

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Kristi Lea Harrington, Circuit Court Judge

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SEP 19 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JEROD SWINTON,

APPELLANT

APPELLATE CASE NO. 2012-212564

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:**

- STATE'S EXHIBIT 2 (VIDEO FROM GOODWILL);**
- STATE'S EXHIBIT 16 (PHOTOGRAPH OF DEFENDANT);**
- STATE'S 16 A (PHOTOGRAPH OF DEFENDANT);**
- COURT'S EXHIBIT 1 (DETENTION CENTER PHOTO OF DEFENDANT);**
- COURT'S EXHIBITS 2, 3, 4 (NOTES FROM JURY)**

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )  
 )  
 -VS- )  
 )  
 JEROD SWINTON, )  
 )  
 DEFENDANT. )  
\_\_\_\_\_ )

2011-GS-10-00474

MAY 16, 2012

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE KRISTI HARRINGTON, JUDGE

APPEARANCES:

MARTHA KENT RUNEY, ESQUIRE  
ATTORNEY FOR THE STATE

RUTLEDGE DURANT, ESQUIRE  
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS  
CIRCUIT COURT REPORTER

1 how people can get blamed for things. Jerod was owed money  
2 by his friend, Simon Simons, for drugs. They had been  
3 together all day and he had been promised to be paid and he  
4 left there on good terms. And although this may seem real  
5 simple to you, it is important to keep in mind what was not  
6 done and how easy it is to blame Jerod Swinton. And you  
7 will be placed in the difficult position of having to make  
8 a decision based only on that and based on what little  
9 evidence there is to support any allegation and what  
10 evidence there is, is unreliable. Jerod Swinton may be  
11 guilty of things that you do not agree with, but that is  
12 not why he is here on trial and these things do not make  
13 him guilty of attempted murder. And based on what you will  
14 see and hear in this courtroom, you must find him not  
15 guilty.

16 THE COURT: You may call your first witness.

17 MR. DURANT: The State calls Evert Eriksson.

18 THE CLERK: Place your left hand on the bible and  
19 raise your right hand, please.

20 Do you solemnly swear or affirm the testimony you  
21 shall give the Court and Jury in the trial of this case  
22 shall be the truth and nothing but the truth, so help you  
23 God?

24 THE WITNESS: I do.

25 THE CLERK: Please have a seat. State your full

1 name and spell your last for the record.

2 THE WITNESS: Evert Eriksson, E-R-I-K-S-S-O-N.

3 EVERT ERIKSSON,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. DURANT:

7 Q. Good morning, Dr. Eriksson. Will you please tell the  
8 jury where you are employed?

9 A. I am employed currently at the Medical University of  
10 South Carolina.

11 Q. And what is your position there?

12 A. I am employed as a general and trauma surgeon at the  
13 University.

14 Q. And what does the area of general and trauma surgery  
15 encompass?

16 A. It involves the evaluation and management of patients  
17 who are traumatically injured, whether that be from  
18 penetrating trauma or from blunt trauma, be it motor  
19 collisions or falls. In addition, we do surgery basically  
20 from the bottom of the jaw to the end of the toes, whether  
21 it be thoracic surgery, heart surgery or abdominal surgery.

22 Q. And were you employed as a general and trauma surgeon  
23 in August of 2006 -- I mean, 2010?

24 A. Yes.

25 Q. And if you would, tell the jury what kind of medical

1 procedures you performed in that capacity?

2 A. Sure. On a weekly or monthly basis, I perform  
3 abdominal surgery, operating on livers, stomachs, colons,  
4 small bowel. I also perform airway surgeries, where we  
5 place tubes into the airway, in addition to chest surgery  
6 on occasion, if required.

7 Q. What is your educational background?

8 A. I have a Bachelor of Science from the University of  
9 Colorado. My medical degree is from the University of  
10 Colorado. My general surgery training is from Michigan  
11 State University and my surgical critical care training is  
12 from Michigan State University.

13 Q. Do you have any teaching duties or responsibilities at  
14 the Medical University?

15 A. I do. I'm an Assistant Professor of Surgery at the  
16 Medical University of South Carolina. Prior to that, I was  
17 an Assistant Professor of Surgery at Michigan State.

18 Q. Have you ever taught, lectured, or given seminars on  
19 areas of your profession?

20 A. Yes.

21 Q. And in your capacity -- well, are you board certified  
22 in any areas?

23 A. I am. I'm board certified in general surgery, surgery  
24 critical care and neuro-critical care.

25 Q. In general surgery?

1 A. Yes, sir.

2 Q. And what else; I'm sorry?

3 A. Surgical critical care.

4 Q. Okay.

5 A. As well as neuro-critical care.

6 MR. DURANT: Your Honor, at this time the State  
7 moves to have Dr. Eriksson qualified as an expert in the  
8 areas of general surgery and surgical critical care?

9 MS. RONEY: Without objection. We agree.

10 THE COURT: With critical care?

11 MR. DURANT: Surgical critical care.

12 THE COURT: Because I had general and trauma  
13 surgery, critical care. Any objection?

14 MS. RONEY: None, Your Honor.

15 THE COURT: Normally, a person cannot give  
16 opinion testimony. It's normally, when a person testifies  
17 they must testify as to either what they heard or saw or  
18 sensed or something of that nature. There is an exception  
19 when someone is qualified because of their education and  
20 experience, they are then permitted to give their opinion  
21 in certain ways if the Court qualifies them in that way.  
22 This witness will be qualified in the area of general and  
23 trauma surgery and critical care to give opinion testimony  
24 in that area. That does not mean that you must accept the  
25 opinion. It is evidence for you to use in any way that you

1 see fit.

2 Mr. Durant, your witness.

3 MR. DURANT: Thank you, Your Honor. May it  
4 please the Court.

5 Q. Dr. Eriksson, in your capacity as a surgeon at MUSC,  
6 did you have the opportunity to treat a patient named Simon  
7 Simmons on August the 6th, or thereabout, 2010?

8 A. Yes.

9 Q. And how was he brought into your practice?

10 A. He was brought in in the early morning hours of August  
11 6th. He was brought in as a Level A activation, which is  
12 the highest level of activation that we have, which usually  
13 means imminent threat to life or limb. When he was brought  
14 into the trauma bay we rapidly assessed him and noted him  
15 to have two penetrating wounds, one in the upper chest and  
16 one in the left mid-abdomen. In my initial evaluation of  
17 him, we found him to have decreased breath sounds on the  
18 left side of his chest and the x-ray also confirmed that he  
19 had a considerable amount of blood in his left chest.

20 Q. And how did you begin to treat him?

21 A. Initially after noting that, we placed a chest tube  
22 into his left chest, which is a tube that is placed through  
23 the skin into the chest to evacuate all the blood. That  
24 assist the patients with breathing. If there's too much  
25 blood, the lung can collapse and they can't breathe.

1 actively. We placed that tube initially for him. That  
2 assisted him somewhat in his resuscitation. After that, I  
3 prepared him to go to the operating room and to the CT  
4 scanner.

5 Q. Was surgery performed on him?

6 A. The placement of the chest tube; yes, I would consider  
7 that surgery.

8 Q. And if you would, within a reasonable degree of  
9 medical certainty, were the procedures that were performed  
10 on him necessary to save his life?

11 A. Yes. Placement of the chest tube is an initial life-  
12 saving maneuver for patients who have blood in the chest  
13 and/or air outside the lung in the chest.

14 Q. If that had not been done, what was the likely result  
15 within a reasonable degree of medical certainty?

16 A. His condition could have deteriorated to the point  
17 that he would have had serious complications from it,  
18 potentially including death.

19 Q. Are you aware of any other procedures that were  
20 performed on Mr. Simmons?

21 A. Yes. Later that morning, I took him to the operating  
22 room where we explored both a wound in his upper chest. We  
23 opened that to the full extent of the wound. We did not  
24 find a penetration into the chest cavity itself. We also  
25 performed what's called a laparotomy, an open abdominal

1 surgery where I opened his belly through the middle and  
2 explored his abdomen. In exploring his abdomen I found a  
3 wound where the bullet had penetrated through the  
4 diaphragm, which is the muscle between the abdomen and the  
5 chest that helps you to breathe. I also found an injury to  
6 his stomach and an injury to his liver.

7 Q. And how would you characterize the extent of these  
8 injuries?

9 A. The injury to his stomach was quite severe. I removed  
10 a considerable amount of blood from his stomach. There was  
11 also evidence of stomach content within his abdomen,  
12 outside of his stomach, which if it's there, it's a very  
13 large medical emergency. As well, I found a laceration on  
14 his liver that required surgical control of the bleeding  
15 from that.

16 Q. What would have been the likely result had these  
17 surgeries not been performed?

18 A. With the penetrating injury to his stomach of what I  
19 found, it almost certainly would result in death if not  
20 treated in an urgent manner.

21 MR. DURANT: Your Honor, may I approach?

22 THE COURT: You may.

23 (WHEREUPON, State Exhibit Number 1 was marked for  
24 identification.)

25 Q. And did you retrieve a projectile from Mr. Simmons?

1 A. I did. After completing the abdominal surgery, prior  
2 to closing his belly up completely, there was a foreign  
3 body that I could feel very close to the middle of his  
4 belly where I had opened it, and it required removal in  
5 order to adequately close his belly and protect him from  
6 other complications down the road.

7 Q. I'm showing you what the State has labeled as State's  
8 Exhibit 1 for identification and ask you to take a look at  
9 that. Does it contain the markings sufficient to let you  
10 know that that was the bullet recovered from Mr. Simmons?

11 A. Yes, that is the object removed from patient Simmons,  
12 who I know at the time to be trauma victim XD, which is  
13 marked on the cup.

14 MR. DURANT: The State moves at this time for the  
15 admission of State's Evidence Number 1?

16 THE COURT: Any objection?

17 MS. RUNEY: No, Your Honor.

18 THE COURT: State's 1 into evidence without  
19 objection.

20 (WHEREUPON, State Exhibit Number 1 was admitted into  
21 evidence.)

22 THE COURT: You may continue.

23 Q. Dr. Eriksson, would you tell the jury how long Mr.  
24 Simmons was in the care of the Medical University from when  
25 he first arrived to when he left?

1 A. Yeah. Do you mind if I reference my medical record so

2 I can give you an exact date?

3 Q. That's fine.

4 A. He was discharged on August 16th; so he spent  
5 approximately ten days in our care.

6 Q. And did he have to have any additional surgeries  
7 during that period of time?

8 A. He did. He required a subsequent surgery on his  
9 chest. He had some retained fluid, as well as an  
10 infection, or at least what appeared to be infective fluid  
11 in his chest that required an open chest surgery to  
12 evacuate that fluid and to free the lung in order to allow  
13 it to fully expand.

14 Q. And, sir, is it your testimony that without these  
15 surgeries that Mr. Simmons would have died?

16 A. Yes.

17 Q. Thank you, sir. Please answer any questions the  
18 Defense may have.

19 MS. RUNEY: Your Honor, I don't have any  
20 questions for Dr. Eriksson. Thank you.

21 THE COURT: Doctor, you may step down. Thank  
22 you.

23 All right. Ladies and gentlemen, we've reached an  
24 appropriate time for us to break for lunch. Do not begin  
25 your deliberations. Do not discuss this case amongst

1 I guess, go ahead and put on the record that we've  
2 stipulated to some items of evidence.

3 THE COURT: All right. Have you marked them?

4 MR. DURANT: We have marked them, Your Honor,  
5 with the Court Reporter, items of evidence labeled number 2  
6 through 15. Number 2 is a video from the Goodwill.  
7 There's a Goodwill there at the crime scene. 3 through 12  
8 are photos of the crime scene, and 13, 14, and 15 are  
9 aerial views of the crime scene.

10 THE COURT: Okay. Is that correct, Ms. Runey?

11 MS. RUNEY: Yes, ma'am. I have no objection to  
12 those.

13 THE COURT: All right. No objection to State's 2  
14 through 15. State's 2 through 15 will be admitted without  
15 objection.

16 MS. RUNEY: It is 2 through 14?

17 MADAM COURT REPORTER: It's 15.

18 MS. RUNEY: Okay. I'm sorry.

19 (WHEREUPON, State Exhibit Numbers 2 through 15 were  
20 admitted into evidence.)

21 THE COURT: Anything else?

22 MR. DURANT: I think that's all, Your Honor.

23 THE COURT: Anything else, Ms. Runey?

24 MS. RUNEY: The only thing that I wasn't clear  
25 about is the hearing outside the presence of the jury

1 regarding the photo.

2 THE COURT: Which photo?

3 MS. RUNEY: The photo at the hospital.

4 MR. DURANT: There was a photo that was shown to  
5 the victim at the hospital after he had said this is --  
6 that the Defendant ---

7 THE COURT: Is it marked?

8 MR. DURANT: We haven't marked it. If we're  
9 going to have a hearing on it ---

10 THE COURT: Do we need to do that now, counsel?

11 MR. DURANT: Well, the victim's going to testify  
12 right now.

13 THE COURT: Okay. So then we do need to do it  
14 right now. All right. Have we marked it? And what's your  
15 objection?

16 MS. RUNEY: Well, Your Honor, I just want -- I  
17 feel like that the State has to establish how it was  
18 presented to the victim at the hospital, and from my  
19 understanding from the case that Mr. Durant submitted to  
20 the Court -- I just read it briefly when he showed it to me  
21 -- is that his plan was to put the victim up to testify to  
22 that identification, although it's different from *Biggers*.  
23 I would request a hearing on that outside the presence of  
24 the jury.

25 MR. DURANT: If you wanted to do that, Your

1 Honor, just in brief response, I could put up Detective  
2 Kramitz to say that he knew ---

3 THE COURT: Well, my understanding, Ms. Runey, is  
4 that they have known each other for an extended period of  
5 time, that she based her identification -- the  
6 identification was based upon her personal knowledge, not  
7 upon the picture, but the picture was merely a confirmation  
8 that the person she told the detective was, was Mr. Swinton  
9 is actually the person that Detective Kramitz knew as Mr.  
10 Swinton, so I don't know that we need at this point to --  
11 the question is entirely different, and you're correct, in  
12 the Court's mind, we don't need to establish -- it was  
13 merely a confirmation, not an ID. It was not the basis of  
14 her understanding of who Mr. Swinton, your client, is. Is  
15 that correct?

16 MR. DURANT: That's exactly right, Your Honor.

17 THE COURT: So at this point I think that the  
18 objection just needs to be made at the time of the  
19 photograph, all right?

20 MS. RONEY: Okay. And that objection, if I could  
21 state that on the record before we even get started is, I  
22 have not been provided that picture through discovery.

23 THE COURT: Well, that's a different issue. You  
24 said you could provide that picture over lunch.

25 MS. RONEY: I have been provided it today, the

1 day that we started the trial. But before today, in  
2 preparation for the trial, I have not seen it.

3 THE COURT: Is there any reason you couldn't have  
4 gotten it through -- did you ask for the picture, Ms.  
5 Runey, in your discovery requests?

6 MS. RUNEY: I was told that it was either ---

7 THE COURT: Well, did you ask for it?

8 MS. RUNEY: Yes.

9 MR. DURANT: Judge, no question she asked for  
10 everything that I needed to give her. But I do believe I  
11 did provide it to her. And I believe I have the date  
12 marked on -- if I could just find it.

13 MS. RUNEY: And it may have been in the stack of  
14 the discovery that I got, it just was not made clear to me  
15 that's what was shown to the victim at the hospital.

16 MR. DURANT: And the reason for that is because  
17 the victim never signed it and nobody ever noted anything  
18 on it.

19 THE COURT: Because she had already identified  
20 that that was the person she knew to be Mr. Swinton;  
21 correct?

22 MR. DURANT: Right.

23 THE COURT: I'm assuming.

24 MR. DURANT: That's correct. And he was in the  
25 hospital. It was a very brief confirmation.

1 THE COURT: All right. So, Ms. Runey, just so  
2 I'm clear because I don't want to base an issue -- you  
3 think you now may have been provided a photograph, you're  
4 just not sure of which photograph was shown to the victim.  
5 Is that more accurate?

6 MS. RUNEY: I have been provided several booking  
7 photos of my client in the discovery. Today I was shown a  
8 photo with the booking information cut off of that photo  
9 and was told that that was the photo that was shown to the  
10 victim at the hospital. Well, before today, in preparing  
11 my defense, I didn't know whether it really was Mr. Swinton  
12 in the picture or who it was in the picture, only that the  
13 victim confirmed that it was Jerod Swinton.

14 MR. DURANT: The same photo that was taken to the  
15 victim in the hospital was given to Ms. Runey.

16 THE COURT: All right. But did you indicate to  
17 Ms. Runey which photo was shown at the hospital? I think  
18 that's now her issue, is that you had given her lots of  
19 photos and you just didn't indicate to her which one was  
20 the one shown.

21 MR. DURANT: I don't know if there was an  
22 indication of which photo. She was aware, my  
23 understanding, is that he was shown one photo of her  
24 client. And we just confirmed it this morning with the  
25 detective who brought the original photo that he showed and

1 said it was this person, just for extra confirmation.

2 There had already been an identification.

3 MS. RUNEY: And, Your Honor, I would just ask the  
4 Court to suppress that identification at the hospital based  
5 on failure to give that over to me.

6 THE COURT: All right. I will address that when  
7 the photo comes. Let's bring the jury in.

8 MS. RUNEY: Thank you, Your Honor.

9 THE COURT: Mr. Durant, that in no way indicates  
10 that you may not inquire the question, I'm just addressing  
11 the objection.

12 MR. DURANT: Thank you, Your Honor.

13 THE COURT: Please rise for the jury. When they  
14 come in, you may be seated.

15 (WHEREUPON, the jury entered the open court at  
16 approximately 1:36 p.m.)

17 THE BAILIFF: The jury's present, Your Honor.

18 THE COURT: Thank you, please be seated.

19 Call your next witness.

20 MR. DURANT: Thank you, Your Honor. The State  
21 calls Simon Simmons.

22 THE CLERK: Place your left hand on the bible and  
23 raise your right hand, please.

24 Do you solemnly swear or affirm the testimony you  
25 shall give the Court and Jury in the trial of this case

1 shall be the truth and nothing but the truth, so help you  
2 God?

3 THE WITNESS: Yes, sir.

4 THE CLERK: Please have a seat. State your full  
5 name and spell your last for the record.

6 THE WITNESS: My name is Simon Perry Simmons,  
7 S-I-M-M-O-N-S.

8 SIMON SIMMONS,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 THE COURT: Your Witness.

11 DIRECT EXAMINATION

12 BY MR. DURANT:

13 Q. Good afternoon, Mr. Simmons.

14 A. How are you doing, sir?

15 Q. Doing well.

16 THE COURT: Mr. Simmons, I'm going to need you to  
17 speak loudly. I'm having a hard time hearing you, which  
18 means to me that the jurors are also going to have a hard  
19 time hearing, all right?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: All right. Thank you.

22 Q. Speak right into the microphone and you should be  
23 fine.

24 A. Yes, sir.

25 Q. Can you tell the jury how old you are?

- 1 A. I'm thirty-one years old.
- 2 Q. And do you live in Charleston?
- 3 A. Yes, in North Charleston.
- 4 Q. Where did you grow up?
- 5 A. In North Charleston most of my life.
- 6 Q. Did you go to school in North Charleston?
- 7 A. Yes, sir, Alice Bimey Middle and Stall High School.
- 8 Q. How far did you go in school?
- 9 A. Tenth grade.
- 10 Q. Are you employed right now?
- 11 A. Not right now, sir.
- 12 Q. And why not?
- 13 A. Because I'm applying for disability for problems from  
14 my injuries.
- 15 Q. Have you previously been employed?
- 16 A. Yes, sir.
- 17 Q. What kind of work did you do?
- 18 A. I did construction work. I worked on the port for a  
19 while. And I do carpentry work, also.
- 20 Q. Do you know a lady named Veronica Black Simmons?
- 21 A. Yes, sir. That's my wife.
- 22 Q. How long has Veronica been your wife?
- 23 A. She was my wife for a year now, but we've been  
24 together for seven years.
- 25 Q. Do y'all have any children?

1 A. Four.

2 Q. And how old are they?

3 A. My youngest is three, my other daughter is five years  
4 old, my son is seven and my other son is thirteen.

5 Q. Where were you living back in August of 2010?

6 A. On Craig Street, sir.

7 Q. And just so the jury knows, where is Craig Street?

8 A. Off Remount Road.

9 Q. In North Charleston?

10 A. Yes, sir. In North Charleston.

11 Q. Is that [REDACTED]

12 A. Yes, sir.

13 Q. And if you would, tell the jury what kind of home you  
14 lived in there?

15 A. It was an apartment complex inside a gated area, a  
16 small apartment complex.

17 Q. All right. I want to take you back to Thursday,  
18 August the 5th of 2010. Do you remember that day?

19 A. Yes, sir. Yes, sir, I remember that day.

20 Q. Can you tell the jury what you were doing that day  
21 approximately before noon, starting there?

22 A. Before noon I think I was walking with my wife to the  
23 school or something like that to pick my son up around that  
24 time.

25 Q. Well, were you walking with your wife at some time

1 that day ---

2 A. Yeah.

3 Q. --- around that time?

4 A. Yes, sir.

5 Q. And you're just a little unsure of exactly what time?

6 A. I'm not sure exactly what time it was.

7 Q. Okay.

8 A. I know I was walking down Remount Road.

9 Q. All right. Did you run into anybody when you were  
10 walking down Remount Road at that time with your wife?

11 A. Yes, sir.

12 Q. Who did you run into?

13 A. Jerod Swinton.

14 Q. Who is Jerod Swinton to you? How do you know Jerod  
15 Swinton?

16 A. We went to school together, you know, I've known him  
17 for years, about fifteen years. We went to school  
18 together. He used to come to my house a while back, you  
19 know. I just hadn't seen him in a while. You know, I  
20 bumped into him that day.

21 Q. Where did you bump into him?

22 A. Right at the corner of Craig Street and Remount Road,  
23 right by the -- right at Advance Auto Parts.

24 Q. What is your date of birth?

25 A. [REDACTED]

1 Q. Do you know his date of birth?

2 A. [REDACTED].

3 Q. How do you know that?

4 A. I've been knowing him for years and we both knew we  
5 had the same birthday, you know.

6 Q. Have you ever hung out with him?

7 A. Yes, sir.

8 Q. Is he a friend of yours?

9 A. Was a friend.

10 Q. What about that day when you first saw him, was he a  
11 friend that day?

12 A. Yes, sir.

13 Q. Do you see Jerod Swinton in this courtroom today?

14 A. Yes, sir.

15 Q. Will you point to him and describe what he's wearing?

16 A. Right there in the yellow shirt; right there, sir.

17 MR. DURANT: Let the record reflect the Defendant  
18 has been identified.

19 THE COURT: The record will reflect.

20 Q. So, if you would, tell the jury what happened after  
21 you saw Mr. Swinton at that time?

22 A. He came back by the house, sat for a while, eat some  
23 pizzas and drank a couple of beers, looked at the photo  
24 album of his kids. He met my kids. You know, we just  
25 talked, catching up on old times, you know.

1 Q. So he came over to your home at Craig Road?

2 A. Yes, sir.

3 Q. And why did he do that?

4 A. He come to sit with me and, you know, just spend time  
5 with each other, you know.

6 Q. Did you want anything from him at that time?

7 A. Did I want anything from him?

8 Q. Uh-huh (affirmative)?

9 A. No, sir.

10 1. Q. Did he want anything from you?

11 A. Not at the time, no.

12 Q. So if you would, tell the jury about your time with  
13 Mr. Swinton when he came back to your house; how long did  
14 that last?

15 A. Which time?

16 Q. Just that first time that you discussed?

17 A. The first time we sat around for about an hour, hour  
18 and a half, just talking, you know, I mean, just sitting  
19 down watching TV. We was doing normal things, you know.  
20 Then he left.

21 Q. All right. Do you recall about how long he stayed?

22 A. About an hour, hour and a half, something like that.

23 Q. Was that the last time you saw him that day?

24 A. No, sir.

25 Q. When was the next time you saw him?

- 1 A. Mid-afternoon.
- 2 Q. And where did you see him later that afternoon?
- 3 A. Back at my house again, in my apartment again.
- 4 Q. Do you know how he arrived there?
- 5 A. An older dude in a burgundy truck.
- 6 Q. Were you expecting him?
- 7 A. Yes, sir.
- 8 Q. Why?
- 9 A. Because I owed him some change for some cocaine.
- 10 Q. You owed him money for cocaine?
- 11 A. Yes, sir.
- 12 Q. How much?
- 13 A. A hundred dollars.
- 14 Q. Did you have that money when he came back?
- 15 A. No, sir.
- 16 Q. Why not?
- 17 A. I was waiting for somebody to pay me money so I could
- 18 give it to him.
- 19 Q. Were you expecting to have this money soon?
- 20 A. Yes, sir.
- 21 Q. How long did he stay with you at that time?
- 22 A. About twenty, thirty minutes; something like that.
- 23 Q. And if you can, do you recall approximately what time
- 24 during the day he came back at that time?
- 25 A. That was around six, seven o'clock, something like

1 that. I'm not sure. It was late afternoon, later in the  
2 afternoon.

3 Q. And if you would, would you tell the jury, were there  
4 any arguments during any of these times?

5 A. No, sir. No, sir.

6 Q. Was there any animosity?

7 A. No, sir.

8 Q. But you didn't have his money at that time?

9 A. No, sir.

10 Q. Was that the last time you saw Mr. Swinton that day?

11 A. No, sir.

12 Q. Who was at your house when he came by both of those  
13 times?

14 A. My wife and my kids.

15 Q. You said he met your kids?

16 A. Yes, sir.

17 Q. And, again, you wife is Veronica?

18 A. Yes, sir.

19 Q. And were they there both of those times that day?

20 A. Yes, sir.

21 Q. All right. When was the next time you saw Mr.  
22 Swinton?

23 A. About twelve o'clock that night.

24 Q. Were you expecting him?

25 A. Not really. I know I had -- I know I was still

1 waiting on the money to come to me, but I didn't know if he  
2 was coming back that night or the next morning.

3 Q. How did he arrive at your house?

4 A. I never saw. He just knocked on the door and I walked  
5 out the door to talk to him.

6 Q. What did you talk to him about?

7 A. I told him I was still waiting on the money to get  
8 there and I asked him for a cigarette. And he was like,  
9 well, I don't have no more cigarettes. We can go get some.

10 Q. All right. So what happened at that point?

11 A. All right. Then I walked back in the house and told  
12 my wife -- I put on my shoes and told my wife we were going  
13 to walk down to the store to get some cigarettes. So I  
14 walked out the door and he said, let me go use the  
15 restroom. So I told my wife let him use the restroom.

16 When he came back out, he walked to the left of my  
17 apartment and went out the alley, right on the side of my  
18 apartment. Then we walked up the alley. I was walking,  
19 looking at the phone trying to contact the person to pay me  
20 the money. He was looking at his phone, I though, too.

21 When I kept walking I heard him say, what's up? I didn't  
22 look back. The second time he said, what's up, again, I  
23 looked back at him and he was pointing a gun at me. And I  
24 begged, man, put the gun down, begging for my life. This  
25 man squeezed the trigger on me anyway. That's what

1 happened that night.

2 Q. So you said you were going to get cigarettes?

3 A. Right.

4 Q. But he first had gone inside your home?

5 A. Right.

6 Q. To use the restroom, according to what you testified  
7 to?

8 A. Right.

9 Q. And then I believe you testified that y'all went to go  
10 get the cigarettes?

11 A. Yes, sir.

12 Q. All right. When you left to go get the cigarettes,  
13 had you been arguing at all?

14 A. No, sir.

15 Q. Had you detected any animosity at all between you and  
16 Mr. Swinton?

17 A. No, sir.

18 Q. And why were you going to get the cigarettes?

19 A. He said he didn't have any cigarettes. I wanted a  
20 cigarette. I thought he wanted a cigarette, you know, and  
21 we was just wasting time until, you know, my friend got  
22 back with the money. And I said, by the time we go to the  
23 store, he should be already came to the house and dropped  
24 off the money, you know. So we ended up walking to get the  
25 cigarettes, and that's what happened.

1 Q. What was your expectation of what was going to happen  
2 after you got the cigarettes?

3 A. I thought I would come back to the house and, you  
4 know, the money would have been waiting there already and  
5 he would go home. I would go to sleep with my wife and  
6 that would be the end of that day.

7 MR. DURANT: Your Honor, may I have the witness  
8 step down?

9 THE COURT: You may.

10 Q. I'm going to come down here and show you a couple of  
11 aerial photographs. Okay. I'm going to first show you  
12 what the State has labeled State's 13. It's already been  
13 introduced into evidence. I'm going to ask that you take a  
14 look at this, get oriented with it. And when you've had  
15 time to get oriented, let me know.

16 A. I was living about right here.

17 Q. All right. Are you oriented with it?

18 A. Uh-huh (affirmative).

19 THE COURT: Mr. Simmons, you're going to have to  
20 speak up. You don't have the benefit of a microphone now  
21 and if I can't hear you, I know the jurors can't hear you.  
22 So you're going to have to speak up. And if I have to ask  
23 you again, I'm just going to have to put you back on the  
24 witness stand. Thank you.

25 THE WITNESS: Yes, ma'am.

1 Q. Now, we also want everybody to see this, okay? So I  
2 want you to kind of stand to the side, and if you can --  
3 can you still see?

4 A. Yes, sir.

5 Q. All right. If you would, point out where you were  
6 living on August 5th and 6th.

7 A. Right here, in this apartment right here.

8 Q. All right. Now, what is this road?

9 A. That's Rivers Avenue right there.

10 Q. That's Rivers Avenue. And this road is?

11 A. Craig Road.

12 Q. Okay. And where would Remount be?

13 A. Remount would be like at the end of Craig Road right  
14 here.

15 Q. All right. And if you would, could you point on this  
16 aerial photograph to the area where you're walking through  
17 the alley to go get cigarettes?

18 A. We walked out the apartment complex right here and  
19 there's a gate right here. We have to walk all the way  
20 out, go around the gate and walk up this alley right here.  
21 By the time we got like right in this area, that's when he  
22 said, what's up? And I turned and looked back and he was  
23 standing against this -- this is a wooden gate. He was  
24 standing against the wooden gate, facing me like this.

25 Q. How far away from you was he?

1 A. About ten feet, about right here.

2 Q. From me to you?

3 A. Right.

4 Q. What were you thinking when you saw his gun?

5 A. I said what I was thinking. I said, please don't do  
6 this. Put the gun down. I got scared. That's what -- the  
7 last word I say to him before he squeezed the trigger.

8 Q. Did he say anything during this time?

9 A. Shut up. Put your hands up. Where's my money? Empty  
10 your pockets. You trying to get me bust, something like  
11 that. But, yeah, the whole time I was talking to him, I  
12 was raising my voice so somebody could hear us because he  
13 wouldn't put the gun down. I thought I could talk to him  
14 to put the gun down; he wouldn't put the gun down. And  
15 that's when I threw my phone at him to try to run. I just  
16 remember hearing the gunshot, and falling down on my back.  
17 And he walked over to me, shot me two times and ran. The  
18 last thing I remember is his feet running off.

19 Q. And you said that he shot at you when you were  
20 running?

21 A. No, I threw the phone and I heard a shot and I turned  
22 to run away and I fell, and then that's when he came over  
23 me, shot two times again, and then ran off.

24 Q. So you were on the ground when he stood over you and  
25 shot you?

1 A. Right.

2 Q. Could you demonstrate to the jury what kind of  
3 position you were in on the ground when he stood over you  
4 and shot you?

5 A. You want me to show you?

6 Q. Can you show us? And you may want to come out here.

7 A. I turned -- I threw the phone like this and turned  
8 around. The sidewalk was broke up a little bit, so I don't  
9 know if I tripped and fell or what, but I know I fell down  
10 and when I fell, I can just remember, I turned and -- I  
11 land, I landed like on my side and I don't know; it was so  
12 fast. I just remember him walking up -- the last thing I  
13 can remember seeing was his feet. He came over me, shot  
14 two more times and I just watched his feet run towards  
15 Rivers Avenue. That's the last thing I saw.

16 Q. All right. I'm going to ask you to resume your seat  
17 now, okay? What did you do once he ran off?

18 A. I was on the ground, trying to get off the ground. I  
19 couldn't get up for a while. So somehow ---

20 Q. Why not?

21 A. Sir?

22 Q. Why not?

23 A. Because I couldn't feel my legs. And finally I got up  
24 off the ground and I crawled around the ground and found  
25 the phone, because that's the only phone I had in my house,

1 because I knew I had to call 9-1-1. So I found the phone.  
2 And I didn't want to look at the wounds. I didn't want to  
3 look to see where I got shot because I didn't want to  
4 panic. I grabbed the phone and walked all the way back  
5 down the alley, around the gate. I was calling for my wife  
6 by the time I got by the apartments. And then she came out  
7 of the house and I was on the other side of the gate and I  
8 came around and I sat on the step. I sat on the step right  
9 there at the apartments, and I asked her for some water,  
10 and she called the ambulance.

11 Q. Were you in any pain?

12 A. Yes, sir.

13 Q. What were you trying to do?

14 A. I was trying to stay calm so I wouldn't, you know,  
15 bleed to death. I just didn't want to panic. Because I  
16 thought I would bleed to death up on the steps.

17 Q. How serious did you think you had been wounded?

18 A. I knew it was serious because I saw the hole in my  
19 shirt where my heart was, I saw the hole in the shirt, but  
20 I didn't want to, I didn't want to look down at it. I just  
21 tried to stay calm. But I knew it was serious.

22 Q. What's the next thing you remember happening?

23 A. I remember after I sat on the steps, drank the water,  
24 tried to cool my body down, I poured the water over my  
25 head. And that's when one of the police officers ran up on

1 the side. And he was like, what happened? And I told him  
2 I got shot. He said, which way did he go at? And I  
3 pointed to the alley and then he left and the ambulance and  
4 other police pulled up.

5 Q. How quickly were the police on the scene?

6 A. I'm not sure. Everything -- it seemed like it was  
7 going in slow motion for me, you know. I'm not really  
8 sure. It felt like forever to me, you know. So I'm not  
9 sure how long exactly, but I think it was quickly, very  
10 quick.

11 Q. Did you tell the police who had done it?

12 A. Yes, sir. I told my wife as soon as I walked up. She  
13 was like, well, what happened? I said, Jerod Swinton just  
14 shot me. I told her. I called him by his nickname and I  
15 say, he just shot me.

16 Q. What's his nickname?

17 A. Rod Black.

18 Q. All right. You said ---

19 A. Rod Black shot me.

20 Q. Rod or Rob?

21 A. Rod.

22 Q. With a "D"?

23 A. Yes, sir.

24 Q. Okay. And how long have you known him by that name?

25 A. Since I -- that's what I called him since I know him.

1 Q. Okay. Do you go by anything else?

2 A. Yes, sir.

3 Q. What do you go by?

4 A. Rock.

5 Q. Rock?

6 A. Yes, sir.

7 Q. I'm sorry. It's especially difficult to hear with  
8 this machine on, as well, so we have to really elevate our  
9 voices at this point, okay?

10 A. Yes, sir.

11 Q. I'm just going to show you a couple of photographs.  
12 They're already in evidence. All right. We're looking at  
13 State's Exhibit 7. Can you tell the jury what that is?

14 A. That's the step I was sitting on and that's the water  
15 I was drinking out that bottle right there. There's where  
16 I was sitting at, until the ambulance came.

17 Q. You were sitting right there?

18 A. On the step.

19 Q. Until the ambulance came?

20 A. Yes, sir.

21 Q. And that's your blood on the bottom step?

22 A. Yes, sir.

23 Q. And do you see the door to your apartment?

24 A. Yes, sir. It's right underneath the steps right  
25 there.

1 Q. Right underneath the steps?

2 A. Yes, sir.

3 Q. All right. Now, I'm going to show you State's 11. I

4 think this is just a closer up. And here is State's 10.

5 Can you tell the jury what we're looking at here?

6 A. That's the gate at my apartments and that's the alley

7 we went out right there.

8 Q. So down that alley is where the shooting happened?

9 A. Yes, sir.

10 Q. And that's the alley you had to walk back up?

11 A. Yes, sir.

12 Q. Until you sat on that stair?

13 A. Yes, sir.

14 Q. You said you remember the police responding. What

15 happened when the police responded to you?

16 A. They asked what happened and I told them I got shot.

17 They asked if I knew who shot me and I said, yes, sir,

18 Jerod Swinton.

19 Q. Where were you taken at that point?

20 A. MUSC.

21 Q. Do you recall how long you stayed at MUSC?

22 A. About two weeks, I think.

23 Q. Why did you call this man's name?

24 A. Because I thought I was going to die.

25 Q. What if you didn't think you were going to die?

1 A. I would have never said his name. I would have never  
2 said his name if I thought I wasn't going to die.

3 Q. Why?

4 A. Because I would have killed him myself. If I had  
5 thought I wasn't going to die, I would have killed him  
6 myself for shooting me like that. I begged this man for my  
7 life and he still squeezed the trigger on me.

8 Q. How long did you stay at the Medical University?

9 A. About two weeks.

10 Q. Do you know what kind of procedures were done to you?

11 A. I just remember them cutting my side open. I couldn't  
12 breathe. And one of my lungs was collapsing. And I  
13 remember the doctor saying I had a problem breathing. My  
14 lungs was collapsing. They had to go back and fix that  
15 problem. I remember that. I remember that surgery. And I  
16 knew I had -- I still have problems breathing.

17 Q. Do you have any problems with trust issues?

18 A. I don't trust nobody. I pat people down when they  
19 come to my house. My wife can't stand it. I embarrass her  
20 all the time now in public.

21 Q. Did you used to do that?

22 A. No, sir.

23 Q. You're saying you do that now?

24 A. Yes, sir.

25 Q. Why do you do that now?

1 A. Because I had known him for years and I never thought  
2 he would do that. Now, I just really don't -- I just don't  
3 trust nobody.

4 Q. Are you seeking any help for that issue?

5 A. Yes, sir.

6 Q. What kind of help are you seeking?

7 A. Some help for mental health and, you know, my body  
8 isn't what it used to be. My body is always aching and in  
9 pain, you know. I'm always taking Tylenols, aspirin, just  
10 anything just to make me sleep, you know.

11 Q. Do you have scars from where the doctors operated on  
12 you?

13 A. Yes, sir.

14 Q. Are they pretty much all over your body?

15 A. Yes, sir.

16 Q. Do you want to show them to the jury?

17 A. Show them?

18 Q. Stand up and show them.

19 A. That's where he shoot me in the chest right there.

20 Q. And what's that big scar under your arm?

21 A. That's where they fixed the lungs, I think.

22 Q. And the one on your abdomen?

23 A. Uh-huh (affirmative).

24 Q. And because of those injuries you really can't work;  
25 can you?

1 A. Sir?

2 Q. Because of those injuries you really can't work; can  
3 you?

4 A. That's right, sir.

5 Q. Now, you do have a couple of convictions. You were  
6 convicted of possession of cocaine in 2003, possession of  
7 crack in 2008; right?

8 A. Yes, sir.

9 Q. If you would again tell the jury who shot you that  
10 night?

11 A. Jerod Swinton.

12 Q. When he came back that last time was there anything  
13 different about his appearance?

14 A. Well, earlier that day, he had on like a white t-shirt  
15 and pants. And when he came back that last time, he had on  
16 dark clothing.

17 Q. Did that mean anything to you at that time?

18 A. No, not at the moment, not at the time. Not until  
19 after it happened, not until the shooting happened.

20 Q. Do you know what county this shooting took place in?

21 A. In North Charleston County.

22 Q. In Charleston County?

23 A. North Charleston.

24 Q. The City of North Charleston?

25 A. Yes, sir.

1 Q. Do you know what county that is?

2 A. No, not really.

3 Q. Thank you. I want you to answer any questions the  
4 Defense may have for you, okay?

5 A. All right. Yes, sir.

6 THE COURT: Ms. Runey. Will you need the  
7 projector?

8 MS. RUNEY: I do not.

9 **CROSS-EXAMINATION**

10 **BY MS. RUNEY:**

11 Q. Mr. Simmons, you owed Jerod Swinton money for drugs;  
12 didn't you?

13 A. Yes, ma'am.

14 Q. A hundred dollars?

15 A. Yes, ma'am.

16 Q. And you said earlier you were waiting on somebody to  
17 bring you the money?

18 A. Yes, ma'am.

19 Q. Is that the person you had sold the drugs to?

20 A. No, ma'am.

21 Q. Just somebody that was going to help you out and bring  
22 you the hundred dollars?

23 A. Yes, ma'am.

24 Q. And y'all had hung out that day drinking?

25 A. Yes, ma'am.

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1 Q. Did you use drugs?

2 A. No, ma'am.

3 Q. This happened in August of 2010; correct?

4 A. Yes, ma'am.

5 Q. And when you were in the hospital, Detective Kramitz  
6 came to see you and you told him what had happened?

7 A. Yes, ma'am.

8 Q. And at that point, you weren't in any real state to  
9 give any detailed information?

10 A. I think my wife gave them a statement.

11 Q. But at that point, you were ill?

12 A. Yes, ma'am.

13 Q. What I'm asking is, your medical situation was what  
14 was important at that time?

15 A. Right.

16 Q. But you never came back in to meet with Detective  
17 Kramitz and give him a detailed statement; did you?

18 A. No, ma'am.

19 Q. In fact, you weren't really interested in  
20 participating in the prosecution of this case; were you?

21 A. No, ma'am.

22 Q. You didn't attend the bond hearing?

23 A. No, ma'am.

24 Q. And you didn't attend Mr. Swinton's preliminary  
25 hearing; did you?

1 A. No, ma'am.

2 Q. And, in fact, you never -- at the beginning of this  
3 case, never met with the Solicitor's Office; did you?

4 A. No, ma'am.

5 Q. The only time that you began to cooperate with the  
6 Solicitor's Office was when you were in jail; correct?

7 A. Yes, ma'am. I never spoke to anyone until ---

8 MR. DURANT: Objection, Your Honor. This is  
9 irrelevant.

10 THE COURT: All right, counsel. You may  
11 approach.

12 (WHEREUPON, Mr. Durant and Ms. Runey approached the  
13 bar.)

14 THE COURT: All right. Ms. Runey.

15 MS. RUNEY: Thank you, Your Honor.

16 Q. And Mr. Simmons, I've talked to you about this case in  
17 preparation for the trial, as well?

18 A. Yes, ma'am.

19 Q. And you don't want Mr. Swinton to go to prison; do  
20 you?

21 A. I mean, I want something to happen to him. I wouldn't  
22 say, prison, no. I would rather him be dead or something  
23 like that. But I mean, prison would work for me, too.

24 Q. Do you remember telling me that you didn't want  
25 anybody to go to prison?

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1 A. I wouldn't want nobody to go to prison, really, I  
2 don't. That's the only way -- you know, I got ---

3 MR. DURANT: Your Honor, objection.

4 THE COURT: Move on, Ms. Runey. Thank you.

5 MS. RUNEY: Thank you, Your Honor.

6 Q. And I believe what you testified on direct is that you  
7 would rather Mr. Swinton be dead?

8 A. Yes, ma'am.

9 Q. So some type of street justice for him?

10 A. Excuse me?

11 Q. Some type of justice on the street?

12 MR. DURANT: Objection.

13 A. If I was doing the shooting, that's exactly what ---

14 THE COURT: Hold on one second. When there's an  
15 objection, I need you to stop talking until I rule on it,  
16 okay?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Counsel, approach.

19 (WHEREUPON, Mr. Durant and Ms. Runey approached the  
20 bar.)

21 THE COURT: Your witness, Ms. Runey.

22 MS. RUNEY: Thank you, Your Honor.

23 THE COURT: Thank you.

24 Q. Mr. Simmons, you've been shot before; haven't you?

25 A. Yes, ma'am.

1 MR. DURANT: Objection.

2 THE COURT: All right, counsel. You may  
3 approach.

4 (WHEREUPON, Mr. Durant and Ms. Runey approached the  
5 bar.)

6 THE COURT: Sustained as to relevance.

7 Q. Mr. Simmons, had you had a confrontation with someone  
8 earlier over drugs?

9 A. No, ma'am.

10 Q. Days before?

11 A. No, ma'am.

12 Q. And you don't really want to be here today; do you?

13 A. No, ma'am.

14 MS. RUNEY: I beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 MS. RUNEY: That's all I have. Thank you.

17 THE COURT: Mr. Durant?

18 MR. DURANT: Thank you, Your Honor. May it  
19 please the Court.

20 **REDIRECT EXAMINATION**

21 **BY MR. DURANT:**

22 Q. Mr. Simmons, do you recall the first time we spoke?

23 A. Yes, sir.

24 Q. And where did I find you then?

25 A. The county jail.

1 Q. And why were you there?

2 A. Some tickets from about three years ago before my last  
3 daughter was born.

4 Q. For child support?

5 A. Child support.

6 Q. So nothing that my office even handled? Is that  
7 right?

8 A. No, sir.

9 Q. And so there was nothing that I did in any way, shape  
10 or form to get you to cooperate in this case; was there?

11 A. No, sir.

12 Q. I mean, did I offer you anything or attempt to  
13 influence anybody to see if you would come and tell what  
14 you had to tell before a jury?

15 A. No, sir.

16 Q. Why are you in front of this jury?

17 A. Because I got a family. I got five kids and a wife  
18 and that's just the best way to handle this right without  
19 me not being with my family.

20 Q. Have you ever attempted to retaliate in any way  
21 against this guy?

22 A. This is the first time I've seen him since that night.  
23 Never talked, never spoke, nothing.

24 Q. Thank you, sir.

25 THE COURT: Ms. Runey?

1 MS. RUNEY: Nothing further, Your Honor.

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

3 THE WITNESS: Thank you.

4 THE COURT: Call your next witness.

5 MR. DURANT: The State calls Veronica Black

6 Simmons.

7 THE COURT: Mr. Foreman, do you need a break?

8 MR. FOREMAN: Everybody's good.

9 THE COURT: Okay. Thank you.

10 THE CLERK: This way, ma'am, if you'll go around  
11 there, please.

12 Place your left hand on the bible and raise your right  
13 hand, please.

14 Do you solemnly swear or affirm the testimony you  
15 shall give the Court and Jury in the trial of this case  
16 shall be the truth and nothing but the truth, so help you  
17 God?

18 THE WITNESS: I do.

19 THE CLERK: Please have a seat. State your full  
20 name and spell your last for the record.

21 THE WITNESS: My name is Veronica Denise Black  
22 Simmons, and it's S-I-M-M-O-S -- N-S.

23 VERONICA BLACK SIMMONS,

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 **BY MR. DURANT:**

2 Q. Good afternoon, Ms. Simmons.

3 A. Hey.

4 Q. How long has your last name been Simmons?

5 A. For a year now.

6 Q. And why is that?

7 A. I just got married.

8 Q. Who did you marry?

9 A. Simon Simmons.

10 Q. How do you know Simon Simmons?

11 A. I knew him for a couple of years. He is my husband.

12 He's the father of my kids. He's my life.

13 Q. What about your relationship back in August of 2010,  
14 what were y'all then?

15 A. We was dating on and off.

16 Q. Did you have children at that time?

17 A. Yes, we did.

18 Q. Tell the jury how old you are?

19 A. I'm thirty-one.

20 Q. And where did you grow up?

21 A. In Charleston.

22 Q. How far did you go in school?

23 A. To the eleventh grade.

24 Q. Where did you attend school?

25 A. I went to Alice Bimey in North Charleston and Stall.

- 1 Q. Are you employed?
- 2 A. No, I'm not.
- 3 Q. Have you been employed?
- 4 A. Yes.
- 5 Q. Where was the last place you worked?
- 6 A. I worked at McDonald's for a year.
- 7 Q. All right. I want to take you back to August the 5th  
8 and 6th of 2010. Do you recall that day?
- 9 A. Yes. It'll be a day I never forget.
- 10 Q. I want to talk to you about -- approximately -- I want  
11 to start off with what you were doing around noon that  
12 Thursday on the 5th. Do you recall what you were doing  
13 then?
- 14 A. I was just hanging out waiting for the kids to get out  
15 of school.
- 16 Q. All right. Where are the kids in school?
- 17 A. Dunston, right down the road from where I was living.
- 18 Q. How did they get to school?
- 19 A. I walk them every day.
- 20 Q. How do they get home?
- 21 A. I walk them back every day.
- 22 Q. Did you walk them back that day?
- 23 A. Yes.
- 24 Q. Did anybody go with you to walk them back that day?
- 25 A. Yes.

- 1 Q. Who?
- 2 A. Simon Simmons.
- 3 Q. So you and Simon went to go walk the kids back?
- 4 A. Yes, went to go get the kids from school.
- 5 Q. Approximately what time was that?
- 6 A. Like twoish.
- 7 Q. Did y'all meet anyone along the way?
- 8 A. He spoke to someone on the way.
- 9 Q. Do you know who he spoke to?
- 10 A. Rob Black.
- 11 Q. Had you ever seen this person named Rob Black before?
- 12 A. Yes.
- 13 Q. Now, when you said Rob Black, how do you spell Rob?
- 14 A. R-O-B.
- 15 Q. With a B?
- 16 A. Uh-huh (affirmative).
- 17 Q. Not a "D"?
- 18 A. No.
- 19 Q. Where did y'all see him?
- 20 A. By the auto parts store. We was going past an auto
- 21 parts store and he saw Simon and he stopped him and said,
- 22 hey, what's up?
- 23 Q. How long had you known Rob Black at that point?
- 24 A. For about three or four years.
- 25 Q. How would you characterize your knowing him? I mean,

1 were you an acquaintance, a friend, or is this just  
2 somebody you knew?

3 A. I knew him through Simon Simmons. I knew that was his  
4 friend, somebody he deal with, somebody he hang out with.

5 Q. And you said you'd known him for two or three years at  
6 that point?

7 A. Uh-huh (affirmative).

8 Q. Do you see Rob Black in the courtroom today?

9 A. I do.

10 Q. If you would, point to him and describe what he's  
11 wearing?

12 A. That's him right there with a yellowish shirt on,  
13 black pants and black shoes.

14 MR. DURANT: Let the record reflect that the  
15 Defendant has been identified.

16 THE COURT: It will. Thank you.

17 Q. And so this is the man that you saw when y'all went to  
18 go pick up your kids from school that day?

19 A. Right.

20 Q. And when did you go pick up the kids?

21 A. Around twoish.

22 Q. And where did you go?

23 A. We went to Dunston Elementary.

24 Q. And after you got them, where did you go?

25 A. We went back home.

- 1 Q. Was that the last time you saw who you say is Rob  
2 Black that day?
- 3 A. No.
- 4 Q. When was the next time you saw him?
- 5 A. I saw him later on that day around threeish, fourish.
- 6 Q. Where did you see him at that time?
- 7 A. He came to the apartment where I was living.
- 8 Q. And where were you living at that time?
- 9 A. On Craig Road.
- 10 Q. Do you know what county that's in?
- 11 A. Charleston County.
- 12 Q. And who were you living with at Craig Road?
- 13 A. I was living with me and my kids and sometimes Simon  
14 would come by and visit us.
- 15 Q. Do you know how Rob Black arrived at your home?
- 16 A. The first time he came by with a female.
- 17 Q. Did you see this female?
- 18 A. Yes.
- 19 Q. Do you know who she was?
- 20 A. No. I just knew that he was with her.
- 21 Q. Did he come inside?
- 22 A. Yes.
- 23 Q. And what was going on while he was there?
- 24 A. Everybody was just sitting down talking, talking about  
25 the kids in school. You know, he was talking to Simon

1 about his kids and Simon was talking to him about his kids.  
2 Me and the girl was just talking. You know, I don't think  
3 she had any kids at that point in time, so we was just  
4 talking about that.

5 Q. Do you know how long he stayed?

6 A. No more than an hour or so.

7 Q. Was anybody arguing at that time?

8 A. No.

9 Q. Was there any tension in the air?

10 A. No.

11 Q. Any animosity?

12 A. No.

13 Q. Was it just kind of easy-going?

14 A. Right. It was.

15 Q. Was that the last time you saw him that day?

16 A. No. I saw him again.

17 Q. And where was he when you saw him again?

18 A. He knocked on the door and Simon went outside and  
19 talked to him.

20 Q. Do you know approximately what time that was?

21 A. It was dark, so it was six, seven. It was like  
22 evening time.

23 Q. And so is this the second time you saw him?

24 A. Second time.

25 Q. It was evening time?

1 A. Uh-huh (affirmative).

2 Q. And what happened at this point when he came back that  
3 time?

4 A. The boys was just outside. He didn't have the female  
5 with him any longer.

6 Q. Do you know how he came that time?

7 A. No.

8 Q. Did he appear differently that time?

9 A. No.

10 Q. How long did he stay that time?

11 A. I'm not sure, but it wasn't long because Simon came in  
12 the house not even an hour then, so it wasn't long.

13 Q. Was anybody arguing at that time?

14 A. No.

15 Q. Was there any tension at that time?

16 A. No.

17 Q. And your testimony is he left again?

18 A. Right.

19 Q. Was that the last time you saw this man that night?

20 A. No.

21 Q. When was the next time you saw him?

22 A. I saw him again later on that night about twelvish.

23 And he knocked on the door. Simon was like, it's Rob Black

24 at the door. And he was like, I'm going outside. So I was

25 like, okay. And that was the last time I saw him. Well,

1 he actually came in when he knocked on the door the last  
2 time.

3 Q. This man came inside your home?

4 A. Yes, he did.

5 Q. That last time?

6 A. Yes, he did.

7 Q. Did you see him come in?

8 A. Yes, I did.

9 Q. Was there anything about him that was different at  
10 that time?

11 A. He had on a different color of clothing.

12 Q. What color clothing was he wearing at this point?

13 A. Darker colors. It was a darker shirt, darker pants, a  
14 darker shoe.

15 Q. How do you know that?

16 A. Because earlier when I saw him that day, he had on  
17 like lighter colors.

18 Q. Was there any reason to think anything about that, at  
19 that time?

20 A. No.

21 Q. And you saw him come in?

22 A. Right.

23 Q. Did you see him leave?

24 A. Yes.

25 Q. Did you see the door close?

1 A. Sure. Yes.

2 Q. Where was Simon?

3 A. Outside.

4 Q. What was your understanding of what was happening?

5 A. Simon and Rob Black was going down to the store and  
6 get some cigarettes.

7 Q. Did you detect any animosity at that point?

8 A. No.

9 Q. Any tension whatsoever at that point?

10 A. No.

11 Q. Was anybody arguing about anything?

12 A. No.

13 Q. What's the next thing you remember happening?

14 A. The next thing I remember happening was no more than  
15 fifteen, ten minutes, I heard Simon screaming my name.

16 Q. Where were you when you heard that?

17 A. I was in the house and I, I kept hearing somebody  
18 yelling. And I was like, what is he yelling. And when I  
19 opened the front door, I saw Simon and he was like leaning,  
20 walking towards the apartments. And I was like, what's  
21 wrong? And he was like, I just got shot. And I said,  
22 well, who shot you? And he said, Rob Black. And I was  
23 like, what? So the next thing I did is like made him come  
24 all the way around the gate and have a seat. And when he  
25 sat down, I just called the police and ambulance and they

1     came.

2     Q.    Were you concerned?

3     A.    Yes.

4     Q.    Why?

5     A.    Because I thought he was going to die.

6     Q.    Who did he tell you shot him?

7     A.    Yes.

8     Q.    Who did he tell you shot him?

9     A.    Rob Black.

10    Q.    Did you call the police?

11    A.    Yes.

12    Q.    Did you do anything to tend to your husband?

13    A.    Yes.  I brought him some water.  He was like he's  
14    burning all over, and I didn't know what to do.

15    Q.    Where were the kids?

16    A.    Sleeping.

17    Q.    Did the police respond?

18    A.    They responded very quickly and an ambulance responded  
19    very quickly.

20    Q.    Did they take Simon with them?

21    A.    Yes.

22    Q.    Did the kids ever wake up that night?

23    A.    They didn't wake up right away.  But when they did, we  
24    had to tell them your daddy was shot, and I had to go to  
25    the hospital to see if he would make it.

1 Q. Did you try to tell the police what you knew about it  
2 that night?

3 A. Yes.

4 Q. And you gave them a written statement?

5 A. Right.

6 Q. Were you able to tell them just everything at that  
7 time?

8 A. Not at that time because I didn't know what happened.  
9 I didn't know what was going on. All I know is I saw a  
10 hole in his chest close to his heart, and I didn't know  
11 what to do.

12 Q. So is it sufficient to say that the jury has heard  
13 more from you than what's written in your written  
14 statement?

15 A. Yes.

16 Q. Is that because you were in a pretty stressful  
17 situation that night?

18 A. Yes.

19 Q. And just so the jury knows, you've got some  
20 convictions as well; right?

21 A. I do.

22 Q. In 2000, possession of cocaine?

23 A. Uh-huh (affirmative).

24 Q. 2005, contributing to the delinquency of a minor?

25 A. Uh-huh (affirmative).

1 THE COURT: Is that a yes?

2 A. Yes. I'm sorry. Yes.

3 Q. And in 2009, theft of electrical current?

4 A. Yes.

5 Q. Thank you. Please answer any questions the Defense  
6 may have for you.

7 THE COURT: Ms. Runey.

8 MS. RUNEY: Thank you, Your Honor.

9 **CROSS-EXAMINATION**

10 **BY MS. RUNEY:**

11 Q. Ms. Simmons, after your husband was taken away by EMS,  
12 some detectives responded to your apartment and they asked  
13 you to give a statement. And at that time you were upset,  
14 and scared, and worried?

15 A. Uh-huh (affirmative).

16 Q. So you just wrote a brief summary quickly about what  
17 happened?

18 A. Uh-huh (affirmative).

19 Q. Is that correct?

20 A. That's correct.

21 Q. And you told them that Simon had run back to the house  
22 screaming for you?

23 A. I heard him screaming. Uh-huh (affirmative).

24 Q. And then later on Detective Ware wanted to speak to  
25 you again?

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1 A. Uh-huh (affirmative).

2 Q. And that was at your apartment?

3 A. Okay.

4 Q. Do you remember that?

5 A. Yes.

6 Q. Was that inside your apartment?

7 A. Yes.

8 Q. And so you gave another statement at that point?

9 A. Right.

10 Q. And so you were able to sit down and he asked you  
11 questions and you were able to respond to those questions?

12 A. Right.

13 Q. And that was different from the earlier statement  
14 because the earlier statement you just wrote out what had  
15 happened?

16 A. Right.

17 Q. So him asking you the questions took a little stress  
18 off of you; correct?

19 A. I wanted to -- I wouldn't say that because by the time  
20 I was sit down answering them questions, they already had  
21 took Simon, so I was worried about how I'm going to get the  
22 kids from the house and how I'm going to get down there.

23 Q. Not knowing what was going on for sure?

24 A. Right.

25 Q. But you knew more specifically what he was looking for

1 when he was able to ask you questions?

2 A. Right.

3 Q. And he asked you in your statement what time Rob Black  
4 had come?

5 A. Uh-huh (affirmative).

6 Q. And this was, you know, within an hour after it had  
7 happened; correct, you giving the statement?

8 A. Right.

9 Q. Do you recall telling Detective Ware that the first  
10 time that night you saw Rob Black was about nine p.m.?

11 A. No.

12 Q. Would it help you if I showed you a copy of that  
13 statement?

14 A. Sure.

15 MS. RUNEY: Your Honor, may I approach the  
16 witness?

17 THE COURT: You may.

18 MS. RUNEY: Thank you.

19 Q. And I only have one copy so I'm going to stand close  
20 to you, but I'm not rushing you.

21 A. Okay.

22 Q. And this is the question and answer portion, so I'm  
23 going to give you a second to look at that.

24 A. Uh-huh (affirmative).

25 Q. I'm going to let you keep that copy.

1 A. Okay.

2 Q. So can -- did you find the section where he says what  
3 time did you see Rob Black that day, earlier that day? And  
4 your response was the first time about nine p.m.?

5 A. Okay.

6 Q. Is that correct?

7 A. I remember seeing him before nine p.m.

8 Q. Okay. But in your statement right after the shooting  
9 you said the first time you had seen him was nine p.m.

10 A. Okay. I see.

11 Q. That's what's on there; right?

12 A. I see.

13 Q. Okay. And then you continued on about a knock at the  
14 door?

15 A. Uh-huh (affirmative).

16 Q. And Simon got up to put his shoes on?

17 A. Uh-huh (affirmative).

18 Q. And your understanding at that point was that they  
19 were going to go to the store?

20 A. Right.

21 Q. Okay. And approximately seven minutes later you heard  
22 Simon screaming?

23 A. Right.

24 Q. And do you remember telling Detective Ware that you  
25 did not see Rob Black the second time that he came to your

1 apartment?

2 A. Yeah, I am aware that I said that. But he did come in  
3 and use the bathroom.

4 Q. But on that night you didn't tell him about him coming  
5 in to ---

6 A. No.

7 Q. --- use the bathroom?

8 A. Yeah, I didn't.

9 Q. Okay.

10 A. My nerves was shaken.

11 Q. Yes, ma'am. And I believe you testified to this  
12 several times on direct, that you never saw them argue ---

13 A. Correct.

14 Q. --- or never saw any tension ---

15 A. No, I did not.

16 Q. --- between Rob Black and your husband?

17 A. Uh-huh (affirmative).

18 Q. And you knew Rob Black from an area called Hunter's  
19 Ridge?

20 A. Dorchester Ridge.

21 Q. Is that a neighborhood?

22 A. Uh-huh (affirmative).

23 Q. And you only knew him as Rob Black?

24 A. Right. Well, I thought that's what they was calling  
25 him, Rob Black.

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1 Q. And what year was that that you lived in that area?

2 A. Around 2005, 2006.

3 Q. And so you didn't know him as Jerod Swinton?

4 A. No, ma'am.

5 MS. RUNEY: Beg the Court's indulgence.

6 THE COURT: Yes, ma'am.

7 MS. RUNEY: That's all I have. Thank you, Ms.

8 Simmons.

9 THE COURT: Redirect?

10

**REDIRECT EXAMINATION**

11 **BY MR. DURANT:**

12 Q. So your husband had been shot that night; right?

13 A. Yes.

14 Q. And taken the Medical University. You thought he  
15 might die?

16 A. Yes.

17 Q. And it was of no relief that the Detective was asking  
18 you questions about what happened at that point; was it?

19 A. No. No, sir, it wasn't.

20 Q. It didn't alleviate your worry?

21 A. No, sir, it didn't.

22 Q. It didn't make you just comfortable at that point?

23 A. No.

24 Q. Did you try to tell him as much as you could?

25 A. I did try to tell him as much as I could remember at

1 that point in time.

2 Q. Did you and Simon hatch a conspiracy against this guy  
3 in a moment when Simon might be dying?

4 A. No, sir.

5 Q. You didn't talk to your husband and try to get the  
6 stories straight about how he may have died?

7 A. No, sir.

8 Q. Well, are you telling the jury the truth right now?

9 A. Yes, sir, I am.

10 Q. All right. Thank you.

11 THE COURT: Ms. Runey?

12 MS. RUNEY: No further questions.

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

14 Ladies and gentlemen this is an appropriate time for  
15 us to take an mid-afternoon break. Do not begin your  
16 deliberations; do not discuss this case amongst yourselves.  
17 We'll take about fifteen minutes.

18 Please rise for the jury.

19 (WHEREUPON, the jury exited the open court at  
20 approximately 2:41 p.m.)

21 THE COURT: Thank you. Be seated. We're at ease  
22 for fifteen minutes.

23 (WHEREUPON, the court stood at recess for a short  
24 break.)

25 THE COURT: Bring in the jury.

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*Eric Jourdan - Direct Examination by Mr. Durant*

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1 Please rise for the jury.

2 (WHEREUPON, the jury entered the open court at  
3 approximately 2:59 p.m.)

4 THE BAILIFF: The jury's present, Your Honor.

5 THE COURT: Thank you. Please be seated.

6 Call your next witness.

7 MR. DURANT: Thank you. The State calls Sergeant  
8 Eric Jourdan, North Charleston Police Department.

9 THE CLERK: Place your left hand on the bible and  
10 raise your right hand, please.

11 Do you solemnly swear or affirm the testimony you  
12 shall give the Court and Jury in the trial of this case  
13 shall be the truth and nothing but the truth, so help you  
14 God?

15 THE WITNESS: I do.

16 THE CLERK: Please have a seat. State your full  
17 name and spell your last for the record.

18 THE WITNESS: Eric Michael Jourdan, J-O-U-R-D-A-  
19 N.

20 ERIC JOURDAN,

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 THE COURT: Your witness.

23 DIRECT EXAMINATION

24 BY MR. DURANT:

25 Q. Sergeant Jourdan, good afternoon.

1 A. Good afternoon, sir.

2 Q. Will you please tell the jury where you are employed?

3 A. I'm employed by the City of North Charleston Police  
4 Department.

5 Q. How long have you been with North Charleston Police  
6 Department?

7 A. I've been a police officer for the past twenty-six  
8 years. I've been employed with North Charleston for the  
9 last fourteen.

10 Q. What is your current position?

11 A. I am currently -- I hold the rank of police sergeant.  
12 I am currently assigned to the Office of Professional  
13 Standards and the Internal Affairs Bureau for the North  
14 Charleston Police Department.

15 Q. Was that your position in August of 2010?

16 A. No. In August of 2010, I was a uniform patrol  
17 supervisor assigned to the South Precinct Uniform Patrol  
18 Division.

19 Q. What were your duties and responsibilities in that  
20 position?

21 A. In that position I supervised a squad of four police  
22 officers on a regular basis during a ten-hour shift,  
23 supervising them in their regular assigned patrol duties in  
24 that area of the City.

25 Q. In that capacity, did you respond to the area of 5611

1 Craig Road in North Charleston on August the 6th of 2011?

2 A. Yes, I did.

3 Q. How were you brought into this case?

4 A. The communications center dispatched a call of a  
5 shooting, which had just occurred at this location at [REDACTED]  
6 [REDACTED]. I was driving on Rivers Avenue westbound,  
7 approaching the area of Remount Road, which Craig Road runs  
8 off of. I acknowledged the call. I was on scene within  
9 less than two to three minutes. I was actually the first  
10 police officer on scene.

11 Q. Do you know what County this location is in?

12 A. Yes, it's in Charleston County.

13 Q. What did you observe upon arrival?

14 A. When I arrived, [REDACTED] is a apartment  
15 building. It sits off of Craig Road just a bit. It's  
16 accessible by a driveway, which leads into a parking area.  
17 I parked my patrol car on Craig Road. I approached the  
18 apartment building on foot. It was, in my opinion, an on-  
19 going emergency situation, since it had been dispatched as  
20 a shooting. I did not know at that time to my certainty  
21 or satisfaction if the suspect was still on scene. As I  
22 approached, I couldn't -- or as I approached the building,  
23 I observed a black male sitting on the bottom step or  
24 landing of a stairway that leads to the second floor of the  
25 apartment building and he was accompanied by a black

1 female.

2 Q. What was the condition of that person sitting at the  
3 bottom of the stairwell?

4 A. It was -- apparently he was bleeding. He was injured.  
5 He was wearing a white t-shirt, which was, I would describe  
6 as soaked in blood. Again, he was sitting. He appeared,  
7 as I would describe, as in shock and pain. It was obvious  
8 that he was bleeding heavily. He appeared to me to be  
9 trying to remain calm because he was aware of the  
10 seriousness of the situation. He'd just been shot. I was  
11 aware of what I was looking at. I asked him his name and  
12 he replied, my name is Simon Simmons. Because of the  
13 serious nature of what I was observing, I immediately asked  
14 him, do you know who shot you? And he replied, Jerod  
15 Swinton.

16 Q. And did his condition concern you?

17 A. Yes, it did.

18 Q. You said that you were the first person to arrive on  
19 the scene from the police department?

20 A. Yes, I was.

21 Q. Did other officers respond to the scene?

22 A. Yes. Right after I arrived, Detective Chris Ware of  
23 the North Charleston Police Department, he had heard the  
24 call dispatched, as well. He arrived and then we were  
25 followed by responding patrol units from that area to the

1 area.

2 Q. Would you characterize the amount of police officers  
3 on that scene as a substantial force?

4 A. Given the fact that we'd just had a shooting, yes.

5 Q. How long did the victim remain at the scene,  
6 approximately?

7 A. From the time that I arrived until EMS and the first  
8 responders from the North Charleston Fire Department  
9 arrived and he was transported, less than eight to ten  
10 minutes, or no more than ten minutes, I would say. Their  
11 arrival was pretty immediately.

12 Q. And are you aware of what EMS did? Did they  
13 essentially take Mr. Simmons and place him in the  
14 ambulance?

15 A. Yes. When the EMS crew arrived, along with the first  
16 responders from the fire department, they came up to the  
17 driveway as I described the path that I took to the  
18 apartment. They were aware that it was a shooting victim.  
19 They had their stretcher with them. They came up, they  
20 removed his shirt. They, along with I, immediately noticed  
21 two gunshot wounds. One in the upper left chest and one in  
22 the lower left torso or abdominal area. Immediately, he  
23 was placed on the stretcher. The safety straps were put  
24 across him and he was being wheeled back to the ambulance.

25 Q. You said he told you at that time when you spoke with

1 him who shot him?

2 A. Yes.

3 Q. And, again, he told you who?

4 A. He told me Jerod Swinton.

5 Q. And so the ambulance took him out of there pretty  
6 quickly?

7 A. Yes, they did.

8 Q. Is there a phrase for how they do that?

9 A. I described it as a load and go. They don't take time  
10 to stabilize or to bandage or take any type of extra steps  
11 to prep the patient before they place them on the  
12 ambulance. It was a serious injury. They saw it as well,  
13 so they didn't wait. They got him into the ambulance as  
14 quick as they could and he was gone to MUSC.

15 Q. After Mr. Simmons was transported out of there, what  
16 was the concern of the police at that point?

17 A. At that point to search the area. If I can, before  
18 Mr. Simmons was transported, we were able to -- or he was  
19 able to tell me where the shooting had occurred. When  
20 additional units arrived, my crime scene units arrived, we  
21 tried to cordon off that area, what we were told by Mr.  
22 Simmons was where the shooting had occurred, an alleyway  
23 that ran next to the apartment building from Craig Road  
24 back towards Rivers Avenue. He said that's where the  
25 shooting occurred. So when other units arrived, we tried

1 to cordon off that area to preserve any evidence that might  
2 be along that pathway. Then we searched that pathway not  
3 only for any physical evidence but any signs of the  
4 suspect.

5 Q. And when you say you cordoned off the area, is that  
6 the perimeter?

7 A. Yes, I'm sorry. It's a perimeter. The entrance to  
8 the alleyway from where we were on Craig Road was blocked  
9 off with crime scene tape.

10 Q. And is that standard police procedure in an incident  
11 such as this?

12 A. Yes, it is.

13 Q. How does the police department form a perimeter?

14 A. If we're going to be doing it with crime scene tape or  
15 with officers, if the area is so spread out that we can't  
16 really string plastic crime scene tape, we'll use officers.  
17 Given this specific area that we were trying to protect, it  
18 was on both sides of chainlink fencing opening on Craig  
19 Road and then the one closer to Rivers Avenue. So we just  
20 wanted to block entrance or access to the alleyway from  
21 Craig Road. And I also did the same thing, I directed an  
22 officer to the other side of Rivers Avenue to contain that  
23 area.

24 Q. So that it wouldn't be contaminated?

25 A. Yes.

1 Q. Did you also have a description of what the suspect  
2 was wearing?

3 A. Yes. Before Mr. Simmons was transported I asked him  
4 to give me a description of Jerod Swinton; described as a  
5 black male, and that at the time he was dressed in all  
6 black clothing. And I broadcast that description to our  
7 communications center and then onto patrol officers who  
8 were responding to the area. I directed them to the area  
9 of Rivers Avenue, both east and west of the Remount Road  
10 area, to search for a black male matching that description.

11 Q. Who was in charge of the scene that night?

12 A. I was in charge of the scene. I was the first officer  
13 on the scene. I was the ranking officer on the scene for  
14 about the first hour of the investigation. Like I said,  
15 Detective Chris Ware arrived shortly after I did. He also  
16 spoke with Mr. Simmons. He also spoke with the female who  
17 was on the scene, who was later identified as Veronica  
18 Black. He spoke to her as well. And then as the crime  
19 scene technicians arrived, the units, I maintained control  
20 of the scene until everybody was given their assignments as  
21 far as the perimeter, perimeter search, or processing of  
22 the crime scene.

23 Q. So you just said as far as perimeter, perimeter search  
24 and processing of the crime scene?

25 A. Yes, sir.

1 Q. And are those all the ways that this case was  
2 investigated?

3 A. Yes, that's how the case was investigated.

4 Q. And essentially the search for evidence ---

5 A. Yes, sir.

6 Q. --- to determine if anything could be found from that  
7 scene, was on at that point?

8 A. Correct.

9 Q. Can you tell the jury how the scene was processed or  
10 searched for any evidence?

11 A. The area that Mr. Simmons had indicated to us where  
12 the shooting occurred, myself and my crime scene  
13 technician, Murphy, we began at the Craig Road entrance of  
14 this alleyway. We walked it. It was dark. Again, it was  
15 after midnight. Using flashlights. He had told us that it  
16 was mid-way of the alley. As we approached, and I would  
17 approximate, I guess, the distance of this alley, a hundred  
18 yards. Forgive me if that's not accurate, but roughly a  
19 hundred yards. About mid-way down this alley we did come  
20 across a puddle of blood on the roadway. So this being  
21 what Mr. Simmons had told us, it was mid-way of the alley,  
22 this was where we found the blood, so we began our  
23 immediate search of this area primarily for shell casings  
24 from a handgun.

25 Q. And you mentioned that -- you said you had a crime

1 scene technician, Murphy?

2 A. Yes.

3 Q. At the crime scene?

4 A. Yes.

5 Q. Is there a separate division of the North Charleston  
6 Police Department for crime scene?

7 A. Yes, there is.

8 Q. And is it standard for crime scene to be called into a  
9 situation such as this?

10 A. Yes, it is.

11 Q. And that's because the scene needs to be processed?

12 A. It needs to be processed for any physical evidence  
13 that's on scene. Also to collect evidence, photographic  
14 measure of whatever the situation may require as far as the  
15 proper documenting and collection of evidence, yes.

16 Q. Was there an attempt to locate any and all witnesses  
17 who may have been able to provide any information about  
18 this?

19 A. Yes. The responding officers, along with Detective  
20 Ware -- I believe Detective Ware interviewed Ms. Black.  
21 I'm sorry. Detective Ware conducted an interview with Ms.  
22 Black, but I think initially she was interviewed by one of  
23 my patrol officers, Officer Hurst. There was another  
24 resident of the apartment complex, Mr. White, I believe it  
25 was, that was also interviewed by Detective Ware as to what

1 they may have seen or heard. We didn't locate anybody else  
2 in the apartment building who we would consider a witness  
3 to this incident.

4 Q. Were doors knocked on?

5 A. Yes, they were.

6 Q. And pretty much anyone that lived in that area, their  
7 door was knocked on?

8 A. Yes, in the apartment building. Yes.

9 Q. And you said that a person named Mr. White was spoken  
10 to, as well?

11 A. I believe that was the name, yes.

12 Q. Was he able to provide any useful information?

13 A. My recollection is that he stated he heard gunfire,  
14 but he did not observe anyone coming or going from the  
15 alleyway.

16 Q. And that was that he'd just heard gunfire?

17 A. Yes. That was my understanding.

18 Q. Are you aware of whether any shell casings were found  
19 that night?

20 A. No shell casings were found in that area where we were  
21 searching.

22 Q. And as a law enforcement officer, you're familiar with  
23 various types of handguns and pistols?

24 A. Yes, I am.

25 Q. Could you explain to the jury what the difference

1 between a semi-automatic pistol and a revolver is?

2 A. Sure. We'll start with the revolver. A revolver is  
3 going to hold either five or six rounds, in some rare  
4 instances, eight rounds of ammunition. The ammunition is  
5 loaded into a cylinder, which has to be manually removed  
6 from the frame of the gun. The ammunition is then loaded  
7 one at a time into the cylinder. The cylinder is then  
8 closed. After the gun is fired, the spent shell casing are  
9 -- have to be manually dumped from the cylinder. That's  
10 how you would clear the cylinder on a revolver. On a semi-  
11 automatic pistol, the ammunition is loaded into a magazine  
12 or a clip. That can vary anywhere from five rounds up to  
13 fourteen or fifteen rounds, depending on the model of the  
14 gun and the power of the gun. This magazine or clip is  
15 then inserted into the grip of the gun and then once the  
16 gun is fired the slide action on top of the gun pulls to  
17 the back and in that same instance the shell casing from  
18 the bullet is extracted -- or ejected, I'm sorry -- from  
19 the gun. And these are what we find at the scene. And  
20 when we find shell casings of certain calibers, it's  
21 indicative of that it was fired from a semi-automatic  
22 handgun.

23 Q. So if shots had been fired from a revolver, you  
24 wouldn't have found shell casings at the scene. Is that  
25 right?

1 A. We would not have found shell casings unless the gun  
2 had been manually emptied. But we didn't find any shell  
3 casings.

4 Q. But just a regular firing of a revolver is not going  
5 to leave a shell casing?

6 A. No, it will not.

7 Q. Whereas a semi-automatic pistol will?

8 A. Yes, it will.

9 Q. And there were no shell casings found in this case?

10 A. No, there weren't.

11 Q. How long did you remain at the scene that night?

12 A. I was probably on scene approximately one hour. Once  
13 Mr. Simmons was transported and we had identified what  
14 witnesses that we could identify at the scene, I felt that  
15 Detective Ware and the other uniformed officers who were on  
16 scene had control of it. I then turned over control of the  
17 scene to Detective Ware and my crime scene technician,  
18 Murphy, because I was the only patrol supervisor for two  
19 precincts that night, so I had other calls that I needed to  
20 respond to.

21 Q. Did you write a report in this case?

22 A. I wrote a supplemental report, yes, sir.

23 Q. And while you were at the scene, also, was there an  
24 attempt to try to track this Defendant using a dog?

25 A. Yes. The K-9 unit did respond and from the area where

1 we believe the shooting occurred, based on Mr. Simmons'  
2 statement and what we found in the way of blood, there was  
3 an attempt to make a track because, he said that he had last  
4 saw Mr. Swinton running towards Rivers Avenue. So an  
5 attempt was made out from the alleyway towards Rivers  
6 Avenue for a track, but nothing was ---

7 Q. That was unsuccessful; right?

8 A. Yes, it was.

9 MR. DURANT: Your Honor, permission for the  
10 witness to step down.

11 THE COURT: Do you need to show the photographs?

12 MR. DURANT: Yes, ma'am.

13 THE COURT: Then, yes, you may step down. Thank  
14 you. Sergeant, please keep your voice up.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: Thank you.

17 Q. And I'm going to ask that you step right in front of  
18 this thing for a second so you can get oriented.

19 A. Okay.

20 Q. And let me know when you've had sufficient time to get  
21 oriented.

22 A. I'm ready.

23 Q. Okay. And this is, for the record, State's 14. Could  
24 you tell us where Rivers Avenue is on this?

25 A. Yes. This will be Rivers Avenue. This would be the

1 westbound lane if you were traveling towards Goose Creek.

2 This would be the eastbound lane if you were heading into

3 downtown Charleston.

4 Q. And Remount Road?

5 A. Remount Road would be this.

6 Q. All right. And if you would, just put your -- draw a

7 circle just with your finger around the relevant portions

8 of the crime scene and where the perimeter was established

9 that night?

10 A. This would be where I made contact with Mr. Simmons,

11 this being [REDACTED] This would be the alleyway

12 that he indicated that the shooting occurred in. Again, it

13 is a paved alleyway. It runs from Craig Road and comes out

14 between two buildings that face Rivers Avenue. And the

15 area where we found the blood would be just in this area

16 right here. I would say about midway of the alleyway.

17 Q. And State's 13, I believe, is more of a closeup here.

18 So take a second to get adjusted there. Let me know when

19 you're ---

20 A. All right.

21 Q. All right. So then this is Rivers Avenue?

22 A. Yes.

23 Q. And Remount Road is going to be over here?

24 A. Yes.

25 Q. And the victim's apartment is right here?

1 A. The victim's apartment is right here.

2 Q. Right here?

3 A. Yes.

4 Q. And this is the alley?

5 A. This is the alleyway.

6 Q. All right. Now, do you know what --

7 A. I got disoriented. Excuse me. There are two  
8 businesses right here.

9 Q. The alley is right here?

10 A. Yes.

11 Q. These two businesses, do you know what businesses  
12 those are?

13 A. They're a collection of businesses. There's a diner  
14 here, I believe. There was a laundromat in this building.  
15 I think at the time this was something similar to a  
16 Goodwill or something -- yeah, a Goodwill in this building  
17 right here.

18 Q. All right. And what was your understanding of the  
19 direction of flight of the suspect?

20 A. That he ran back towards Rivers Avenue, which would  
21 have him taking the path up the alley between these two  
22 buildings and then through this parking lot, towards Rivers  
23 Avenue.

24 Q. All right. Are you aware of whether anyone was on the  
25 lookout for possible cameras that may have captured

1 anything?

2 A. At that time I was not, no.

3 Q. So that was something that you were not aware of?

4 A. No, I was not aware of that.

5 Q. So if they were, that would be an appropriate question  
6 for some other law enforcement officer?

7 A. Yes.

8 Q. All right. I want to show you a couple of pictures up  
9 on ---

10 MR. DURANT: How long is that going to take?

11 THE WITNESS: Thirty seconds.

12 THE COURT: You may have a seat.

13 MR. DURANT: You can resume your seat. Thank  
14 you, sir.

15 THE WITNESS: All right.

16 Q. Go ahead and start with State's 10. If you can tell  
17 us what we're looking at here?

18 A. Yes, sir. This would be a photograph of the alleyway,  
19 and it appears to be taken from Craig Road looking down the  
20 alley back towards the Rivers Avenue side of the alley.

21 Q. So if you went down that road you would find the  
22 Goodwill to the left and Marie's Diner to the right?

23 A. Yes.

24 Q. And State's 11?

25 A. This is the landing in the stairway where I found Mr.

1 Simmons sitting when I arrived on the scene.

2 Q. State's 9?

3 A. This is a photograph of the alley in the area where  
4 the blood was found.

5 Q. All right. And what's the building we're looking at  
6 straight-on?

7 A. That would be the building which contains Marie's  
8 Diner and I believe the laundromat.

9 Q. All right. And to the left -- is the building to the  
10 left, that's Goodwill?

11 A. That would be the Goodwill building, yes.

12 Q. I'll put that one in there, State's 3?

13 A. This is a photograph of the dirt -- of the driveway  
14 leading from Craig Road up to the apartment building. That  
15 appears to be a North Charleston fire truck out on Craig  
16 Road.

17 Q. And that's yourself and Detective Ware?

18 A. That is me. Detective Ware is in plain clothes with  
19 the telephone. And the officer to the right is Officer  
20 Charles Hurst.

21 Q. And State's 4?

22 A. That is a photograph of the blood that we found on the  
23 roadway, midway of the alley.

24 Q. And that was determined to be where the shooting  
25 occurred?

1 A. That's what we believe, yes, sir.

2 Q. Were there any other substantial pools of blood like  
3 that out there?

4 A. No.

5 Q. That was the only one?

6 A. That was the only one.

7 Q. Besides the one at the stoop, the stairs?

8 A. That was the only one in the alleyway.

9 Q. I think this is just a perspective that's further  
10 back?

11 A. Yes.

12 Q. Were you ever told what the motive for this shooting  
13 was?

14 A. Yes. During my conversations with -- or my  
15 conversation, I should say, with Mr. Simmons prior to him  
16 being transported, after he had identified the person who  
17 shot him, he'd given me a description, he volunteered that  
18 it was over a hundred dollar debt that he owed to Mr.  
19 Swinton.

20 Q. And that was told to you in the moments before he was  
21 transported in the ambulance?

22 A. Before he was transported. Yes, it was.

23 Q. All right. Thank you, sir. Please answer any  
24 questions the Defense may have.

25 THE COURT: Ms. Runey?

1 MS. RUNEY: I don't have any questions for

2 Sergeant Jourdan. Thank you.

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

4 THE WITNESS: Thank you.

5 MR. DURANT: The State calls Detective Chris

6 Ware.

7 THE COURT: Sergeant, you may remain in the

8 courtroom with us.

9 SERGEANT JOURDAN: Oh, thank you, Your Honor.

10 THE COURT: But you are free to leave. Is that  
11 correct, Mr. Durant, Ms. Runey?

12 MS. RUNEY: Yes, ma'am.

13 MR. DURANT: That's correct. Subject to recall  
14 and we don't expect to recall.

15 THE COURT: All right. Thank you.

16 THE CLERK: Place your left hand on the bible and  
17 raise your right hand, please.

18 Do you solemnly swear or affirm the testimony you  
19 shall give the Court and Jury in the trial of this case  
20 shall be the truth and nothing but the truth, so help you  
21 God?

22 THE WITNESS: I do.

23 THE CLERK: Please have a seat. State your full  
24 name and spell your last for the record.

25 THE WITNESS: Christopher Patrick Ware, W-A-R-E.

1                                   **CHRISTOPHER WARE,**

2                   **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

3                                   **DIRECT EXAMINATION**

4   **BY MR. DURANT:**

5   Q.    Good afternoon, Detective Ware.

6   A.    Good afternoon.

7   Q.    Will you please tell the jury where you are employed?

8   A.    North Charleston Police Department.

9   Q.    And how long have you been employed there?

10  A.    Six years.

11  Q.    What is your current position?

12  A.    I'm a detective in the property unit.

13  Q.    Was that your position in August of 2010?

14  A.    Yes, sir.

15  Q.    And what are your primary responsibilities and duties  
16  in that position?

17  A.    I investigate burglaries, larcenies, and any calls for  
18  service that may come up while I'm on duty that involve  
19  anything that occurs freshly on the street, just committed.

20  Q.    And that's in the property division?

21  A.    If it occurs while I'm on duty and the person's unit  
22  who handles robberies, shootings, stuff like that are not  
23  there, then we will assume responsibility for that  
24  situation, as well.

25  Q.    Just so the jury knows, in the detectives bureau,

1 there are different divisions and different detectives who  
2 work different crimes?

3 A. Yes, sir.

4 Q. And can you just tell the jury kind of -- a little bit  
5 about the organization of the Detective Bureau in North  
6 Charleston?

7 A. North Charleston Detective Bureau is split up into  
8 several different teams. There's a white collar team that  
9 handles bank robberies, white collar crimes, check fraud,  
10 credit card fraud. Then there's a property unit that  
11 handles burglaries, larcenies, any time any items are  
12 stolen from anywhere, a business, a home, whatnot. And  
13 there's a person's unit that handles shootings, robberies,  
14 crimes committed against persons. And then there's a  
15 fourth unit, the juvenile unit, that handles crimes  
16 committed against juveniles. Any given day all three teams  
17 are on duty. There are different shifts. And every given  
18 month a certain person from either one of those teams is  
19 working a night shift from eight p.m. to four a.m.

20 Q. And what about the rank and file, the command  
21 structure. Who is your superior?

22 A. My superior is Sergeant Johnson. My superior would  
23 also be whatever ranking Sergeant that I -- ranking  
24 Sergeant, Lieutenant or Captain, that I encounter on the  
25 street while I'm out on the street responding to calls.

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1 Q. All right. But in your capacity as detective in the  
2 property crimes division of the detectives bureau, you can  
3 respond to any crime and investigate any crime that the  
4 detectives division needs to be called out on. Is that  
5 right?

6 A. Yes, sir.

7 Q. And such was the case in this case?

8 A. Yes, sir.

9 Q. And a little bit -- just more on the organization of a  
10 case or how a case is investigated, if you would tell the  
11 jury what a case agent is?

12 A. Basically a call for service is first initiated, the  
13 patrol units respond to the scene. If there's a necessity  
14 for a detective to respond, then a detective will respond  
15 to the scene. Once that scene is secured, so to say, then  
16 there's going to be a case agent that's assigned to the  
17 case. Depending on if it's a property crime or a person's  
18 crime, one of those detectives is usually available. That  
19 detective per that crime will be assigned to that case to  
20 follow it the rest of the way through, do a follow-up,  
21 line-ups. Once we're done with the scene, they'll help  
22 take statements and then afterwards they'll follow up with  
23 line-ups, finding people, interviewing them, drawing  
24 warrants, keeping the case file, making sure that the  
25 prosecutor and everybody is supplied with all information

- 1 gathered in reference to a case.
- 2 Q. And they're essentially the manager of the case?
- 3 A. Yes, sir.
- 4 Q. And other detectives can help them on the case, but
- 5 they're the manager?
- 6 A. Yes, sir.
- 7 Q. Who is the case agent in this case?
- 8 A. Detective Kramitz.
- 9 Q. And is this Detective Kramitz right here?
- 10 A. Yes, sir.
- 11 Q. And he is in the person's unit of the detectives
- 12 bureau at North Charleston?
- 13 A. Yes, sir.
- 14 Q. Well, in your capacity as a detective, did you respond
- 15 to this scene at [REDACTED] on August the 6th of 2011?
- 16 A. Yes, I did.
- 17 Q. How were you brought into this case?
- 18 A. I was working the eight p.m. to four a.m. shift that
- 19 night and I was actually driving around throughout the city
- 20 and I heard the call for a possible shooting that came over
- 21 the radio. I started responding to the area at 5611 Craig
- 22 Street. And as I was en route, Sergeant Jourdan had
- 23 arrived on the scene and he had located a victim that was
- 24 shot at least one time, possibly multiple times. A very
- 25 few minutes later, I showed up on scene.

1 Q. When you arrived, approximate how many officers were  
2 at the scene at that point?

3 A. I know myself and Sergeant Jourdan were there. I  
4 don't recall exactly how many others. Officer Hurst was  
5 there. There were some others that were searching the  
6 pavement area that ran along side of the apartment, as  
7 well.

8 Q. How would you characterize the situation when you  
9 arrived at the scene?

10 A. It was a very serious situation. The victim was  
11 obviously in a lot of pain. He was covered in blood. I  
12 didn't know how well he was going to come out of the other  
13 end of this, because he was obviously very injured,  
14 seriously injured. EMS arrived right after I did and they  
15 immediately loaded him on a stretcher and got him out of  
16 there. As far as behind him, I had a distraught female  
17 that was later identified as the victim's girlfriend who  
18 was behind him.

19 Q. And you said she was distraught?

20 A. Yes, sir.

21 Q. Just pretty upset?

22 A. Yes, sir.

23 Q. And was that kind of the -- that was kind of the  
24 feeling per your observation of Ms. Black, now Ms. Simmons,  
25 and Simon Simmons at that time. Is that correct?

1 A. Yes, sir.

2 Q. Were you able to speak with Simon Simmons at that  
3 point?

4 A. I was.

5 Q. What did you talk to him about?

6 A. I first asked him his name, which he replied, Simon  
7 Simmons. Then I asked him who shot him. Once I asked him  
8 who shot him, he responded, Jerod Swinton. Then I asked  
9 him what he got shot over, what was the reason he was shot?  
10 He said, over some money. EMS then stepped up behind me as  
11 I was asking him one last question and he was able to tell  
12 me that he believed it was a .38 that he was shot with.

13 Q. And is a .38 a revolver?

14 A. Typically, it is, yes, sir.

15 Q. Did you remain at the scene after Mr. Simmons was  
16 transported in the ambulance?

17 A. Yes, sir.

18 Q. Did you also participate in the search for evidence  
19 and for witnesses?

20 A. Yes, sir.

21 Q. To your knowledge, were there any shell casings found  
22 at the scene?

23 A. No, sir.

24 Q. Was the crime scene able to be located?

25 A. Yes, sir.

1 Q. And to your understanding, where was that?

2 A. Approximately a hundred yards behind the residence,  
3 just to the right of the residence. The apartments are  
4 situated much like the front of this box, and then there's  
5 a pavement that ran right next to the apartments to  
6 businesses on the adjoining highway that ran behind it.  
7 About a hundred yards back behind the apartment, we found a  
8 small pool of blood where we believed the incident location  
9 was.

10 Q. For fear of being redundant, I'm going to abbreviate  
11 some of your testimony, but essentially you were involved  
12 in the search for witnesses and evidence at the scene that  
13 night?

14 A. Yes, sir.

15 Q. You were involved in the process of knocking on doors  
16 to see if anybody could tell you anything about this?

17 A. Yes, sir.

18 Q. And you did speak with some witnesses that night?

19 A. Yes, sir.

20 Q. I believe you said you spoke to Ms. Black, now Ms.  
21 Simmons?

22 A. Yes, sir.

23 Q. And the crime scene division was called out?

24 A. Yes, sir.

25 Q. How long did you stay at the scene that night?

1 A. I was there almost two hours.

2 Q. After you left the scene did you do anything else to  
3 investigate this case?

4 A. I did. I responded back to the City Hall, met with  
5 Detective Kramitz, who was preparing a warrant. And after  
6 he prepared the warrant and it was signed for service, then  
7 we located all mailing addresses that we could find for  
8 Jerod Swinton and went and attempted to locate him.

9 Q. So the warrant was signed for Jerod Swinton that  
10 night?

11 A. Yes, sir.

12 Q. Were you able to locate him that night?

13 A. No, sir.

14 Q. And how long did the process of looking for him that  
15 night or morning last?

16 A. If I could refer to my notes. I believe we -- we  
17 concluded our search at about six thirty-five a.m.

18 Q. How many different residences did you go to?

19 A. Five.

20 Q. And he was not found at any of those residences?

21 A. No, sir.

22 Q. And you did write the report in this case. Is that  
23 correct?

24 A. The incident report?

25 Q. That's right?

1 A. No, sir.

2 Q. You wrote a supplemental report?

3 A. Yes, sir.

4 Q. Excuse me. And, of course, that was provided to my  
5 office?

6 A. Yes, sir.

7 Q. Please answer any questions the Defense may have for  
8 you.

9 THE COURT: Ms. Runey.

10 MS. RUNEY: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. RUNEY:

13 Q. Good afternoon, Detective Ware.

14 A. Good afternoon.

15 Q. How quickly after the call went out were you able to  
16 respond to Craig Street, Craig Road?

17 A. Approximately five minutes after the call went out.

18 Q. And that was twelve fifty-five, twelve fifty?

19 A. Yes, ma'am. I heard the call at twelve fifty and I  
20 arrived on scene at twelve fifty-five.

21 Q. And after the victim was taken away, you were able to  
22 talk with Ms. Black, who is now Ms. Simmons?

23 A. Yes, ma'am.

24 Q. And were you able to take her into her apartment?

25 A. Yes, I was.

1 Q. And she sat down and gave you a more detailed  
2 statement?

3 A. She first supplied Officer Hurst with a statement and  
4 then I did a follow-up behind him with some questions and  
5 answers to try to clarify anything that I didn't see as  
6 being clear in her original written statement.

7 Q. Because a question and answer type statement can be  
8 more detailed?

9 A. Yes, ma'am.

10 Q. And you wrote it out? You wrote out the questions and  
11 then you wrote down her responses?

12 A. Yes, ma'am.

13 Q. And was a search warrant served or any type of search  
14 done on that apartment?

15 A. I did a search of her apartment. I did it under  
16 consent. I asked her if she minded if I looked around the  
17 apartment. They had just moved into the apartment so there  
18 was very little inside the apartment. I think it was a  
19 couch and a TV and the kids had a mattress in the bedroom  
20 and they were sleeping on a mattress. Basically, there was  
21 nothing in the apartment.

22 Q. And did you do any searches of any surrounding areas?

23 A. Yes, I did.

24 Q. Did that include the apartments that were also on  
25 Craig Road, the other apartments?

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1 A. As far as did I go inside or did I go around?

2 Q. Inside?

3 A. No, ma'am.

4 Q. Were you able to locate and interview anybody in the  
5 area of Rivers Avenue?

6 A. No, ma'am.

7 Q. And that's a pretty busy area; isn't it?

8 A. (Affirmative nod).

9 Q. You just asked Ms. Black, Ms. Simmons, questions at  
10 that point?

11 A. Yes, ma'am.

12 Q. And you never showed her a picture of anyone named Rob  
13 Black?

14 A. No, ma'am. I did not have access to any photographs  
15 there on scene.

16 MS. RUNEY: That's all I have. Thank you.

17 THE COURT: Mr. Durant?

18 MR. DURANT: Your Honor, I have no questions.

19 THE COURT: You may step down and you may remain  
20 with us, but you're free to leave.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Call your next witness.

23 MR. DURANT: The State calls Kelly Murphy.

24 THE CLERK: Place your left hand on the bible and  
25 raise your right hand, please.

1 THE CLERK: Please have a seat. State your full  
2 name and spell your last for the record.

3 THE WITNESS: Alan Richard Kramitz, K-R-A-M-I-T-  
4 Z.

5 ALAN KRAMITZ,

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 THE COURT: Your Witness.

8 MR. DURANT: Thank you, Your Honor. May it  
9 please the Court.

10 DIRECT EXAMINATION

11 BY MR. DURANT:

12 Q. Detective Kramitz, will you please tell the jury where  
13 you're employed?

14 A. The City of North Charleston Police Department.

15 Q. And how long have you been employed with the City of  
16 North Charleston Police Department?

17 A. Eighteen years.

18 Q. And what is your current position?

19 A. I'm a detective in the person's crime unit in North  
20 Charleston.

21 Q. And was that your position in August of 2006?

22 A. That's correct.

23 Q. I mean 2010, excuse me. August 6th, 2010?

24 A. Yes.

25 Q. And would you please tell the jury what your primary

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1 responsibilities and duties in that position are?

2 A. Investigate violent crimes, homicides, armed  
3 robberies, assaults, serious assaults, crimes against  
4 persons.

5 Q. And that's just one unit in the detectives bureau at  
6 North Charleston. Is that right?

7 A. Yes, that's correct.

8 Q. In that capacity, did you become involved in the  
9 investigation of a shooting that occurred at [REDACTED]  
10 [REDACTED] in North Charleston on August the 6th of 2010?

11 A. Yes, I did.

12 Q. How were you brought into the case?

13 A. I received a call from Sergeant Johnson to respond to  
14 the North Charleston Police Department. There was a  
15 shooting on Craig Road and a suspect had been identified.  
16 My job was to report to the police department, obtain a  
17 photograph of the suspect and then report to the MUSC  
18 hospital to make contact with the victim.

19 Q. And I think you've been identified as the case agent  
20 in this case?

21 A. That's correct.

22 Q. And, again, what was your responsibility in that  
23 capacity for this case?

24 A. I'm the case manager, if you want to use that word. I  
25 would be in charge of the case, see the case through the

1 prosecution, also keep in contact with the Solicitor's  
2 Office, just ensure the integrity of the case and make sure  
3 everything's done correctly.

4 Q. All right. Did you actually respond to the scene that  
5 night?

6 A. No, I did not.

7 Q. How did you first become involved?

8 A. I received a call from Sergeant Johnson about the  
9 shooting.

10 Q. Who is Sergeant Johnson?

11 A. She is my on-call supervisor. She's actually in  
12 charge of the property unit, but like Detective Ware said,  
13 we have other on-call units together.

14 Q. So, in a sense, the detectives bureau is fluid in  
15 terms of their supervisors and the direction and the  
16 organization of how you respond and investigate crimes?

17 A. That's correct. My actual supervisor is a Sergeant  
18 Hill, but when I'm on call, it would be Sergeant Johnson.

19 Q. And so what did you do?

20 A. I reported to the North Charleston Police Department  
21 with the information I received and went ahead and obtained  
22 a photograph of Mr. Swinton and then reported to the MUSC  
23 Hospital, trauma unit.

24 Q. Why did you go there?

25 A. That's what I was instructed to do.

1 Q. But why?

2 A. I apologize.

3 Q. Who were you going to see?

4 A. To show a picture of Mr. Swinton to the victim.

5 MS. RUNEY: Objection, Your Honor.

6 THE COURT: Your basis?

7 MS. RUNEY: I would just renew my earlier  
8 objection regarding ---

9 THE COURT: Approach.

10 (WHEREUPON, Mr. Durant and Ms. Runey approached the  
11 bar.)

12 THE COURT: Counsel, you have an on-going  
13 objection as to this line of questioning?

14 MS. RUNEY: Yes, ma'am.

15 THE COURT: Mr. Durant.

16 Q. When you got to the Medical University, were you able  
17 to speak with Simon Simmons right away?

18 A. No, I was not.

19 Q. Why not?

20 A. The doctors and nurses were attending to Mr. Simmons  
21 at the time. Due to the seriousness of his injuries, I was  
22 not allowed at that time to see him.

23 Q. Approximately how long did you have to wait?

24 A. It was a few minutes. It wasn't very long.

25 Q. Were you able to speak with him?

1 A. Yes, I was.

2 Q. What was his condition when you saw him?

3 A. He was laid out on the table there, the attending  
4 table. He seemed -- it was an extremely serious incident.  
5 He had a gunshot wound to his upper left and lower left  
6 also, right by his heart. He was very serious. I thought  
7 he wasn't going to make it.

8 Q. Did he appear to be in pain?

9 A. Yes, very much so.

10 Q. And he was able to speak with you?

11 A. Yes, he was.

12 Q. Was he able to tell you who had done this to him?

13 A. Yes, he did.

14 Q. Who did he tell you did this to him?

15 A. Jerod Swinton.

16 Q. And is that the person whose photograph you brought  
17 with you?

18 A. That's correct. It is.

19 Q. And why did you bring the photograph of Jerod Swinton  
20 with you?

21 A. I was informed by Sergeant Johnson that the victim had  
22 been a friend of the suspect for a long period of time and  
23 that he knew him very well.

24 Q. So you wanted to get extra confirmation of that?

25 A. That's correct. I did.

1 Q. Do you have the photo that you showed him today with  
2 you?

3 A. Yes, I do.

4 Q. Is it with you at the witness stand?

5 A. Yes, it is.

6 (WHEREUPON, State Exhibit Number 16 was marked for  
7 identification.)

8 Q. All right. I'm showing you what the State has labeled  
9 State's Exhibit 16 for identification, and ask you to take  
10 a look at it.

11 A. Yes, sir.

12 Q. Do you recognize it?

13 A. Yes, I do.

14 Q. And what is it?

15 A. It's the picture I brought down to MUSC Hospital and  
16 showed the victim.

17 Q. And how did you show that picture to the victim?

18 A. Just like this here. I went in -- it's my practice  
19 for a shooting victim, it's very serious in nature. I get  
20 right up to them. I want to get all the information I can.  
21 I actually showed him the pictures, put it right in his  
22 face and showed him.

23 Q. What was his reaction from viewing the picture?

24 A. He immediately identified -- he said, that's him.  
25 That's the guy who shot me.

1 Q. I mean, did he call him by his name?

2 A. He said, Jerod Swinton.

3 Q. As he had done before?

4 A. Yes.

5 Q. But this time with the picture?

6 A. Yes, correct.

7 Q. All right. Based on that information, what did you  
8 do?

9 A. I left MUSC Hospital, went back to the North  
10 Charleston Police Department and secured -- drafted an  
11 arrest warrant for Mr. -- for the Defendant.

12 Q. All right.

13 MR. DURANT: And, Your Honor, at this time the  
14 State moves for the admission of State's 16.

15 THE COURT: We'll take that up outside the  
16 presence of the jury. Please continue.

17 MR. DURANT: Thank you, Your Honor.

18 Q. Were you able to get the warrant signed that night for  
19 Jerod Swinton?

20 A. Yes, I was. I went to Judge Bligen's house myself and  
21 had it taken care of.

22 Q. Did you attempt to serve this warrant that night?

23 A. Yes, we did.

24 Q. What all did you do in an attempt to do that?

25 A. We did a check of all the known addresses or possible

1 addresses of the Defendant and began searching for him.

2 Q. Were you able to locate him?

3 A. No, we were not.

4 Q. Approximately how many addresses did you search for  
5 him at?

6 A. Five.

7 Q. Was he able to be found that night?

8 A. No, he was not.

9 Q. Do you recall when he was arrested for this charge?

10 A. About twenty days later off of Dorchester Road.

11 Q. On August the 26th?

12 A. Yes.

13 Q. As the case agent, you're in charge of follow-up on  
14 this case. Is that correct?

15 A. That's correct.

16 Q. Were you aware that there had possibly been video  
17 cameras at the incident location that may have captured  
18 something, anything, from this incident?

19 A. Yes.

20 Q. What was the result of looking into those video camera  
21 systems?

22 A. The cameras at Marie's Diner were dummy cameras, which  
23 is a camera that's put up by a business that wants to  
24 pretend or show there's a camera out there for security  
25 reasons. And also there was a camera located at the

1 Goodwill, which was an active camera.

2 Q. Was there any video collected from either of these  
3 locations?

4 A. Yes. Not Marie's, but Goodwill.

5 Q. And that was collected as part of this case?

6 A. Yes. Another officer collected it.

7 Q. All right.

8 MR. DURANT: Your Honor, at this time the State  
9 is going to play State's Number -- it's already into  
10 evidence as State's Number 2, I believe.

11 Q. All right. And we have to watch this quickly; right?

12 A. Yes, you do.

13 Q. All right. Let's play it.

14 (WHEREUPON, State Exhibit Number 2 was played in open  
15 Court.)

16 Q. And that's all that it captured?

17 A. That's all it captured.

18 Q. Just a second, if that?

19 A. That's correct.

20 Q. You can't tell whose face is in that video; can you?

21 A. No, you can't.

22 Q. You can see it is dark clothing?

23 A. Yes.

24 Q. And you wrote a report in this case as well; right?

25 A. A supplemental, yes, sir. Case notes.

1 Q. A supplemental report?

2 A. Case notes.

3 Q. All right. Thank you. Please answer any questions  
4 the Defense may have.

5 A. Yes, sir.

6 THE COURT: Ms. Runey.

7 MS. RUNEY: Thank you, Your Honor.

8 **CROSS-EXAMINATION**

9 **BY MS. RUNEY:**

10 Q. Good afternoon, Detective Kramitz?

11 A. How you doing?

12 Q. You said you wrote a supplemental report in this case?

13 A. Yes, ma'am.

14 Q. And that's so you can detail everything that you've  
15 done on the case?

16 A. Yes, ma'am, pretty much, yeah.

17 Q. Because this happened in 2010?

18 A. Yes.

19 Q. And it can be down the road when you're called to  
20 testify in a case?

21 A. Yes.

22 Q. So you want to be able to remember things correctly?

23 A. Yes.

24 Q. You developed a sequential photo lineup in this case;  
25 didn't you?

1 A. Yes, I did.

2 Q. And what that means is several photos, usually six,  
3 where you can show to a victim or a witness in a case and  
4 they can make an identification?

5 A. Yes.

6 Q. You developed that lineup; correct?

7 A. Yes, ma'am.

8 Q. But you did not show that to Mr. Simmons?

9 A. I did not.

10 Q. In this case you just showed him one picture?

11 A. That's correct.

12 Q. Because you weren't able to find Mr. Swinton that  
13 night, you developed some information or a document that  
14 had his description on it?

15 A. Yes.

16 Q. And that is given out to other officers and people in  
17 the area?

18 A. Yes.

19 Q. In other words to be on the lookout?

20 A. Yes.

21 Q. And on that document you listed Mr. Swinton as five  
22 seven and a hundred and seventy pounds?

23 A. Yes, ma'am.

24 Q. Where did you get that information from, from -- well,  
25 let me ask you this. Did you get that information from Mr.

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1 Simmons?

2 A. No.

3 Q. Okay. And when you went to these houses or addresses  
4 that night looking for Mr. Swinton that was not his  
5 residence?

6 A. Correct.

7 Q. He didn't live there?

8 A. Correct.

9 Q. Were you ever able to find a gun in Mr. Swinton's  
10 possession?

11 A. No, ma'am.

12 Q. And not in his home?

13 A. No, ma'am. I believe the address we have is [REDACTED]  
14 [REDACTED] and next to it says, acquaintance's address.

15 Q. Somebody who knew him?

16 A. Yes, ma'am.

17 Q. Okay. And when you did arrest Mr. Swinton, you told  
18 him that there was a video?

19 A. Yes.

20 Q. And you were referring to that video from the Goodwill  
21 that we saw here today?

22 A. Yes.

23 Q. And you told Mr. Swinton that he was in that video?

24 A. I believed he was in it, yes. Due to the area where  
25 he came from -- well, due to the area of the person running

1 from, which is consistent with the area of the shooting.

2 Q. You believed that the person on the video was the  
3 person who did the shooting?

4 A. Yes, ma'am.

5 Q. You went back to MUSC a second time to get a written  
6 statement from ---

7 A. Yes. Sorry.

8 Q. And what you did was you got a verbal statement from  
9 him?

10 A. Yes, I did.

11 Q. And you included that in your reports, but he never  
12 wrote out a statement?

13 A. He did not.

14 Q. And he never came back in to meet with you to give  
15 another statement?

16 A. No, ma'am.

17 Q. And once you did your supplemental report in August,  
18 you didn't have any further contact with Mr. Simmons?

19 A. No.

20 MS. RONEY: I beg the Court's indulgence.

21 THE COURT: Yes, ma'am.

22 MS. RONEY: Nothing further. Thank you.

23 MR. DURANT: Thank you, Your Honor. Just  
24 briefly.

25

**REDIRECT EXAMINATION**

1 **BY MR. DURANT:**

2 Q. Defense counsel pointed out that you did put together  
3 a six-person photo array?

4 A. That's correct?

5 Q. Including the Defendant's photo in there?

6 A. Yes.

7 Q. And if you would, just tell the jury the reason why  
8 you didn't use the photo array and just used the one single  
9 picture?

10 A. It was my understanding, because obviously the victim  
11 has known the Defendant for a long period of time, went to  
12 school together, in that same area all the time together,  
13 so they knew each other very well. There was no -- I  
14 didn't see any point in a six-photograph lineup. And,  
15 also, due to the injuries of the victim, I mean, I had very  
16 little bit of time to go through this entire six-pack of  
17 pictures with the victim. It was life threatening  
18 injuries.

19 Q. And, in fact, the victim had told you that the person  
20 who shot him was Jerod Swinton before you showed him that  
21 one photo?

22 A. Correct. Prior to me showing the picture to the  
23 victim, he told me who did it.

24 Q. All right. And if you would, tell the jury what the  
25 usefulness is and the type of situation when you would,

1 when you would be more inclined to use a six-person photo  
2 array?

3 A. If a victim doesn't know a suspect at all, has never  
4 met them before in the past or has maybe very brief  
5 encounters with the person who committed the crime.

6 Q. Such as a stranger?

7 A. A stranger ---

8 Q. A crime committed by a stranger?

9 A. Correct. Like an armed robbery at a convenience  
10 store, you show the clerk, or like a random type thing.

11 Q. The fact of the matter is you had enough information  
12 to obtain an arrest warrant before even showing that photo.  
13 Isn't that right?

14 A. That's correct. I had information from the scene who  
15 identified the Defendant as the perpetrator of the crime.

16 Q. Defense counsel also pointed out that you did go back  
17 to the hospital in an attempt to obtain a written  
18 statement?

19 A. Yes.

20 Q. And what was the victim's condition when you went back  
21 several days later?

22 A. He seemed weak, frail, very sick still, and in pain.

23 Q. Did he indicated to you that he was not able to  
24 provide a written statement?

25 A. Yes, he did.

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1 Q. Is that why you proceeded to take an oral statement  
2 from him?

3 A. That's correct. I wanted something to put in my notes  
4 of the conversation we had.

5 Q. And, again, this is follow-up that you're doing on  
6 this case after you have already obtained an arrest warrant  
7 for this Defendant?

8 A. That's correct.

9 Q. Thank you, sir.

10 THE COURT: Ms. Runey?

11 MS. RUNEY: Briefly.

12 **RE CROSS EXAMINATION**

13 **BY MS. RUNEY:**

14 Q. Detective Kramitz, the information that you had from  
15 the scene was that Mr. Simmons called Jerod Swinton's name?

16 A. Yes.

17 Q. Thank you.

18 MS. RUNEY: That's all.

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

20 THE WITNESS: Do I leave this up here?

21 THE COURT: Yes. Thank you. Counsel, any  
22 additional witnesses for the evening?

23 MR. DURANT: No, Your Honor.

24 THE COURT: Ladies and gentlemen, I like to break  
25 at about five p.m., so this is an appropriate time for us

1 wonderful and restful evening, and I will see you back in  
2 the morning.

3 Please rise for the jury.

4 (WHEREUPON, the jury exited the open court at  
5 approximately 4:17 p.m.)

6 THE COURT: Thank you. Be seated.

7 We need to first of all address the issue -- let me  
8 see the photograph and that's 16, State's 16?

9 MR. DURANT: That's correct, Your Honor.

10 THE COURT: We need to address that issue. Mr.  
11 Durant needs to get it, or Mr. Ferguson. All right. And  
12 again the basis of your objection to the admission of  
13 State's 16?

14 MS. RUNEY: Your Honor, I understand the decision  
15 of the Court in regards to the *Biggers*. This is somebody  
16 that the victim knew. I think that makes a difference. My  
17 argument as to this picture being admitted is that we were  
18 not provided it in discovery. I say that we were not  
19 provided it; I was given a booking photo of Mr. Swinton. I  
20 believe that the picture was shown to him without the  
21 booking information, but it is the booking photo. And I  
22 was just given notice of that today when we started the  
23 trial. And I ask for that reason that it be excluded.

24 THE COURT: Ms. Runey, were you given this photo?

25 MS. RUNEY: I have a photo, a black and white

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1 photo, that I would like to make an exhibit. But I'm not  
2 even sure if it's the same booking photo. I can show you  
3 what I have. It looks like it's the same booking date, but  
4 the photo that I have been given, which I can pass up to  
5 the Court, is pretty bad, bad quality.

6 THE COURT: Do you want to mark it as a Court's  
7 Exhibit for the record?

8 MS. RUNEY: Yes.

9 THE COURT: You may mark that as Court's 1.  
10 (WHEREUPON, Court Exhibit Number 1 was marked for  
11 identification.)

12 MS. RUNEY: May I approach the Court Reporter?

13 THE COURT: You may.

14 MS. RUNEY: Thank you.

15 THE COURT: Mr. Durant, is there any reason we  
16 can't just take a -- redact the rest of the photograph and  
17 just send one back?

18 MR. DURANT: Your Honor, that is fine with me.  
19 I'd just like to point out that that photograph was  
20 provided to the Defense; listed on our numbering system as  
21 number 27; and, also, in Detective Kramitz's report, which  
22 was also turned over to the Defense. There was only one  
23 booking photo turned over to the Defense and it was this  
24 one. And it says that on 8/6/2010 at approximately one  
25 forty-seven hours, this detective provides the victim a

1 photograph obtained via the Charleston County Inmate Photo  
2 Bank. Upon viewing the photograph, victim Simmons  
3 immediately states, that's him. That's Jerod. He's the  
4 one that shot me. So the information about what kind of  
5 photo was all presented.

6 THE COURT: I think the record is abundantly  
7 clear now. And Court's 1 will be a copy of what the State  
8 had given pursuant to Rule 5, and so the record will be  
9 clear.

10 Back to my question, Mr. Durant, is there any reason  
11 that the full thing needs to go back or can we just send  
12 back ---

13 MR. DURANT: I'm fine with whatever Your Honor  
14 decides on that. I have no preference.

15 THE COURT: Ms. Runey, do you have a preference  
16 for the whole thing to go back?

17 MS. RUNEY: I would prefer just one picture.

18 THE COURT: Okay. Can you redact the photo? Can  
19 you get just one photograph?

20 MR. DURANT: We can just clip that one if that's  
21 all right. We can get another one.

22 MS. RUNEY: And preferably the full-face one I  
23 would assume.

24 THE COURT: Correct. Thank you.

25 All right. Are there any other matters, Mr. Durant?

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1 will instruct the jurors that they cannot give the fact  
2 that you did not testify any consideration whatsoever, and  
3 that there is to be absolutely no prejudice to you because  
4 you did not testify.

5 It is left entirely up to you whether or not you  
6 testify. You may talk with your attorneys, either  
7 separately or together. You may talk with your family or  
8 friends or anyone else, but the final decision is left  
9 entirely up to you. Do you understand what I've explained  
10 to you?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you have any questions about what  
13 I have explained to you?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Mr. Swinton, when we come back  
16 tomorrow, depending on what the State -- if the State calls  
17 any further witnesses, then my question to you will be  
18 simply, do you wish to testify? And you're not required to  
19 answer at this time. I'm going to give you over the  
20 evening hour and into the morning to make that  
21 determination. Thank you, sir. You may have a seat.

22 All right. Do you have the photograph ready for me,  
23 sir?

24 MR. DURANT: We do, Your Honor.

25 THE COURT: All right. Thank you.

1 MR. DURANT: May I approach?

2 THE COURT: And that will be marked just for --  
3 I'm going to keep 16, but I'm not entering 16, that will be  
4 16-A. Thank you.

5 (WHEREUPON, State Exhibit Number 16-A was marked for  
6 identification and admitted into evidence.)

7 THE COURT: And 16-A is admitted over Defense's  
8 objection.

9 MR. DURANT: Do you mind if I just clip the  
10 bottom part of that and get the number off of it?

11 MS. RUNEY: That would be great.

12 THE COURT: Get the number off of it.

13 MR. DURANT: This is one of the ones that was put  
14 in the photo array. So I'm just going to ---

15 THE COURT: All right. With that, Mr. Durant, is  
16 there anything further?

17 MR. DURANT: No, Your Honor.

18 THE COURT: With that, Ms. Runey, is there  
19 anything further?

20 MS. RUNEY: No, Your Honor.

21 THE COURT: All right. We'll be at ease --  
22 counsel, approach. I'm sorry. Are you requesting any  
23 lesser includeds at this time? I cannot think of any that  
24 fit, but are you requesting anything? Mr. Durant, are you  
25 requesting?

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1 forward the podium just a little bit. I'm having trouble  
2 seeing one juror.

3 MR. DURANT: Yes, Your Honor.

4 THE COURT: Thank you.

5 **CHARGE**

6 **BY THE COURT:**

7 Ladies and gentlemen, I remind you that during this  
8 trial you and I have had certain duties to perform. As the  
9 Trial Judge, it is my responsibility to preside over the  
10 trial of this case and I have the duty to rule on the  
11 admissibility of the evidence offered during this trial.  
12 You are to consider only the competent evidence before you.  
13 If there was any testimony that was stricken from the  
14 record, you must disregard that testimony. You are to  
15 consider only the testimony that has been presented from  
16 the witness stand, any exhibits that have been made part of  
17 the record, as well as the stipulations of counsel.

18 I have the additional duty to charge you the law  
19 applicable to this case. As the Presiding Judge, I am the  
20 sole Judge of the law of this case. It is your duty to  
21 accept the law and apply the law as I state it to you now.  
22 If you already have any idea as to what the law is or what  
23 the law ought to be and it does not agree with what I'm  
24 about to tell you, you must abandon your own ideas because  
25 you are sworn to accept the law and apply the law exactly

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*Charge*

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1 as I state it to you now.

2 In every case tried in this courtroom before a jury,  
3 the jury becomes the sole and exclusive judges of the  
4 facts. A Trial Judge may not make any comment on the facts  
5 to the trial jury. You, the jury, are the sole judges of  
6 the facts. You are not to infer from anything that I have  
7 said or done throughout this trial or during my charge on  
8 the law, that I have any opinion regarding the facts in  
9 this case. The law does not allow me to have an opinion  
10 about the facts in this case. This is a matter solely for  
11 you to determine. As jurors, it is your duty to determine  
12 the value, effect, weight and the truth of the evidence  
13 that has presented itself in this trial.

14 The indictment charges the Defendant with attempted  
15 murder. I remind you the fact that the Defendant was  
16 arrested, charged and indicted in this case is not evidence  
17 in this case and cannot be considered by you as evidence of  
18 guilt in this case, nor does it create any presumption or  
19 inference of guilt. This document is simply the formal  
20 written instrument which contains the charges made against  
21 the Defendant. It is the formal document by which this  
22 case is brought into court. Just as the indictment in this  
23 case is not evidence, any terminology or labels used to  
24 refer to the individuals involved in this case cannot be  
25 considered as evidence. For example, the use of the word

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1 defendant and victim are merely formal labels and may not  
2 be considered by you as evidence in this case.

3       The Defendant has pled not guilty to the indictment.  
4 A person charged with committing a criminal offense in  
5 South Carolina is never required to prove himself innocent.  
6 I charge you, it is an important rule of law that the  
7 Defendant in a criminal trial, no matter what the  
8 seriousness of the charge may be, will always be presumed  
9 to be innocent of the crime for which the indictment was  
10 issued, unless guilt has been proven by the evidence  
11 satisfying you of that guilt beyond a reasonable doubt.  
12 The presumption of innocence does not end when you begin  
13 your deliberations, but it does accompany the Defendant  
14 throughout the trial until you reach a verdict of guilt  
15 based upon evidence satisfying you of that guilt beyond a  
16 reasonable doubt. The presumption of innocence is not mere  
17 legal theory. It is not just a legal phrase. It is a  
18 substantial right to which every Defendant is entitled  
19 unless you, the jury, are satisfied from the evidence of  
20 the Defendant's guilt beyond a reasonable doubt.

21       The State has the burden of proving the Defendant  
22 guilty beyond a reasonable doubt. Some of you may have  
23 served previously as jurors in civil cases where you were  
24 told it is only necessary to prove that a fact is more  
25 likely true than not true, such as by greater weight or

1 preponderance of the evidence. In criminal cases, the  
2 State's proof must be more powerful than that, it must be  
3 beyond a reasonable doubt. Proof beyond a reasonable doubt  
4 is proof that leaves you firmly convinced of the  
5 Defendant's guilt. There are very few things in this world  
6 that we do know with absolute certainty and in criminal  
7 cases the law does not require proof that overcomes every  
8 possible doubt. If, based upon your consideration of the  
9 evidence, you are firmly convinced that the Defendant is  
10 guilty of the crime charged, you must find the Defendant  
11 guilty. If, on the other hand, you think there is a real  
12 possibility that the Defendant is not guilty, you must give  
13 the Defendant the benefit of the doubt and find him not  
14 guilty.

15 There are two types of evidence that are generally  
16 presented in a trial, direct evidence and circumstantial  
17 evidence. Direct evidence is the testimony of a person who  
18 claims to have actual knowledge of the facts, such as an  
19 eyewitness. It is evidence which immediately establishes  
20 the main fact to be proved. Circumstantial evidence is  
21 proof of a chain of facts and circumstances indicating the  
22 existence of a fact. It is evidence which immediately  
23 establishes the main fact to be proved.

24 Circumstantial evidence is based on an inference and  
25 not on personal knowledge or observation. The law makes

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1 absolutely no distinction between the weight or value to be  
2 given to either direct or circumstantial evidence nor is a  
3 greater degree of certainty required of circumstantial  
4 evidence than that of direct evidence. You should weigh  
5 all of the evidence presented and after weighing all of the  
6 evidence, if you are not convinced of the guilt of the  
7 Defendant beyond a reasonable doubt, you must find the  
8 Defendant not guilty.

9 Necessarily, you must determine the credibility of the  
10 witnesses who have testified in this case. Credibility  
11 simply means believability. It becomes your duty as jurors  
12 to analyze and to evaluate the evidence and determine which  
13 evidence convinces you of its truth. In determining the  
14 believability of the witnesses who have testified in this  
15 case, you may believe one witness over several witnesses or  
16 several witnesses over one witness. You may believe a part  
17 of the testimony of a witness and reject the remaining part  
18 of the testimony of that same witness. You may believe the  
19 testimony of a witness in its entirety or reject the  
20 testimony of a witness in its entirety. You may consider  
21 whether the witness has exhibited to you any interest,  
22 bias, prejudice or other motive in this case and you also  
23 may consider the appearance and the manner of a witness  
24 while on the witness stand.

25 The Rules of Evidence ordinarily do not permit

1 witnesses to testify to what we would call opinions or to  
2 conclusions. An exception to this Rule exists for  
3 witnesses that are called expert witnesses, a witness who  
4 by education and experience has become expert in some art  
5 or science or profession may state an opinion as to a  
6 relevant or material matter in which the witness claims to  
7 be an expert. The witness may also state the reasons for  
8 that opinion. You should consider any expert opinion  
9 received in evidence in this case, and like any other  
10 evidence, give it the weight you think it deserves. If you  
11 decide that the opinion of an expert witness is not based  
12 on sufficient education or experience or if you concluded  
13 that the reasons given in support of the opinion are not  
14 sound, or that the opinion is outweighed by other evidence,  
15 you may disregard the opinion entirely. An expert  
16 witness's testimony is to be given no greater weight than  
17 that of other witnesses simply because the witness is an  
18 expert.

19 A person who has a past criminal record is competent  
20 to testify during trial. A past record does not affect the  
21 ability of that witness to testify. The past record may  
22 only be considered by you, if at all, in determining the  
23 witness's believability. Remember, you are the sole judges  
24 of the facts in this case and of the believability of any  
25 and all of the witnesses.

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1           You have heard evidence that the Defendant was  
2 convicted of a crime other than the one for which the  
3 Defendant is now on trial. This evidence may be considered  
4 by you if you conclude it is true, only in deciding whether  
5 the Defendant's testimony is believable, and for no other  
6 purpose. You must not consider the Defendant's prior  
7 record as any evidence of the Defendant's guilt of the  
8 charge we are trying here today.

9           In order to establish criminal liability, criminal  
10 intent is required. The mental state required to be proven  
11 by the State for a particular crime might be purpose,  
12 intent, knowledge, recklessness or criminal negligence.  
13 Criminal intent must be proven by the State beyond a  
14 reasonable doubt. Criminal intent is always a matter that  
15 must be determined by the jury from the circumstances  
16 surrounding the situation. There is no way to prove intent  
17 to a mathematical certainty. There is no way that medical  
18 science can dissect a person's brain and determine what  
19 that person had in mind. So the law says that criminal  
20 intent may be inferred from the circumstances shown to have  
21 existed. This is how you make a determination of whether  
22 or not the element required the intent was present. It is  
23 not necessary to establish intent by direct and positive  
24 evidence, but intent may be established by inference in the  
25 same way as any other fact, by taking into consideration

1 the acts of the parties and all the facts and circumstances  
2 of the case. Criminal intent is a mental state. It is a  
3 conscious wrongdoing. It is up to you to determine what  
4 the Defendant intended to do based upon the circumstances  
5 shown to have existed. Criminal intent can arise from  
6 action or a failure to act. It may arise from negligence,  
7 recklessness or an indifference to duty or to consequences  
8 that is considered by the law to be the equivalent of  
9 criminal intent.

10 An issue in this case is the identification of the  
11 Defendant as the person who committed the crime. The State  
12 has the burden of proving identity beyond a reasonable  
13 doubt. You must be satisfied beyond a reasonable doubt of  
14 the accuracy of the identification of the Defendant before  
15 you may convict the Defendant. Identification testimony is  
16 an expression of belief or impression by a witness. You  
17 must determine the accuracy of the identification of the  
18 Defendant. You must consider the believability of each  
19 identification witness in the same way as any other  
20 witness. You may consider whether the witness had an  
21 adequate opportunity to observe the offender at the time of  
22 the offense. This will be affected by things like how long  
23 or short a time was available, how far or close the witness  
24 was, the lighting conditions and whether the witness had  
25 the chance to see another person in the past. Once again,

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1 I instruct you, the burden of proof of the State extends to  
2 every element of the crime charged and this specifically  
3 includes the burden of proving beyond a reasonable doubt  
4 the identity of the Defendant as the person who committed  
5 the crime. If, after examining the testimony, you have a  
6 reasonable doubt as to the accuracy of the identification,  
7 you must find the Defendant not guilty.

8 An intent is an effort to accomplish a crime which  
9 does not succeed. An intent includes a specific intent to  
10 do a particular criminal act along with an act falling  
11 short of the act intended. The State must show more than  
12 mere preparation of intent. Therefore, there must be some  
13 overt act committed in the effort to commit the crime.

14 Intent means intending the result which actually occurs,  
15 not accidentally or involuntarily. Intent may be shown by  
16 acts or conduct of the Defendant and other circumstances  
17 from which you may naturally and reasonably infer intent.

18 The Defendant is charged with attempted murder. In  
19 order to prove this crime, the State must prove the  
20 Defendant attempted to kill another person with malice  
21 aforethought, either expressed or implied. Malice is  
22 hatred, ill will or hostility towards another person. It  
23 is the intentional doing of a wrongful act without just  
24 cause or excuse and with an intent to inflict an injury or  
25 under circumstances that the law will infer an able intent.

1 Malice aforethought does not require that malice exist for  
2 any particular time before the act is committed, but malice  
3 must exist in the mind of the Defendant just before and at  
4 the time the act is committed. Therefore, there must be a  
5 combination of the previous evil intent in the act. Malice  
6 aforethought may be expressed or inferred. The terms  
7 expressed or inferred does not mean different types of  
8 malice, but merely the manner in which malice may be shown  
9 to exist. That is either by direct evidence or by an  
10 inference from the facts and circumstances which are  
11 proved. Expressed malice is shown when a person speaks  
12 words which express a hatred or ill will for another or  
13 when the person prepared beforehand to do an act which was  
14 later accomplished. Malice may be inferred from conduct,  
15 showing a total disregard for human life. Inferred malice  
16 may also arise when the deed is done with a deadly weapon.

17 A deadly weapon is any article, instrument or  
18 substance which is likely to cause death or great bodily  
19 injury. Whether an instrument has been used as a deadly  
20 weapon depends upon the facts and circumstances of each  
21 case. The following are examples of instruments which may  
22 be considered deadly weapons; a piston, shotgun, rifle,  
23 dirk, dagger, knife, slingshot or a metal knuckle. A gun  
24 may be a deadly weapon even if it is not operating. If  
25 facts are prove beyond a reasonable doubt sufficient to

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1 raise an inference of malice to your satisfaction, this  
2 inference would simply be an evidentiary fact to be  
3 considered by you, the jury, along with other evidence in  
4 this case and you may give it the weight you decide it  
5 should receive.

6 Mr. Foreman, you are responsible for writing the  
7 verdict in this case. Ladies and gentlemen, the verdict  
8 must be unanimous, meaning all twelve of you must agree, in  
9 the Court of General Sessions, Ninth Judicial Circuit,  
10 Indictment 2011-GS-10-474, State of South Carolina versus  
11 Jerod Swinton. This is the verdict form. Ladies and  
12 gentlemen, please take no significance in the fact of the  
13 way that I have placed the items on the verdict form. It's  
14 simply something must go on the paper first. Question  
15 number one or answer number one, we, the jury find the  
16 Defendant not guilty; or number two, we, the jury find the  
17 Defendant guilty of attempted murder. Mr. Foreperson, you  
18 must sign and date the verdict form once you have reached  
19 your verdict indicating it is the unanimous decision of the  
20 jury. Once you have reached your verdict you will knock on  
21 the jury room door and we will receive you back into the  
22 courtroom.

23 Mr. Heyward, you have completed your service at this  
24 time and I ask that you remain with us for just a few  
25 moments until the twelve begin their deliberations. So,

1 again, this will be the last time, hopefully, I say this to  
2 you; do not begin your deliberations, do not discuss this  
3 case amongst yourselves. We will be gathering the verdict  
4 form and the evidence to go back to you and the bailiff  
5 will indicate to you when you may begin your deliberations.

6 Please rise for the jury.

7 (WHEREUPON, the jury exited the open court at  
8 approximately 11:13 a.m.)

9 THE COURT: You may be seated. Any objection or  
10 addition or correction to the charges read? From the  
11 State?

12 MR. DURANT: No, Your Honor.

13 THE COURT: From the Defendant?

14 MS. RUNEY: No, Your Honor.

15 THE COURT: Counsel, we will be at ease. Please  
16 do not go far. Thank you.

17 (WHEREUPON, the verdict form and exhibits were  
18 delivered to the jury, after which the Court stood at  
19 recess awaiting the verdict of the jury.)

20 (WHEREUPON, Court Exhibit Number 2 was marked for  
21 identification.)

22 THE COURT: Anything before we bring in the jury?  
23 Mr. Durant, you are prepared ---

24 MR. DURANT: Your Honor, we're just trying to get  
25 this up and going right now.

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*Charge*

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1 THE COURT: All right. Thank you. All right.  
2 Let's bring in the jury.

3 MR. DURANT: We're trying to get it up. It's not  
4 up yet.

5 THE COURT: You can still play with it while  
6 they're here.

7 MR. DURANT: Well, I wouldn't want to fiddle with  
8 it too long in front of them.

9 THE COURT: Is that a full screen, Mr. Durant?

10 MR. FERGUSON: I don't think we can get the full  
11 screen.

12 THE COURT: All right. From what I'm seeing, we  
13 cannot do it frame-by-frame. Is that correct?

14 MR. FERGUSON: That's correct, Your Honor.

15 THE COURT: All right. So there's no sense in  
16 just hoping that it's going to change. Let's go ahead and  
17 bring in the jury. We'll just play it as many times as  
18 they want to see it.

19 MR. FERGUSON: Do you want me to pause it  
20 continuously or just ---

21 THE COURT: We'll just play it as many times --  
22 I'm going to explain to them that there is no way to stop  
23 it frame-by-frame and that we'll play it as many times --  
24 just keep repeating it until they tell me they've seen  
25 enough.

1 MR. FERGUSON: Thank you.

2 THE COURT: Thank you.

3 THE BAILIFF: Are you ready for them?

4 THE COURT: Yes. I'm sorry.

5 (WHEREUPON, the jury entered the open court at  
6 approximately 11:44 a.m.)

7 THE COURT: Thank you. Be seated.

8 Mr. Foreman, we have received your note. And I was  
9 just commenting to someone unrelated to this case yesterday  
10 that with all the technology, what an archaic way to  
11 communicate back and forth via notes, but unfortunately  
12 that's the way we must do it. We have provided the  
13 information that's -- regarding the addresses to you via  
14 notes. And we have queued up the video. There is no way  
15 for us to do it frame-by-frame, so we're just going to keep  
16 playing it until -- just repeating the playback until you  
17 tell me your jurors are satisfied.

18 THE FOREMAN: Thank you. Thank you.

19 THE COURT: Thank you.

20 Mr. Ferguson.

21 (WHEREUPON, State Exhibit Number 2 was played in open  
22 court.)

23 THE JUROR: Can you stop at any point when he's  
24 right there. Anyway of stopping it when it gets right to  
25 the ---

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*Charge*

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1 THE COURT: All right. You want to indicate when  
2 to stop it?

3 THE JUROR: Okay. Right when he gets right  
4 there. Back it up just a little.

5 THE COURT: I know ---

6 MR. FERGUSON: When he comes to this spot.

7 THE COURT: I know this is very difficult for  
8 you, but I need you to utilize your foreperson. And if you  
9 need to write him a note ---

10 THE JUROR: Yeah.

11 THE COURT: --- or whisper, but I need you to  
12 utilize the foreperson. And that is all the technology  
13 that we're able to provide to you. We have been attempting  
14 to stop it frame-by-frame, but that is it.

15 THE JUROR: Okay.

16 THE FOREMAN: There you go. Perfect. Thank you.  
17 That's perfect. Do we have a time frame of that video from  
18 that night?

19 THE COURT: Okay. Counsel approach.

20 (WHEREUPON, Mr. Durant and Ms. Runey approached the  
21 bar.)

22 THE COURT: I will need for you to write that  
23 because we're going to need to mark that question as a  
24 Court's Exhibit.

25 If we're done with the video, we can turn the lights

1 back on. Have all of the issues with the video been  
2 addressed?

3 THE FOREMAN: Yes. Thank you.

4 THE COURT: And the question is, can we get the  
5 time of the video. There was no testimony as to the exact  
6 time. The individual that testified as to the video was  
7 Detective Kramitz. The only thing that I can do is replay  
8 his entire testimony, direct and cross, redirect, recross.

9 THE FOREMAN: Okay. Thank you.

10 THE COURT: So please let me know if you wish to  
11 rehear all of that and we'll bring you back in and play the  
12 audio of his testimony.

13 THE FOREMAN: Thank you.

14 THE COURT: You are excused. Thank you.

15 Please rise for the jury.

16 (WHEREUPON, the jury exited the open court at  
17 approximately 11:51.)

18 (WHEREUPON, Court Exhibit Number 3 was marked for  
19 identification.)

20 THE COURT: Thank you. Be seated. Any  
21 objections to what was indicated to the jury, from the  
22 State?

23 MR. DURANT: No, Your Honor.

24 THE COURT: From the Defendant?

25 MS. RUNEY: No, Your Honor.

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1 THE COURT: All right. We'll be at ease. I  
2 anticipate another note, so do not go far. Thank you.

3 (WHEREUPON, court stood at recess awaiting the verdict  
4 of the jury.)

5 THE COURT: The jury wants to hear Mr. Simmons'  
6 testimony replayed and Mr. Swinton's testimony replayed.

7 Bring them in.

8 Please rise for the jury.

9 (WHEREUPON, the jury entered the open court at  
10 approximately 12:30 p.m.)

11 THE BAILIFF: All jurors are seated, Your Honor.

12 THE COURT: Please be seated. And Madam Court  
13 Reporter, if you will please begin with Mr. Simmons'  
14 testimony.

15 (WHEREUPON, the testimony of Simon Simmons and Jerod  
16 Swinton was played in open court.)

17 THE COURT: Please return to continue your  
18 deliberations.

19 Please rise for the jury.

20 (WHEREUPON, the jury exited the open court at  
21 approximately 1:16 p.m.)

22 (WHEREUPON, Court Exhibit Number 4 was marked for  
23 identification.)

24 THE COURT: Please be seated.

25 Anything from the State?

1 MR. DURANT: No, Your Honor.

2 THE COURT: Anything from the Defense?

3 MS. RUNEY: No, Your Honor.

4 THE COURT: Okay. Counsel you can approach.

5 (WHEREUPON, Mr. Durant and Ms. Runey approached the  
6 bar.)

7 THE COURT: We're at ease.

8 (WHEREUPON, the court stood at recess awaiting the  
9 verdict of the jury.)

10 THE COURT: Thank you. Be seated. I understand  
11 we have a verdict. Anything before we bring in the jury?

12 MR. DURANT: The State's ready, Your Honor.

13 THE COURT: Ms. Runey?

14 MS. RUNEY: Yes.

15 (WHEREUPON, the jury entered the open court at  
16 approximately 1:47 p.m.)

17 THE BAILIFF: All present, Your Honor.

18 THE COURT: Thank you. Please be seated.

19 I understand the jury has reached a verdict. If you  
20 will please hand the verdict form to the bailiff.

21 (WHEREUPON, the verdict form was handed up to the  
22 Court.)

23 THE COURT: Mr. Swinton, if you'll please stand.

24 THE CLERK: State of South Carolina, County of  
25 Charleston, in the Court of General Sessions, Ninth

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Charge

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1 Judicial Circuit, Indictment Number 2011-GS-10-474, the  
2 State of South Carolina versus Jerod Swinton. We, the  
3 jury, find the Defendant guilty of attempted murder.  
4 Signed, Don Sumter, Foreperson of the jury, dated May 17th,  
5 2012.

6 Mr. Foreman, ladies and gentlemen of the jury, if this  
7 is your verdict, please signify by raising your right hand.

8 (WHEREUPON, all jurors' right hands were raised.)

9 THE CLERK: You may put it down.

10 Your Honor, please let the record reflect that all  
11 jurors raised their hand.

12 THE COURT: Thank you. Anything further required  
13 of the jury from the State?

14 MR. DURANT: Not from the State?

15 THE COURT: From the Defendant at this time?

16 MS. RUNEY: No, Your Honor.

17 THE COURT: Thank you. Y'all may be seated.

18 Ladies and gentlemen of the jury, this concludes your  
19 service for this case. It also completes your service for  
20 the week. If you would please retire to your jury room, I  
21 want to personally thank you for your service to Charleston  
22 County. I will be there in just a few moments.

23 Please rise for the jury.

24 (WHEREUPON, the jury exited the open court at  
25 approximately 1:49 p.m.)

1 THE COURT: Thank you, please be seated.

2 Is the State prepared for sentencing at this time?

3 MR. DURANT: With the exception of a sentencing  
4 sheet, Your Honor.

5 THE COURT: All right. Please make sure that you  
6 do that. I'm going to release the jury.

7 Ms. Runey, anything further required from the  
8 Defendant before we impose sentence?

9 MS. RONEY: No, Your Honor.

10 THE COURT: We'll be at ease until Mr. Durant  
11 returns with the sentencing sheet. I'm going to go release  
12 the jury. Any objection to releasing the jury, Ms. Runey?

13 MS. RONEY: No, Your Honor.

14 THE COURT: Mr. Ferguson?

15 MR. FERGUSON: No, Your Honor.

16 THE COURT: Thank you.

17 (WHEREUPON, the court stood at recess for a short  
18 break.)

19 THE COURT: Please rise for the jury.

20 (WHEREUPON, the jury entered the open court at  
21 approximately 2:02 p.m.)

22 THE COURT: Thank you. Please be seated.

23 Mr. Durant, is there anything further from the State?

24 MR. DURANT: Your Honor, in terms of addressing  
25 this sentence and asking the Court what the State wishes,

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1 the jury has spoken. They found this Defendant guilty. As  
2 Your Honor knows, this charge carries up to thirty years in  
3 prison. The State would tell the Court he does have a  
4 prior record: three counts of check fraud in 2001,  
5 possession of a stolen motor vehicle in 2005, and  
6 possession of crack in 2005. I would like to have the  
7 Court to take note that he has taken no responsibility,  
8 shown no remorse for this crime, and that mitigation is not  
9 available to him. This is a cold-blooded killing where the  
10 victim survived. There's no room for this in our society.  
11 The State is asking for the maximum sentence.

12 At the appropriate time, the victims would like to  
13 address the Court.

14 THE COURT: I will hear -- I have heard  
15 previously the testimony. I will hear from one at this  
16 time.

17 MS. SIMMONS: I just wanted to say thank God the  
18 jury ---

19 THE COURT: Ma'am, I need you to address your  
20 comments to the Court.

21 MS. SIMMONS: Oh, I'm sorry.

22 THE COURT: Thank you. And just for the record,  
23 so it's clear, if you'll please state your full name one  
24 more time.

25 MS. SIMMONS: My name is Veronica Simmons. I

1 would like to say thank you to everybody for the court,  
2 especially the Judge and the jury. Thank you.

3 THE COURT: Anything further, Mr. Durant?

4 MR. DURANT: No, Your Honor.

5 THE COURT: Ms. Runey, I'll be happy to hear from  
6 you and your client if he wishes to address the Court at  
7 this time.

8 MS. RUNEY: Thank you, Your Honor. Jerod  
9 Swinton, as he told you here in the courtroom, is thirty-  
10 one years old. What you didn't hear is that he has two  
11 children. He has been in Charleston all of his life, born  
12 and raised here, grew up in the downtown area and then  
13 moved out to the North area. He was living with his  
14 mother. He had one brother that was shot in 2003. He  
15 attended Stall High School and went up until the tenth  
16 grade. Where -- when he left school, he began to work for  
17 an electrical company and he stayed with that same company  
18 for ten years. I think that says a lot that he worked for  
19 the same company for ten years. You know, he does admit to  
20 having a problem with getting caught up in the sale of  
21 drugs. And he doesn't try to deny those things. But he  
22 was working and did keep the same job for ten years.

23 He's been incarcerated since his arrest on this  
24 charge, which I calculate is six hundred and thirty days.  
25 That's been a long time for him to sit and think about his

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*Charge*

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1 life. I know he's done a lot of contemplation there. I  
2 have asked Jerod not to address the Court today in  
3 anticipation of an appeal. So I ask the Court not to hold  
4 that against him, that he is not making any statement here  
5 today. And I also ask the Court to consider his record.  
6 We do agree that he does have a record. It is a minimal  
7 record. In 2001, he's got several fraud -- fraudulent  
8 check convictions, and in 2005 a stolen vehicle and a  
9 possession of cocaine. Certainly, nothing of this caliber  
10 and certainly nothing of any violence, and I ask you to  
11 take those things into consideration on Mr. Swinton's  
12 behalf.

13 THE COURT: Ms. Runey, did you explain to your  
14 client that he has ten days to appeal the decision and the  
15 imposition of this sentence?

16 MS. RUNEY: Yes, ma'am.

17 THE COURT: And did you also explain -- and I  
18 understand that the jury has convicted him, but did you  
19 explain to him that this is considered a violent and a most  
20 serious offense and what those classifications will mean to  
21 him in the future?

22 MS. RUNEY: We did not discuss that today. I'm  
23 sure that we have in the past, but I will be glad to make  
24 sure that he understands that.

25 THE COURT: And, Mr. Swinton, I understand that

1 your attorney has indicated to you not to address the Court  
2 at this time and please rest assured that I will not hold  
3 that against you. I understand that you likely will be  
4 appealing the Court's decision and imposition of the  
5 sentence here today.

6 Ms. Runey, is there anything further?

7 MS. RUNEY: No, Your Honor.

8 THE COURT: Anything further from the State?

9 MR. DURANT: No, Your Honor.

10 THE COURT: Mr. Swinton, please rise. Mr.

11 Swinton, I have listened to the testimony for the past two  
12 days. I have taken into consideration the very careful and  
13 thoughtful deliberation of the jury, listening to, not only  
14 your testimony, but the testimony of the victim's twice and  
15 reviewing the testimony.

16 It is the order of the Court on Indictment 2011-GS-10-  
17 474, that you be committed to the State Department of  
18 Corrections for a term of twenty years. I give you credit  
19 for six hundred and thirty days. Good luck to you, sir.

20 Ladies and gentlemen, again, the bailiffs will escort  
21 you out. Thank you, again, for your service to Charleston  
22 County. Thank you.

23 (WHEREUPON, the jury exited the open court at  
24 approximately 2:06 p.m.)

25 THE COURT: All right. With that, anything

GRD20100804535

DOCKET NO. 2011GS1000474

WITNESSES

ALAN KRAMITZ  
North Charleston Police Department

The State of South Carolina  
County of Charleston

AGENCY CASE NUMBER

2010033215

COURT OF GENERAL SESSIONS

February Term 2011

ARREST WARRANT NUMBER

K404170

DATE OF ARREST

August 26, 2010

ACTION OF GRAND JURY

TRUE BILL

*[Handwritten Signature]*

Foreperson of Grand Jury  
Date: *[Handwritten]*

VERDICT

Foreperson of Petit Jury Date:

INDICT.DOT

FILED

2/11/2011 11:08:03 AM  
JULIE J. ARMSTRONG  
CLERK OF COURT

10.4575 (1)

THE STATE

vs.

JEROD SWINTON  
DOB: *[Redacted]*  
B/M

Indictment for  
Attempted Murder

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON    )

INDICTMENT

---

At a Court of General Sessions, convened on February 7, 2011 the Grand Jurors of Charleston County present upon their oath:

---

Attempted Murder

That in Charleston County, South Carolina, on or about August 6, 2010, the Defendant, JEROD SWINTON, did, with intent to kill and malice aforethought, attempt to kill Simon Simmons. This is 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.

  
G. RUTLEDGE DURANT  
ASSISTANT SOLICITOR

---

STATE OF SOUTH CAROLINA )  
 COUNTY OF Charleston )  
 STATE VS. )  
JEROD SWINTON )  
 AKA: )  
 Race: BLACK Sex: M Age: 31 )  
 DOB: [REDACTED] SS# [REDACTED] )  
 Address: [REDACTED] )  
 City, State, Zip: NORTH CHARLES, SC 294180000 )  
 DL#: [REDACTED] SID#: SC01303121 )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1000474  
 A/W#: K404170  
 Date of Offense: 8/6/2010  
 S.C. Code § : 16-03-0029  
 CDR Code #: 3410

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  
 TO: Murder / Attempted Murder

CONVICTED OF or  PLEADS

in 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)  §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.

[Signature] 73944  
DuRan, J. Rutledge SC Bar# [REDACTED] Defendant Attorney for Defendant SC Bar# [REDACTED]

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. 630 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  DeL. Waives Hearing  Ordered  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

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: \_\_\_\_\_

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>

Appointed PD or appointed other counsel,  
 § 47.12 requires \$500 be paid to Clerk  
 during probation.

Clerk of Court/ Deputy Clerk [Signature]  
 Court Reporter: D. Hawks  
 SCCA/217 (03/2011)

Presiding Judge [Signature]  
 Judge Code: 215  
 Sentence Date: 5/17/12

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 19, 2013

Susan B. Hackett

Susan B. Hackett  
Appellate Defender

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

ATTORNEY FOR APPELLANT

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ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED  
SEP 19 2013  
SC COURT OF APPEALS

THE STATE,

RESPONDENT,


V.

JEROD SWINTON,

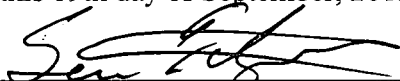
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 19th day of September, 2013.

  
\_\_\_\_\_  
Brandon Hall  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
this 19th day of September, 2013.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 30, 2022