10 A They were old phones.

11 Q Okay. Did you determine if they were in working
12 condition?

13 A They weren't in working condition. They wouldn't
14 -- they wouldn't turn on.

15 Q They wouldn't turn on?

16 A No, ma'am.

17 Q All right.

18 MS. LEMPESIS: No further questions from this
19 witness for the State.

20 THE COURT: Re-cross?

21 MS. CAMPBELL: No.

22 THE COURT: You may step down.

23 A Thank you, your Honor.

24 THE COURT: All right. Let's take about a ten-
25 minute break. Then, we'll have our next witness.

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1 Again, don't begin deliberations or discussions, and
2 we'll see you all back in about ten minutes.

3 JURY LEAVES COURTROOM 3:16 P.M.

4 BAILIFF: The jury is clear, your Honor.

5 THE COURT: All right. With that, your last is
6 the doctor?

7 MS. LEMPESIS: Yes.

8 THE COURT: Is that going to give her time to get
9 ready? Okay. All right. See you back in ten minutes.

10 MS. LEMPESIS: Thank you, your Honor.

11 OFF THE RECORD 3:16 P.M.

12 BACK ON THE RECORD 3:35 P.M.

13 BY THE COURT:

14 BAILIFF: All rise, please. Court's now in
15 session.

16 THE COURT: Take your seats. Got your witness
17 ready?

18 MS. LEMPESIS: We do, Judge.

19 THE COURT: Is everybody ready? Defense ready?
20 This is Dr. McElveen?

21 MS. LEMPESIS: It is. He's in the courtroom,
22 ready to go. And Judge, just briefly before they come
23 in, we talked before about not going through the
24 colloquy about his qualifying him as an expert.

25 THE COURT: All right.

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1 MS. LEMPESIS: But we've discussed, and I'm just
2 going to go just briefly, most of the questions. It
3 won't take --

4 THE COURT: When you tender him as an expert,
5 you'll say, no objection, and I'll just tell them what
6 an expert is.

7 MS. LEMPESIS: Okay. And I will ask some of the
8 background questions, your Honor.

9 THE COURT: That's fine.

10 MS. LEMPESIS: Okay.

11 BAILIFF: The jury is entering the courtroom, your
12 Honor.

13 JURY ENTERS COURTROOM 3:37 P.M.

14 THE COURT: Okay, folks. We're going to resume
15 now with the State calling their next, as I understand,
16 last witness, Dr. McElveen.

17 MS. LEMPESIS: That's correct. The State calls
18 Dr. Ty McElveen.

19 MADAM CLERK: If you'll place your left hand on
20 the Bible, please. Raise your right hand. Do you
21 solemnly swear or affirm that the testimony you give
22 shall be the truth, so help you God?

23 A I do.

24 MADAM CLERK: Thank you. Have a seat, please.
25 And if you'll state and spell your name for the record,

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1 please.

2 CECIL TYRONE MCELVEEN, M.D.: Sure. It's Cecil,
3 C/e/c/i/l. Tyrone, T/y/r/o/n/e. McElveen,
4 M/c/e/l/v/e/e/n, M.D.

5 CECIL TYRONE MCELVEEN, M.D.

6 DIRECT EXAMINATION BY MS. LEMPESIS:

7 Q Thank you, Dr. McElveen. Good afternoon.

8 A Hi.

9 Q Dr. McElveen, who do you work for?

10 A I -- I'm a physician. I'm self-employed. I work
11 for Beaufort Memorial Hospital, under the auspices of
12 Team Health, which is a private national emergency
13 medicine group of physicians. I also work with my own
14 clinic in Ridgeland, with Beaufort-Jasper Comprehensive
15 Health Services.

16 Q Okay. And are you licensed in South Carolina to
17 practice medicines?

18 A Yes, I am.

19 Q Are you licensed in any other state?

20 A No.

21 Q Okay. And where did you go to in medical school?

22 A Medical University of South Carolina in
23 Charleston.

24 Q Okay. And you did your residency where?

25 A Anderson Memorial Health Center, in Anderson,

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1 South Carolina.

2 Q Okay.

3 COURT REPORTER: Where? Anderson, South Carolina?

4 A Anderson, yes.

5 Q And how long have you practiced in this area, the
6 Beaufort zone?

7 A Since 1997. I came here straight out of
8 residency.

9 Q Okay. And so, how long have you been practicing
10 in the emergency room.

11 A I actually, even during residency, since '95. So,
12 nineteen years.

13 Q Okay. And do you go through some sort of
14 certification procedure?

15 A I'm board-certified in family practice.

16 Q Okay. And are you -- do you get re-certified
17 every certain number of years?

18 A Every six years, yes. Two years since my last
19 certification.

20 Q Okay. And have you testified in criminal court
21 before?

22 A Yes, I have.

23 Q How many times? Do you remember?

24 A I was trying to think. I can think offhand of at
25 least four cases, but it's hard to say, other than

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1 that.

2 Q Okay. And were you qualified as an expert before
3 in emergency medicine?

4 A Yes.

5 Q Thank you. And how many gunshot victims would you
6 say you have served in your years of practice?

7 A Oh, gosh. Gunshot wounds, something we see,
8 unfortunately, in Beaufort every other weekend or so.
9 But I'd say on the order of a dozen a year or so. So,
10 more than a hundred.

11 Q Okay.

12 MS. LEMPESIS: And your Honor, at this time, the
13 State would offer Dr. Mcelveen as an expert in
14 emergency medicine.

15 MS. CAMPBELL: No objection.

16 THE COURT: All right. Folks, yesterday I told
17 you that when we had people come in and testify,
18 they're basically allowed to come in and tell you what
19 they heard, they saw, they touched, they felt, they
20 smelled, and we don't allow witnesses to normally come
21 in and give their opinion about their testimony.

22 The State -- or the law says, however, when a
23 witness, because of training, education, experience in
24 a field rises to the level of expertise, we allow them
25 to come into court, testify not only as to their

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1 observations, but they are allowed to also then, give
2 you their opinion about whatever it is they're
3 testifying to, and give you the reasons for their
4 opinion.

5 Now, this witness has now been qualified as an
6 expert in the field of emergency medicine, and will be
7 allowed to tell you what his observations were, as well
8 as give you an opinion about his observations.

9 Just because a witness gets qualified as an expert
10 doesn't mean that you're necessarily required to
11 blindly accept whatever their opinion is. You decide
12 how much weight to give their testimony based on his
13 education, his experience, and all the other testimony
14 you hear throughout the trial. And you decide how much
15 weight his testimony deserves, based on all the witness
16 -- all the evidence that you hear throughout the trial.
17 You may resume.

18 MS. LEMPESIS: Thank you, your Honor.

19 BY MS. LEMPESIS:

20 Q Dr. McElveen, were you working at Beaufort
21 Memorial Hospital on the night of July 15th, 2013?

22 A Yes.

23 Q Were -- what shift were you working?

24 A I believe it was the evening shift, or night
25 shift.

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1 Q Okay. And what are your typical duties or tasks
2 when you're working the night shift at the emergency
3 room?

4 A Well, we see everyone who comes in for any -- any
5 health condition, anyone who's in need of care. We
6 don't turn anyone around -- anyone away. And as an
7 emergency room, we also see someone who comes in by
8 ambulance, or anyone who comes in, in any distress at
9 all.

10 Q Okay. And are you usually the most senior person
11 in the emergency room?

12 A Yes. And as of, I believe March of 2013, there
13 was a change in the emergency room where this new group
14 that I'm working for now, Team Health, came in. But
15 because myself and a few other physicians have been
16 here for awhile, we were -- we are the senior
17 physicians who -- we were in charge of taking care of
18 the trauma patients, the most serious patients, as they
19 come in during -- and still am, by the way, but during
20 this transition period especially, we were in charge of
21 that.

22 Q Okay. And do you recall treating Chadwick
23 Mitchell on the night of July 15th?

24 A Yes, I do.

25 Q Okay. And what did he come in -- what sort of

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1 injury did he come into the emergency room with?

2 A He had a gunshot wound to his chest.

3 Q Okay. And the gunshot wound to his chest, what
4 did you do to treat that?

5 A Well, initially, when the ambulance calls to let
6 us know what they're bringing in, they'll call to let
7 us know this is a, you know, I guess a 33, 36, 38-year-
8 old gentleman with a gunshot wound to his chest, which
9 immediately tells us that this could be a very serious
10 condition, and to get ready. So, we mobilize our
11 respiratory therapists, let surgeons know when we have
12 a chest injury coming in. All the support staff and
13 nurses that we need there in the trauma room, we're
14 ready when our patient arrived.

15 Q Okay. So, when Chad arrived in the emergency
16 room, he was met by a whole slew of people.

17 A That's right.

18 Q Okay. All ready to attend to him. Why do you
19 have such a -- such a large response to this sort of
20 injury?

21 A A gunshot wound by itself is a serious injury
22 anywhere. A blast injury can cause anyone to lose a
23 limb. It can cause, you know, of course, to the head,
24 it's instant death if it goes into the brain. If it
25 goes into the chest, we worry about the heart, to the

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1 lungs, all the body organs. If we look at the causes
2 of death from a gunshot wound, it's injury to the chest
3 that we see as causing the most common death.

4 Now, on the street, it's gunshot wounds to the
5 head. But once it gets to the emergency room -- if
6 they're alive to the point they get to the emergency
7 room, it's gunshot wounds to the chest that will cause
8 deaths.

9 Q Okay. And so, you said you treated Chad for a
10 gunshot wound to his chest.

11 A Yes.

12 Q Do you remember what area of his chest?

13 A He was shot in the right, upper chest, just
14 lateral to what's called mid-clavicular line. You take
15 your collarbone and divide it in half, it was just to
16 the outside of that, just beneath the collarbone.

17 Q Okay. And when he arrived in the emergency room,
18 what was his status? Was he stable?

19 A He was awake and alert. I don't have his exact
20 numbers in front of me, but he was tachycardic, as we
21 would expect for someone who has been shot. But he was
22 breathing, and he was awake and alive, and that was a
23 good sign.

24 Q What does tachycardia mean?

25 A I'm sorry. He had a rapid heart rate. His heart

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1 was beating faster than a hundred beats per minute.

2 Q Okay.

3 A Normal is sixty to a hundred.

4 Q And what did you do there in the emergency room to
5 treat him immediately when he arrived?

6 A First, we assessed his airway, that he was, in
7 fact, breathing. His airway was intact. Then, his
8 circulatory status, which revealed that his heart was
9 beating fast, but he was able to maintain his blood
10 pressure, which means he probably had lost some blood,
11 but not to the point where he was bleeding to death.
12 And then, from that, we evaluated his neurologic
13 status. We looked at the obvious one, which was the
14 gunshot wound to the chest, but also for any secondary
15 wounds from there.

16 Q Okay. And did you find any secondary wounds?

17 A No, we did not.

18 Q Okay. Do you recall, was -- did Chad stay there
19 at Beaufort Memorial for treatment?

20 A He did not. Unfortunately, we don't have anyone
21 in Beaufort who could manage chest injuries. If the
22 bullet entered the lung, injured the lung or major
23 vessels of the chest, we don't have the equipment or
24 the support personnel to care for patients who are
25 injured in that way. It takes special machinery to

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1 divert blood to maintain blood circulation with open
2 chest wound, people who have open-heart surgery, or
3 anything along those lines.

4 Also, he had what appeared to be a neurologic
5 injury, and we didn't have any way of addressing his
6 neurologic injury to his arm that also appeared while
7 he was in the emergency room, or, also, we discovered
8 while he was in the emergency room.

9 Q And was that neurologic injury to his arm a result
10 of the gunshot wound?

11 A Yes.

12 Q Okay. In your expert opinion, Dr. McElveen, could
13 he have died from this gunshot wound to his chest?

14 A He very -- he's a lucky gentleman. Yes, he very
15 could -- very easily could have.

16 Q Okay. Did you do any sort of toxicology test on
17 Mr. Mitchell when he came into the emergency room?

18 A As a matter of routine practice, anyone who comes
19 in who's involved in a stabbing, gunshot wound, any
20 kind of serious illness, we do check alcohol and drug
21 screens.

22 Q Okay. And what did those results tell you?

23 A That he did have alcohol in his system. He was
24 intoxicated. And also, he had cocaine in his system.

25 Q Okay. And the alcohol and cocaine in his system,

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1 did those affect his injury at all, or from what you
2 can tell?

3 A It may have added to his rapid heart rate,
4 definitely. But he did not appear to be intoxicated.
5 I was a little surprised to find those findings.

6 COURT REPORTER: I'm sorry, I was a little
7 surprised to find?

8 A Those findings.

9 Q So, you were surprised at the levels of cocaine
10 and alcohol in his system?

11 A Yes. Yes.

12 Q And that's because you talked to him, and he was
13 very coherent?

14 A Yes. He was able to follow instructions. He was
15 -- for what he had been through, was very cooperative.

16 Q Okay. And he wasn't slurring his words, or --

17 A That's right.

18 Q -- having any trouble in that way?

19 A That's right.

20 Q Okay. Did you treat Mr. Mitchell at all after he
21 was transported to MUSC? Did you ever see him again?

22 A I did not. I did not.

23 Q Okay. Dr. McElveen, I don't have any other
24 questions for you at this time.

25 A Okay.

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1 Q If you could just answer any other questions that
2 Ms. Campbell may have.

3 A Certainly.

4 DR. CECIL TYRONE MCELVEEN, M.D.

5 CROSS-EXAMINATION BY MS. CAMPBELL:

6 Q Good afternoon.

7 A Hi.

8 Q Dr. McElveen, as, I guess, head of the emergency
9 room that night, I'm going to ask you a couple of quick
10 questions.

11 MS. CAMPBELL: May I approach the witness, your
12 Honor?

13 THE COURT: You may.

14 MS. CAMPBELL: Thank you.

15 BY MS. CAMPBELL:

16 Q You take a social history, which is a self-report
17 by the patient, about things that might be helpful for
18 you.

19 A Yes, ma'am.

20 Q And isn't it true that Mr. Chadwick Mitchell
21 reported that he did not use tobacco, that he was not
22 under the influence of any alcohol, nor under the
23 influence of any illicit drugs that night, correct?

24 A That's right.

25 Q And that was clearly a lie, right?

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1 A Yes.

2 Q Okay. The reason that you take blood samples from
3 the patients as they come into the E.R. is to determine
4 whether or not they have alcohol or illicit drugs, like
5 cocaine, in their system, is because that may affect
6 the protocol that you use to treat that patient,
7 correct?

8 A Yes, ma'am.

9 Q Okay. Now, when you receive back the initial
10 screen --

11 MS. CAMPBELL: May I approach?

12 THE COURT: You may.

13 BY MS. CAMPBELL:

14 Q -- on Mr. Mitchell, if I could direct your
15 attention to the line here for cocaine.

16 A Yes.

17 Q And it has an H next to it, correct?

18 A Yes.

19 Q That would mean that the reading was high.

20 A That's right.

21 Q At some point, either you or another staff member
22 at the E.R., decided because it was high, you needed a
23 further test done, correct?

24 A There's no such thing as a normal level of
25 cocaine. Any level is going to come back as high.

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1 Q Right.

2 A And so, to quantitate that, it's a reflex for the
3 lab just to say, *well, just how high is it.* So, they
4 always say that.

5 Q Okay. *Just how high is this person?* And so, when
6 you got the second test back --

7 MS. CAMPBELL: If I may approach the witness?

8 THE COURT:

9 MS. CAMPBELL: Thank you, your Honor.

10 BY MS. CAMPBELL:

11 Q If you would, please tell the jury what Mr.
12 Chadwick Mitchell's reading came back as that night in
13 the E.R. with you, for the cocaine.

14 A The official reading is 5,644 nanograms per
15 milliliter.

16 Q Correct. And the cutoff is 300 nanograms per
17 millimeter for the mere presence of cocaine, correct?

18 A That's the lowest limit the test will find, is
19 300.

20 Q Right. My math's not too good, but that's about
21 20 times the cutoff, correct?

22 A Yes.

23 Q Okay. And the ethanol, which is alcohol, is
24 214.2, correct?

25 A Yes.

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1 Q And that is also listed as high.

2 A That's right.

3 Q Okay. Now, you talked to Chad Mitchell several
4 hours -- well, I won't say several hours -- about an
5 hour or so after he was shot, correct?

6 A Yes, ma'am.

7 Q Okay. Now, as far as how he was acting, having
8 that level of cocaine and that level of alcohol in his
9 system out on Little Capers Road, you have no knowledge
10 of whether he was alert and oriented at that time,
11 correct?

12 A Yeah. I only have access to what I saw there in
13 the emergency room.

14 Q Okay.

15 A And what the investigator reported. That's right.

16 Q And so, you have no testimony for us as to whether
17 or not he was suffering from any sort of hallucinations
18 or any negative impact from that level of cocaine in
19 his system, out on Little Capers Road, correct?

20 A Out on Little Capers Road, that's right, I can't.

21 Q Are you familiar with the term *cocaine psychosis*?

22 A Yes, ma'am.

23 Q Okay. Cocaine psychosis occurs when an individual
24 ingests excessive amounts of cocaine, right?

25 A Yes.

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1 Q Okay. And during a cocaine psychosis episode,
2 they can experience hallucinations, correct?

3 A Yes.

4 Q Perhaps a seizure.

5 A Yes, ma'am.

6 Q Correct? And I think that that can also include
7 distortion of events and paranoia, as well, correct?

8 A Yeah. Yes, ma'am. That goes along with cocaine,
9 yes.

10 Q Correct. Okay. Thank you. That's -- well, one
11 more thing.

12 A Um-hmm.

13 Q Would it be fair to say that having suffered a
14 gunshot wound, that might sober you up?

15 A I don't know about that.

16 Q Okay. Thank you. That's all I have.

17 THE COURT: Re-direct?

18 MS. LEMPESIS: Just briefly.

19 CECIL TYRONE MCELVEEN, M.D.

20 RE-DIRECT BY MS. LEMPESIS:

21 Q This cocaine psychosis Ms. Campbell's talking
22 about, if a person was in a cocaine-induced psychosis,
23 do you know how long that would last?

24 A For quite some time. I would have -- I would have
25 diagnosed that in the emergency room, had that been

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1 going on.

2 Q You would have noticed --

3 COURT REPORTER: I'm sorry, I would have diagnosed
4 that in the emergency room, had that?

5 A Been going on.

6 Q So, if Chadwick Mitchell is in a cocaine
7 psychosis, it would have still been going on when you
8 were treating him in the emergency room.

9 A I did not see any evidence of that. That's right.

10 Q In your opinion. Thank you.

11 MS. CAMPBELL: I'm sorry, your Honor. I did have
12 one more question.

13 THE COURT: You may.

14 MS. CAMPBELL: If I may.

15 CECIL TYRONE MCELVEEN, M.D.

16 RE-CROSS-EXAMINATION BY MS. CAMPBELL:

17 Q Doctor, on Page -- you've got a lot of records
18 here from the E.R. Okay. Oh, here we go. Page --

19 MS. CAMPBELL: If I may approach?

20 BY MS. CAMPBELL:

21 Q This is Page 76 of 87. You have a notation that:

22 *The patient states he then fled the*
23 *vehicle.*

24 Correct?

25 A That's what's underlined here.

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1 Q Yes?

2 A I'm not sure what I'm looking at.

3 Q This is from the E.R., the notations about what
4 Mr. Mitchell said. That he was in the car with two or
5 three other people.

6 A Is this from the ambulance service, I believe.

7 Q Yes.

8 A Okay. Yeah. Then, he said that to them.

9 Q And then, he fled the vehicle, correct?

10 A That's -- yes, that's what's stated.

11 Q Okay.

12 COURT REPORTER: I'm sorry. You'll need to speak
13 up. *And then he fled the vehicle?*

14 A I was saying, yes, that's what is stated.

15 Q Correct.

16 COURT REPORTER: Thank you.

17 Q An argument broke out, resulting in him receiving
18 a gunshot wound, and then he fled the vehicle, correct?

19 A Yes.

20 Q Thank you.

21 MS. CAMPBELL: That's all I have. Thank you.

22 THE COURT: You may step down.

23 A Thank you.

24 THE COURT: Free to go, too. You're welcome to
25 stay, free to go.

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1 A Thank you.

2 THE COURT: All right. Does the State have any
3 other witnesses?

4 MS. LEMPESIS: No other witnesses from the State,
5 your Honor.

6 THE COURT: State rests?

7 THE STATE RESTS.

8 MS. LEMPESIS: We would rest at this time.

9 THE COURT: All right. Folks, we're going to
10 break for the evening there, and begin back tomorrow
11 morning at 9:30, with the Defense's portion of the
12 case. Again, if they decide to put one up, they'll
13 have to decide tonight and let us know in the morning.

14 So, even though you've heard all of the State's
15 evidence now, again, it would be improper for you to
16 begin your deliberations. Please just go home tonight,
17 enjoy your evening. Don't talk to anyone about the
18 case, including any other jurors. Don't try to find
19 out anything about the case by driving by and, you
20 know, doing some of your own detective work. Please
21 don't post things on the Internet. Please don't try to
22 read the newspaper to find out if there's anything on
23 there.

24 Like I say, we'll get this case to you tomorrow
25 for you to begin your deliberations. After you come

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1 back with a verdict, you can talk 'til your heart's
2 content about whoever -- with whoever you want to about
3 the case, and do whatever you want, post things on the
4 Internet, do whatever. But until the case is over
5 with, please don't do any of those things. Just go
6 home. It's a nice day outside. Enjoy a little bit of
7 sunshine, and we'll see you back at 9:30 in the
8 morning. Thank you for your patience.

9 JURY LEAVES COURTROOM 3:57 P.M.

10 BAILIFF: Your Honor, their pads, do you still
11 want them left here?

12 THE COURT: Yeah. Note pads stay.

13 BAILIFF: Yes.

14 THE COURT: You can just collect them there.

15 BAILIFF: Okay.

16 THE COURT:

17 BAILIFF: The jury is clear, your Honor.

18 THE COURT: All right. Ms. Campbell, what's your
19 thoughts on your calling witnesses at this point? Have
20 you made a decision yet for tomorrow?

21 MS. CAMPBELL: I have talked with my client. My
22 client has made the decision that he does not wish to
23 testify.

24 THE COURT: Okay. Any other witnesses?

25 MS. CAMPBELL: No other witnesses.

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1 THE COURT: All right. Well, tomorrow morning,
2 then, I guess we'll go into charging and arguing.
3 We've given you our preliminary charges. If you have
4 anything that you want, let's -- why don't we meet here
5 tomorrow morning at 9:15? Email anything to my law
6 clerk tonight that you might want for changes, and we
7 will see you in the morning.

8 Mr. Brabham, I talked to you yesterday about
9 testifying. Your lawyer has indicated to me, at this
10 point, you do not want to testify. I will allow you to
11 make your final decision on that in the morning, to
12 sleep on it, talk to Ms. Campbell again. If you decide
13 you want to testify tomorrow, you still will be allowed
14 to. If you don't want to testify, I will tell the jury
15 they are not to hold that against you during their
16 deliberations. All right? So, again, you don't have
17 to make that decision. Your lawyers tell me right now
18 you don't intend to testify tomorrow. But the final
19 decision you will have to make tomorrow morning, by
20 9:30. All right?

21 A Yes, your Honor.

22 THE COURT: See you all in the morning.

23 MS. LEMPESIS: Thank you, your Honor.

24 MS. CONCANNON: Thank you, your Honor.

25 MS. CAMPBELL: Judge, do we do the directed

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1 verdict motions in the morning?

2 THE COURT: Oh, yeah.

3 MS. CAMPBELL: That would be fine.

4 THE COURT: Okay.

5 MS. CAMPBELL: That would be good for me. Okay.

6 Thank you.

7 END DAY TWO, TUESDAY, APRIL 22,

8 2014, 3:59 P.M.

9 BEGIN DAY THREE, WEDNESDAY, APRIL 23,

10 2014, 9:25 A.M.

11 BY THE COURT:

12 THE COURT: The statement of defendant charged,
13 does that really need to go in? Did that get really
14 used? I'm trying to recall, you know, the language you
15 put in. And even though I made a decision that you get
16 to hear it, you ultimately got to decide if it's
17 voluntary, et cetera. Was that used against him?

18 MS. LEMPESIS: We did question Investigator Rice
19 about the statement that the defendant made. I mean,
20 you know. We're going to mention in the closing, as
21 far as it was an inconsistent statement with what he
22 had said.

23 THE COURT: I'm just always trying to pare down as
24 much as I can.

25 MS. LEMPESIS: Um-hmm.

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1 THE COURT: His voluntariness of his statement
2 never really was an issue, so if you want it left in,
3 I'll leave it in. I mean, it's one of those things
4 where --

5 MS. CAMPBELL: I think I would be remiss if I did
6 not have you charge the jury.

7 THE COURT: Well, I wouldn't want you to remiss.

8 MS. CAMPBELL: No. And I certainly don't want to
9 be called again --

10 THE COURT: No remorse. No remorse.

11 MS. CAMPBELL: -- later myself about not having
12 that charge.

13 THE COURT: No remorse. I told my law clerk this
14 morning, I said, well, make sure we've got the new
15 circumstantial evidence charge in there. I said,
16 sometimes, I don't understand these folks. They sit
17 around and read a law review article, and if you can
18 explain the difference between the old one and the new
19 one, I mean. I guess that's why they're on the Supreme
20 Court and I'm not. All right. The only thing that's
21 different than what you went home with is on reasonable
22 doubt, we -- I left my Vickers charge in, added what
23 Traci asked, which is the second bullet point:

24 What is a reasonable doubt in the law?

25 A reasonable doubt is the kind of doubt that

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1 would cause a reasonable person to hesitate
2 to act.

3 The rest of it is what I usually put in. And
4 then, on -- what was the second -- what was the other
5 one?

6 MADAM CLERK: Presumption of innocence.

7 THE COURT: Presumption of innocence. Yeah, we
8 had -- it was -- 99 percent of this stuff was exactly
9 what I already had in there. What was --

10 MS. CAMPBELL: Well, I think it might be the third
11 bullet point. I always enjoy the charge of the robe of
12 righteousness.

13 THE COURT: You wanted the robe of righteousness.

14 MS. CAMPBELL: Correct. Yes.

15 THE COURT: You like that.

16 MS. CAMPBELL: I like that. And it's proper.

17 THE COURT: Well, I don't want you to have any
18 remorse, so we'll charge it.

19 MS. CAMPBELL: Thank you.

20 THE COURT: All right. So, everybody's okay with
21 these charges? State's okay?

22 MS. LEMPESIS: State's okay, your Honor.

23 THE COURT: Defense okay?

24 MS. CAMPBELL: Defendant has no objection to the
25 jury charges.

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1 THE COURT: How long do you think you will need?

2 MS. CONCANNON: Fifteen minutes, maybe.

3 THE COURT: How long do you think you'll need?

4 MS. CAMPBELL: Fifteen to twenty-ish, about twenty
5 minutes.

6 THE COURT: Okay.

7 MS. CAMPBELL: Would you care for me to make my
8 directed verdict motion at this time?

9 THE COURT: That's probably a good idea, because
10 we'd be all filled with remiss if we didn't.

11 MS. CAMPBELL: Yes. Lots of problems, should I
12 fail to do that. So, may it please the Court?

13 THE COURT: Yes.

14 MS. CAMPBELL: It's my understanding, based upon
15 the State resting their case yesterday, that the State
16 had presented all the evidence that they intend to
17 present in this case. It is incumbent upon me at this
18 time to make a motion for a directed verdict. I am
19 confident that your Honor is familiar with the criteria
20 that we are looking at in the case law, and specific to
21 this case.

22 You know, if there's any direct or substantial
23 circumstantial evidence reasonably tending to prove the
24 guilt of Mr. Brabham, or which guilt may be fairly and
25 logically deduced, then, of course, your Honor may

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1 submit the case to the jury, where a jury is required
2 to speculate about Mr. Brabham's guilt or innocence.
3 That's where we have a bit of an issue.

4 The evidence in this case, as I recall it, is Chad
5 Mitchell making the accusation that Mr. Brabham shot
6 him. Short of that, and if you accompany that, in
7 fact, with Mr. Brabham's denial when questioned by law
8 enforcement, that would require the jury, without any
9 further corroborating or, you know, substantial
10 circumstantial evidence to speculate, and raises the
11 specter at this point of, we're still at mere
12 suspicion. And we would ask --

13 THE COURT: We're not allowed to put Mr. Chadwick
14 Mitchell's statement aside, though, and pretend it
15 doesn't exist. He said, *that guy shot me*.

16 MS. CAMPBELL: Correct.

17 THE COURT: So, that's any direct evidence. We
18 don't even discuss substantial circumstantial. We've
19 got some direct evidence. We've got a denial.

20 MS. CAMPBELL: Correct. The sole piece of direct
21 evidence would be the accusation -- the mere accusation
22 itself.

23 THE COURT: It's a -- it's a big one.

24 MS. CAMPBELL: Yes, it is.

25 THE COURT: Okay.

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1 MS. CAMPBELL: So, based upon that, on behalf of
2 Mr. Brabham, I would make a motion for directed verdict
3 at this time.

4 THE COURT: All right. Well, it is denied.

5 MS. CAMPBELL: At this point, I would renew my
6 motion on selection of the jury, which was our *Batson*
7 issue --

8 THE COURT: Um-hmm.

9 MS. CAMPBELL: -- and preserve that for Mr.
10 Brabham. If your Honor recalls, we had an issue as to
11 the State of South Carolina using a strike on the only
12 black member of the jury panel as called, alleging that
13 the strike was based upon the assertion by the juror
14 that she knew Mr. Brabham and some of the witnesses in
15 the case; however, confidently said to your Honor, *I*
16 *can be fair and impartial*. A similarly-situated white
17 juror was then placed upon the jury, who had also
18 indicated that she knew some of the witnesses in the
19 case, and could be fair and impartial. And we felt
20 that the State violated Mr. Brabham's *Constitutional*
21 rights during the selection of the jury for his case.
22 And in effect, Mr. Brabham was denied a fair trial, and
23 we renew that motion at this time, as well.

24 And the second motion that we renew is our motion
25 for a mistrial. As your Honor recalls yesterday, you

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1 had the foreman of the jury send your Honor a note
2 questioning the time line in this case, and wanted to
3 know if he could get some more information. We feel
4 that Mr. Brabham was prejudiced by that, in that the
5 State of South Carolina was given privy to insight and
6 thought processes of one of the jurors prior to the
7 close of their case. And even though your Honor, you
8 know, sort of made a ruling that he was not prejudiced,
9 and that the State wouldn't be allowed to answer the
10 question in their evidence, that, you know, can't un-
11 ring the bell for the State of South Carolina. They
12 know that that's an issue that they need to address,
13 and will likely address it in their closing. And so,
14 again, having had his mistrial motion denied yesterday,
15 I preserve that for Mr. Brabham at this time by
16 renewing that mistrial motion.

17 THE COURT: All right. Well, as to the *Batson*
18 motion, I don't think you're required to renew it at
19 the end of the trial. But to the extent you did,
20 you're protected. It's denied, same reasoning. And as
21 to the mistrial motions, also denied, same reasoning as
22 I gave at the time.

23 MS. CAMPBELL: With those rulings, I believe it
24 would be proper at this time for the Court to inquire
25 of my client as to whether or not he intends to take

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1 the stand in his own defense, or present any evidence
2 at this time.

3 THE COURT: Thank you for reminding me of that.
4 Mr. Brabham, would you stand? We've talked a couple of
5 times about your right to testify at the beginning of
6 the trial yesterday, and I told you that they had to
7 have the right to testify if you want to tell the jury
8 your side to the story. You can do so. You have to
9 truthfully answer questions your lawyer asks. You also
10 are to answer cross-examination questions presented by
11 the -- the State. If you want to testify, you can.

12 If you don't want to testify, you don't have to.
13 You don't have to call any witnesses. If you don't
14 testify, I will instruct the jury not to hold that
15 against you in their deliberations at all. In fact,
16 I'm going to look at my jury charges again real quick
17 on that. I see that it is not in there. Defendant not
18 testifying, is that language in here?

19 MS. CAMPBELL: It was in the first draft.

20 LAW CLERK: It was in the first draft.

21 THE COURT: It was in there.

22 LAW CLERK: It phantomly disappeared.

23 THE COURT: It seems to have disappeared, but we
24 will add it back if you tell me you don't want to
25 testify. Somehow or another, it got deleted, but we

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1 had this conversation.

2 Anyway, I'll tell the jury not to hold that
3 against you while they are deliberating. That is an
4 important *Constitutional* right that you have.
5 Beginning of the trial, I told you, you don't have to
6 tell me yesterday. Your lawyer told me you do not want
7 to testify, and I think that was your indication to me
8 at the end of the day yesterday, as well. Today is
9 your final opportunity to decide if you want to
10 testify. Have you made a final decision?

11 DEFENDANT BRABHAM: Yes, your Honor.

12 THE COURT: And what is your decision?

13 DEFENDANT BRABHAM: No, I will not.

14 THE COURT: Don't want to testify?

15 DEFENDANT BRABHAM: No, sir.

16 THE COURT: All right. Well, then, I will
17 instruct the jury not to hold that against you while
18 they are deliberating. and we'll add that back into
19 the jury charges real quick, Don't know how that got
20 deleted. Anyway, you may be seated. As soon as we get
21 that added back in and all the jurors are present,
22 we'll start.

23 MS. CAMPBELL: And your Honor, may I request that
24 when your Honor brings the jury back in, that I'll rest
25 now, on behalf of Mr. Brabham. And at the conclusion

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1 of the trial, I would renew my directed verdict motion,
2 my Batson motion, and my mistrial motions, And I would
3 assume the Court would deny them on the same grounds.

4 THE COURT: Again, if you feel the need to make
5 them, you can.

6 MS. CAMPBELL: I feel that I must.

7 THE COURT: Better safe than sorry.

8 MS. CAMPBELL: Yes, sir. And so, I can formally
9 rest in front of the jury without the need to, you
10 know, go back on the record on those motions.

11 THE COURT: All right.

12 BAILIFF: They jury is here.

13 THE COURT: They're all here? All right. Just a
14 minute to get the jury charge in. All right. It's in
15 -- it's in mine. It's just a standard charge out of
16 the book. All right. Let's bring the jury in. Go
17 ahead and bring the jury in.

18 BAILIFF: The jury is entering the courtroom, your
19 Honor.

20 JURY ENTERS COURTROOM 9:40 A.M.

21 THE COURT: All right. Be seated. Welcome back,
22 folks. We're going into the final stage in the trial.
23 Does the Defense have any witnesses they wish to call?

24 THE DEFENDANT RESTS:

25 MS. CAMPBELL: Your Honor, the Defense will not be

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1 calling any witnesses, and the Defense, at this time,
2 would rest.

3 THE COURT: All right. Very well. Okay, folks.
4 We are going to now have the closing arguments. You've
5 heard all of the evidence that you've heard in the
6 trial, and I'll now give the lawyers the opportunity to
7 come up, review the evidence that you have heard, and
8 will make an argument, basically an attempt to persuade
9 you to render a verdict on their client's behalf. I
10 will then charge you on the law that you are to apply.
11 Then, you will retire to consider your verdict.

12 The rules of our procedure are that, because the
13 Defense presented no testimony, he has the right to
14 close in full. So, you will hear from the State first,
15 and then from the defendant, and then I will charge you
16 on the law. Reminder: what the lawyers say now is not
17 to be considered by you as evidence. It is argument.
18 You've heard all the evidence that you're going to
19 hear. All right? So, Madam Solicitor, if you're
20 ready, you may begin.

21 CLOSING ARGUMENT ON BEHALF

22 OF THE STATE BY MS. CONCANNON:

23 MS. CONCANNON: Thank you, your Honor. May it
24 please the Court? Good morning. Every morning when
25 I'm getting ready, I drink my cup of coffee, and I take

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1 my time to get ready in the mornings, and I turn the
2 *Today Show* on. Normally it's just background noise
3 while I'm getting ready, it's on for something going on
4 behind me.

5 Well, this morning a segment that they had on kind
6 of piqued my interests a little bit. They were talking
7 about strangers and how your gut tells you, *stay away*
8 *from strangers*, you know, *you can't trust them*. You
9 *don't know them*. *Just keep your distance a little bit*.
10 Well, ironically for Chad, it was strangers that saved
11 his life, and it was his family -- a family member,
12 Malcolm Brabham, that tried to take it away from him.

13 Now, at the start of this trial, you were asked to
14 listen to the testimony and review all the evidence and
15 find him guilty of both attempted murder and possession
16 of a weapon during the commission of a violent crime,
17 the revolver he used to shoot Chad. Ms. Campbell got
18 up and she asked you to use your individuality and use
19 your common sense, that this is your county, Beaufort
20 County is your home, and render a just and true
21 verdict. I agree with Ms. Campbell, and I want to ask
22 you to do that today. I'm going to ask you to use your
23 common sense and your individuality and find him
24 guilty. Find Malcolm Brabham guilty of both the
25 attempted murder of Chad for shooting him in the chest,

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1 and possession of a weapon during this violent crime.

2 Malcolm Brabham used a revolver. He pulled it out
3 and shot him in the chest, aiming to kill. He left his
4 brother-in-law on the side of the road, alone,
5 abandoned, and helpless. When he left that day, as far
6 as he knew, Chad was dead. Society and people would
7 cringe at the thought of even doing this to an animal,
8 to a pet, to a dog -- shooting it and leaving it on the
9 side of the road? Malcolm did it to his own brother-
10 in-law. He shot him, a person he had known for years,
11 his family, the uncle to his children.

12 I want to talk to you briefly a little bit about
13 the witnesses you heard testify these past three days.
14 First, you heard from a lady named Nancy Harvey. She
15 was the 911 caller. It was normal evening for her.
16 She was enjoying it. Having cocktails, dinner with her
17 friends. And all of the sudden, this man stumbles upon
18 their dinner party, shot, bleeding to death. Well,
19 they take care of him. They save his life. They put
20 pressure on his wound. They call 911. You heard the
21 911 call. You heard her relaying to dispatch what had
22 happened. She's getting this information from Chad
23 himself. He's telling her, *Malcolm Brabham shot me.*
24 *That is the name of the person that shot me,* and you
25 can hear that on the 911 call. And she also told you,

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1 he smelled a little bit like alcohol, yes. But was he
2 drunk? Was he intoxicated? No. He was coherent. He
3 was alert. He knew what was going on, and from Day 1,
4 he told her, *Malcolm Brabham shot me.*

5 You heard from Chad. He told you of his
6 relationship with the defendant. He said, *well, we're*
7 *not really friends. He's my little sister's boyfriend,*
8 *you know. I knew him for about ten or twelve years,*
9 *since about 2002. They have children together. I'm*
10 *the uncle to their children, but we're not -- we're not*
11 *best friends. He told you how he got off work. He had*
12 *been working in the food and beverage industry for*
13 *years, all his life. He still works in food and*
14 *beverage. He said he got off work, and the next day,*
15 *he didn't have to go to work. So, this was his*
16 *weekend. It was his Friday night, so he was drinking a*
17 *little bit, just hanging out, relaxing. Malcolm comes*
18 *home. Malcolm says he's going to go to Saint Helena to*
19 *see a friend. Well, Chad has nothing to do, so he*
20 *says, sure, why not? I'll come along for the ride.*
21 *I'll come with you. So, he goes, and they hang out on*
22 *Saint Helena for a little bit. And then, they go to*
23 *a place that you heard a lot about -- The Hole. The*
24 *Hole, Dehill Road, different names, one area on Lady's*
25 *Island where people hang out, they drink, they*

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1 socialize, they have a good time. Well, they're there,
2 and it's not really a good time that's being had.

3 Chad sees something that he really doesn't approve
4 of. He sees Malcolm flirting, being a little over-
5 flirtatious with someone named Elaine Blake, and you
6 saw Elaine. She got up there and told you what
7 happened, and an argument starts. Argument starts
8 between Chad, between Malcolm, and between Elaine. The
9 three of them are very mad. Chad is sticking up for
10 his sister, Reah, who you also saw testify. He doesn't
11 like it. Malcolm is suppose to be her boyfriend, the
12 father of her children, but he's paying attention to
13 this other woman, Elaine? That's just not right. Chad
14 didn't like it, and he's going to do something about
15 it.

16 The three of them leave together, and they're
17 still arguing. Elaine tells you the three of them left
18 The Hole together. Chad tells you the three of them
19 left The Hole together, and they're still arguing.
20 They're arguing, and the State doesn't contend that
21 Chad's a saint. We don't -- we never wanted you to
22 believe that. Maybe he was being argumentative, yes.
23 Had he been drinking that day? Yes. Did he have
24 cocaine in his system? Yes. Do I wish he didn't have
25 cocaine in his system? Yes. But the facts are the

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1 facts are the facts, and the truth is the truth. And
2 while Chad had been drinking, he was not drunk. While
3 he had cocaine in his system, it did not -- did not --
4 he was still able to tell what was happening, and what
5 had happened to him that night, and he knew -- he was
6 aware of his surroundings, and he knew what was going
7 on.

8 You also heard he had an assault conviction. It
9 was ten years ago, or so. It was a misdemeanor, and he
10 got probation. He's not a saint, but that night he was
11 just sticking up for his sister, and he got shot over
12 it.

13 Chad tells you that as the three of them are in
14 the car, they're still arguing. Elaine told you that
15 three of them in the car, they're still arguing.
16 Elaine's done. *I've had enough. I'm getting out of*
17 *here. Take me out. I'm getting out.* She gets out of
18 the car. They go on. Chad gets out of the car. He
19 can't take it any more. He's sick of it. He gets out
20 of the car. Well, Malcolm is mad. He is furious.
21 Chad had been accusing him of cheating on Reah, and he
22 was mad.

23 Chad told you, in the blink of an eye, it turned
24 into the wild, wild west. Malcolm gets out of the
25 driver's side, pulls out a revolver, and fires one shot

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1 in Chad's chest. He was between five and six feet away
2 from him, and fired that shot, aiming to kill. You
3 wouldn't shoot somebody in the chest for any other
4 reason. Dr. McElveen told you that typically, shots to
5 the chest are fatal. Malcolm shoots him, leaves him on
6 the side of the road, bleeding, abandoned, helpless.
7 As far as he knew, as far as Malcolm knew, when he left
8 that day, Chad was dead.

9 Chad went into survivor mode. Somehow, his
10 adrenaline kicked in. He was in survivor mode. He was
11 able to walk to the first house he sees with lights on.
12 Lucky for him, Nancy Harvey is there with some of their
13 friends, and they save his life. They apply pressure
14 to his wound, and they called 911. And when asked who
15 shot him, his answer never changed. *Malcolm Brabham.*
16 *Malcolm Brabham did it. Malcolm Brabham shot me.* He
17 was rushed to Beaufort Memorial Hospital, and then
18 subsequently taken to MUSC, because Beaufort Memorial
19 couldn't adequately save his life with their
20 procedures. He has injuries. He has long-term
21 injuries. He had to spend days at MUSC. He had
22 multiple surgeries, all because Malcolm Brabham shot
23 him and tried to kill him.

24 You also heard from Elaine Blake. And I think we
25 can all tell, she wasn't exactly thrilled to be on that

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1 witness stand when she was here, but she was here. And
2 she confirmed, and she reiterated Chad's story. They
3 were in a fight, they were arguing, and the three of
4 them left The Hole together. She also told you that
5 the last person she saw with Chad was Malcolm. She
6 also told you that while she was walking, and while she
7 was waiting on the porch at that house in the pouring-
8 down rain, there was nobody else around. There was
9 nobody else in the area. There was nobody else that
10 could have shot Chad.

11 You also heard from John Horry. He owns Horry
12 Water Well, Malcolm's former boss, former employer. He
13 said that -- well, he's known Malcolm for years. He
14 said he cared for him, he trusted him. He also told
15 Investigator Rice, though, that Malcolm had told him
16 that morning, *last night, I got in an argument with my*
17 *brother-in-law, and I hurt him.* Malcolm did hurt Chad,
18 and as far as he knew, he had killed Chad.

19 You heard from Captain Johnson, who was on the
20 SWAT team. He was the leader of the SWAT team. And
21 you may be thinking, *this guy was at work. It was mid-*
22 *morning or early afternoon. Is a SWAT team really*
23 *necessary?* It may seem a little extreme. It was
24 absolutely necessary. Malcolm Brabham had just tried
25 to kill somebody with a gun. He had just shot somebody

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1 hours earlier, and they had to take every precaution to
2 ensure the safety of their lives when they arrested
3 him.

4 You heard from Reah. Reah is Chad's sister and
5 the mother of Malcolm's children. She got a little bit
6 emotional at the beginning of her testimony. She
7 cried. Did she want to be here testifying against the
8 father of her kids? Probably not. But she knew it was
9 right, and she knew the truth, and she knew that she
10 had to do it. She told you that Malcolm is not
11 trustworthy. She would know. She's known him for ten-
12 plus years. She has three children with him. She
13 reiterated that Malcolm had been working that day. He
14 came and got breakfast to go from her work. Hours
15 passed, Malcolm comes home. It's nighttime. He told
16 Reah that he left Chad in The Hole. Ironically, he
17 told Investigator Rice he left him on the side of the
18 road. So, can we believe those?

19 Malcolm is acting a little -- a little odd, off,
20 when he comes and sees Reah. He tells her -- he asks
21 her to always be with him, and be by his side. He
22 gives her a hug and a kiss, and she just -- she thinks
23 this is a little off. This is not typical behavior for
24 Malcolm. And she doesn't realize that while she is
25 hugging Malcolm, and telling him that, yes, she'll be

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1 by his side, that Malcolm thinks that he had just
2 killer her brother.

3 You heard from Investigator Rice, who is the lead
4 investigator on this case. He was on-call that night,
5 and he got assigned this case. He told you how he
6 interviewed the victim, and Chad immediately told him
7 *Malcolm Brabham shot me. Malcolm Brabham shot me.*
8 *Malcolm Brabham shot me.* He went and searched the
9 area. He went and spoke with other witnesses. He
10 spoke with Malcolm himself. And these are when
11 Malcolm's inconsistencies come about. Remember, he
12 told Reah that he'd left Chad on the side of the road,
13 and he told Investigator Rice that he had left him at
14 The Hole. He also tried to hide his car that night, if
15 you all remember. You saw the picture of it. The car
16 is underneath this tent, underneath this tarp, hidden
17 from the road. And Investigator Rice says, *you can*
18 *maybe see the license plate, but it's pretty much*
19 *covered from the roadway.* He tried to hide that car,
20 because it was outside of that car that he tried to
21 kill his brother-in-law.

22 Finally, you heard from Dr. McElveen. He's been
23 in emergency room medicine for nineteen-plus years.
24 He's one of the lead physicians here at Beaufort
25 Memorial. He says that he has dealt with probably over

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1 a hundred gunshot victims, and that typically a gunshot
2 wound to the chest is fatal. It typically kills, and
3 Chad is very, very lucky to be here today.

4 He testified that Chad had a lot of alcohol and a
5 lot of cocaine in his system. But what he also
6 testified about is this cocaine psychosis that the
7 Defense would have you believe Chad was being inflicted
8 by. Dr. McElveen told you that had Chad been under the
9 symptoms of a cocaine psychosis, that he would have
10 diagnosed it. Those symptoms would have still been
11 with him when he was in the emergency room that night
12 and that morning. Did he diagnose a cocaine psychosis?
13 No. He actually said he was shocked. He was surprised
14 how alert and how coherent Chad was when he was
15 speaking with him. He completely disagreed that there
16 was a cocaine psychosis that Chad was under the
17 influence of. The Defense wants you to focus on
18 different testimony that I like to call red herrings.
19 It's just distractions. It's just smoke and mirrors.
20 It tries to get your mind over here, when the truth is
21 over here. One of those is forensic evidence. And one
22 thing that was brought up was gunshot residue, GSR.
23 Well, if you remember, both Investigator Rice and
24 Sergeant Wilson, with the Beaufort County Sheriff's
25 Office, testified a little bit about gunshot residue,

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1 how it's attained, and the whole nine to get testing
2 for gunshot residue. There's roughly a six-hour time
3 frame to get a sample of it to test and send out to
4 SLED for testing. It's easily transferred. It's
5 particles that come on you. It's easily transferred.
6 It falls off. It rubs off. It disappears. If you
7 remember, Chad -- my apologies -- Malcolm wasn't
8 arrested until the next day, far outside that six-hour
9 time frame. It makes sense that there was no gunshot
10 residue on him. It also makes sense that none was
11 found inside the car, for a couple reasons. First, the
12 shooting happened outside of the car. Second, the car
13 was found -- remember, because it was hidden -- a
14 couple days later, and the swabs were obtained a couple
15 days later, far outside that six-hour time frame to
16 obtain gunshot residue to test.

17 They also wanted you to focus on these cell phones
18 that were found in the car and never submitted.
19 Investigator Rice testified they were broken. They
20 couldn't even come on.

21 They also kept bringing up the name Norman
22 Singleton. That's another red herring. What do we
23 know about Norman Singleton? We know he lives at The
24 Hole. We know that's where he lives, and he was there
25 that night. We also know he is severely disabled.

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1 Investigator Rice testified to you about his
2 impairments, and that he needs assistance to get
3 around. So, this is what we know. Chad was shot.
4 He was shot in the chest, and in all likelihood, he
5 could have died. He's very lucky to be here this
6 morning. It was a chest wound, which are typically
7 fatal, and we know that Malcolm shot him. How do we
8 know Malcolm shot him? We know that because Chad, from
9 day one, has said, *Malcolm shot me*. We also know that
10 Elaine Blake puts Malcolm as the last person with Chad
11 that night, arguing. Oh, and then, the defendant gave
12 inconsistent statements. He told Investigator Rice he
13 left Malcolm on the side of the road. He did. He
14 thought he was dead when he left him on the side of the
15 road. He told Reah he left Chad at The Hole. We know
16 that's not true, because Elaine said, *that's not true*,
17 and neither one of them came back to The Hole that
18 night. And we also know that he told John Horry, his
19 boss, who he trusted and cares for, *I got in an*
20 *argument with my brother-in-law last night, and I hurt*
21 *him*. He hurt him. He thought he had killed him.

22 So, I thank you for bearing with us these past
23 three days. I know that you all have really busy
24 lives, and this takes time away from your work and your
25 families. But as the judge told you on Monday, we

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1 could not do our judicial system without you. The
2 State has the burden of proving Malcolm Brabham guilty
3 of both attempted murder and possession of a weapon
4 during the commission of a violent crime. And I'm
5 confident that after you look at all the evidence, and
6 you look at the pictures and the testimony, that you'll
7 be firmly convinced, and you will not hesitate to find
8 Malcolm Brabham both guilty of the attempted murder of
9 Chad Mitchell, and possession of a weapon during the
10 commission of a violent crime. Thank you.

11 THE COURT: Ms. Campbell.

12 MS. CAMPBELL: Please the Court, your Honor? I'm
13 going to get some assistance, if I could, moving the
14 podium.

15 BAILIFF: Where do you want it?

16 CLOSING ARGUMENT ON BEHALF

17 OF THE DEFENDANT BY MS. CAMPBELL:

18 MS. CAMPBELL: Just right there at the corner,
19 lined up square. Good morning. The first thing I'd
20 like to say before I get into my closing argument with
21 you is that, this whole notion that my job is to throw
22 out red herrings and do this whole smoke and mirror
23 thing. I take offense at that. That's an attack on my
24 credibility, and that's not necessary, and that's not
25 what I'm here to do. And I have the faith and trust in

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1 all of you that you know that, and you believe that.

2 The second thing is, you can stand here, the State
3 of South Carolina, and you can say over and over and
4 over again, *Malcolm Brabham shot Chadwick Mitchell*.
5 You could say that a thousand times. It still doesn't
6 bring you any closer to giving you the tools that you
7 need to bring back a guilty verdict. Saying it doesn't
8 make it so.

9 What I'd like to say to you at this point, and I
10 think you all can tell this by the evidence at this
11 point, is that you can't be in two places at one time.
12 You know, as we live our lives and go through our daily
13 lives, it would be hard for all of us to think about a
14 situation where we might have to say, *oh, my gosh,*
15 *well, I was here at a certain time, or I was there at a*
16 *certain time*. Well, thankfully, Malcolm was at another
17 location at the time that Chad was being shot.

18 And I do want to talk about the case, in two
19 different ways. Let's talk about what we know first,
20 and then we'll talk about what we don't know. We know
21 that Chadwick Mitchell was at ■ River Drive at 9:15
22 p.m., on 7-15-2013, with a gunshot wound to the chest.
23 We know that. We know the 911 call came in. 9:19 was
24 the dispatch time for EMS and BCSO. We know at 9:23,
25 BCSO arrived at ■ River Drive.

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1 We know that Chad, for whatever reason, sent the
2 officers to the intersection of Holly Hall Road and
3 Little Capers Road, because that's where he said this
4 crime scene is. BCSO, you heard testimony, we know
5 they canvassed that area. They went up and down River
6 Drive, that whole area where Chad sent them, absolutely
7 no evidence whatsoever that a crime had occurred in
8 that location. We know that BCSO canvassed ■ River
9 Drive and the whole area up and down the road. I think
10 the Solicitor gave you a map of that during the State's
11 case. Not a single person that they talked to heard
12 anything unusual, heard any gunshots down in that area
13 -- nothing.

14 We know that BCS officer Hovest went to Malcolm's
15 home at 10:00 o'clock, right around 10:00 o'clock, on
16 that night and talked to Reah. He testified, and he
17 told you he's an accurate officer. He values his job.
18 He puts in his report what happened, *I talked to her.*
19 *Yes, Malcolm was home. He was here. He was with me*
20 *and the children. He left our home about 45 minutes*
21 *ago, which makes it about 9:15. Can't be two places at*
22 *one time.*

23 The Solicitor is correct, we know Chad was drunk.
24 He was high on a large amount of cocaine. Probably
25 with that amount, a gram or more, he had done in a very

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1 short period of time. The doctor testified that that
2 leads to paranoia, hallucinations, distortion of
3 events. All of those things should factor in. We know
4 this.

5 We know Malcolm and Chad spent some time together
6 that evening, that summer evening. We know that they
7 wound up at the Hill, or The Hole, whatever you want to
8 call it. But I tell you what it also is, what Officer
9 Rice testified it is -- it's the Singleton family
10 compound, and it's right there at the intersection of
11 Capers Hall -- Little Capers Road and Holly Hall Road,
12 right up in that little curve there. That's their
13 compound.

14 We know that Elaine Blake was already there
15 drinking. We know that Norman Singleton was there. We
16 know that Sheena was there. Never did get a last name
17 on her, and there were others there. We know that when
18 Chad got there, he was in rare form. He was fussing.
19 He was arguing. He was verbally abusive to Elaine in
20 front of Norman. Whatever his disability may be, you
21 never heard any testimony that he couldn't fire a gun.
22 You know that he was bullying. He was arguing. He was
23 calling her *nasty bitch*. He was basically telling her
24 in front of those people, *you're whoring around*.
25 *You're a nasty bitch*. And -- and this was out of

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1 control. Everybody that was there knew he was out of
2 control.

3 What else do we know? We know that Chad was
4 removed from the Hill because his brother-in-law, I
5 think you can say at this point, was concerned, and
6 rightfully so, that he was going to get in another
7 situation, like the conviction he has on his record for
8 beating somebody up. So, he's like, *come on, let's go,*
9 and carefully, as a caretaker, tried to get him out of
10 there. Elaine said that she had plans with him to go
11 to this club in Ridgeland, and she rode. You know this
12 from her testimony. When they got in the car at the
13 compound and tried to leave, it was still going. And
14 it was so bad -- and you know this because she said, *I*
15 *got to get out,* and she did get out. And when she got
16 out, she never saw them again, never heard anything
17 again, like a gunshot or anything like that.

18 But you also know that sometime, you know, about
19 9:15ish, sometime between 9:00 and 9:30, she gets a
20 phone call from Malcolm that says, *hey, I'm heading out*
21 *of town. I'm going back over to my mama's, you know.*
22 *I'll talk to you later. Okay? We -- we've got that*
23 *time line established. You know this. And you know*
24 *how else you could positively know this? If the*
25 *investigator had opened up Malcolm's phone that they*

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1 took from him when they arrested him, you could have
2 verified that incident, that phone call, that text
3 message, whatever it was. Do you have that tool? No,
4 you don't have it, because they failed to give it to
5 you.

6 Now, we know that Chad lies. He lied to the E.R.
7 people and personnel. No, I'm not using any alcohol.
8 No, I'm not using any drugs. He lied. You know this.
9 You know he lied when he told Officer Rice, you know,
10 when Malcolm shot me, he went back in the car, got the
11 gun, came back out and shot me. Then, he wants to get
12 up here today, or excuse me, yesterday, and say, you --
13 oh, it was sort of, a -- a western movie where, you
14 know, he's, like, gun slinging it out. He's lying.

15 Now, Malcolm, you know, served our country
16 honorably in the United States Navy. You know sometime
17 around that period of time he met Reah. They fell in
18 love. They had three children together. They were
19 together when Chad levels these accusations at him.

20 You know that Malcolm told Officer Rice, look, I
21 don't know what you're talking about. I didn't shoot
22 Malcolm. Last time I saw him, I left him down at The
23 Hole, right there in that little curve. We know that
24 from Officers Wilson's testimony -- and I do think this
25 is important -- you know gunshot residue, when you fire

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1 a weapon, it gets on you. It gets on your hands, your
2 clothing, your shirt, your pants. It gets on things
3 that you touch. Absolutely no gunshot residue on the
4 outside, on the inside, anywhere on Malcolm's car.
5 Now, did they have an opportunity to take gunshot
6 residue from Chad, from his hands? Absolutely. Did
7 they do it? No. The shirt that he was wearing that
8 night that they opened up for you today, where has that
9 shirt been since July, 2013? Sitting in an evidence
10 locker, no analysis whatsoever to determine if Chad
11 himself, that night, at The Hole, fired a weapon.

12 Now, you also know that Malcolm's pants, the pants
13 that they say they believe he was wearing when this
14 happened, have also been sitting in the evidence locker
15 since last July. No testing done whatsoever. The
16 State needs to do their job. They need to give you the
17 tools to do your job. Have they done that? No.
18 Again, multiple phones, sitting in evidence, never
19 opened.

20 And I'll tell you that what you can also know at
21 this point. Malcolm went to work, like he did every
22 day. Nobody goes to work when they're a murder
23 suspect. When they think they've left someone dead,
24 lying on the road, out on Lady's Island, no, they don't
25 get up and go to work the next day. They don't do

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1 that. Yeah, he took his car to the mechanic on the way
2 to his mama's house in Ridgeland.

3 Remember, there's no burden on Malcolm to prove
4 that he's innocent, to prove anything. Now, he
5 complied with his arrest when a tactical team came in
6 there, you know. There were no incidents whatsoever.
7 I will tell you, these things you know.

8 What you don't know, what you still don't know, is
9 who really shot Chad. Here we are at the end of the
10 day, and we don't know, you don't know. Ask yourself,
11 do you shoot your brother-in-law, and then, do you go
12 home, check what's cooking on the stove, give your wife
13 a hug and a kiss, talk to your son? No. And, you
14 know, you can look at it however you want, because that
15 is your right. But I believe that when, you know,
16 Malcolm's talking to his wife, you heard Reah say, *we*
17 *done had our problems with Elaine.* And Malcolm knew
18 that when Chad got home that night, he was going to
19 fill her ears all about Elaine again. You know they've
20 separated before. He wanted to be sure that she knew,
21 and they had a kiss and a hug, love you, you know,
22 *stick by me, whatever you're going to hear,* and Malcolm
23 left. You know, who wants to continue to deal with
24 that? He didn't want to deal with Chad any more that
25 night. He had had his fill of all of that down at The

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1 Hole, and so, he goes to his mama's.

2 I don't know about your cell phone, my cell phone
3 -- remember Chad testified he was locked out of his
4 cell phone so he couldn't call 911? When I'm locked
5 out of my cell phone, when my kid does all this stuff
6 and I get locked out, I can still make an emergency
7 call. It's standard on every phone. Locked out, you
8 can still hit that button.

9 Last couple things I want to go over with you, or
10 what I view as three bedrock principles and foundations
11 of this courtroom. His Honor will tell you that no man
12 or woman must prove themselves innocent, for how can a
13 man do that? We can't. We shouldn't have to. We
14 don't have to. You don't have to. An accusation is
15 made, and that accusation must be supported by credible
16 -- that's the key -- credible evidence, evidence of a
17 man's guilt beyond a reasonable doubt, and you'll hear
18 from your Honor about what that means.

19 Now, if Chad had pointed the finger that night and
20 said, *oh, Norman Singleton shot me, this other guy down*
21 *there shot me*, they would be sitting right there.
22 That's the point we're at. They took his accusation.
23 They got a warrant. They arrested him. They brought
24 him in here and put him on trial, and then put Chad on
25 the stand and had him just repeat the accusation. The

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1 question you have to ask yourselves is, *can I trust*
2 *Chad?* How do you know if you can trust him? You judge
3 his credibility.

4 You know, the Solicitor talked about watching the
5 *Today Show* this morning, and I don't have time to watch
6 television in the morning, getting everybody ready for
7 school and things like that, and I -- I do have time
8 occasionally to go camping up in the mountains with the
9 kids. And up near the Blue Ridge Mountain and the
10 parkway up there, there's a place called the Mile High
11 Bridge, and it's a bridge between two peaks. And below
12 it, if you fall, you're going to die. And hesitate to
13 act, that's what the State would have you do. They
14 would have you walk across a bridge that Chadwick
15 Mitchell built for you ,from innocent, to presumed
16 innocent, to guilty. When you are asked to do that in
17 a jury deliberation room, and you stop and you hesitate
18 to step out on that bridge that Chadwick Mitchell built
19 for you, that is reasonable doubt. That is not guilty.
20 Now, step out on that bridge and take your child with
21 you -- reasonable doubt, hesitate to act, if you cannot
22 trust the foundation of that bridge.

23 A unanimous verdict, the second thing. All must
24 agree. His Honor will tell you that. But remember,
25 each man, each woman, one boat, one mind. You never

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1 have to give up a firmly-held believe just to be in
2 agreement. We don't require that. We don't ask you to
3 do that. You should stand as the unique individual and
4 the unique juror that you are, make up your mind. You
5 know, when it comes time to take out that little slip
6 of paper and write down that you think, guilty/not
7 guilty, fold it up, turn it in to your foreman, you
8 will be firm to your mind and in your conviction. Ask
9 yourselves, has the State of South Carolina given you
10 the tools to do that, to make up your mind. Did they
11 leave questions unanswered? What is the time line that
12 I believe occurred?

13 You know, gunshot wound to the chest, you heard
14 absolutely no testimony about, was it an upward shot,
15 was it a downward shot? Was it straight on? You know,
16 you can tell the height of a shooter by evidence like
17 that. Could they have obtained that evidence?
18 Absolutely. Are you lacking that evidence? Yes, you
19 are. Would you like to have it? I'm sure you would.
20 Did they fail in their burden? Yes, they did.
21 Reasonable doubt, it is your sworn responsibility and
22 duty now to become a part of that foundation that I
23 talked about earlier. This bedrock foundation of our
24 American justice system, you must stand strong, for the
25 innocence of a man can never -- you can never lower the

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1 bar. For if you lower the bar, then every single
2 person in this courtroom suffers markedly. Most
3 importantly, Malcolm suffers today, but in the long
4 run, all of us suffer, because the cracks in the
5 foundation that come from a guilty verdict where
6 there's no proof of guilt beyond a reasonable doubt,
7 that loosens and shakes the foundations that you and I
8 and everyone must seek to uphold, for all of our
9 protections. And proof beyond a reasonable -- proof of
10 guilt beyond a reasonable doubt has not been met in
11 this case. And I say to you again, before I close, and
12 the last time I have an opportunity to speak to you is
13 that, you cannot be in two places at one time. Thank
14 you for your patience.

JURY CHARGE BY THE COURT:

15 THE COURT: Thank you. All right, folks. We've
16 now heard the evidence. You've heard the arguments,
17 and we are at the point where I charge you on the law.
18 I told you that I had responsibilities, which include
19 presiding over the trial of the case. We rule on
20 things like admissibility of evidence. Again, you are
21 only to consider the evidence that you heard in this
22 courtroom this week. That would be testimony from the
23 witness stand, photographs, documents, that sort of
24 thing. That's the only evidence for you to consider.
25

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1 You also are now to charge -- or, apply the law as
2 I charge it to you. It may not necessarily be what you
3 think the law is. It may not be what you hope the law
4 is, but it is the law that you are duty-bound under the
5 oath that you took at the beginning of the trial to
6 apply to the facts as you find them.

7 Now, you are the sole judges of the facts. You
8 determine how much weight and credibility to give to
9 witnesses' testimonies. You can determine such things
10 as whether or not a witness has a bias, a prejudice, or
11 an interest in the outcome of the case. You can judge
12 such things as their appearance and demeanor on the
13 witness stand, and the reasonableness of their
14 statements. You're not bound to decide this case based
15 on the number of witnesses that a side produces. You
16 can believe one witness over many, or many over one.
17 You can accept all of a witness's statement, or you can
18 reject it entirely. You can accept part of a witness's
19 statement, and you can reject part of it. And if you
20 reject part of it, of course, you can still accept the
21 remainder of witness's testimony. Excuse me.

22 Now, I told you during the trial that we
23 ordinarily just let people get up and testify about
24 what they heard, they saw, they touched, they felt,
25 they smelled, that sort of thing. But we do allow an

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1 exception for that with expert witnesses, and as I told
2 you during the trial, these are people who are
3 considered experts because of their education or
4 specialized training, or experience in some field. And
5 they have the opportunity to give you their opinion and
6 state the reasons for their opinion. You decide how
7 much weight to give and expert witness's testimony.
8 You can give it as much or as little as you decide it
9 deserves. If you don't think it's based on sufficient
10 education or experience, or if you conclude that the
11 experts' opinions are not sound, or that they're
12 outweighed by other evidence, you can disregard that
13 opinion entirely. You are not compelled to blindly
14 accept the witness's, an expert witness's, opinion.
15 You have the right to consider that testimony in light
16 of all of the circumstances and give it such weight, if
17 any, that you think it is entitled to.

18 Now, I want to remind you, as I said at the
19 beginning of the trial, the fact that the defendant was
20 arrested, charged, and indicted in this case is not
21 evidence in this case, and it cannot be considered by
22 you as evidence of guilt in this case, nor does it
23 create any presumption or inference of guilt. An
24 indictment is simply a formal written instrument by
25 which -- that contains the charges that is brought

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1 against the defendant. It gives this court
2 jurisdiction, and it allows the defendant to know what
3 he is to stand trial for.

4 The defendant pled not guilty to those
5 indictments, and that plea, therefore, casts the burden
6 on the State to prove the defendant is guilty beyond a
7 reasonable doubt. A person charged with committing a
8 crime in South Carolina is never required to prove
9 himself innocent. I charge you that this is an
10 important rule of law that a defendant in a criminal
11 trial, no matter how serious the charge may be, is
12 always presumed to be innocent of the crime for which
13 the indictment was issued, unless guilt has been proven
14 by evidence satisfying you of that guilt beyond a
15 reasonable doubt.

16 Presumption of innocence does not end when you
17 begin your deliberations. It accompanies the defendant
18 throughout the trial, until you reach a verdict based
19 on guilt -- or, based -- a verdict of guilt based upon
20 evidence satisfying you of that guilt beyond a
21 reasonable doubt. The presumption of innocence is like
22 a robe of righteousness placed about the shoulders of
23 the defendant, which remains with the defendant until
24 it has been stripped from the defendant by evidence
25 satisfying you of the defendant's guilt beyond a

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1 reasonable doubt. This presumption of innocence is not
2 just a mere legal theory. It's not just a legal
3 phrase. This is a substantial right, which every
4 defendant is entitled, unless you, the jury, satisfied
5 from the evidence of the defendant's guilt beyond a
6 reasonable doubt.

7 I also instruct you, and I emphasize the fact that
8 the defendant did not testify is not a factor to be
9 considered by you in any way during your deliberation
10 and consideration on the question of the guilt or
11 innocence of the defendant. It may not be considered
12 by you in any manner whatsoever. A defendant has a
13 *Constitutional* right to remain silent, and the
14 assertion of this right must not be considered by you
15 during your deliberations. I repeat: under the oath
16 that you took at the beginning of this trial, you are
17 to draw no conclusion whatsoever from the fact the
18 defendant in this case did not testify. The fact that
19 the defendant did not testify should not even be
20 discussed in the jury room. The burden of proof, as I
21 stated to you, is on the State. The defendant is not
22 required to prove his innocence. And again, the burden
23 of proof remains on the State to prove guilt beyond a
24 reasonable doubt.

25 So, you have heard this phrase, *beyond a*

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1 reasonable doubt. Some of you may have served as a
2 juror in civil cases where you were told that it is
3 only necessary to prove that a fact is more likely true
4 than not, such as by the greater weight or
5 preponderance of the evidence. In criminal cases, the
6 State's proof must be more powerful than that. It must
7 be beyond a reasonable doubt.

8 So, what is a reasonable doubt in the law? Our
9 courts have defined reasonable doubt as the kind of
10 doubt that would cause a reasonable person to act.
11 They also have defined the reasonable doubt as proof
12 that leaves you firmly convinced of the defendant's
13 guilt. There are very few things in this world that we
14 know with absolute certainty, and in criminal cases,
15 the law does not require proof to overcome each and
16 every possible doubt. If, based on your consideration
17 of the evidence, you are firmly convinced that the
18 defendant is guilty of the crime charged, you must find
19 the defendant guilty. If, on the other hand, you think
20 there is a real possibility that the defendant is not
21 guilty, then you must give the defendant the benefit of
22 the doubt and find him not guilty.

23 Now, there are two types of evidence that are
24 generally presented during the trial. There's direct
25 evidence, and there's circumstantial evidence. Direct

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1 evidence directly proves the existence of a fact, and
2 it does not require deduction. Circumstantial evidence
3 is proof of a chain of facts and circumstances that
4 indicate this existence of a fact. Crimes may be
5 proven by circumstantial evidence. The law makes no
6 distinction between the weight or value to be given,
7 either direct or circumstantial evidence.

8 However, to the extent that the State relies on
9 circumstantial evidence, all of the circumstances must
10 be consistent with each other, and when taken together,
11 point conclusively to the guilt of the accused beyond a
12 reasonable doubt. If the circumstances merely portray
13 the defendant's behavior as suspicious, then the proof
14 has failed. The State has, again, the burden of
15 proving the defendant guilty beyond a reasonable doubt,
16 and this burden rests with the State, regardless of
17 whether the State relies on direct evidence,
18 circumstantial evidence, or some combination of the
19 two.

20 Now, a statement was alleged to have been made by
21 the defendant that was admitted into evidence in this
22 case, and while this court has made a determination
23 that the statement was admissible, I instruct you that
24 you make the ultimate decision as to whether or not the
25 defendant made the statement. And if the defendant did

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1 make the statement, you must determine whether or not
2 the statement was made by the defendant voluntarily and
3 of his own free will. This means that his statement
4 was not caused by pressure, fear, force or threats,
5 coercion, or intimidation, or by hope or promise of
6 leniency, or a reward of any kind.

7 In determining whether or not the statement was
8 voluntary, you should consider both the characteristics
9 of the defendant and the details of the questioning.
10 Some of the questions you must consider are, age of the
11 defendant, defendant's education or lack of education,
12 defendant's mental ability or capacity, defendant's IQ
13 or intelligence, defendant's background and
14 environment, place and length of detention, the nature
15 of questioning, and the advice or lack thereof to the
16 defendant of his *Constitutional* rights, including but
17 not limited to the right to remain silent. That the
18 statement could be used against him in the court of
19 law, the right to have a lawyer present, that if he
20 couldn't afford a lawyer, a lawyer would be appointed
21 to represent him without any cost, and that he could
22 stop making a statement any time.

23 You must consider all of the circumstances
24 surrounding -- or all of the surrounding circumstances
25 before you give any weight to an alleged statement.

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1 The state has the burden of proving beyond a reasonable
2 doubt the alleged statement was voluntary. If you
3 determine it was, you may give the statement any
4 further consideration you deem proper. You must decide
5 what weight, if any, should be given to the alleged
6 statement, and if you determine the alleged statement
7 was not a free and voluntary statement of the
8 defendant, you shouldn't consider the statement at all.

9 Now, I told you the defendant was indicted for two
10 separate charges. And so, I'll go over with you the
11 elements that the State must prove of those two
12 charges. The first indictment was for attempted murder
13 in violation of *South Carolina Code 16-03-29*. In order
14 to prove this crime -- this is attempted murder -- in
15 order to prove this crime, the State must prove that
16 the defendant, with the intent to kill, attempted to
17 kill another person with malice aforethought, either
18 express or implied. Malice is hatred, ill will, or
19 hostility towards another person. It is the
20 intentional doing of a wrongful act without just cause
21 or excuse, and with an intent to inflict an injury, or
22 under circumstances that the law will infer evil
23 intent.

24 Malice aforethought does not require the malice
25 exist for any particular time before the act is

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1 committed, but malice must exist in the mind of the
2 defendant just before and at the time the act is
3 committed. Therefore, there must be a combination of
4 the previous evil intent and the act. Malice
5 aforethought must -- may be express or inferred. These
6 terms, express and inferred, do not mean different
7 types of malice, but merely the manner in which malice
8 may be shown to exist. That is, either by direct
9 evidence or by inference from the facts and
10 circumstances, which are proven.

11 Express malice is shown when a person's speech
12 words which express hatred or ill will for another, or
13 when the person prepared beforehand to do the act which
14 was later accomplished. For example, lying in wait for
15 a person or other acts of preparation, going to show
16 that the deed was within the defendant's mind would be
17 express malice. If facts are proved beyond a
18 reasonable doubt, sufficient to raise an inference of
19 malice to your satisfaction, this inference would
20 simply be an evidentiary fact to be considered by you,
21 the jury, along with any other evidence in the case,
22 and you may give it the weight you decide it should
23 receive.

24 An intent to kill is an element of attempted
25 murder. In the context of an attempt crime, specific

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1 intent means the defendant intended to complete the
2 acts comprising the underlying offense. Intent means
3 not accidental or involuntarily. Intent may be shown
4 by acts and conduct of the defendant and other
5 circumstances from which you may naturally and
6 reasonably infer intent. Evidence of the character of
7 the act, the character of the instrument used, the
8 manner in which it is used, the purpose to be
9 accomplished, and the resulting wounds or injuries may
10 be considered in determining the intent with which the
11 act was committed. Intent may also be inferred when it
12 is demonstrated that the defendant voluntarily and
13 willfully commits an act, the natural tendency of which
14 is to destroy another's life.

15 Now, the second indictment that the defendant
16 stands trial for is for possession of a weapon during
17 the commission of a violent act, and that's in
18 violation of *South Carolina Code 16-23-490*. And in
19 order to prove that crime, the State must prove beyond
20 a reasonable doubt that the defendant was in the
21 possession of a firearm, or visibly displayed what
22 appeared to be a firearm during the commission of a
23 violent crime. The firearm means any machine gun,
24 automatic rifle, revolver, pistol, or any weapon which
25 will or is designed to, or may be readily converted to

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1 expel a projectile. In order to find the defendant
2 guilty of possession of a weapon during the commission
3 of a violent crime, you must first find the defendant
4 guilty of either committing a violent crime or
5 attempting to commit a violent crime. I charge you
6 that attempted murder is a violent crime. The State
7 must prove beyond a reasonable doubt that the weapon
8 further advanced or helped in the commission of the
9 crime.

10 Now, in order -- in determining the guilt or
11 innocence of the defendant, you are not to consider any
12 possible penalty for any particular crime. Punishment
13 for a crime is a matter for me to determine. It should
14 never be considered by you in any way whatsoever in
15 arriving at a fair and impartial verdict, as to the
16 guilt or innocence of the defendant.

17 And then, finally, folks, your verdict must be
18 unanimous. In other words, all twelve jurors must
19 agree. Now, I'm going to send you back to the jury
20 room. Don't begin your deliberations just yet. I have
21 to give the lawyers the opportunity to let me know if I
22 mis-spoke, or said something that I didn't tell them I
23 was going to say, just a formality that we go through.
24 We'll get the evidence together, and I'll send it back
25 with the bailiff, with the indictments. At that point,

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1 you can begin deliberations, but just hold off on that.

2 When the jury has reached a verdict -- and I'll be
3 dismissing the alternate in just a minute -- but when
4 all twelve jurors have reached a verdict as to a
5 particular indictment, Mr. Foreman, on the back of this
6 indictment, you will see, underneath the word *True*
7 *Bill*, which has a blue stamp, underneath that, it says
8 *Verdict*. There are two possible verdicts, guilty or
9 not guilty. All right? Whichever the jury unanimously
10 agrees upon, sign it and date it. Once you've reached
11 a verdict as to both indictments, let the bailiff know
12 you have reached a verdict. All right. So, if you'll
13 go with the bailiffs. Again, don't begin deliberations
14 until I send the order back, along with the evidence.

15 JURY LEAVES COURTROOM 10:35 A.M.

16 BAILIFF: Jury is clear. Door is closed, your
17 Honor.

18 THE COURT: All right. Anything from the State?

19 MS. LEMPESIS: Nothing from the State, your Honor.

20 THE COURT: From the Defense?

21 MS. CAMPBELL: Yes, your Honor. And if you need
22 to have the court reporter listen to it, when your
23 Honor charged reasonable doubt, your Honor said that a
24 reasonable doubt is the kind of doubt that will cause a
25 reasonable person to act. The word hesitate was not

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1 used, and that is critical in the charge.

2 THE COURT: I'm sorry. I didn't realize I said
3 that.

4 MS. CAMPBELL: And I would just ask that your
5 Honor bring the jury back in and just give them the
6 correct wording of that charge.

7 THE COURT: I will certainly do that.

8 MS. CAMPBELL: Thank you, your Honor.

9 THE COURT: Anything else?

10 MS. CAMPBELL: No, your Honor.

11 THE COURT: All right. Thank you for pointing
12 that out. Bring them back in.

13 BAILIFF: The jury is entering the courtroom, your
14 Honor.

15 JURY ENTERS COURTROOM 10:38 A.M.

16 THE COURT: Okay, folks. Be seated. Apparently,
17 I did make a slip of the tongue, and it's a -- it's one
18 that I need to bring you back in and clarify for you.
19 When was talking about reasonable doubt, I told you
20 there were basically two definitions, and the first way
21 that our state defines reasonable doubt is, as the kind
22 of doubt that would cause a reasonable person to
23 hesitate to act. Apparently, I forgot to say, to
24 *hesitate to act*, and just read *reasonable doubt as the*
25 *kind of doubt that would cause a reasonable person to*

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1 act. That is incorrect. The correct thing that I
2 should have said was, *a reasonable doubt is the kind of*
3 *doubt that would cause a reasonable person to hesitate*
4 *to act.* Okay? Go on back, and we'll get the evidence
5 together and send it on to you in just a minute.

6 JURY LEAVES COURTROOM 10:39 A.M.

7 BAILIFF: The jury is clear, your Honor.

8 THE COURT: All right. Well, thank you for
9 verifying that. Let's see if we've got everything
10 together. Okay. Take that on back to them, and tell
11 them they may begin deliberations. And then, if you
12 would, bring me the alternate, and I will discharge the
13 alternate.

14 BAILIFF: Will do, your Honor.

15 THE COURT: Thank you all for conducting the trial
16 in a superbly professional manner. It went very
17 smoothly, and I appreciate it very much, so. Don't
18 wonder off too far.

19 MS. CAMPBELL: Thank you, Judge.

20 BAILIFF SORRELL TOOK EVIDENCE TO

21 JURORS 10:40 A.M.

22 THE COURT: Oh, I'm sorry. Well, you are free for
23 the rest of the week now. Once they begin
24 deliberations, you're free to go. You are free to talk
25 to anybody about the case, anybody you want to. If you

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1 don't want to talk to anybody, you have that right, as
2 well.

3 ALTERNATE JUROR: Okay.

4 THE COURT: But thank you for your service. You
5 don't have to call the telephone number or anything any
6 more..

7 ALTERNATE JUROR: Thank you.

8 THE COURT: Thank you.

9 OFF THE RECORD 10:42 A.M.

10 End 4-22-14-v42-day 2 Begin 4-22-14-v43-day 2

11 BACK ON THE RECORD 10:53 A.M.

12 BY THE COURT:

13 BAILIFF: All rise. Come to order. Court is back
14 in session.

15 THE COURT: Be seated.

16 MS. CAMPBELL: Judge, if I may, I have -- I would
17 ask that the three now, jury questions be marked as
18 court's exhibits.

19 THE COURT: Okay.

20 MS. CAMPBELL: I would assume that --

21 THE COURT: There's only two.

22 MS. CAMPBELL: Was there one that was before.

23 THE COURT: Okay. I think I gave you that one.
24 Are you talking about yesterday?

25 MS. CAMPBELL: Yes.

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1 THE COURT: Okay. From the exhibits?

2 MS. CAMPBELL: And that would be the first one.

3 THE COURT: Right.

4 MS. CAMPBELL: And then the one from around 11:00
5 o'clock this morning, and then, the third one from now.

6 THE COURT: Do you have that one from this
7 morning?

8 BAILIFF SORRELL: I gave it to you this morning.

9 THE COURT: Okay. All right. We'll mark this
10 one, as well.

11 COURT REPORTER: That one will be Court's Exhibit
12 4.

13 ITEM IDENTIFIED AS NOTE FROM
14 JUROR MARKED COURT'S EXHIBIT
15 NUMBER 2.

16 ITEM IDENTIFIED AS NOTE FROM
17 JURORS MARKED COURT'S EXHIBIT
18 NUMBER 3.

19 ITEM IDENTIFIED AS NOTE FROM
20 JURORS MARKED COURT'S EXHIBIT
21 NUMBER 4.

22 THE COURT: Yes. All right. So, which one do you
23 have first, Chadwick Mitchell, or Mr. Horry? Which is
24 easiest for you, the two folks? They want to hear both
25 of them.

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1 COURT REPORTER: Oh. Well, we can just go in
2 order. Let me write it down. Chadwick and Mr. Horry.
3 Let me find out which one's first. Do you want me to
4 take the machine back?

5 THE COURT: Let's see. Chadwick -- was Chadwick -
6 - he was first, right?

7 MS. CAMPBELL: Yes.

8 MS. LEMPESIS: He was before Mr. Horry.

9 THE COURT: All right. We'll do this first. Can
10 you -- you can just play it out loud for them?

11 COURT REPORTER: They'll be coming in here?

12 THE COURT: Yes.

13 COURT REPORTER: Okay.

14 THE COURT: All right. Would it be easier if you
15 just went in there?

16 COURT REPORTER: It's easier for me to go in
17 there. I think they might hear it better if I go in
18 there.

19 THE COURT: I do that most of the time. The
20 acoustics are usually better than in some places,
21 because they don't have a good place. Also is, just
22 play that testimony back.

23 MS. CAMPBELL: I'm good with that.

24 THE COURT: Okay.

25 MS. LEMPESIS: That's fine, Judge. Thank you.

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1 THE COURT: Well, here. I'll give you this. Mark
2 that, and just tell them that you're just playing it
3 back, and if they have any questions at all -- I tell
4 you what, bring the Foreman in.

5 BAILIFF: Yes, sir.

6 BAILIFF: Foreman, your Honor.

7 FOREMAN: Hello, your Honor.

8 THE COURT: Mr. Foreman. Your note said that you
9 all wanted to hear the -- or read the transcript of the
10 testimony of Mr. Mitchell and Mr. Horry. We don't have
11 a transcript, but what we can do is, the court reporter
12 can play the audio portion back. All right?

13 FOREMAN: That would probably be fine.

14 THE COURT: All right. So, what we're going to do
15 is, I'm going to send you back there. The court
16 reporter's going to come back there and play it back
17 for you, because the acoustics on it are not that good,
18 and in here, the sound goes off the ceiling. So,
19 everybody's agreed that they're okay with the court
20 reporter coming back and playing it.

21 FOREMAN: Okay.

22 THE COURT: She'll play it through. Please tell
23 the jury not to talk during that. Don't do your
24 deliberations or discussions in front of the court
25 reporter, in other words.

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1 FOREMAN: Okay.

2 THE COURT: So, when she's finished, then she'll
3 leave, and then you can resume your deliberations and
4 discussions.

5 FOREPERSON: Very good.

6 THE COURT: All right. Thank you.

7 FOREMAN: All right.

8 THE COURT: Okay. You can head on back. Thank
9 you.

10 MS. CAMPBELL: One further thing, your Honor.
11 Since they've asked to hear the testimony of Chadwick
12 Mitchell and John Horry --

13 THE COURT: Um-hmm.

14 MS. CAMPBELL: I would ask that, you know, that it
15 be played back in its entirety, both witnesses, since
16 that was the request that was made back from the jury.

17 THE COURT: That is fine. Play the entire thing
18 back.

19 COURT REPORTER: Yes, your Honor.

20 THE COURT: All right. Thank you.

21 OFF THE RECORD 10:58 A.M.

22 THE COURT REPORTER WENT TO THE
23 JURY ROOM AND PLAYED BACK FOR THE
24 JURORS THE TESTIMONY OF CHADWICK
25 MITCHELL AND JOHN HORRY.

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1 BACK ON THE RECORD 1:52 P.M.

2 BY THE COURT:

3 VERDICT:

4 BAILIFF: The jury is entering the courtroom, your
5 Honor.

6 JURY ENTERS COURTROOM 1:53 P.M.

7 THE COURT: All right. Be seated. All right.

8 Mr. Foreman, I understand the jury has reached a
9 verdict. Is that correct?

10 FOREMAN: That is correct.

11 THE COURT: Is it unanimous as to both
12 indictments?

13 FOREMAN: It is.

14 THE COURT: All right. Would you hand it to the
15 bailiff, please? Thank you. All right. The defendant
16 will rise. The Clerk will publish.

17 MADAM CLERK: The State of South Carolina versus
18 Malcolm Brabham, Case Number 2013-GS07-1230, for the
19 charge of attempted murder, we the jury find the
20 defendant guilty.

21 As to Indictment Number 2013-GS07-1231, for the
22 charge of possession of a weapon during the commission
23 of a violent crime, we the jury find the defendant
24 guilty.

25 Lady's and gentlemen of the jury, if this is the

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1 decision of each and every one of you, if you'd please
2 indicate so by raising your right hand. Thank you.

3 THE COURT: All right. Let the record reflect,
4 all the jurors have raised their hands. Do you wish to
5 have the jury polled?

6 MS. CAMPBELL: Yes, your Honor, please.

7 THE COURT: All right. Clerk will poll the jury.

8 MADAM CLERK: When I call your number, if you'll
9 please stand. Juror Number 257. Is this your verdict?

10 JUROR NUMBER 257: Yes.

11 MADAM CLERK: Is it still your verdict?

12 JUROR NUMBER 257: Yes.

13 MADAM CLERK: Thank you. Juror Number 31. Is
14 this your verdict?

15 JUROR NUMBER 31: Yes, it is.

16 MADAM CLERK: Is it still your verdict?

17 JUROR NUMBER 31: Yes.

18 MADAM CLERK: Thank you. Juror Number 337. Is
19 this your verdict?

20 JUROR NUMBER 337: Yes.

21 MADAM CLERK: Is it still your verdict?

22 JUROR NUMBER 337: Yes.

23 MADAM CLERK: Thank you. Juror Number 85. Is
24 this your verdict?

25 JUROR NUMBER 85: Yes.

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1 MADAM CLERK: Is it still your verdict?

2 JUROR NUMBER 85: Yes.

3 MADAM CLERK: Juror Number 178. Is this your
4 verdict?

5 JUROR NUMBER 178: Yes.

6 MADAM CLERK: Is it still your verdict?

7 JUROR NUMBER 178: Yes.

8 MADAM CLERK: Thank you. Juror Number 51. Is
9 this your verdict?

10 JUROR NUMBER 51: Yes.

11 MADAM CLERK: Is it still your verdict?

12 JUROR NUMBER 51: Yes.

13 MADAM CLERK: Thank you. Juror Number 114. Is
14 this your verdict?

15 JUROR NUMBER 114: Yes.

16 MADAM CLERK: Is it still your verdict?

17 JUROR NUMBER 114: Yes.

18 MADAM CLERK: Thank you. Juror Number 216. Is
19 this your verdict?

20 JUROR NUMBER 216: Yes.

21 MADAM CLERK: Is it still your verdict?

22 JUROR NUMBER 216: Yes.

23 MADAM CLERK: Thank you. Juror Number 392. Is
24 this your verdict?

25 JUROR NUMBER 392: Yes.

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1 MADAM CLERK: Is it still your verdict?

2 JUROR NUMBER 392: Yes.

3 MADAM CLERK: Thank you. Juror Number 307. Is
4 this your verdict?

5 JUROR NUMBER 307: Yes.

6 MADAM CLERK: Is it still your verdict?

7 JUROR NUMBER 307: Yes.

8 MADAM CLERK: Thank you. Juror Number 354. Is
9 this your verdict?

10 JUROR NUMBER 354: Yes?

11 MADAM CLERK: Is this still your verdict?

12 JUROR NUMBER 354: Yes.

13 MADAM CLERK: Thank you. And Juror Number 52. Is
14 this your verdict?

15 JUROR NUMBER 352: Yes, it is.

16 MADAM CLERK: Is it still your verdict?

17 JUROR NUMBER 352: Yes.

18 MADAM CLERK: Thank you.

19 THE COURT: All right. Well, folks, I want to
20 thank you for your service this week. It's been an
21 interesting week. You had an interesting trial, and
22 you all did all that we could ask you to do, and that
23 is, sit attentively through the trial, and then do a
24 serious, thorough job on deliberating on a verdict.
25 And I think that the amount of time you took to come to

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1 a verdict shows how seriously you took your oath, and
2 that's really all we can ask. There's no -- sometimes
3 people will go, *well, did I do the right thing?*
4 There's no magic answer to these things.

5 I tell people, a lot of times when I'm qualifying,
6 you know, 95 percent of the time, I agree with whatever
7 the verdict the jury came up with. About 4.99 percent
8 of the time, I go, *well, yeah, this may be not what I*
9 *would have done, but I certainly see how they come up*
10 *with that verdict.* In all the years I've been doing
11 this, I've only had one verdict where I just said, *you*
12 *know, I have no idea what those people were thinking.*
13 *They just must want to go home.* That's all I can come
14 up with. But it's clear that you folks spent a good
15 deal of time deliberating.

16 The lawyers did a tremendous job of presenting the
17 case, I thought, in a very professional manner, got
18 right to it, didn't waste a lot of time, and got you
19 the facts. And you know, some places in California, a
20 trial like this could take weeks. It's just crazy
21 talk. But you know, they -- we do things a little bit
22 differently here in South Carolina, but I think in many
23 respects, we do a good job, and we got right to it
24 Monday afternoon. We had a few hearings that we needed
25 to take care of with some evidentiary matter, so that

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1 by the time we started yesterday, you all got to hear
2 what you needed to hear. All the evidence that the
3 people wanted you to hear, you got to hear, and then
4 very attentively listened throughout. That's part of
5 my job, too, is, I'm keeping an eye out and make sure
6 everybody's awake. I never saw anybody nod off. There
7 was a good pace to the trial, and then you spent a good
8 deal of time deliberating. And so, you've done all we
9 asked -- we could possibly ask that you do, and I want
10 to thank you for that service this week.

11 You no longer have to call after 6:00 o'clock or
12 report. We're done for the week for jury trials, so
13 you are done for the week for jury service. You're
14 welcome to stay around if you want. We'll have
15 sentencing here in a little bit, but you're also free
16 to go. So, I'll give you the opportunity to anybody
17 that wants to leave to go ahead and leave. If you want
18 to stay around, you're welcome to stay around. It's
19 totally up to you. All right. Thank you for your
20 service.

21 JURY LEAVES COURTROOM 1:59 P.M.

22 SENTENCING, BY THE COURT:

23 BAILIFF: Jury is clear, your Honor.

24 THE COURT: All right. Okay. What would the
25 State like to tell me before sentencing?

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1 MS. LEMPESIS: May I pass up the sentencing sheet?
2 Your Honor, as, obviously, you presided over this case,
3 you heard all the facts of the case. And so, I don't
4 need to reiterate any of the facts. I would just like
5 to focus first on Mr. Brabham's prior record, which,
6 while not extensive, it does include a prior charge for
7 pointing and presenting a firearm, which your Honor, of
8 course, has also heard about. That charge of pointing
9 and presenting a firearm, he was convicted of in 2009.
10 It involved the same victim, Chadwick Mitchell, who
11 pulled a gun and fired a shot and said he was going to
12 put him -- Mr. Brabham said, *I'm going to put you in*
13 *your grave*. He didn't kill him that day. He didn't
14 shoot him that day.

15 He did, of course, shoot him on July 15th, of
16 2013, and that injury that Chad suffered not only could
17 have killed him, but it has resulted in -- it's changed
18 his entire life. Chadwick, you heard, is a cook. He's
19 been doing that by trade for all of his adult life, and
20 he is greatly affected every day. He's permanently
21 disabled from being shot in the chest. His right arm
22 and his right hand -- and he's right-handed -- will
23 never be the same. His hand, when you look at it's,
24 the muscle is atrophying because of the nerve damage
25 and the resulting muscle damage from the shot. So,

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1 it's something that he lives with every day, and is
2 suffering through every day. He still has pain, and
3 just long-term damage from that, and he is lucky to be
4 here today with us.

5 So, based on the prior incidents between Mr.
6 Brabham and Mr. Mitchell, and the extent of the injury,
7 and the seriousness of this charge, the State would ask
8 that he be sentenced -- Mr. Brabham be sentenced to
9 thirty years.

10 THE COURT: Does the victim want to say anything?

11 MS. LEMPESIS: Chad, do you want to say anything?

12 MR. MITCHELL: She basically put it in perspective,
13 you know. This injury has affected my life
14 dramatically. You know, I have limited use of my hand,
15 and the simplest things are very difficult to do. And
16 you know, it's really senseless that it had to come to
17 this, but, you know, I just -- good job. Thank you.
18 And that's all I have to say.

19 THE COURT: Thank you. Anything further from the
20 State?

21 MS. LEMPESIS: Nothing further from the State,
22 your Honor. Thank you.

23 THE COURT: All right. Ms. Campbell?

24 MS. CAMPBELL: May it please the Court, your
25 Honor? You know, your Honor, part of the

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1 responsibilities that the Court has at this point is
2 determining what is an appropriate sentence for Mr.
3 Brabham. The jury has found him guilty, and your Honor
4 made the notation that it took a considerable amount of
5 time for the jury to reach that verdict, and they have
6 reached their verdict. But I would like to tell
7 you a little bit about my client. Consistently, since
8 the accusation was made against Malcolm, he has denied
9 that he shot Chad. I will tell you that this incident
10 between the two of them back in 2009, in that
11 particular incident, Mr. Brabham sat in the Beaufort
12 County Detention Center month after month after month,
13 waiting to have his trial on that case, because his
14 factual information on that case differed greatly from
15 what Mr. Mitchell said happened. And in fact, in my
16 conversations with Malcolm, you know, he felt that he
17 was being threatened by Mr. Mitchell in that incident,
18 and that Mr. Mitchell himself was armed. Having sat in
19 the detention center for so many months, he was offered
20 a plea bargain that was, you know, too good to pass up,
21 and he took the plea.

22 Mr. Brabham served honorably and faithfully in the
23 United States Navy for this country. He established --
24 or he maintained his home here in this county. He has,
25 for all intents and purposes, his wife here, his three

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1 children here, and his mother has been by his side
2 during this trial. I know that she would like to
3 address your Honor at the appropriate time, in just a
4 moment. Malcolm has, other than the skirmish with Chad
5 previously, you know, abided by our laws and been a
6 citizen in this county that we can all accept and be
7 pleased with.

8 I will tell you, though, as far as some of your
9 information had as far as Chad was concerned, Mr.
10 Mitchell, although not admitted in evidence in this
11 case himself, was convicted of the unlawful carrying of
12 a firearm. And so, that lends some credence to some of
13 the issues in relation to the 2009 incident.

14 I would ask your Honor to take into account, also,
15 that the State had offered Mr. Brabham to reduce his
16 charge to assault and battery in the first degree in
17 their assessment in the severity of this case, and
18 offered him a plea bargain for ten years. Mr. Brabham,
19 maintaining his innocence and his right to a jury
20 trial, turned down that plea offer. I'd ask your Honor
21 to sentence Mr. Brabham to no more than the ten years
22 that he was offered, and not put Mr. Brabham in a
23 position where he is facing an additional period of
24 time, after having come forward, gone through the
25 process of having a jury trial. Thank you for hearing

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1 us out, your Honor. THE COURT: All right. Who
2 would like to speak on his behalf?

3 MS. CAMPBELL: This is Grace Hudson. This is
4 Malcolm's mother.

5 THE COURT: All right, ma'am. What would you like
6 to say?

7 MS. HUDSON: I would like to say that he's been a
8 good son and father to his children.

9 THE COURT: I need you to speak up.

10 MS. HUDSON: He's been a good son and father to his
11 children. And that I would ask that you take pity upon
12 him in the judgment.

13 THE COURT: Thank you. All right. Mr. Brabham,
14 would you like to say anything?

15 DEFENDANT BRABHAM: Your Honor, this is my brother-
16 in-law, you know. I love him. I love my baby mother.
17 I love his mother. I go to work every day to provide
18 for my family, your Honor. Your Honor, from the
19 beginning, I could tell me and Chad had differences
20 before, your Honor, but -- but for me to be convicted
21 now of attempted murder that I know I didn't do, your
22 Honor, makes me feel terrible, honestly. But I just
23 ask your Honor to just be lenient on me, until I can
24 hopefully get an appeal, your Honor.

25 THE COURT: Well, you'll be able to appeal.

4-23-14 STATE V BRABHAM

1 MS. CAMPBELL: Thank you, your Honor. Would you
2 like Malcolm to remain standing?

3 THE COURT: That would be fine. I'm going to tell
4 you that, you know, my view of the evidence, it was a
5 pretty open and shut. The jury either believed you or
6 believed Mr. Mitchell. It's really not a case of a
7 question of identity. Mr. Mitchell said it was you,
8 point blank range. The motive made sense. The only
9 thing that really doesn't make sense is the peculiar
10 incident that took place five years before, in which it
11 sounds like almost the exact same scenario played out,
12 the only difference being that your shot didn't hit
13 him. I'm really left with no alternative but to
14 feel like you were guilty and agree with the jury's
15 verdict. It's not like I disagree with it at all.
16 There's no evidence pointing a finger at anyone else.
17 It was simply whether or not they chose to believe Mr.
18 Mitchell, and they chose to believe Mr. Mitchell. And,
19 you know, it's a world that I don't understand where
20 you solve your differences in these kinds of manners,
21 but you know, the ten-year sentence is out of the
22 question, simply because of the prior incident.
23 You know, that whole thing doesn't make any sense
24 to me as to why this sort of thing happens again. If
25 it was a simple matter of having a pointing and

4-23-14 STATE V BRABHAM

1 presenting, you know, sadly in this world, you get a
2 lot of those, but shooting at the same guy over the
3 same kind of argument five years apart, well, that puts
4 it into a whole different category. And a punishment
5 of ten years is, I don't think, fits the crime, not
6 based on what I heard during trial. So, I'm going to
7 sentence you to the Department of Corrections for 20
8 years, five years on the weapons charge. They'll run
9 concurrent. You'll get credit for whatever time you
10 served. Good luck to you.

11 MS. LEMPESIS: Thank you, your Honor.

12 THE COURT: How much time was served? Do you have
13 the date?

14 MS. CAMPBELL: I don't, your Honor.

15 THE COURT: I'll put it on there.

16 MS. LEMPESIS: I can get the number for you.

17 THE COURT: All right.

18 MS. LEMPESIS: Judge, he's served 291 days.

19 THE COURT: 291?

20 MS. LEMPESIS: Yes. Thank you.

21 THE COURT: All right.

END DAY THREE, END TRIAL

2:09 P.M.

4-21-14 STATE V BRABHAM

CERTIFICATE OF REPORTER

APRIL 21, 22, & 23, 2014 TRANSCRIPT OF TRIAL

STATE OF SOUTH CAROLINA

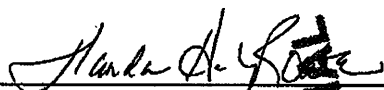
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing April 21, 22, and 23, 2014 Transcript of Trial is a true, accurate, and complete record of the proceedings had on said date and exhibits admitted in the case of State of South Carolina versus Malcolm Brabham, Beaufort County, South Carolina, Court of General Sessions, Case Numbers 2013-GS-07-01230 and 2013-GS-07-01231.

I further certify that I am of neither kin, counsel, nor interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature August 14, 2014.


Wanda H. Rowe, CVR-M
Official Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MALCOLM BRABHAM,

APPELLANT

APPELLATE CASE NO. 2014-000959

ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in failing to declare a mistrial when the jury sent a note during the presentation of the state's case indicating the jurors had engaged in premature deliberations by discussing the evidence presented as the note evinced a lack of clarity regarding the timeline of events?

STATEMENT OF THE CASE

On September 20, 2013, a Beaufort County grand jury indicted Appellant for attempted murder (2013-GS-07-1230) and possession of a weapon during the commission of a violent crime (2013-GS-07-1231). R. 380. The state, represented by Mary Jordan Lempesis and Mary Concannon, called the case for trial before the Honorable Roger M. Young and a jury on April 21, 2014. Trasi Campbell represented Appellant. R. 1-2. The jury found Appellant guilty as charged. R. 363, lines 17-24. Judge Young sentenced Appellant to twenty years' imprisonment for attempted murder and five years' imprisonment for the weapons charge. He ordered the sentences to be served concurrently. R. 375, lines 6-9; R. 382.

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

Chadwick Mitchell and Appellant met in 2003 when Appellant began dating Mitchell's sister, Reah Gonsalves. R. 139, lines 7-14. Over the course of the next several years, Appellant and Gonsalves had three children together and lived together on family land where Mitchell also lived. R. 140, lines 5-6; R. 141, lines 1-8; R. 163, line 14 – R. 164, line 2; R. 230, line 24 – R. 232, line 3.

On July 15, 2013, between 5:00 p.m. and 5:30 p.m., Appellant and Mitchell sat in the yard drinking beer and liquor. R. 141, lines 12-24. Appellant and Mitchell then travelled to an area of Lady's Island called "The Hole" where they socialized and continued drinking alcohol. R. 142, line 8 – R. 143, line 2; R. 164, lines 10-23. On the way to The Hole, Mitchell used a large quantity of cocaine. R. 156, lines 15-24; R. 165, lines 18-20; R. 165, line 24 – R. 166, line 11; R. 170, lines 17-22; R. 172, line 12 – R. 173, line 6.¹

At The Hole, Appellant and Mitchell met up with Elaine Blake, who was Appellant's cousin, and Norman Singleton, who was Blake's boyfriend. In his inebriated state, Mitchell believed Appellant was flirting with Blake. R. 143, lines 5-13. Mitchell became enraged and belligerent; he argued with everyone at The Hole. R. 157, line 24 – R. 158, line 5; R. 170, line 23 – R. 171, line 11; R. 174, lines 7-15; R. 176, line 23 – R. 178, line 2. After dark, Appellant and Mitchell decided to leave The Hole. R. 143, line 14; R.

¹ Mitchell admitted he had alcohol and cocaine in his system the day of the shooting and agreed he used cocaine that day. Asked where and when he used cocaine, Mitchell responded, "I was probably in [Appellant's] car." The prosecutor again prompted Mitchell to tell the jury when he used cocaine, and Mitchell responded, "Maybe right before we got to The Hole." R. 156, lines 22-25. According to the treating physician in the emergency room, Mitchell had very high levels of alcohol and cocaine in his system. R. 297, lines 16-24; R. 300, line 9 – R. 302, line 2. However, Mitchell denied drug and alcohol use upon his admission to the emergency room. R. 299, lines 16-25.

143, line 24 – R. 144, line 7; R. 166, lines 12-14. Blake joined Mitchell and Appellant in the car because Blake and Mitchell planned to go out later. R. 142, line 14 – R. 143, line 18; R. 157, lines 12 -23; R. 179, line 25 – R. 180, line 10. During the ride, Mitchell continued to accuse Appellant and Blake of improprieties, including calling Blake a “nasty bitch.” R. 145, lines 10-18; R. 178, line 23 – R. 179, line 3. Blake would not stand for Mitchell’s continued insults and demanded to be let out of the car. Appellant stopped the car and allowed Blake to get out. R. 145, line 21 – R. 148, line 11; R. 179, lines 3-12. However, Blake’s absence did not stop Mitchell’s abusive behavior. He continued to hurl accusations at Appellant. R. 148, lines 13-14. Finally, Appellant insisted Mitchell exit the car too. R. 148, lines 15-19.

Here, the evidence differed concerning what transpired next. Mitchell initially told the responding officer that Appellant reached into the open driver’s door, retrieved a gun, and shot him. R. 169, line 23 – R. 170, line 2. However, at trial, Mitchell claimed that Appellant also got out of the car, closed the driver’s door, and the two “started throwing more obscenities at each other.” Then, Appellant “kind of pulled the gun like a - - it was like a western movie. I didn’t even really see it coming. Between us arguing, he just pulled out and, boom, shot me, you know.” R. 149, lines 4-11; see also R. 166, line 15 – R. 167, line 10 (testifying that Appellant pulled the gun “from behind his jeans”); R. 167, line 15 – R. 168, line 1.² Mitchell claimed he grabbed his chest and collapsed while Appellant looked on. Mitchell further claimed that Appellant “looked around,” “jumped in the car and just

² Blake did not see Appellant in possession of a gun or a gun in the car. R. 184, lines 13-14; R. 185, lines 9-16.

peeled out," leaving Mitchell on the side of the road. R. 150, lines 13-20. Mitchell bled profusely after the shooting. R. 154, lines 8-11.

After being shot in the chest, Mitchell, smelling of alcohol, walked to the first house with lights on, which was almost a mile from the alleged incident location, and asked the residents to call for help. R. 128, lines 18-24; R. 153, lines 1-6; R. 255, lines 1-4. He arrived at the house between ten and fifteen minutes after the shooting. R. 154, lines 1-5. The responding officer was dispatched at 9:15 p.m. and responded at 9:23 p.m. R. 134, lines 6-10. Mitchell told the residents and the police, who subsequently arrived, that his brother-in-law, Appellant, had shot him. R. 125, line 20 – R. 126, line 7; R. 132, lines 4-11; R. 153, lines 17-25; R. 154, lines 12-18.

Armed with Mitchell's accusations, officers went to Gonsalves's home looking for Appellant. R. 190, lines 4-12; R. 191, line 19 – R. 192, line 4. When the officer arrived at 10:00 p.m., Gonsalves stated Appellant was no longer at the residence, having left forty-five minutes prior to the officer's arrival. R. 192, line 5 – R. 193, line 2; R. 245, line 7 – R. 246, line 2. Also, Appellant contacted Blake to say he was on his way to his mother's home in Ridgeland around 9:15 p.m. R. 183, lines 3-9; R. 185, line 23 – R. 186, line 9. The following day, the police arrested Appellant at his job without incident. When the arresting officer interrogated Appellant regarding his alleged involvement in Mitchell's shooting, Appellant informed the officer he had not shot Mitchell, but had left him on the side of the road at The Hole. R. 211, line 12 – R. 212, line 17; R. 264, line 20 – R. 265, line 3; R. 266, line 14 – R. 269, line 2.

No evidence of a shooting, such as blood, shell casings, projectiles, or gunshot residue, was found at the area where Mitchell claimed the shooting occurred or in

Appellant's car. In fact, no gun was recovered. R. 188, line 20 – R. 190, line 3; R. 252, lines 3-9; R. 252, line 22 – R. 253, line 7; R. 254, lines 2-25; R. 273, line 19 – R. 275, line 24; R. 283, line 23 – R. 284, line 5; R. 285, lines 5-25. Further, no one in the area heard any gunshots. R. 191, lines 5-18.

ARGUMENT

The trial judge erred in failing to declare a mistrial when the jury sent a note during the presentation of the state's case indicating the jurors had engaged in premature deliberations by discussing the evidence presented as the note evinced a lack of clarity regarding the timeline of events.

Relevant facts

During the state's case-in-chief, the jury sent a note to the trial judge remarking that the timeline was "a little fuzzy." The note further explained that witnesses used phrases, such as "after dark." Due to the unclear timeline, the jury note explained that "[i]t would be helpful to know what time sunset was on the date in question." R. 218, lines 9-12; R. 377.

When the judge received the note, he questioned the jury foreperson regarding its contents:

THE COURT: Okay. Help me understand how you all came up with this question?

JUROR NUMBER 52: All right. We heard from a number of different witnesses, ... the 911 operator arrived at the dinner party at 7:00. I think Mr. - - the gentleman who got shot, said that they had started drinking at 5:00 or 5:30. So, we hear a bunch of times, and then I hear: "Well, we left the bar. I don't know what time, but after dark."

And so, I wanted to kind of, you know, July, after dark's probably 8:00 or 8:30.

THE COURT: Um-hmm.

JUROR NUMBER 52: But there's a period of time there where a gentleman said, "I was taking cocaine," but I needed - - he took that over a period of two hours.

THE COURT: Um-hmm.

JUROR NUMBER 52: How does that two hours fit within all of those other times? That's - - that was my question.

THE COURT: Okay. So, the question that you've come up with and asked here, is this something that you all came up with back there, or is it just your question?

JUROR NUMBER 52: It is my question.

THE COURT: Have you discussed this issue with anybody back there?

JUROR NUMBER 52: Other people have heard me as I talked about the question, yes.

THE COURT: Who were you talking to about it?

BAILIFF: He started to ask me - -

JUROR NUMBER 52: I started - -

BAILIFF: - - and I told him to write it down, [Y]our Honor.

JUROR NUMBER 52: Right.

THE COURT: Okay. So, you all were - - this is when you were coming back from lunch?

JUROR NUMBER 52: No, this is before we went to lunch. As we departed here, I held back, and I said, "I've got a question." And I did not, you know, - - so, I started asking her the question, time line's fuzzy. I know that there were some other people around who heard that.

THE COURT: All right. Did you mention this to any other jurors when you went back after lunch?

JUROR NUMBER 52: No.

THE COURT: Or before lunch?

JUROR NUMBER 52: No, just what they may have overheard before I wrote that note.

THE COURT: So, nobody else asked the same question or brought it to your attention?

JUROR NUMBER 52: To my knowledge, no.

THE COURT: Has anybody else been discussing the question?

JUROR NUMBER 52: We have purposely not, per your orders, been discussing this case at all.

R. 218, line 15 – R. 220, line 21.

Appellant argued the jury had engaged in premature deliberations based upon the statements contained in the note and those made by the foreperson. Concerning prejudice, Appellant argued that “by virtue of the foreman providing this note to [Y]our Honor and providing it to the state, and the state has not finished their case yet, the foreman has provided the state the opportunity to answer one of his questions, and that is prejudicial to [Appellant].” Thus, Appellant moved for a mistrial. R. 221, line 13 – R. 222, line 7.

The trial judge determined the juror was “being conscientious” and the examination of the foreman indicated he had not discussed the matter with anyone. Based on those findings, the trial judge determined the jury had not engaged in premature deliberations. Further, the judge held Appellant suffered no prejudice. However, the judge refused to allow the prosecution to recall any witnesses to address the timeline. R. 222, line 24 – R. 223, line 18.

When the entire jury panel returned to the courtroom, the trial judge instructed the jury that questions during the course of the trial were not encouraged. He then stated that “one of the big problems” with the submission of a jury question during the trial was that it “suggests” the jury “may be deliberating” before hearing all of the evidence. The note made it necessary for the judge to ask if any of the jurors talked about the case. Further, the judge asked if any juror overheard the foreperson talking to the bailiff about his question. Three jurors responded affirmatively to the judge’s question. One juror indicated he was “wondering the same thing” as asked by the foreperson. However, all three jurors responded the question would not affect their deliberations. R. 227, line 14 – R. 229, line 7.

Appellant renewed his motion for a mistrial when he moved for a directed verdict. Appellant argued he suffered prejudice from the jury's premature deliberations because the prosecution was "given privy to insight and thought processes of one of the jurors prior to the close of their case." Despite the judge's ruling that the state could not re-call a witness to the stand, the prosecution knew the timeline was "an issue that they need[ed] to address" and "[would] likely address it in their closing." R. 314, line 24 – R. 315, line 16. The judge denied the motion. R. 315, lines 17-22.

Discussion

"A jury should not begin discussing the case, nor deciding the issues, until all the evidence has been introduced, the arguments of counsel complete, and the applicable law charged." State v. Joyner, 289 S.C. 436, 437, 346 S.E.2d 711, 712 (1986). As explained by the Supreme Court, "the reason for this rule is apparent":

[A] jury should not begin discussing a case, nor deciding the issues, until all of the evidence, the argument of counsel, and the charge of the law is completed. ... The human mind is constituted such that when a juror declares himself, touching any controversy, he is apt to stand by his utterances to the other jurors in defiance of evidence. A fair trial is more likely if each juror keeps his own counsel until the appropriate time for deliberation.

State v. McGuire, 272 S.C. 547, 552, 253 S.E.2d 103, 105 (1979); see also Joyner, 289 S.C. at 437, 346 S.E.2d at 712. Premature jury deliberations involve a matter of fundamental fairness. State v. Aldret, 333 S.C. 307, 311, 509 S.E.2d 811, 812-813 (1999).

The South Carolina Supreme Court held that evidence of premature deliberations does not require automatic reversal. Rather, the defendant must demonstrate prejudice. Id. at 315, 509 S.E.2d at 815. Further, the Court established certain procedures to be followed

when an allegation of premature deliberations arises during the trial. Id.³ “[T]he trial court should conduct a hearing to ascertain if, in fact, such premature deliberations occurred, and if the deliberations were prejudicial.” Id. Further, “[i]f requested by the moving party, the court may voir dire the jurors and, if practicable, ‘tailor a cautionary instruction to correct the ascertained damage.’” Id. (quoting United States v. Resko, 3 F.3d 684, 695 (3d Cir. 1993)). If the premature deliberations were prejudicial, then a new trial must be ordered. Id.

Deliberation is “[t]he act of carefully considering issues and options before making a decision or taking some action; esp., the process by which a jury reaches a verdict, as by analyzing, discussing, and weighing the evidence.” BLACK’S LAW DICTIONARY 438-439 (7th ed. 1999). The jury engaged in premature deliberations by considering the evidence as presented and noting the areas of strengths and weaknesses. The note clearly showed at least one member of the jury was considering and weighing the evidence. The trial judge’s voir dire of the jury showed that at least one other member of the jury was considering and weighing the same evidence. Thus, the trial judge erred in concluding the jury had not engaged in premature deliberations. Further, Appellant suffered prejudice as a result of the premature deliberations because the note put the prosecution on notice of at least one weakness in its case – the timing of the events. Because the prosecution received notice of this weakness – and the jury’s perception of this as a weakness – during the course of the

³ Although the body of the opinion suggests these procedures are optional at the discretion of the trial judge, the Court later indicated the procedures were required. State v. Aldret, 333 S.C. 307, 313 n. 3, 509 S.E.2d 811, 813 n. 3 (1999)(explaining that normally the Court would not address the merits of a procedurally barred issue, but did so here to set forth the “proper procedure for trial courts to follow in such cases”); see also, State v. Yarborough, 363 S.C. 260, 263, 609 S.E.2d 592, 594 (2005).

prosecution's case-in-chief, the prosecution had the opportunity to strengthen the timeline to support Mitchell's contention that Appellant shot him. The timeline was particularly important in this case because Appellant's defense was that he was with Gonsalves at the time that Mitchell was shot. The timeline before the jury indicated the call for help due to Mitchell's gunshot wound was made shortly after 9 p.m. However, Gonsalves told the police that Appellant left her home at approximately 9:15 p.m. The jury was interested in knowing what time Appellant and Mitchell left The Hole in order to determine whether Mitchell was shot while Appellant was in the area as Mitchell contended or whether Mitchell was shot while Appellant was with Gonsalves as Appellant contended. This was crucial evidence in the case. The jury's premature deliberation on this point prejudiced Appellant.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and sentences and remand for a new trial based upon the jury's engagement in premature deliberations.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of February, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Roger M. Young, Circuit Court Judge

RECEIVED

FEB 03 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MALCOLM BRABHAM,

APPELLANT

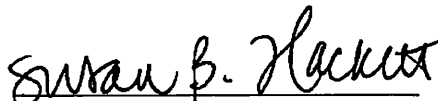
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Malcolm Brabham states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Roger M. Young, which was held on April 24, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Malcolm Brabham.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of February, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Roger M. Young, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MALCOLM BRABHAM,

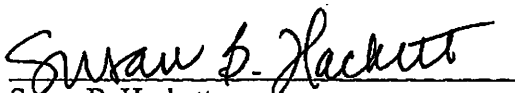
APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Entire transcript of pretrial motions dated April 21, 2014;
- (2) Entire trial transcript dated April 21, 22, & 23, 2014;
- (3) Court's Exhibit # 2 (Note from jury)
- (4) Court's Exhibit # 3 (Note from jury)
- (5) Court's Exhibit # 4 (Note from jury)
- (6) True-billed indictments; and
- (7) Sentence sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

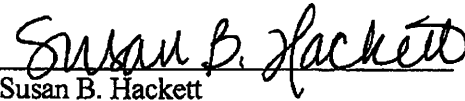
February 3rd, 2015Susan B. Hackett
Appellate DefenderSouth Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 3, 2015


Susan B. Hackett
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-15

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FEB 03 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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FEB 03 2015

SC Court of Appeals

Appeal from Beaufort County

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

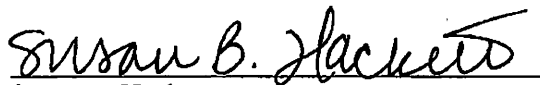
V.

MALCOLM BRABHAM,

APPELLANT

CERTIFICATE OF SERVICE

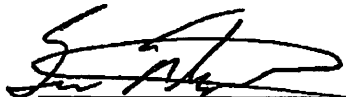
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Malcolm Brabham, #359777 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 3rd day of February, 2015.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of February, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Malcolm Brabham, Appellant.

Appellate Case No. 2014-000959

Appeal From Beaufort County
Roger M. Young, Sr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-498
Submitted August 1, 2015 – Filed October 21, 2015

APPEAL DISMISSED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

HUFF, WILLIAMS, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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November 06, 2015

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: The State v. Malcolm Brabham
Lower Court Case No. 2013GS0701230, 2013GS0701231
Appellate Case No. 2014-000959

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Malcolm Brabham, 359777
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire
Susan Barber Hackett, Esquire
The Honorable Roger M. Young, Sr.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Malcolm Brabham, #359777

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2016-CP-07-1092
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Corr. Inst., South Carolina Dept. of Corrections
2. Name and location of Court which imposed sentence Beaufort County Court of General Sessions; Hon. Roger M. Young, Judge and a jury
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-07-1230; attempted murder
 - (b) 2013-GS-07-1231; possession of a weapon during the commission of a violent crime
 - (c) issuance of a violent crime
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 21, 22, & 23, 2014; twenty (20) years concurrent with
 - (b) April 21, 22 & 23, 2014, five (5) years

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals (Anders review)
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal dismissed pursuant to Anders review
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 21, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2015-UP-498
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____ N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Trial Counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Trial counsel failed to communicate a favorable written ten (10) plea offer made to the Applicant,
 (b) by the State See attached pages 3A-3I
 (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. _____

(c) the disposition thereof:

i. _____
 ii. _____
 iii. _____

10. (a) Ineffective Assistance of Trial Counsel

11. (a) Applicant was denied the effective assistance of trial counsel in violation of his rights as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Art. I, §§ 3 and 14 of the South Carolina Constitution, and the Due Process Clauses of both the Federal and State Constitutions as a result of trial counsel's failure to communicate a favorable ten (10) year plea offer made to the Applicant, by the State.

RELEVANT FACTS

Malcolm Brabham (hereinafter "Applicant") was indicted on September 20, 2013, by a Beaufort County Grand Jury for attempted murder, indictment no. 2013-GS-07-1230 and possession of a weapon during the commission of a violent crime, indictment no. 2013-GS-07-1231. On April 21, 22, & 23, 2014, Applicant proceeded to trial before the Honorable Roger M. Young and a jury. The State was represented by Assistant Solicitors Mary Jordan Lempesis and Mary Concannon. Applicant was present and represented by Traci Campbell of the Beaufort County Public Defender's Office. The jury found Applicant guilty as charged. Judge Young sentenced Applicant to twenty (20) years' imprisonment for attempted murder and a concurrent five (5) year sentence for the weapon's charge. A timely appeal was perfected.

Susan B. Hackett, Appellate Defender, filed an Anders brief in the South Carolina Court of Appeals on February 3rd, 2015. The Anders Brief presented the following question:

The trial judge erred in failing to declare a mistrial when the jury sent a note during the presentation of the state's case indicating the jurors had engaged in premature deliberations by discussing the evidence

presented as the note evinced a lack of clarity regarding the timeline of the events.

On October 21, 2015, the South Carolina Court of Appeals dismissed the appeal after review pursuant to Anders v. California, 386 U.S. 738 (1967) and, granted counsel's motion to be relieved as counsel (Unpublished Opinion No. 2015-UP-498).

Shortly after the Applicant's arrival into the South Carolina Department of Corrections, Applicant learned that he could obtain his discovery materials. He wrote his trial counsel requesting a copy of his discovery. Thereafter, having received the discovery materials the Applicant discovered that a favorable formal written plea offer of ten (10) years had been offered to him by the State, a plea that Applicant would have taken had trial counsel discussed the State's plea offer.

The Sixth Amendment right to counsel guarantees "[I]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense," U.S. Const. Amend. VI. That right ensures defendants the assistance of "a reasonably competent attorney," McMann v. Richardson, 397 U.S. 759, 770-71 n.14 (1970). The Supreme Court established the constitutional right to effective assistance of counsel in Powell v. Alabama, 287 U.S. 45 (1932), and subsequently created the standard for ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668 (1984). The Supreme Court extended this standard to guilty pleas in Hill v. Lockhart, 474 U.S. 52 (1985), and recently expanded this standard to apply during the plea-bargaining stage, see Missouri v. Frye, 566 U.S. ___, 132 S.Ct. 1399 (2012) and Lafley

v. Cooper, 566 U.S. ___, 132 S.Ct. 1376 (2012). The Frye Court noted that the "Sixth Amendment guarantees a defendant the right to have counsel present at all critical stages of the criminal proceedings [which]... include arraignments, post-indictment lineups, and entry of a guilty plea," 132 S.Ct. at 1405. Accordingly, "[a]nything less [than effective counsel during plea negotiations]... might deny a defendant 'effective representation by counsel at the only stage when legal aid and advice would help him,'" Id., at 1408 (citing Massiah v. United States, 377 U.S. 201 (1964)).

In Frye, the "case [arose] in the context of claimed ineffective assistance that led to the lapse of a prosecution offer of a plea bargain, a proposal that offered terms more lenient than the terms of the guilty plea entered later." Frye, 132 S.Ct. at 1404. There were two questions before the United States Supreme Court in Frye: (1) "whether the constitutional right extends to the negotiation and consideration of plea offers that lapse or are rejected[.]" and (2) "If there is a right to effective assistance with respect to those offers, ... what a defendant must demonstrate in order to show that prejudice resulted from counsel's deficient performance." Id.

Ultimately, the Court held that the right to effective assistance of counsel extends not only to those situations in which a criminal defendant accepts a plea bargain and waives his right to trial,^① but also to situations where plea offers are rejected or allowed to lapse. Id. at 1410-11.

① See Hill v. Lockhart, 474 U.S. 52 (1985) (finding ineffective assistance of counsel from a guilty plea (1) where counsel's advice was

In support of its holding, the Court found:

The reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages. Because ours 'is for the most part a system of pleas, not a system of trials,' *Lafley*, post, at 11, it is insufficient simply to point to the guarantee of a fair trial as a backdrop that inoculates any errors in the pretrial process.

Id. at 1407 (emphasis added by underlining). The Court further emphasized that "[i]n today's criminal justice system, ... the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant."

Id. (underlining added for emphasis).

As the companion case to *Frye*, the Court in *Lafley* addressed when "the favorable plea offer was reported to the client but, on advice of counsel, was rejected, there was a full and fair trial before a jury. After a guilty verdict, the defendant received a sentence harsher than that

not within the range of competence demanded of attorneys in criminal cases and (2) where "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial"; see also *Padilla v. Kentucky*, 559 U.S. 130 S.Ct. 1473 (2010) (finding an attorney renders ineffective assistance of counsel by failing to advise a defendant that a guilty plea may subject the defendant to automatic deportation).

offered in the rejected plea bargain." Lafler, 132 S.Ct. at 1383. However, in Lafler both parties agreed that counsel's performance was deficient based on his erroneous advice to reject the plea offer. Id. at 1384. Therefore, the main inquiry was how to apply Strickland's prejudice prong where a defendant had rejected a plea offer based on ineffective assistance of counsel but was convicted after a full and fair trial. The prejudice analysis for this situation follows:

In contrast to Hill, here the ineffective advice led not to an offer's acceptance but to its rejection. Having to stand trial, not choosing to waive it, is the prejudice alleged. In these circumstances a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the judgment and sentence that in fact were imposed.

Id. at 1385; See Glover v. United States, 531 U.S. 198, 203 (2001) (finding "any amount of [additional] jail time has Sixth Amendment significance").

The Lafler Court noted, "The fact that respondent is guilty does not mean he was not entitled by the Sixth Amendment to effective assistance or that he suffered no prejudice from his attorney's deficient performance during plea bargaining." Id. at 1388. As for the remedy applied by the Court:

The specific injury suffered by defendants who decline a plea offer as a result of ineffective assistance of counsel and then receive a greater sentence as a result of trial can come in at least one of two forms. In some cases, the sole advantage a defendant would have received under the plea is a lesser sentence... [and] [i]n some situations it may be that resentencing alone will not be full redress for the constitutional injury.

Id. at 1389. In the first set of cases, this occurs "when the charges that would have been admitted as part of the plea bargain are the same as the charges the defendant was convicted of after trial." Id. "In this situation the court may conduct an evidentiary hearing to determine whether the defendant has shown a reasonable probability that but for counsel's errors he would have accepted the plea. If the showing is made, the court may exercise discretion in determining whether the defendant should receive the term of imprisonment the government offered in the plea, the sentence he received at trial, or something in between." Id.

In the second set of cases, this occurs when "an offer was made for a guilty plea to a count or counts less serious than the ones for which a defendant was convicted after trial, or if a mandatory sentence confines a judge's sentencing discretion after trial, a resentencing based on the conviction at trial may not suffice." Id. (citations omitted). "In these circumstances, the proper exercise of discretion to remedy the constitutional injury may be to require the prosecution reoffer the plea proposal. Once this has occurred, the judge can

then exercise discretion in deciding whether to vacate the conviction from trial and accept the plea or leave the conviction undisturbed." Id.

The Lafley Court noted, "In implementing a remedy in both of these situations, the trial court must weigh various factors; and the boundaries of proper discretion need not be defined here.... At this point, however, it suffices to note two considerations that are of relevance." Id. "First, a court may take account of a defendant's earlier expressed willingness, or unwillingness, to accept responsibility for his or her actions. Second, it is not necessary here to decide as a constitutional rule that a judge is required to prescind (that is to say disregard) any information concerning the crime that was discovered after the plea offer was made." Id.

The Lafley Court ultimately held that "[t]he correct remedy in these circumstances... is to order the State to reoffer the plea agreement." Id. at 1391. The Lafley Court noted, "Presuming respondent accepts the offer, the state trial court can then exercise its discretion in determining whether to vacate the convictions and resentence respondent accordingly, or to leave the convictions and sentence from trial undisturbed." Id.

In Davie v. State,^② the Supreme Court of South Carolina adopted "rule that counsel's failure to convey a plea offer constitutes deficient performance and warranted for resentencing."

② 381 S.C. 601, 625 S.E.2d 416, 2009 S.C. Lexis 306 (S.C. Apr. 10, 2009)

In Bell v. State^③ the South Carolina Court of Appeals held that "trial counsel was ineffective for failing to communicate a ten-year plea offer to the defendant."

In the present case, trial counsel's performance was deficient, as it fell below "an objective standard of reasonableness" when trial counsel failed to communicate a favorable "formal written ten-year plea offer by the State.

The Applicant, had he been informed of the State's formal written plea offer of a ten-year sentence, would have taken that plea as it is much more favorable to the Applicant. (See Applicant's Affidavit, attached).

Here, Applicant's case does not fit squarely into the facts presented in Lafley or Frye since Lafley was informed of the correct plea offer, but given erroneous advice, and Frye resulted in a guilty plea. However, Applicant's case fits into Bell v. State and Davie v. State.

Applicant was prejudiced by trial counsel's failure to communicate a "favorable, written formal plea offer and counsel's deficient performance because both prongs of the adapted Strickland standard are satisfied, as Applicant would have gladly taken the State's very favorable plea offer of "ten (10) year sentence," the court would have accepted its terms[,] and that the sentence "would have been less severe than under the judgment and sentence that in fact were imposed." Lafley, 132 S.Ct. at 1385; See Glover v. United States, 531 U.S. 198, 203 (2001) (finding "any amount of [additional] jail time has Sixth Amendment significance").

③ 410 S.C. 436, 765 S.E.2d 4, 2014 S.C.App. Lexis 290 (Nov. 5, 2014)

Applicant specifically reserves the right to amend or supplement the statement of grounds/issues, and the facts in support thereof on which he bases his allegations that he is being held unlawfully in violation of his Sixth and Fourteenth Amendment rights of the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution.

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) South Carolina requires "ineffective assistance of(b) counsel" claims be raised on APCR

(c) _____

17. Were you represented by an attorney at any time during the course of:

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Malcolm Brabham #359777, 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.

x Malcolm Brabham 5-2-16

SWORN to and subscribed before me this 2nd
day of May, 2016.

Luchean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

2016 MAY -6 PM 2:39
JESSIE ANDERSON
CLERK OF COURT
DORCHESTER COUNTY, S.C.

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Malcolm Brigham, #359777

I, _____, 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.

 5-2-16
Applicant

SWORN or affirmed to and subscribed before me this
2nd day of May, 2016.


Notary Public

My Commission Expires: May 26, 2020

2016 MAY -6 PM 2:39
CLERK OF COURT
SOUTH CAROLINA
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	IN THE FOURTEENTH JUDICIAL
	)	CIRCUIT
Malcolm Brabham, #359777,	)	Case No.: 2016-CP-07-1092
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on May 6, 2016, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. In September 2013, the Beaufort County Grand Jury indicted Applicant for attempted murder (2013-GS-07-1230) and possession of a weapon during a violent crime (2013-GS-07-1231). Chief Public Defender Trasi Campbell, Esquire, represented Applicant. Assistant Solicitors Mary Jordan Lempesis, Esquire, and Mary Concannon, Esquire, prosecuted the case. On April 21-23, 2014, Applicant proceeded to trial before the Honorable Roger M. Young. The jury found Applicant guilty as indicted. Judge Young sentenced Applicant to imprisonment for concurrent terms of twenty years for attempted murder and five years for possession of a weapon during a violent crime.

Applicant filed a timely notice of appeal. Susan B. Hackett, Esquire, of the Office of Appellate Defense, perfected the appeal by submitting an Anders brief. The South Carolina Court of Appeals dismissed Applicant's appeal on October 21, 2015. State v. Brabham, Op. No. 2015-UP-498 (S.C. Ct. App. filed October 21, 2015). The remittitur was returned to the circuit court on November

6, 2015.

Attached to this Return and incorporated by reference are the records of the Beaufort County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. ALLEGATIONS

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. "Trial counsel failed to communicate a favorable written ten year plea offer made to Applicant by the State."

III. INEFFECTIVE ASSISTANCE OF COUNSEL

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.

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. AMENDMENTS

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 received prior to ten days before the evidentiary hearing 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)-(b), SCRCF. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF. 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), SCRCF.

V. CONCLUSION

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

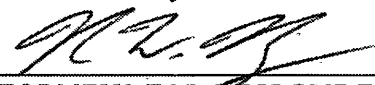
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

RUSTON W. NEELY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 3, 2017

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOR THE 14th JUDICIAL CIRCUIT
	)	
Malcolm Brabham	)	
	)	2016-CP-07-1092
Applicant	)	
Vs.	)	
State of South Carolina	)	Applicant's Amendment
	)	to Application for
Respondent,	)	Post-Conviction Relief.
	)	

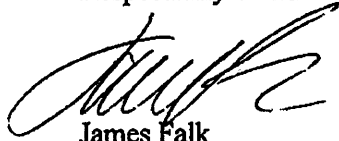
2018 JAN 29 AM 8:53
JERRI ANN ROSENBERG
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO: DeShawn Mitchell, Esq., Office of SC Attorney General, PO Box 11549, Columbia, SC 29211-1549.

In addition to those grounds set-forth in Applicant's initial application for Post-Conviction Relief, Applicant, by counsel hereby adds the following grounds to support his claim of ineffective assistance of trial counsel.

1. Trial Counsel failed to object to hearsay statements regarding conversations that the State's witnesses had with the victim:
 - a. Record on Appeal p. 132, l. 7 (Testimony of Corporal Seronka on Re-Direct)
 - b. Record on Appeal p. 136, l. 6 (Testimony of Corporal Seronka on Re-Direct)
2. Trial Counsel failed to object when State sought to elicit negative testimony regarding the Defendant's character. Record on Appeal p. 232 l. 17-20 (Testimony of Reah Gonsalves on Direct).
3. Trial counsel failed to request a jury charge on alibi even though she argued that defense in her closing argument. (Record on appeal p. 333 l. 9-17)

Respectfully Submitted,


James Falk
PO Box 1058
Charleston, SC 29402
(843) 606 6007
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

Undersigned certifies that on July 10, 2017 a copy of the above was mailed to Deshawn Mitchell the address listed above.

A handwritten signature in black ink, appearing to read 'James Falk', with a horizontal line drawn underneath it.

James Falk
Counsel for Applicant

RECEIPT FOR EXHIBITS

1-29-18

MALCOMB MAURICE BRABHAM V STATECASE NO. 2016-CP-07-01092_ JUDGE R. LAWTON MCINTOSH

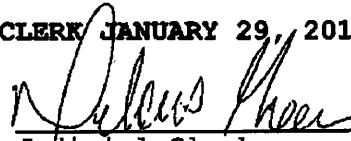
APPLICANT:

- 1 Document Identified as
Plea Offer
Admitted as Evidence.....

No other exhibits.

ABOVE EXHIBITS RECEIVED BY CLERK JANUARY 29, 2018.


Wanda H. Rowe, CR


Judicial Clerk

ORIGINAL

2018 JAN 29 PM 8:13
CLERK OF COURT

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NUMBER 2016-CP-07-01092

MALCOLM BRABHAM

APPLICANT

VERSUS

STATE OF SOUTH CAROLINA

RESPONDENT

JANUARY 29, 2018

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING

BEAUFORT, SOUTH CAROLINA

BEFORE HON. LAWTON MCINTOSH, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF APPLICANT
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843-606-6007
jfalklaw@gmail.com

ON BEHALF OF RESPONDENT
STATE OF SOUTH CAROLINA:

HON. DESHAWN H. MITCHELL
ASSISTANT ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549
803-734-3693
dmitchell@scag.gov

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TRASI CAMPBELL

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APPLICANT:

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Plea Offer
Admitted as Evidence.....24

1-29-18 BRABHAM V STATEBY THE COURT

1 BEGINNING 9:53 A.M.

2 BY THE COURT:

3 THE COURT: Is Brabham the first case up?

4 MR. MITCHELL: Yes, sir.

5 THE COURT: Okay. I don't have that package. Do
6 you have that?

7 MR. MITCHELL: Yes, sir. May I approach?

8 THE COURT: Yes, sir.

9 MR. MITCHELL: May it please the Court, your Honor?

10 THE COURT: Yes, sir.

11 MR. MITCHELL: DeShawn Mitchell, on behalf of the
12 State. This is 2016-CP-07-01092, Malcolm Brabham versus
13 the State of South Carolina. The applicant is presently
14 confined in the South Carolina Department of Corrections
15 pursuant to orders of commitment of the Beaufort County
16 Clerk of Court.

17 In September of 2013, the Beaufort County Grand
18 Jury indicted Applicant for attempted murder, possession
19 of a deadly weapon during a violent crime. Chief Public
20 Defender Trasi Campbell represented the applicant.

21 On April 21st through 23rd of 2014, Applicant
22 proceeded to trial before the Honorable Robert M. Young.
23 The jury found Applicant guilty as indicted. Judge
24 Young sentenced Applicant to imprisonment for concurrent
25 terms of twenty years for attempted murder, and five

1-29-18 BRABHAM V STATE

BY THE COURT

1 years for possession of a weapon during a violent crime.

2
3 Applicant filed a timely notice of appeal. Susan
4 B. Hackett of the Office of Public Defense perfected the
5 appeal. The South Carolina Court of Appeals dismissed
6 Applicant's appeal on October 21, 2015. The remittitur
7 was returned to the Circuit Court on November 6, 2015.
8 The applicant is present in the courtroom today, and
9 represented by Mr. Falk.

10 THE COURT: All right. Mr. Falk.

11 MR. FALK: Yes, your Honor. I recently filed this
12 with the Beaufort Court. If you could just make a
13 record to this exhibit.

14 THE COURT: What is that?

15 MR. FALK: It's the amended claims to the PCR.

16 THE COURT: Okay. And I assume the State opposes
17 that?

18 MR. MITCHELL: Actually, Judge, he sent it to me
19 last week. I read over it. I'm prepared for it. So,
20 if he wants to go forth.

21 THE COURT: Okay. Go ahead, and we'll make it part
22 of the Court's record.

23 MR. FALK: Okay.

24 THE COURT: Additional grounds, other than failure
25 to communicate a ten-year written plea offer?

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BY THE COURT

1 MR. FALK: Yes, your Honor.

2 THE COURT: What are the other grounds?

3 MR. FALK: They're more substantial as far as
4 ineffective assistance of counsel.

5 THE COURT: Okay. Are they --

6 MR. FALK: But I will -- I was going to read them.

7 THE COURT: Okay. Go ahead. Sorry. I like to
8 have them before we start to look at them. Do you have
9 a copy of that?

10 MR. FALK: Yes, your Honor. Yeah, I do, because -
11 - I have one here.

12 THE COURT: Okay. I'm sorry to interrupt you. Go
13 ahead.

14 MR. FALK: So we have the issue regarding the
15 failure to communicate a plea. And in addition -- and
16 we're not waiving that claim, but in addition to --
17 we're adding additional claims. One is that trial
18 counsel -- excuse me -- trial counsel failed to object
19 to hearsay statements regarding conversations that the
20 State's witnesses had with the victim. So these are --
21 and I've -- the amended PCR actually cites to the page
22 in the record of appeal. One was a statement by
23 Corporal -- I guess they're both on re-direct --
24 Corporal Seronka's statements. Trial counsel failed to
25 object when the State sought to elicit negative

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1 testimony regarding the defendant's character, and that
2 occurred -- and that is testimony from Reah Gonsalves.
3 And I'll bring that up in more specificity.

4 And trial counsel failed to request a jury charge
5 on alibi. And it would appear that, if you read the
6 record on appeal, and if you look at the defense, or the
7 arguments made in closing argument, it seems as though
8 trial counsel made the arguments for alibi, but there
9 was no request for a charge on alibi.

10 THE COURT: All right. So you're ready to proceed?

11 MR. FALK: Mr. Brabham, I asked him to take the
12 stand, and he's going to address his -- the issue as far
13 as the failure to communicate a plea.

14 THE COURT: Go ahead and swear the witness, please.

15 MADAM CLERK: If you would place your left hand on
16 the Bible and raise your right as best you can. Do you
17 solemnly swear or affirm to truthfully answer all
18 questions asked of you by this court, so help you God?

19 APPLICANT BRABHAM: I do.

20 MADAM CLERK: Thank you.

21 APPLICANT MALCOLM BRABHAM, DIRECT

22 EXAMINATION BY MR. FALK:

23 Q. Could you state your name for the record, please.

24 A. Malcolm Maurice Brabham.

25 Q. Okay. And Mr. Brabham, who represented you at your

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1 trial?

2 A. Ms. Campbell.

3 Q. Okay. And was she retained, or was she with the
4 Public Defender's Office?

5 A. She was a public defender.

6 Q. Okay. And how many times had she talked with you
7 prior to this case going to trial?

8 A. Maybe three. In person, maybe three.

9 Q. And in person. Were there other communication
10 between you and her?

11 A. Yeah. It was -- the first time I ever met Ms.
12 Campbell, I got -- I caught this charge in July of 2013.
13 August, September, October. Somewhere October,
14 September, was my first time seeing her.

15 Q. Um-hmm.

16 A. You want me to go ahead, or?

17 Q. Yeah. Please.

18 A. Want me to get into it?

19 Q. Please do.

20 A. When I met her that day, she came and she made a
21 introduction, like, I'm Ms. Campbell, such and such, I'm
22 your lawyer. She -- at that time, she had a plea
23 agreement in her hand at that time. I had --

24 THE COURT: She had what, please?

25 A. A plea agreement.

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1 THE COURT: Plea agreement. Okay.

2 BY MR. FALK:

3 A. And --

4 Q. And what was your understanding of the plea
5 agreement?

6 A. I mean, this was my first time ever looking at
7 prison time, so when I looked down at the plea, I -- of
8 course, I was like, they want me to take ten years? And
9 so, she was like, Malcolm, just take it easy. You know
10 what I'm saying? Just let me explain to you what's
11 going on. And at that time, that's when Ms. Campbell
12 said, okay, the plea is for assault and battery, high
13 and aggravated nature. She said, I'm going to explain
14 it to you. She said, okay, ABHAN is your twenty-year
15 charge -- your charge -- they're charging you with
16 attempted murder, which is thirty years. ABHAN is a
17 twenty-year charge. Assault and battery first is a ten-
18 year charge. Assault and battery second, that's zero to
19 three. And so, I was like, oh, okay. And she said --
20 once she said assault and battery second, she circled
21 that. She said, okay, this is what I'm going to try to
22 -- this is the plea that I'm going to try to get you.
23 So I said, so we're not taking this plea? She said, no,
24 we're not taking that plea. She said that -- she said
25 everything was going to be okay. She said, this is just

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1 a sign of a weakness in the prosecution's case. That's
2 word-for-word. This my life; I never forget it. And
3 so, once she said that, I felt relieved. I went back to
4 A-1 just like -- feeling like I had a false sense of
5 hope, like I'd be all right. You know what I'm saying?
6 So next time I seen her, I'm like -- oh, it was
7 bond court. Like, I was calling her, asking her about
8 my bond, because nobody had signed my bond, and I was
9 calling her constantly. The next time I saw her in
10 person, they woke me up one morning and was like, okay,
11 you got court. So I'm thinking okay, I'm going to get
12 another bond. And at this time I was in a holding cell.
13 She saw everybody. And once she got to me, she came to
14 me and said, Malcolm -- mind you, this was months later.
15 She said Malcolm, they want you to take the ten-year
16 plea today. So I said, I thought -- I thought we wasn't
17 going to take this plea. She said, well, apparently,
18 they seem to think that the case is a slam dunk. You
19 know what I'm saying? So I'm like, well, you my lawyer;
20 what you think? And so, when I asked her that, she was
21 like, well, as your lawyer I can't tell you what to do.
22 She said I -- she said, I can't tell you what to do, but
23 my advice to you would be to wait until the gunshot
24 residue tests come back; and if it's negative -- she
25 said, if it's positive, take the plea; if it's negative,

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1 we going to trial.

2 The problem with the whole situation is, I told her
3 right there, like, I know the test is negative. So just
4 like I told her right then, two weeks later she came
5 back like, okay, the result is back; the test is
6 negative; we going to trial.

7 Q. So the gunshot residue test was negative.

8 A. Yeah, the gunshot residue test was negative. The
9 whole problem with this whole situation was that Ms.
10 Campbell, I got -- I got -- she never explained to me
11 that the ten -- when she came to me that day, talking
12 about they want you to take the ten years today, at that
13 -- at that moment right there, she was supposed to tell
14 me it's a difference between this ten-year plea that I
15 brought to you the first time, versus what I'm coming to
16 you with today.

17 Q. Because you filled out an application for PCR
18 relief, and there was a memorandum that you attached to
19 it.

20 A. Uh-huh.

21 Q. And in your memorandum, you talk -- you discuss the
22 fact that, shortly after applicant's arrival at the
23 South Carolina Department of Corrections, Applicant
24 learned that he could obtain his discovery materials;
25 got your discovery materials; and that you discovered

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- 1 that a favorable, formal, written plea offer of ten
2 years had been offered to him by the State, a plea that
3 Applicant would have taken, had trial counsel discussed
4 the State's plea offer. Is that correct?
- 5 A. Yeah, that's correct.
- 6 Q. All right. So what -- what was -- where did she
7 fail to discuss? What did she need to discuss with you?
- 8 A. She never told me that the ten-year plea that was
9 -- that I saw on paper was assault and battery high and
10 aggravated nature. That's a ten-year violent -- that's
11 ten years/eighty-five. This is common sense. Had she
12 told me, Malcolm, the State has a plea for assault and
13 battery first, which is a ten-year, non-violent plea,
14 there's no way I would've walked -- there's no way I
15 would've went back to the dorm. That's five years.
- 16 Q. Okay. So that's -- so what you're saying is, there
17 were ten-year offers made, but the first time you got a
18 ten-year offer, it was to ABHAN, which is eighty-five
19 percent time. And then, you got a -- and then,
20 apparently, there was a plea offer to assault and
21 battery first, but you weren't aware that that's what it
22 was.
- 23 A. Yeah. I -- yeah, I was never aware of that. It
24 was two -- it's two, ten-year pleas. But I'm under the
25 impression of there's only one, ten-year plea, because I

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1 only seen one, ten-year plea on paper. When I came here
2 from A-1, down here to the holding cell right down the
3 hall, she said they want you to take the ten years
4 today. I'm only under the impression that there's one,
5 ten-year plea. I don't know that it's an assault and
6 battery first, ten-year, non-violent plea. I'm not the
7 smartest man in the world, but I know five years versus
8 risking my life with thirty.

9 Q. Um-hmm.

10 A. You know what I'm saying. That's -- that's --
11 that's just crazy. And -- and -- and what even makes it
12 worse is that me and -- me and the victim of this crime,
13 this is not our first time getting in trouble with each
14 other. So the record will reflect from the past
15 situations that, if the State offers me a favorable
16 plea, it's a chance that I'm going to take that plea to
17 lesser my consequences. You feel me?

18 Q. Um-hmm.

19 A. There's no way that I would risked my life on
20 trial, go days without eating. It's stressful. You
21 know what I'm saying? I'm leaving my family, everybody.
22 So there's no way that I would -- my -- my mom is right
23 back there. If she would've told me right then,
24 Malcolm, that's five years, take it, just take the plea,
25 she wouldn't even have to tell me that. I would've went

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1 right, like, man, I'm gone. You know what I'm saying.
2 But it's no way, like, I was still under the impression,
3 like, okay, Ms. Campbell told me not to take this plea
4 the first time because there was a weakness in the
5 prosecution's case. Okay. Why is she telling me to
6 take this now. That's why I asked her, you are my
7 lawyer, what do you think I should do. You know what
8 I'm saying? She said wait -- the plea expired. I
9 skipped that plea -- I skipped that part. The plea
10 expired before the -- the plea expired before I was
11 aware that the gunshot residue test was back. So. even
12 if the gun -- even if the gunshot residue --

13 Q. Just so the record's clear, which plea expired?
14 The ABHAN, the eighty-five percent plea; or the assault
15 and battery first plea?

16 A. The assault and battery first plea. I didn't even
17 find out about that until I was at Lieber. I was
18 working for ground maintenance. I wrote -- I wrote this
19 letter right here. I got this back from Beaufort
20 County, right here on the front. I got a plea paper
21 here. This is the only copy of the plea that I have
22 here. I don't know why I don't have the assault and
23 battery high and aggravated nature, I don't know why I
24 don't have a copy of that in here, when I -- when I
25 wrote them for, but this is what they sent me back.

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1 I'm at work when I get this motion. I'm going
2 through it. And can you imagine just being sentenced to
3 twenty years, and you sitting down, going through a
4 motion, and just see, like, what the -- what --

5 Q. Let me back up. When you said you just found out
6 about it, what did you just find out about?

7 A. I just found out that it was a plea for assault and
8 battery first.

9 Q. I see. So it's not that when you were in jail -- I
10 mean, when you were in the holding cell, right before
11 your trial was about to start --

12 A. Um-hmm.

13 Q. -- that you didn't know the difference in the --
14 you're saying you thought she was talking about the same
15 ten-year plea?

16 A. Yeah. I didn't --

17 Q. For ABHAN. You really had no idea it was a plea to
18 --

19 A. I never knew that it was a --

20 COURT REPORTER: I'm sorry. I'm sorry. You never
21 had any idea, what?

22 Q. So you had no idea you got a plea to assault and
23 battery first?

24 A. No, no. That's -- once I saw that, once I got this
25 motion back, I got this motion back before I got my

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1 transcript.

2 MR. FALK: Okay.

3 A. But once I got my trial transcripts back, and I
4 was, you know, you read those constantly when you just
5 want --

6 Q. And is the plea offer in that pile of papers?

7 A. Yeah, it was the plea offer.

8 Q. Could you pull it out. Okay. What's the date on
9 it?

10 A. The date on it is April 8, 2014.

11 MR. FALK: Your Honor, may I approach the witness?

12 THE COURT: Yes, sir.

13 MR. FALK: Your Honor, I would like to mark this
14 and make this the second [sic] exhibit.

15 THE COURT: Okay. Any objections?

16 MR. MITCHELL: Your Honor, I'm just concerned about
17 the authenticity of the actual record itself.

18 THE COURT: Say that again.

19 MR. MITCHELL: The authenticity of the actual
20 record. If it was actually sent --

21 THE COURT: All right. Would you go lay some
22 foundation to authenticate that, please.

23 MR. FALK: I think I would have to call Ms.
24 Campbell to lay the foundation.

25 THE COURT: Okay. All right

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1 MR. FALK: So I'll have it as just an exhibit,
2 without making it a part of the record at this time.

3 THE COURT: Well, I will let him to testify about
4 it subject to him being stricken from the record,
5 because, until it's authenticated, it's not in evidence.

6 MR. FALK: Okay.

7 THE COURT: I mean, that's where we are.

8 BY MR. FALK:

9 A. You want to know if it's real or not?

10 Q. Hold onto that. So you had -- do you have any
11 recollection when the plea offer was to expire?

12 A. April 8, 2014.

13 Q. When did your trial start?

14 A. My trial started April 21, 2014.

15 Q. Okay. And have you ever -- when was the first time
16 you saw any communi -- any written communication about
17 an offer, other than the ABHAN?

18 A. No.

19 Q. When was the first time you got your --

20 A. The first time was when I wrote -- when I wrote the
21 Clerk of Court for a motion to just -- for a Rule 5.

22 Q. And when do you think you got that information?

23 A. I got that when -- I can tell you exactly when I
24 got it. It was July 30th of 2014.

25 Q. Okay.

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1 A. When I -- when I found out about this right here.

2 MR. FALK: Your Honor, I believe I have no further
3 questions for this witness.

4 THE COURT: Okay. Cross-examination.

5 MR. MITCHELL: Thank you, your Honor. May it
6 please the Court?

7 APPLICANT MALCOLM BRABHAM, CROSS-

8 EXAMINATION BY MR. MITCHELL:

9 Q. Good morning. How are you? Good morning, Mr.
10 Brabham. How are you?

11 A. Good morning. How you doing?

12 Q. Good. Let me ask you a few questions. How many
13 times did you meet with Ms. Campbell, again?

14 A. In person, I know -- I'm just talking strictly --
15 strictly, like, considering this case, not my bonds, I
16 would say, like, three times.

17 Q. Okay. And so, I just want to make sure that the
18 testimony is correct. You said that there were two plea
19 offers that were extended to you?

20 A. It was one plea offer -- she came twice. There was
21 one plea offer. There was only a ten-year plea. It was
22 never -- she never differentiated, like, this is this
23 plea, this is that plea. She never did that.

24 Q. Okay.

25 A. So.

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1 Q. So, with regards to the first plea, did you reject
2 that plea offer?

3 A. Yeah. She -- she said -- she told me that we
4 weren't taking it.

5 Q. Okay. So she rejected it or you rejected it?

6 A. I just answered you. I just told you that she told
7 me we weren't taking it.

8 Q. Okay. So she had made up her mind for you.

9 A. She made up her mind for me?

10 Q. Yeah. Is that -- I'm asking you because --

11 A. How could she make up her mind up for me.

12 COURT REPORTER: I'm sorry. What was your answer?

13 A. How could she make her mind up for me?

14 THE COURT: Just one second. Listen to his
15 question. If you don't understand it, ask him to
16 rephrase it.

17 A. Can you repeat the question.

18 THE COURT: No, sir. No, sir. Let him ask the
19 question; answer the question. Okay? Ask the question
20 again.

21 MR. MITCHELL: Thank you, your Honor.

22 BY MR. MITCHELL:

23 Q. So the question is, did you reject the plea offer?

24 A. No. She reject -- she rejected the plea offer for
25 me. She told me that we weren't taking the plea deal,

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1 so, if you -- I don't know how to --

2 THE COURT: Well, I think that he's answered that
3 the same way, so.

4 MR. MITCHELL: I'll move on, Judge.

5 THE COURT: Okay.

6 BY MR. MITCHELL:

7 Q. In regards to discovery and the evidence in the
8 case, did Ms. Campbell go over the discovery with you?

9 A. No. I don't remember going over this motion of
10 discovery with Ms. Campbell. When I got -- when I
11 received the motion of discovery, the only time that I
12 went over that was in my cell, man. We couldn't even go
13 to the li -- we can't even go to the library in Beaufort
14 County.

15 Q. Okay.

16 A. Everybody knew that.

17 Q. Let me ask you this. Prior to going to trial, did
18 you discuss with her about witnesses that you wanted to
19 call, or what type of defense that you wanted to pursue
20 in trial?

21 A. Oh, I -- I definitely talked about witnesses. None
22 were ever called, though.

23 Q. What names did you give her?

24 A. In my defense. I don't have a list of them. I
25 don't have a list of those names.

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1 Q. Okay. Do you remember at trial you telling the
2 judge -- well, I guess I should say, did you ever talk
3 to her about testifying at trial?

4 A. I asked her about it, like, she told me that she
5 didn't think it was in my best interests, all right.

6 Q. So was that her decision for you not to testify to
7 the jurors?

8 A. That -- that was just a question she asked me,
9 like, I mean, the -- I don't think it's in your -- that
10 was the recommendation she gave me, like, I don't think
11 it's in your best interests to testify because they can
12 use your criminal history against you. That was advice
13 from my attorney.

14 MR. MITCHELL: That's all the questions that I have
15 for this witness.

16 THE COURT: Any re-direct?

17 MR. FALK: No, your Honor.

18 THE COURT: Thank you, sir. You may step down.
19 Call your next witness.

20 MR. FALK: We'll call trial counsel to the stand.

21 MADAM CLERK: Do you solemnly swear or affirm to
22 truthfully answer all questions asked of you by this
23 court, so help you God?

24 TRASI CAMPBELL: I do.

25 MADAM CLERK: Thank you.

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TRASI CAMPBELL - DX - FALK

1 TRASI CAMPBELL, DIRECT

2 EXAMINATION BY MR. FALK:

3 Q. Would you please state your name.

4 A. Good morning. My name is Trasi Campbell. And
5 that's spelled T/r/a/s/i; Campbell, C/a/m/p/b/e/l/l.

6 MR. FALK: Your Honor, may I approach?

7 THE COURT: Yes, sir.

8 BY MR. FALK:

9 Q. I'm going to show you an offer letter that my
10 client was testifying to. Do you recall ever seeing
11 that?

12 A. This appears to be a copy of an offer that was in
13 Mr. Brabham's file with my office. And I believe that
14 this was sent to him. I have a copy as well, in my
15 possession.

16 Q. Okay. So you would confirm that he was given an
17 offer for ten years on assault and battery first. Is
18 that correct?

19 A. I would confirm for you that, that is what the
20 paperwork says. However, the emails that were exchanged
21 with the prosecutor, she indicated that her offer was
22 for ABHAN, and not assault and battery first. So all I
23 can testify truthfully to on that is that she was saying
24 it was for ABHAN, but her paperwork was saying A and B
25 first. And she and I communicated about that

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TRASI CAMPBELL - DX - FALK

1 discrepancy. So, in answer to this particular issue,
2 that's all the information I have.

3 Q. When did you communicate about the discrepancy?

4 A. The email exchange took place on April 7th,
5 throughout the day.

6 Q. And can you highlight, or can you tell me some
7 parts of the email exchange, or what was precisely said
8 about the discrepancy?

9 A. So there was a discussion about probation or split
10 sentences, and my questioning about A and B first. And
11 then, I said back to her, well -- when she talked about
12 the ABHAN -- I said, well, he turned that down, we can
13 put it on the record tomorrow if you want to. We must
14 have been having court and thought it was wise to put it
15 on the record. And then, the last thing that she said
16 to me, well, my offer was for ABHAN, not A and B first.
17 So.

18 Q. But do you recall seeing that piece of paper?

19 A. I do. Sure.

20 Q. Okay. Your Honor, we would make that an exhibit to
21 our hearing.

22 THE COURT: It's admitted. That would be State
23 Number 1. I mean, Applicant Number 1.

24 ITEM IDENTIFIED AS PLEA OFFER

25 MARKED APPLICANT'S EXHIBIT NUMBER 1

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TRASI CAMPBELL - DX - FALK

1 ADMITTED AS EVIDENCE.

2 BY MR. FALK:

3 Q. Do you have a copy of the record on appeal up
4 there?

5 A. I do.

6 Q. Could you look at about Page 131, where it's your
7 -- where the State has Corporal Seronka on direct
8 examination.

9 A. Yes, sir.

10 Q. And if you'd look on Page 131, could you sort of
11 summarize what Dr. -- I mean Corporal Seronka was
12 talking about when he talks -- look on Line 11, on Page
13 -- again, I'm doing cites from the record on appeal,
14 which is 131.

15 THE COURT: And that's the number at the top of the
16 record of appeal?

17 MR. FALK: The record of appeal cite, Page, yes,
18 131 on the record of appeal.

19 BY MR. FALK:

20 Q. If you could look through Lines 11 through 17.
21 What does -- can you just sort of summarize what the
22 Corporal is referring to?

23 A. It appears that Corporal Seronka was sort of a
24 first arrival on the scene, and he was describing the
25 person that he found who had been shot in the chest.

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TRASI CAMPBELL - DX - FALK

1 Q. Okay. So he's talking to the victim. And if you
2 would then look on Page 132 on the record of appeal,
3 Lines 4 through 11.

4 A. Yes. This is when Corporal Seronka, in responding
5 to the gunshot wound, is obtaining information from the
6 person who's been shot, Mr. Mitchell, as to who shot
7 him.

8 Q. And would you agree that, if it's the victim
9 testifying to that, that that was a hearsay statement?

10 A. Not necessarily.

11 Q. Okay. What would -- so where, at the question, you
12 were able -- on Line 4, on Page 132 -- when you
13 responded to this incident, you were able to obtain the
14 identity of the offender, the alleged suspect in this
15 case. And his response was -- I believe he stated it
16 was his brother-in-law.

17 A. That's correct.

18 Q. So do you think that the statement of identifying
19 my client as the suspect in this case was not offered
20 for the truth of the matter asserted?

21 A. I think that, when the officer was testifying about
22 the identity of the person that they needed to be
23 looking for, no. I do not think that it was a hearsay
24 statement. And at that point, as far as our defense was
25 concerned, I did not object.

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TRASI CAMPBELL - DX - FALK

1 Q. Then, if you could go on to Page 136 on the record
2 of appeal. Let me withdraw that. Let me move on to --
3 let me move on to Page 232 on the record of appeal.

4 A. Yes, sir.

5 Q. Who -- what -- where does Rhea Gonsal -- in your
6 recollection, Rhea Gonsalves, how does she fit into this
7 case?

8 A. Well, Rhea originally gave what I consider to be
9 evidence that could've put Mr. Brabham somewhere else at
10 the time Mr. Mitchell is making the accusation that
11 Malcolm had shot him in the chest. But when she
12 testified at trial, she did not testify accordingly.
13 She placed Malcolm with her about forty-five minutes
14 after the shooting occurred. It was unfortunate that
15 she changed her version, and I challenged her on that,
16 on cross-examination, but she didn't budge. And so, her
17 sworn testimony at trial was that he was not with her at
18 the time that Mr. Mitchell had been shot in the chest,
19 which was unfortunate for -- for Malcolm.

20 Q. So she was a -- so she was a fact witness, and she
21 was an acquaintance of both Mr. Mitchell and Mr.
22 Brabham?

23 A. Family.

24 Q. Okay. What was the family relationship?

25 A. I want to say sister, perhaps, to Mr. Mitchell.

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TRASI CAMPBELL - DX - FALK

1 I'm not really sure. I can look it up in my notes. And
2 then, there was a romantic situation with Mr. Brabham.
3 He was in and out of that home. There were prior
4 difficulties between the three parties over criminal
5 domestic violence, multiple ways. But that's -- that's
6 what she testified to.

7 Q. Okay. Now, if you would go to Page 232 on the
8 record on appeal, and skip down to Line 17. On direct
9 examination, she was asked: do you consider Malcolm
10 Brabham a trustworthy person.

11 A. That is correct.

12 Q. At this point in the trial, had Mr. Brabham taken
13 the stand?

14 A. He had not.

15 Q. So he certainly hadn't put his character into
16 evidence in this case, had he?

17 A. That is correct.

18 Q. Did you consider objecting to that question?

19 A. No.

20 Q. Was that a trial strategy decision not to object?

21 A. When she answered, I really don't know, I really
22 don't mean, I think that part of my strategy was to go
23 after her on cross-examination, which I did; and cross-
24 examine her and discredit her, so that any of her
25 responses to the State would be questionable, which we

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TRASI CAMPBELL - DX - FALK

1 tried to do.

2 Q. Okay.

3 A. Again, she contradicted herself, multiple times.

4 Q. Did you consid -- did you ask for a charge on
5 alibi?

6 A. No, I did not.

7 Q. Was that a trial decision not to ask for the
8 charge?

9 A. I didn't have an alibi for him. There was no one
10 that could testify, or did testify, that they were with
11 him, or knew, you know, about his location at the time
12 that Mr. Mitchell, you know, was shot in the chest. I
13 tried, you know, again, in closing, and argued some
14 things like that, but we were not in a position to get a
15 charge on it.

16 Q. Because you would agree -- if you would look at
17 Page -- record on appeal, Page 333.

18 A. Yes, sir.

19 Q. And Lines 9 through 17.

20 A. Yes, sir.

21 Q. So you were arguing, in effect, for alibi, were you
22 not?

23 A. I was definitely arguing to the jury, hopeful,
24 that, despite the fact we didn't have the evidence to
25 get a charge on alibi, that perhaps they -- they might

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TRASI CAMPBELL - DX - FALK

- 1 heed my argument. But, however, they did not.
- 2 Q. And your reason not to ask for alibi was?
- 3 A. Again, I --
- 4 Q. An alibi charge.
- 5 A. I did not have in the record any testimony that
- 6 placed Malcolm, you know, somewhere other than, you
- 7 know, at the location where Mr. Mitchell was shot in the
- 8 chest. And that -- without that evidence, there was no
- 9 basis to request the alibi charge.
- 10 Q. And as --
- 11 A. In my opinion.
- 12 Q. And as far as that exhibit, my exhibit, did you
- 13 ever communicate that offer to Mr. Brabham?
- 14 A. I communicated with Mr. Brabham about plea offers
- 15 in this case. Yes. The specifics of the plea offers,
- 16 as far as I can recall, were for ABHAN. I can assure
- 17 you, again, if he had been offered anything better than
- 18 that, it would've been communicated to him. It would
- 19 not be my practice to withhold a plea offer from a
- 20 client.
- 21 Q. Okay.
- 22 A. Thank you.
- 23 Q. So that offer is for assault and battery first.
- 24 A. That is what the paperwork says, correct.
- 25 Q. And do you have any reason to believe that you did

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TRASI CAMPBELL - CX - MITCHELL

1 not receive that piece of paper?

2 A. Did I receive it?

3 Q. Yes.

4 A. I definitely received this.

5 Q. Okay.

6 A. I'm not sure the manner in which I received it, but
7 again, as I said, when I reviewed the notes in the file
8 and the email exchange with the specific prosecutor
9 about exactly what the plea offer was, she maintained
10 that the plea offer was for ABHAN. And she was not
11 offering A and B first. So again, if I had gotten this,
12 I would've discussed assault and battery first, but it
13 may have been to no avail since it appears that the
14 prosecutor was set on ABHAN.

15 MR. FALK: I have no further questions.

16 THE COURT: Cross-examination.

17 MR. MITCHELL: Thank you, your Honor. May it
18 please the Court?

19 THE COURT: Yes, sir.

20 TRASI CAMPBELL, CROSS-

21 EXAMINATION, BY MR. MITCHELL:

22 Q. Good morning, Ms. Campbell. How are you?

23 A. I'm well, thank you.

24 Q. Good. How long have you practiced law here in
25 South Carolina?

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1 A. Let's see. I was admitted into South Carolina Bar
2 in 1990.

3 Q. And how much of that time has been devoted to
4 criminal law?

5 A. My entire career.

6 Q. Your entire career. Okay. And you work for the
7 Public Defender's Office, so it's fair to say that you
8 were appointed to this case. Is that correct?

9 A. That is correct.

10 Q. Could you tell me a little bit about the facts of
11 how the --

12 A. Well, the -- Mr. Chadwick Mitchell had been shot in
13 the chest, and down -- sort of a dark, dark road. And
14 apparently, he had been, you know, the allegations were,
15 riding in the car with Mr. Brabham and this other
16 person, the young woman. And that, according to Mr.
17 Mitchell, unprovoked, Mr. Brabham shot him in the chest
18 outside the car; and then he managed to crawl, somehow,
19 to a house and, I don't know, got them to phone 911.
20 The cops came out, and then they commenced to looking
21 for Mr. Brabham, and found him, arrested him. And then,
22 of course, the case moved on from there. And then, I
23 began to work with Mr. Brabham, and trying to get some
24 sort of time line for where he was during those -- those
25 hours, you know. And then, preparing his case and

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TRASI CAMPBELL - CX - MITCHELL

1 reviewing the evidence, we certainly did our best to get
2 a time line, but a lot of the -- there are a lot of
3 times that are unaccounted for.

4 Q. So is it fair to say that the two parties who
5 actually witnessed that shooting were the defendant and
6 the victim in this case, correct?

7 A. Yes. And then -- and then, of course, there was
8 this -- this woman in the car.

9 Q. Yes.

10 A. Yeah.

11 Q. But she couldn't testify to anything in regards to
12 the shooting, correct?

13 A. No. No. She just sort of put Malcolm there.

14 Q. Okay. Is it fair to say that you met with Mr.
15 Brabham a number of times to discuss the issues in the
16 case?

17 A. Malcolm and I met, yes, at the Detention Center;
18 and then, of course, at court, and went over his case.

19 Q. So let's just deal with this first issue in regards
20 to relaying the plea offer.

21 A. Okay.

22 Q. So there was an initial plea offer for ten years,
23 for ABHAN, correct?

24 A. I believe that's correct, yes.

25 Q. Did Mr. Brabham reject that plea offer?

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1 A. Yes, he did.

2 Q. Okay. And I heard you talk with Mr. Falk a few
3 moments ago about a second potential plea offer. To
4 your recollection, was there ever a second plea offer
5 for ten years for assault and battery?

6 A. Not to my recollection. But as I said, you know,
7 before, if -- if I had this piece of paper, I would have
8 communicated it with him. You know, I wouldn't hold
9 back on a -- on a plea offer that was communicated.

10 Q. Let me ask you this. You've been practicing since,
11 I think you said, 1990.

12 A. Um-hmm. Correct.

13 Q. Some odd twenty-some years.

14 A. Um-hmm.

15 Q. Has there ever been any mistakes by the Solicitor's
16 Office in terms of putting the wrong charge on a plea
17 offer before?

18 A. I have -- I have seen, you know, inconsistencies in
19 the State's, yes, by the solicitors in sentencing sheets
20 and plea offers, yes.

21 Q. But you have an email from the solicitor saying
22 that her offer is and always has been ABHAN, correct?

23 A. That's what she appears to say.

24 Q. Okay. What type of investigation did you do in
25 this case? Did Malcolm give you part -- did the

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TRASI CAMPBELL - CX - MITCHELL

1 applicant give you any witnesses at all, or any
2 potential witnesses that you could call for him?

3 A. We did. We went through the whole, you know, where
4 were you, who were you with, and tracked down as many
5 links as we could, to the best of our ability. Things
6 like -- there was a period of time, in my notes here
7 where he had been on Lady' Island with someone only
8 known as the bootlegger. And then, we tried to pin down
9 the times that he was there. And my investigator, you
10 know, went out and tried to find whoever the bootlegger
11 was. Things like that were done, yes.

12 Q. You. Let me ask you this. Mr. Falk asked you
13 about this -- this Rhea Gonsalves.

14 A. Yes, Rhea. Um-hmm.

15 Q. And she testified at the actual hearing, and he
16 asked you about not objecting to a comment that she
17 made.

18 A. Um-hmm.

19 Q. I believe your response was that you got a chance
20 to cross-examine her, correct?

21 A. That is correct.

22 Q. Okay. So any inconsistencies or statements that
23 she may have made, you would have exploited that on
24 cross-examination?

25 A. Yes. And I -- and again, I mean, she -- I have to

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1 say, it was quite shocking that she testified
2 differently than she had originally reported. I mean,
3 that was critical for Malcolm that she maintained, you
4 know, the time that she had told law enforcement that he
5 was there. But she didn't. And her testimony, as it
6 stood at trial, you know, under oath, is what we were
7 stuck with.

8 Q. Okay. And let me ask you this. You also heard him
9 make the accusation that you didn't object to one of the
10 Corporal's statements, and didn't object to it being
11 hearsay.

12 A. Right.

13 Q. But isn't it true that the victim testified in the
14 actual case?

15 A. Oh, sure.

16 Q. And he essentially told the jury that, I told the
17 officer this guy was my brother-in-law who shot me.

18 A. My brother-in-law, right.

19 Q. Okay. So essentially, it came in that way as well,
20 too.

21 A. Most definitely.

22 Q. Okay. Let me ask you this. I heard you talk with
23 Mr. Falk about an alibi defense.

24 A. Um-hmm.

25 Q. Did you ever have any witnesses to call, to present

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TRASI CAMPBELL - CX - MITCHELL

1 a valid alibi defense?

2 A. Rhea certainly was the foundational level of that.
3 And -- and -- and we had sort of, I don't want to say
4 banked on it, but it was certainly a critical piece of
5 that alibi. And it -- again, it's unfortunate for
6 Malcolm that she did not maintain the position that he
7 was with her when -- when, you know, Mr. Mitchell was
8 getting shot in the chest.

9 Q. And then, let me ask you this. I know it's
10 probably a hypothetical question, but --

11 A. Um-hmm.

12 Q. -- if you had, during the charge conference to the
13 judge, inquired about an alibi defense, what do you
14 think the likelihood of the judge granting that --

15 THE COURT: That's speculation. Move forward.

16 BY MR. MITCHELL:

17 Q. I guess, let me ask you this. If Mr. Falk asked
18 you about arguing alibi in the actual closing --

19 A. Um-hmm.

20 Q. -- but closing arguments aren't evidence presented
21 to a jury, they're just arguments, correct?

22 A. That's correct.

23 Q. Okay.

24 MR. MITCHELL: Judge, that's all the questions I
25 have for the witness.

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TRASI CAMPBELL - RDX - FALK

1 THE COURT: Thank you, sir. Re-direct?

2 MR. FALK: Yes, your Honor.

3 TRASI CAMPBELL, RE-DIRECT

4 EXAMINATION, BY MR. FALK:

5 Q. If you -- would you please look at Page 323?

6 THE COURT: What is that? What page, again?

7 MR. FALK: Page 371, on the record on appeal.

8 BY MR. FALK:

9 Q. And look at Lines 15 through 21.

10 A. Yes, sir.

11 Q. But as maybe more as a preference, did you -- you
12 heard Mr. Brabham testify that he said that you sort of
13 made up the decision for him that was going to reject
14 that first ten-year offer. Is that correct? That's
15 what he testified to?

16 A. Yeah, I believe that is what he testified to.

17 Q. But did you make any recommendation on that first
18 ten-year offer the first time you received it?

19 A. What I can tell you is, is that I would not have
20 told Malcolm, Mr. Brabham, or any other client what to
21 do; that it is ultimately and finally their choice. I
22 can only advise them about the strengths and the
23 weaknesses of the State's case, the strengths and
24 weaknesses of any criminal record, and any witnesses
25 that we might put up, you know, for a defense; and

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TRASI CAMPBELL - RDX - FALK

1 advise them about the penalties, and then the
2 ramifications of a particular plea. But I would never,
3 and could never, tell someone you've got to take this
4 plea or you've got to reject this plea.

5 Q. But in that section where you were talking to the
6 sentencing judge, after the verdict and prior to
7 sentencing, what plea offer were you talking about on
8 Lines 18 through 21 that was too good to pass up?

9 THE COURT: This is on Page 371?

10 MR. FALK: This is on Page 371.

11 BY MR. FALK:

12 A. You know, I'm reading what you're saying, and I
13 don't know what that means, because he didn't take a
14 plea. So perhaps it's not correct or reflective of what
15 was actually said, because Mr. Brabham did not take a
16 plea. It says, and he took the plea. But of course, we
17 were at trial, so he did not. I'm not sure what that
18 inconsistency is.

19 Q. Do you think he -- do you think he got an offer
20 that was too good to pass up? That part of the
21 sentence.

22 A. I would -- again, I would say that, looking at what
23 he was facing, ABHAN was a pretty good plea offer. But
24 again, it doesn't make sense be -- what is said, because
25 it says, and he took the plea. So I'm not really sure

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TRASI CAMPBELL - RDX - FALK

1 what that means.

2 Q. Then, if you could move on to Page 372. Lines 14
3 through 17; or 14 through 18.

4 A. Yes.

5 Q. What were you talking about there?

6 A. I was talking about this document right here, which
7 is the piece of paper where the State offered, in
8 writing, assault and battery in the first degree. If
9 the -- if the State had wanted to correct me, then they
10 could have, should have. But I felt that it was
11 important for the Court to know that I had received a
12 plea offer for ten years, and what I believed the plea
13 offer to be.

14 Q. Okay.

15 A. In fashioning a sentence, considering what the
16 State thought was appropriate.

17 Q. So I mean, that -- because I think your testimony
18 before was that, well, if I received it, I received it;
19 or I -- but you acknowledge having received an offer for
20 assault and battery first degree.

21 A. Yes, I did.

22 Q. Okay.

23 A. It's in the file.

24 Q. And whether it's in that file -- and certainly,
25 that's also the assault and battery first degree is what

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1 you were referring to in that paragraph there.

2 A. Correct.

3 MR. FALK: I have no further questions.

4 THE COURT: All right.

5 MR. MITCHELL: Nothing else, your Honor.

6 TRASI CAMPBELL

7 EXAMINATION BY THE COURT:

8 THE COURT: All right. Let me ask, let me clarify.

9 A. Yes, sir.

10 THE COURT: You had assault and battery of high and
11 aggravated nature that you relayed to the applicant in
12 this case, sounds around the first meeting. And I'm
13 confused. You -- I thought you testified earlier that
14 there was an email chain between you and the solicitor
15 in this case, or deputy solicitor, that said my offer is
16 ABHAN; it's not assault and battery first.

17 A. That is what happened. A part --

18 THE COURT: And that came some days before trial?

19 A. Correct.

20 THE COURT: So it was before trial.

21 A. Yes.

22 THE COURT: So was the assault and battery -- when
23 was that assault and battery first offer communicated
24 with you?

25 A. Your Honor, I don't see a date on the document

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TRASI CAMPBELL - RRDY - FALK

1 itself. I just see that it expires April 8, 2014. And
2 in the email exchange about that offer, the only date on
3 there is April 7th, with the prosecutor.

4 THE COURT: So the email -- the correction from her
5 came the day before that offer, and then it --

6 A. Would have expired, correct.

7 THE COURT: Before it expired. Excuse me. Okay.

8 A. Yes.

9 THE COURT: Did you ever relay that assault and
10 battery first offer to Mr. Brabham?

11 A. Again, I did, to the best of my memory, convey all
12 plea offers as I perceived them to be, your Honor.

13 THE COURT: Right.

14 A. In this case, to Mr. Brabham, as I received them
15 from the State at the time.

16 THE COURT: All right. Thank you so much. Any
17 additional questions anybody have?

18 TRASI CAMPBELL, RE-RE-DIRECT

19 EXAMINATION BY MR. FALK:

20 Q. Now I'm confused. With -- so are you saying that
21 you didn't convey assault and battery first because you
22 didn't think it was accurate?

23 THE COURT: She said she conveyed all offers.

24 A. Right.

25 THE COURT: That was her response. I don't mean to

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TRASI CAMPBELL - RRDx - FALK

1 speak for her, but she just said that.

2 MR. FALK: Right. But then, she was -- I thought
3 then she was qualifying it --

4 THE COURT: Okay.

5 MR. FALK: -- in some fashion, because --

6 BY MR. FALK:

7 Q. Did you ever tell him he had an offer for assault
8 and battery first?

9 A. Yes. I mean, I conveyed all offers that were given
10 to him.

11 MR. FALK: Okay. Thank you.

12 THE COURT: All right. Thank you. May this
13 witness be excused?

14 MR. FALK: Yes, your Honor.

15 MR. MITCHELL: Yes.

16 THE COURT: Any objection?

17 MR. MITCHELL: No, your Honor.

18 THE COURT: Thank you, ma'am.

19 TRASI CAMPBELL: Thank you, sir.

20 THE COURT: Any additional witnesses?

21 MR. FALK: We have no further witnesses.

22 THE COURT: Mr. Falk, any witnesses?

23 MR. MITCHELL: None from the State.

24 THE COURT: All right. Thank you. Gentlemen, I'll
25 read through the files further, and I'll issue an

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TRASI CAMPBELL - RRDY - FALK

1 opinion as soon as I have opportunity to do so.

2 MR. FALK: Thank you, your Honor.

3 THE COURT: Thank you very much.

4 END PROCEEDING 10:50 A.M.

1-29-18 BRABHAMCERTIFICATE OF REPORTER

CERTIFICATE OF REPORTER

JANUARY 29, 2018 TRANSCRIPT OF PCR HEARING

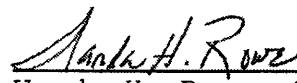
STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing January 20, 2018 Transcript of PCR Hearing is a true and accurate record of the proceedings had and exhibits admitted on said date, in the case of Malcolm Brabham versus State of South Carolina, Beaufort County, Court of Common Pleas, Case Number 2016-CP-07-01092; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter contains my original signature and is attached to the original of this transcript requested by SCCID. Pursuant to SCACR 607, requests for copies of transcripts must be made to the court reporter. Unauthorized copying/mailling is prohibited.

Witness my signature October 20, 2018.


Wanda H. Rowe, CMA
Official Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT

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ISAAC MCDUFFIE STONE, III
SOLICITOR

PLEA OFFER:

DEFENDANT'S NAME: Malcolm Brabham

CHARGE(S): Attempted Murder
Possession of a Weapon during the commission of a violent crime
Criminal Domestic Violence, 1st Offense

PLEA TO: Assault and Battery, 1st Degree, and CDV 1st

DISPOSITION OF OTHER CHARGES: Nolle prosequere as part of plea

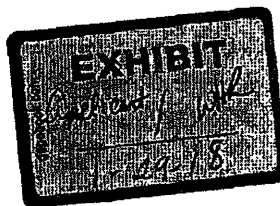
SENTENCE RECOMMENDATION / NEGOTIATION:

- Recommendation of 10 years in SCDC

OFFER EXPIRES: April 8, 2014

SOLICITOR: Mary Jordan Lempesis
255-5883 / mlempesis@bcgov.net

DEFENSE ATTORNEY: Trasi Campbell



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Malcolm Brabham, #359777,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2016-CP-07-1092

ORDER OF DISMISSAL

2018 APR 13 PM 1:24
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed on May 6, 2016 by Malcolm Brabham (Applicant). Respondent made its Return on or about August 3, 2017. An evidentiary hearing into the matter was convened on January 29, 2018, at the Beaufort County Courthouse in Beaufort, South Carolina. Applicant was present and represented by James K. Falk, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's trial counsel Trasi Campbell, Esquire also testified. This Court had before it a copy of the records of the Beaufort County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return, Applicant's records from the Department of Corrections and Applicant's appellate records. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. In September 2013, the Beaufort County Grand Jury indicted Applicant for attempted murder (2013-GS-07-1230) and

possession of a weapon during a violent crime (2013-GS-07-1231). Chief Public Defender Trasi Campbell, Esquire, represented Applicant. Assistant Solicitors Mary Jordan Lempesis, Esquire, and Mary Concannon, Esquire, prosecuted the case. On April 21-23, 2014, Applicant proceeded to trial before the Honorable Roger M. Young. The jury found Applicant guilty as indicted. Judge Young sentenced Applicant to imprisonment for concurrent terms of twenty years for attempted murder and five years for possession of a weapon during a violent crime.

Applicant filed a timely notice of appeal. Susan B. Hackett, Esquire, of the Office of Appellate Defense, perfected the appeal by submitting an Anders brief. The South Carolina Court of Appeals dismissed Applicant's appeal on October 21, 2015. State v. Brabham, Op. No. 2015-UP-498 (S.C. Ct. App. filed October 21, 2015). The remittitur was returned to the circuit court on November 6, 2015.

ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Trial counsel failed to communicate a favorable written ten year plea offer made to Applicant by the State."

Applicant filed an Amendment to his Application on January 29, 2018 alleging the following reasons:

1. Trial Counsel failed to object to hearsay statements regarding conversations that the State's witness had with the victim.
 - a. Record on Appeal p. 132, l. 7 (Testimony of Corporal Seronka on Re-Direct)
 - b. Record on Appeal p. 136, l. 6 (Testimony of Corporal Seronka on Re-Direct)
2. Trial Counsel failed to object when the State sought to elicit negative testimony regarding the Defendant's character. Record on Appeal p. 232 l. 17-20 (Testimony of Reah Gonsalves on Direct).
3. Trial Counsel failed to request a jury charge on alibi even though she argued that defense in her closing argument. (Record on Appeal p. 333 l. 9-17)

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING**Applicant's Testimony**

Applicant testified he was charged with the crimes he was found guilty of in July of 2013 and the first time he saw Trial Counsel was in September of that year. Applicant testified Trial Counsel presented him a plea offer for ten years for assault and battery of a high and aggravated nature. He testified Trial Counsel explained his charges and told him not to take the plea because the offer was a sign of weakness in the State's case. Applicant then testified he could not get in touch with Trial Counsel after their meeting but months later Trial Counsel told him he should now take the ten year plea offer because the State's case was a slam dunk. Applicant testified there was a second ten year plea offer for assault and battery 1st degree that was never relayed to him that he only found out about after he was found guilty. Additionally, Applicant testified had Trial Counsel presented him with the ten year plea offer for assault and battery 1st as opposed to the plea offer for assault and battery of a high and aggravated nature he would have accepted it as it was a non-violent plea offer versus a violent plea which would have resulted in him serving less time in prison.

On cross-examination, Applicant testified he met with Trial Counsel three times and there was one plea offer presented to him for ten years. Applicant testified when asked if he rejected the plea offer that Trial Counsel told him they were not taking the offer. Applicant testified the only time he went over discovery was in his cell in jail. He testified he did not give Trial Counsel a list of people he wanted her to contact. Applicant testified Trial Counsel did not think it was a good decision to have him testify at trial.

Trial Counsel's Testimony

Trial Counsel was handed a plea offer sheet for assault and battery 1st degree by

Applicant's PCR counsel and testified that the plea offer sheet did come from the State. Trial Counsel then testified her email correspondence with the Solicitor in charge of the case confirmed that the State had sent a plea offer of assault and battery 1st for ten years but that it was done in error as the offer was originally and remained a plea offer for ten years for assault and battery of a high and aggravated nature. Trial Counsel testified she did not object to hearsay testimony from one of the State's witnesses as the same testimony had come in prior to that witness testifying. Trial Counsel also testified the reason she did not object to Applicant's girlfriend's testimony about him not being a trustworthy person was because the girlfriend did not testify according to what was expected and she changed her version of the facts. However, Trial Counsel testified she believed she challenged the girlfriend's testimony at trial and part of her strategy was to discredit her. Trial Counsel testified she did not request an alibi charge because Applicant did not have an alibi. She testified she tried to argue somethings related to an alibi defense in closing but did not have any alibi testimony.

On cross-examination, Trial Counsel testified the facts of the case were that the victim who was Applicant's girlfriend's brother, was shot in the chest down a dark dirt road and he crawled to a house on that road where 911 was called. Trial Counsel testified she met with Applicant at the detention center and court. She then testified she received a plea offer of ten years for assault and battery of a high and aggravated nature which Applicant rejected. Trial Counsel then testified that if there had been a true offer of ten years for assault and battery 1st degree she would have communicated that to Applicant. However, Trial Counsel testified she had an email from the Solicitor regarding the plea offer of assault and battery 1st for ten years but that the offer was done in error as the offer was originally and remained a plea offer for ten years for assault and battery of a high and aggravated nature. Trial Counsel testified she had

practiced law for some time and had seen inconsistencies or mistakes in plea offers from Solicitors before. Trial Counsel testified she did not object during Applicant's girlfriend's direct examination because she was able to exploit her testimony on cross examination.

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 can weigh 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).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's

performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). 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).

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. These credibility findings have been applied to the Court's findings and conclusions set forth below. Additionally, prior to testimony being taken, Applicant proceeded on only the following grounds for relief.

Failure to communicate plea offer

Applicant alleged Trial Counsel failed to communicate a favorable written ten year plea offer. Applicant testified Trial Counsel had a plea offer for ten years for assault and battery of a high and aggravated nature. Applicant also testified there was a second ten year plea offer for assault and battery 1st degree that was never relayed to him that he only found out about after he was found guilty at trial. Trial Counsel testified she received a plea offer of ten years for assault and battery of a high and aggravated nature which Applicant rejected. Trial Counsel also testified she had an email from the Solicitor regarding a plea offer of assault and battery 1st for ten years but that the offer was done in error as the offer was originally and remained a plea offer for ten years for assault and battery of a high and aggravated nature. Trial Counsel testified she had

practiced law for some time and had seen inconsistencies or mistakes in plea offers from Solicitors before. This Court finds Applicant's allegation that Trial Counsel failed to communicate a favorable written ten year plea offer is denied as the evidence established from the testimony that Trial Counsel did communicate the State's actual plea offer. Moreover, this Court finds the alleged plea offer of ten years on a non-violent assault and battery 1st was mistakenly put in writing but was corrected by the Solicitor in communications to Trial Counsel. Further, Applicant admitted that the correct plea offer was communicated to him and he rejected it. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in her representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. Accordingly, this allegation is denied and dismissed.

Failure to request an alibi charge

Applicant alleged Trial Counsel failed to request an alibi charge. "[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." State v. Robbins, 275 S.C. 373, 377, 271 S.E.2d 319, 321 (1980). Further, an alibi which makes it only *less likely* the accused is the guilty party is no alibi. See Walker v. State, 397 S.C. 226, 723 S.E.2d 610 (Ct. App. 2012) "To establish an alibi defense and thus be entitled to an instruction of alibi, a defendant must present some evidence that he was at another place at the time of the crime and could not therefore have committed the crime." State v. Diamond, 280 S.C.

296, 297, 312 S.E.2d 550 (1984), quoting State v. Robbins, 275 S.C. 273, 271 S.E.2d 319 (1980). "A simple denial of one's presence at the scene does not constitute an alibi." Id. Trial Counsel testified she did not request an alibi charge because Applicant did not have an alibi. She testified she tried to argue somethings related to an alibi defense in closing but did not have any alibi testimony. This Court finds there was insufficient evidence presented at trial to warrant such a request or charge on alibi and had one been requested it would have been denied. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in her representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. Applicant has failed to show the outcome of his trial would have been different had Trial counsel requested an alibi charge. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. This allegation is denied and dismissed.

Failure to object to hearsay testimony

Applicant alleged Trial Counsel failed to object to hearsay testimony regarding conversations the State's witness had with the victim. Applicant argued that the testimony elicited from the State's Witness Corporal Seronka was hearsay. (ROA p. 132, 1-11, 136, 1- 8). As to this allegation that the hearsay testimony was improperly allowed with regard to the victim's identification of Applicant, this Court finds Applicant is correct that the testimony constitutes improper hearsay. However, this Court finds the victim testified to the exact testimony offered by Corporal Seronka prior to Corporal Seronka actually testifying. (ROA p. 153-154). Therefore, there was substantial evidence in the record prior to the admission of this

evidence and counsel was not ineffective for failing to object. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in her representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. Applicant has failed to show the outcome of his trial would have been different had Trial counsel objected to hearsay testimony regarding conversations that the State’s witness had with the victim. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. This allegation is denied and dismissed.

CONCLUSION

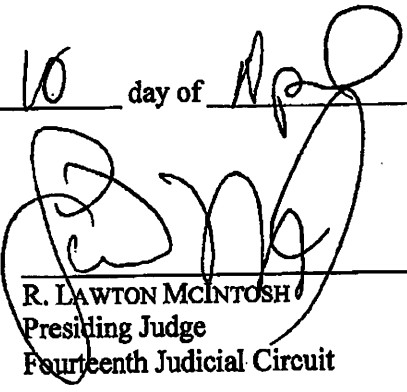
Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that 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 Notice of Appeal on the Applicant’s behalf. See Rule 71.1 (g), SCRCP. Refer to 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 10 day of Nov, 2018.



R. LAWTON MCINTOSH
Presiding Judge
Fourteenth Judicial Circuit

Anders, South Carolina

WITNESSES

Rice / BCSD

ARREST WARRANT NUMBER

2013A0710400242

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: SEP 20 2013

VERDICT

GUILTY

Foreperson of Petit Jury
Date: 4/26/2013
INDICT

DOCKET NO. 2013GS0701230

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

September Term 2013

THE STATE

vs.

Malcolm Brabham

Indictment for

Attempted Murder

SC Code: 16-03-0029
CDR Code:3410

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2013GS0701230

At a Court of General Sessions, convened on September 26, 2013, the Grand Jurors of Beaufort County present upon their oath:

Attempted Murder

That in Beaufort County, South Carolina, on or about July 15, 2013, the Defendant, with malice aforethought, did attempt to kill the victim, Chadwick Mitchell, to wit: the Defendant did shoot the victim in the chest; all in violation of Section 16-3-29 of the South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Beaufort

VS.

Malcolm Brabham

AKA:

Race: AFRICAN AME Sex: M Age: 30

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS0701230

A/W#: 2013A0710400242

Date of Offense: 7/15/2013

S.C. Code §: 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lempesis, Mary Jordan

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 291 Dms☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: Certified - A True Copy

John Ann Roseneau - Clerk of Court
Beaufort County, SC - LaSandra Young☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

WITNESSES

Rice / BCSD

ARREST WARRANT NUMBER

2013A0710400243

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

SEP 20 2013

VERDICT

Guilty

Foreperson of Petit Jury
Date:

INDICT

4/26/2013

DOCKET NO. 2013GS0701231

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

September Term 2013

THE STATE

vs.

Malcolm Brabham

Indictment for

**Possession of a weapon during the
commission of a violent crime**

SC Code: 16-23-0490
CDR Code:0549

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2013GS0701231

At a Court of General Sessions, convened on September 26, 2013, the Grand Jurors of Beaufort County present upon their oath:

Possession of a weapon during the commission of a violent crime

That in Beaufort County, South Carolina, on or about July 15, 2013, the Defendant, Malcolm Brabham, did possess a pistol or visibly display what appeared to be a pistol during the commission, or attempted commission, of Attempted Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS.
Malcolm Brabham

AKA:

Race: AFRICAN AME Sex: M Age: 30DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Lempesis, Mary Jordan

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 241 Days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2013GS0701231A/W#: 2013A0710400243Date of Offense: 7/15/2013S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

Presiding Judge

Judge Code: 2134Sentence Date: 8/28/14

La Sandra B. Young
 La Sandra B. Young
 Clerk of Court
 Beaufort County, SC - La Sandra Young

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.