STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Larry B. Hyman, Circuit Court Judge

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S.C. SUPREME COURT

JAMES A. WILSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001432

APPENDIX

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INDEX

INDEX i

TRANSCRIPT OF TRIAL HELD JUNE 27-29, 2016 1

APPLICATION FOR POST-CONVICTION RELIEF 441

RETURN 451

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING HELD MAY 21, 2018 460

ORDER OF DISMISSAL 515

INDICTMENTS 528

STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**

COUNTY OF HORRY) CASE NO.:2015-GS-26-04026

2015-GS-26-04027

June 27-29, 2016

BEFORE: The Honorable Steven John

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

JAMES ABDULLAH WILSON,

Defendant.

APPEARANCES:

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Seth Oskins, Esq.
Attorneys for the State.

Ralph Wilson, Sr., Esq.
Attorneys for the Defendant.

Official Court Reporter
Natalie Dahl, RPR

2

I N D E X

STATE'S WITNESSES PAGE

MARCUS RHODES (JACKSON V. DENNO MOTION)
Direct Examination by Mr. DeBusk..... 26
Cross-Examination by Mr. Wilson..... 33
Redirect Examination by Mr. DeBusk..... 38

TRUDY COX
Direct Examination by Mr. DeBusk..... 60
Cross-Examination by Mr. Wilson..... 79
Redirect Examination by Mr. DeBusk..... 102

SCHANSKI HEMINGWAY
Direct Examination by Mr. Oskins..... 110
Cross-Examination by Mr. Wilson..... 115
Redirect Examination by Mr. Oskins..... 123
Recross-Examination by Mr. Wilson..... 123

KENDRICK GREEN
Direct Examination by Mr. DeBusk..... 125
Cross-Examination by Mr. Wilson..... 132
Redirect Examination by Mr. DeBusk..... 155

NIKARA RUSH
Direct Examination by Mr. DeBusk..... 161
Cross-Examination by Mr. Wilson..... 176
Redirect Examination by Mr. DeBusk..... 201

TIMOTHY CAST
Direct Examination by Mr. Oskins..... 209
Cross-Examination by Mr. Wilson..... 215
Redirect Examination by Mr. Oskins..... 219

JILL DOMOGAUER
Direct Examination by Mr. Oskins..... 220
Cross-Examination by Mr. Wilson..... 231
Redirect Examination by Mr. Oskins..... 250

NICHOLAS BATALIS
Direct Examination by Mr. DeBusk..... 252
Cross-Examination by Mr. Wilson..... 264
Redirect Examination by Mr. DeBusk..... 276

JAMES WILSON
Examination by The Court..... 282

DEFENSE WITNESSES:

JAMIE SPIVEY
Direct Examination by Mr. Wilson.....288
Cross-Examination by Mr. DeBusk.....308

JAMES ABDULLAH WILSON
Direct Examination by Mr. Wilson.....314
Cross-Examination by Mr. DeBusk.....332

MARCUS RHODES
Direct Examination by Mr. Wilson.....349
Cross-Examination by Mr. DeBusk.....360
Redirect Examination by Mr. Wilson.....363
Recross-Examination by Mr. DeBusk.....365

Closing statements by Mr. Wilson.....376

Closing statement by Mr. DeBusk.....390

Jury Charge.....405

Verdict.....425

EXHIBITS

STATE'S EXHIBITS		MARKED	ADMITTED
1	Miranda form	28	29
2	CD admitted	30	32
3	Map on board	61	61
4	Photos	62	63
5	Photo	65	66
6	Photo	66	66
7	Photo	72	--
8	Photo	102	103
9	Weather report	109	110
10	Poster board	210	211
11	Photo	222	222
12-14	Photos	223	224
15	Photo	225	226
16	Photo	225	226
17	Shirt in bag	227	--
18	T-shirt in bag	227	229
19	Spent 40 cal.	227	229
20	Plait	227	230
21	Plait	227	230
22	Plait	227	230
23	Photo	258	258

DEFENDANT'S EXHIBITS

(No Defense Exhibits were marked.)

COURT'S EXHIBITS		
1	Jury note	422
2	Jury charge	422
3	Jury note	422
4	Jury note	423
5	Jury note	423

P-R-O-C-E-E-D-I-N-G-S

THE COURT: Counsel, would you come up and talk to me for a second?

(Whereupon, a bench conference was had.)

THE COURT: Ladies and gentlemen, we are going to pick the case of the State of South Carolina versus James Abdullah Wilson. The State of South Carolina has charged the defendant, Mr. Wilson, with two crimes, that being murder and possession of a weapon during the commission of a violent crime. Now, regarding this I'm going to read to you some basic information set forth in the indictment. Before I do that, I need to tell you the indictment is merely the charging document, the document which brings the matter to court. It is not evidence, cannot be considered by anyone as evidence in the case. The only reason I'm reading it to you is to see if you happen to know anything about this case.

So the State has charged that the defendant, James Abdullah Wilson, did in Horry County on or about May 8, 2015 willfully, feloniously and intentionally killed the victim, Nigeria McDonald, with malice aforethought, either expressed or implied, by means of a gunshot, and the victim did die as a proximate result thereof on or about May 8, 2015 in the County

6

of Horry, State of South Carolina all in violation of the Code of Laws for the State of South Carolina, 1976, as amended.

The State also charged that James Abdullah Wilson did in Horry County on or about May 8, 2015 possess a firearm, or visibly display what appeared to be a firearm, during the commission or attempted commission of a violent crime in violation of the Code of Laws, State of South Carolina, 1976, as amended.

Is there any member of the jury panel that knows anything about this particular case, heard anything about this particular case from anyone, any point in time from any source, whether it is a person or, you know, TV, newspaper, know anything about it, whatsoever, at all; if so, please stand?

Very good.

Now, the possible or potential witnesses in this case, and because I call a name does not mean that that witness will be called as a witness in the case, but the potential exists that they could be called. So, Marcus Rhodes; Greg Lent, Horry County Police Department; Jill Domogauer, Horry County Police Department; Timothy Cast, Horry County Police Department; Todd Cox, Horry County Police Department; retired Jonathan Bryan, Horry County Police

Department; Peter Cestare, Horry County Police Department; James Green, South Carolina Law Enforcement Division; Nicholas Batalis, Medical University of South Carolina; Nikara Rush, Schanski Hemingway, Trudy Shullamite Cox, Shaquille Anthony Gore, Jamie Spivey, Donte Livingston, Cassandra Campbell, Kendrick Green; Brian Wilson, Horry County Police Department; Jonathan Martin, Horry County Police Department; William Hemingway, Craig Hutchinson, Horry County Police Department.

Is there any member of the jury panel that is related by blood or marriage, close personal friends, acquaintances of any of these possible or potential witnesses along with the defendant, James Abdullah Wilson; if so, please stand?

Very good.

All right, Solicitor, if you would stand and identify yourself, please, sir.

MR. DeBUSK: I'm George DeBusk. I'm with the 15th Circuit Solicitor's Office, and with me is Seth Oskins, who is also with the Solicitor.

THE COURT: Very good. Mr. Wilson.

MR. WILSON: I'm Ralph Wilson. I'm a sole practitioner. This is my paralegal, Danielle Switz (phonetic).

THE COURT: Is there any member by the jury panel that is related by blood or marriage, close personal friends or acquaintances of these lawyers that have introduced themselves or regarding the private practice of law, Mr. Wilson, ever been a client of his currently or in the past; if any of that applies to you, please stand.

All right.

Any member of the jury panel that you, yourself, or a member of immediate family, ever had a matter of any kind handled, touched, worked on, spoken about by the 15th Circuit Solicitor's Office, and that is the prosecuting office that covers Horry and Georgetown Counties; if so, please stand?

All right, sir. Your name and jury number?

JUROR: Warren Beckham, 18.

THE COURT: Was it yourself or a family member?

JUROR: Family member, wife.

THE COURT: Can you give to the State of South Carolina and to the defendant a fair and impartial trial? Can you be a fair and impartial juror in this case?

JUROR: I can.

THE COURT: Thank you very much, sir.

Any member of the jury panel that is related by

blood or marriage, close personal friends, acquaintances of anyone employed at the 15th Judicial Circuit Solicitor's Office in Horry County or Georgetown Counties; if so, please stand?

All right. Yes, sir.

JUROR: I'm sorry, I'm close personal friends of Scott Hixson.

THE COURT: All right, sir. And this is the same juror, same juror number. Can you give to the State of South Carolina and to the defendant a fair and impartial trial? Can you be a fair and impartial juror in this case?

JUROR: Yes, sir.

THE COURT: Thank you very much. All right. Is there any member of the jury panel that you believe you have any kind of personal, political, religious, philosophical belief that would prevent you from being a fair and impartial juror in this case; if so, please stand?

All right.

Is there any member of the jury panel that is a former law enforcement officer or you have a current family member who is now in law enforcement or was in the past in law enforcement? If any of that applies to you, please stand at this time. Again, same juror,

10

but if you would state your name and number again.

JUROR: Warren Beckham, 18.

THE COURT: What relation or --

JUROR: Two brothers, FBI.

THE COURT: Can you give to the State of South Carolina and to the defendant a fair and impartial trial? Can you be a fair and impartial juror in this case?

JUROR: Yes, sir.

THE COURT: Thank you very much. Yes, ma'am.

JUROR: Margaret Wicker, 380. FBI, I worked for the FBI.

THE COURT: Did you work there?

JUROR: Yeah, I worked there.

THE COURT: Can you give to the State of South Carolina and to the defendant a fair and impartial trial? Can you be a fair and impartial juror in this case?

JUROR: Yes.

THE COURT: Thank you very much. Down here at the closer to the end.

JUROR: Joie Giles. My ex-brother-in-law works for Horry County Police Department.

THE COURT: Do you remember your juror number?

JUROR: 109.

THE COURT: Can you give to the State of South Carolina and to the defendant a fair and impartial trial? Can you be a fair and impartial juror in this case?

JUROR: Yes, sir.

THE COURT: Thank you very much. Yes, ma'am.

JUROR: April Lorey, 207. My brother-in-law and niece work for the Horry County Sheriff's Office, and my niece's husband is a Conway City police officer.

THE COURT: Can you give to the State of South Carolina and to the defendant a fair and impartial trial? Can you be a fair and impartial juror in this case?

JUROR: Yes, sir.

THE COURT: Thank you. Yes, sir.

JUROR: Eugene Woodlief, juror number is four -- I don't remember. My sister retired from Mecklenburg Police.

THE COURT: Can you give to the State of South Carolina and to the defendant a fair and impartial trial? Can you be a fair and impartial juror in this case?

JUROR: Absolutely, yes.

THE COURT: Yes, ma'am.

MR. WILSON: Your Honor --

12

THE COURT: Sorry.

MR. WILSON: What was his number?

THE COURT: Your number again.

JUROR: I think --

MR. DeBUSK: 391, for the record.

THE COURT: Thank you. Yes, ma'am.

JUROR: Penny Jalosky, 150. I have a nephew and niece that are state troopers, one in New York and one in Pennsylvania.

THE COURT: And can you give to the State of South Carolina and to the defendant a fair and impartial trial? Can you been a fair and impartial juror in this case?

JUROR: Yes, I can be.

THE COURT: Thank you very much.

All right. Is there any member of the jury panel that you, yourself, or a member of your immediate family is a member of any kind of victim's rights or law enforcement support organization? Let me just give you some examples of what I'm talking about. This is not an exhaustive list. Citizens Against Violent Crime, Mothers Against Drunk Driving or the neighborhood watch program, the South Carolina Law Enforcement Officers Association, or South Carolina Sheriff's Association, some kind of victim's rights or

law enforcement support organization of any kind; if so, please stand.

All right.

Now, next question I'm going to ask you, ladies and gentlemen, is whether or not you, yourself, or a member of your immediate family has been the victim of a crime. Now, the question is going to be straightforward: Was it yourself or a family member. I'm not going to ask you about anything of what occurred. I do not want you to volunteer any information to me about what occurred. I'm just asking whether it is yourself or a family member, and then I'll ask the qualification questions.

Any member of the jury panel, either you, yourself, or a member of your immediate family ever been the victim of a crime; if so, please stand?

Your name and jury number?

JUROR: Warren Beckham, 18.

THE COURT: You or family member?

JUROR: Family member.

THE COURT: Can you give to the State of South Carolina and to the defendant a fair and impartial trial? Can you be a fair and impartial juror in this case?

JUROR: Yes, sir.

14

THE COURT: Thank you very much. Yes, ma'am.

JUROR: Rae Anne Bushway, 36. Family member.

THE COURT: Can you give to the state of South Carolina and to the defendant a fair and impartial trial? Can you be a fair and impartial juror in this case?

JUROR: Yes, sir.

THE COURT: Thank you, ma'am. Yes, ma'am.

JUROR: 72, Barbara Delk. Family member.

THE COURT: Can you give to the State of South Carolina and to the defendant a fair and impartial trial? Can you be a fair and impartial juror in this case?

JUROR: Yes.

THE COURT: Thank you very much. Yes, ma'am.

JUROR: Loretta Edwards, Juror 89. Family member.

THE COURT: Can you give to the State of South Carolina and to the defendant a fair and impartial trial? Can you be a fair and impartial juror in this case?

JUROR: Yes.

THE COURT: Thank you very much. All right. I'll ask you, ladies and gentlemen, what I classify as my general or catch-all question. Do you know of any

reason, have any question in your mind, any doubt in your mind that you believe you can't give to the State of South Carolina and to the defendant a fair and impartial trial? That is for any reason, whatsoever, that you believe that you cannot be a fair and impartial juror in this case; if so, please stand?

Further questions from the State?

MR. DeBUSK: None, Your Honor. Thank you.

THE COURT: Defense?

MR. WILSON: Nothing, Your Honor.

THE COURT: Very good. Ladies and gentlemen, we're going to have the selection process. What is going to happen is the clerk's representative is going to call out one of your names. If and when your name is called, you will stand up, you will come forward and come around to a place basically right in front of the court reporter right here in front of the bench in front of her, stand and face the back of the courtroom. At that point in time, the clerk will inquire of the State to present or excuse the juror. If you are presented by the State, the clerk will inquire of the defense if he wants to seat or excuse the juror. If you are excused by the State or defense, you go back and have a seat from whence you came. If you are presented by the State and seated by

16

the defense, the clerk will instruct you to go to the jury box over there and have a seat in the jury box as a member of this particular jury.

If you happen to have any personal items, book, purse, whatever it might be, your name is called, please bring that along with you in case you are seated, you can go directly to the jury box.

Madam clerk.

THE CLERK: Juror 207, April Lorey. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Excuse this juror for this particular case.

THE CLERK: You are excused from this case.

197, Donna Leith. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Seat the juror.

THE CLERK: 46, Leslie Catana. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Seat the juror.

THE CLERK: Please be seated in the jury box.

344, Donald Thayer. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Please excuse the juror from the trial of this particular case.

THE CLERK: 80, Vinh Dinh. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Seat the juror.

THE CLERK: 109, Joie Giles. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Seat the juror.

THE CLERK: Please be seated in the jury box. 150, Penny Jalosky. What say the State?

MR. DeBUSK: What was the number?

THE CLERK: 150.

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Please excuse the juror for this trial of the case.

THE CLERK: 279, Jose Rangel. What say the State?

MR. DeBUSK: Please excuse the juror.

THE CLERK: You're excused from this case.

18

30, Martha Brooks. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Seat the juror.

THE CLERK: 63, Tracy Coyle. What say the State?

MR. DeBUSK: Please present the juror.

MR. WILSON: Please excuse the juror from this particular case.

THE CLERK: You're excused from this particular case.

105, Diana Garay. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Seat the juror.

THE CLERK: Andreau Wingate, 390. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Please excuse the juror for this particular case.

THE CLERK: You're excused from this case.

232, Jillian Mcmanus. What say the State?

MR. DeBUSK: Present the juror.

THE CLERK: Defense?

MR. WILSON: Please excuse the juror for the

trial of this particular case.

THE CLERK: You're excused from this particular case.

101, Benjamin Foust. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Seat the juror.

THE CLERK: 71, Patrick Davis. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Seat the juror.

THE CLERK: Please be seated in the jury box.

210, Hannah Maloney. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Please excuse the juror for this particular case.

THE CLERK: You're excused for this particular case.

18, Warren Beckham. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Please excuse the juror for this particular case.

20

THE CLERK: 257, Justin Ogle. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Seat the juror.

THE CLERK: 89, Loretta Edwards. What say the State?

MR. DeBUSK: Please seat the juror.

THE CLERK: Defense?

MR. WILSON: Seat the juror.

THE CLERK: Please be seated in the jury box. 201, William Lisanty. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Please excuse the juror from this particular case.

THE CLERK: You are excused from this case.

72, Barbara Delk. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Seat the juror.

THE CLERK: Please be seated in the jury box.

385, Aliyyah Willis. What say the State?

MR. DeBUSK: Please present the juror.

MR. WILSON: Please seat the juror.

THE COURT: We have two alternates, one and two on each alternate.

THE CLERK: 110, Harry Gillings. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Seat the juror.

THE CLERK: Please be seated in the jury box. 328, Jackie Stanley. What say the State?

MR. DeBUSK: Please present the juror.

MR. WILSON: Please excuse the juror from this particular case.

THE CLERK: 99, Rivers Ford. What say the State?

MR. DeBUSK: Please present the juror.

THE CLERK: Defense?

MR. WILSON: Seat the juror.

THE CLERK: Please be seated in the jury box.

THE COURT: Mr. Gillings and Mr. Ford, you are alternates in this particular matter. Thank you.

Now, is there any objections to the jury as a panel from the State?

MR. DeBUSK: None from the State.

THE COURT: Defense?

MR. WILSON: Nothing, Your Honor.

THE COURT: Very good. I find the jury is proper

22

pursuant to Batson versus Kentucky and J.E.B versus Alabama. I'll ask you in a minute go back to the jury room and do one thing for me, and that is going to be select your foreperson for this particular jury. Let me tell you what the foreperson's duties and responsibilities are. If we are here in the courtroom and the jury needs attention to something, the witness needs to speak up, lawyers, whatever the situation is, the foreperson will raise their hand, get the Court's attention and handle whatever the matter is. If you are back in the jury room and a matter comes up, you take the pad and pen provided to you, you write a note, sign it and give it to the bailiff and it will come to me and we'll handle the matter, whatever it might be. When we have gone through the evidentiary portion, we have heard all of the witnesses that will come before you and testify under oath, you received any kind of documents or any physical evidence that might be introduced in this matter, we have heard the closing arguments of the attorneys, I have then given you the law that you will apply to the facts and evidence you collectively find to be true in this particular matter, then I will send the case to you for your deliberations and your unanimous decision in this particular matter. At that point in time, the

foreperson's duties and responsibilities change in this regard: The foreperson is going to act like the chairperson at a meeting, you know, guide the discussions if necessary. An important duty is to make sure that everyone that wants to has an opportunity to speak. Everyone's voice has an opportunity to be heard. The foreperson's voice and vote carries no more weight than any other member of the jury. Everyone is equal in that regard. Again, the foreperson needs to remain in charge, guide the discussions if necessary. If there is a matter that needs the Court's attention, write out the note, sign it and give it to the bailiff and it will come to me and we'll handle it, whatever it might be.

The final responsibility and duty of a foreperson is once the jury has well and truly deliberated, you have reached your unanimous decision in this matter, the foreperson takes the verdict form, which the Court will provide to you, check the appropriate blocks or write out the appropriate word, thereafter signing your name as foreperson indicating that that, indeed, is the verdict of each and every member of the jury in this particular case.

So with that instruction as to the foreperson, I'll send you back to the jury room and let you

24

discuss it, pick your foreperson. As to the alternates, Mr. Gillings and Mr. Ford, as the alternates you can vote on the foreperson, but being alternates, you cannot be the foreperson. Everyone else is eligible for that duty and responsibility. So if you will, go back to the jury room and select a foreperson, knock on the door and let the bailiff know who it is.

(The jury exits at 12:37 p.m., and the following is heard out of the presence of the jury.)

THE COURT: All right. Ladies and gentlemen of the panel that were not selected for this particular case, I'll excuse you for the balance of the day. I want you to call back to the jury information line tonight after 6 o'clock. As you have heard, you may very well may not be called back, might ask you to call back in again, but it may be that you are not asked to come back to the courthouse.

Again, I want to tell you that the civil roster and criminal roster there were a large number of cases resolved just because you are answering the jury summons and here ready and willing to be jurors. We appreciate that very much. If I don't see you again, thank you for your service. You have an exemption now because you did answer the summons for three years of

coming back to see us in circuit court. If you get called by magistrate or city judge or federal judge, you have to see them, just don't have to see me for the next three years.

With that, you are now excused. Call that number now after 6:00. Thank you.

(Whereupon, the prospective jury panel exits at 12:39 p.m.)

THE COURT: Before we break for lunch, anything from the State at this point in time?

MR. DeBUSK: No, Your Honor.

THE COURT: Defense?

MR. WILSON: Nothing, Your Honor.

THE COURT: We'll come back at 2 o'clock and start the Jackson v. Denno at 2 o'clock. Thank you.

(A lunch recess was taken.)

(The following is had out of the presence of the jury.)

THE COURT: The jury has selected Juror 71, Patrick Davis, as the foreperson.

Is the State ready to proceed with the Jackson V. Denno hearing?

MR. DeBUSK: Yes, Your Honor.

THE COURT: Call your witness.

MR. DeBUSK: Detective Rhodes.

26

JACKSON V. DENNO HEARING

(MARCUS RHODES, having been duly sworn, testified as follows:)

DIRECT-EXAMINATION

BY MR. DeBUSK:

Q Who is your employer?

A Horry County Police Department.

Q How long have you been in law enforcement?

A 25 years.

Q And for the Horry County Police?

A Since 2000.

Q What are your duties at this time?

A I'm a detective in the Violent Crimes Unit.

Q And how about in May of 2016, what did you do then?

A Detective in the Violent Crimes Unit.

Q Did you participate in the investigation of the killing of Nigeria McDonald?

A I did.

Q What was your role?

A I was the case agent.

Q Were you present for an interview of James Abdullah Wilson during that interview?

A Yes, sir.

Q Was anyone else present besides Mr. Wilson?

A Detective Greg Lent.

Q When and where was the defendant taken into custody?

A It is my understanding he turned himself in at the Freemont Baptist Church in Freemont. Officers arrested him there after he had called dispatch.

Q Where is Freemont relative to the murder scene?

A Freemont is in the Longs community over in the -- off of 905. Incident occurred in the Myrtle Beach area, Racepath area, going into Myrtle Beach proper off of 501.

Q Now, where was the interview conducted?

A At the J. Reuben Long Detention Center in one of the interview rooms.

Q Did you record this interview?

A I did.

Q Did you capture the whole interview?

A We did capture the majority of the interview. Right at the beginning of the interview, the recorder was not on inadvertently. We turned in on as soon as we recognized it was not on.

Q Before you started interviewing the defendant, did you or Detective Lent threaten or coerce him to give a statement?

A We did not.

Q Did you make any promises or issue threats to get

him to give a statement?
A No, sir.
Q Did you or Detective Lent deprive him of anything he needed to get a statement?
A No, sir.
Q Did you inform him of his Miranda rights?
A Yes.
Q And before you informed him of the Miranda rights, did you inquire as to his education and if he was under the influence of anything?
A Yes.
Q What was his response?
A The defendant said that he went to North Myrtle Beach High, attended the ninth grade, and he was not under the influence of drugs or alcohol.
Q Let me show you State's 1 and ask if you recognize it.
(State's Exhibit 1 marked.)
A I do.
Q (MR. DeBUSK) What is that?
A The advisement of Miranda form we use at the police department.
Q What did -- how do you use that when you informed him of the Miranda rights?
A What I do is I have the defendant read along with

me -- not out loud -- but as I read out loud, the defendant is invited to read the rights. After I read each one of the rights, I ask the defendant to initial that particular right. On this one, the initials "JW" follow each right. Then we ask if they understand their rights. The defendant indicates yes and checks yes, then the defendant signs -- prints and signs his name, and then we date and time it and sign as a witness.

MR. DeBUSK: Your Honor, we move to admit this for purposes of the hearing.

THE COURT: Any objection?

MR. WILSON: No, sir.

THE COURT: In evidence for purposes of the hearing.

(State's Exhibit 1 admitted for Jackson v. Denno hearing only.)

Q (MR. DeBUSK) When you did this interview, did the defendant seem to be physically uncomfortable in any way?

A He did not.

Q Did he appear not under the influence of drugs or alcohol?

A He did.

Q Now, you said the beginning of the tape did not

capture the Miranda rights?

A Correct.

Q Did you reiterate those rights just to --

A Yes, sir. At the end of the interview, when we realized that the rights had not been captured, we talked about that at the end of the interview. I asked the defendant if we had, in fact, gone over the rights at the beginning of the interview, and he indicated, yes, that is correct.

Q I'll show you State's 2 and ask if you recognize this?

(State's Exhibit 2 marked.)

A I do, yes, sir.

Q Does that -- what is it?

A It is a CD that has several interviews of witnesses, including the defendant, that I prepared to go along with the case file.

Q Is that a fair and accurate representation of that recorded interview?

MR. DeBUSK: We move this for purposes of the hearing into evidence.

THE COURT: Any objection?

MR. WILSON: Yes, sir. Yes, sir.

THE COURT: Okay.

MR. WILSON: My objection is this, that during

the course -- and I don't know if -- I guess this is the appropriate time to do it, I haven't done cross-examination to ask him, but during the tape-recording there is a comment in response to a question by the officers about what his purpose was for being there on that day, and what he told them was that he was there to sell drugs. I would submit that that is irrelevant and that that should be redacted from this tape before it is played for the jury. The reason for that, Your Honor, is that, one, obviously it is prejudicial, first of all. Second of all, I think that it bears no significance at all to the crime charged in this particular case and goes directly to the character of the defendant. So I would ask the Court to redact that portion of this tape.

MR. DeBUSK: We don't seek to admit that. We would like to play the entire tape for the Court for the Jackson V. Denno. If we were to play this for the jury, we would do any redactions as well as any others that Mr. Wilson might have.

THE COURT: Any objection to that, Mr. Wilson?

MR. WILSON: No, sir.

THE COURT: Go ahead. It is in evidence for purposes of the hearing, and you may publish it.

32

MR. DeBUSK: Thank you, Your Honor.

(State's Exhibit 2 admitted for Jackson v. Denno hearing only.)

(State's Exhibit 2 published to the Court.)

Q (MR. DeBUSK) The way it starts in the middle, is that the correct form of that recording?

A Yes, sir.

Q Is that when it was turned on?

A It is, sir.

Q Thank you.

THE COURT: Can you stop it? Is that the defendant's voice.

THE WITNESS: Yes, it is, sir.

MR. DeBUSK: Sorry.

THE COURT: Go ahead.

(Published to the Court.)

Q (MR. DeBUSK) You did, in fact, confirm that he signed the Miranda waiver?

A I did.

MR. DeBUSK: That is our showing, Your Honor. There are portions of the tape that the defense may want to edit. If they will give us a list of those portions and the timing on the tape counter, we can redact the tape and give them a copy to review before presenting it.

THE COURT: All right. Mr. Wilson, I'll hear from you, anything else?

MR. WILSON: I have a few questions.

THE COURT: Go ahead.

CROSS-EXAMINATION

BY MR. WILSON:

Q What time was it that Mr. Wilson was arrested from the church; do you know what time it was?

A Counselor, I'm not exactly sure. I had just laid down. We worked all night on this case and other cases. Detective Lent secured the warrants in the morning on the 9th, after the event on the 8th, and it was sometime after that. So sometime, I would say, between 10:00 and 3:00. But like I say, I had gotten a phone call that he was arrested, but I had just laid down.

Q What time was it then that you started to conduct your interview with him?

A It was right around 5 o'clock, just a few minutes after 5:00.

Q So the interview -- and you concluded at 5:42?

A Yes.

Q So you were with him for 42 minutes, thereabouts?

A Something like that, yes, sir.

Q Now, I noticed that during the course of the

tape-recording it doesn't come on until almost mid-sentence. How long had you been talking with him before the tape was turned on?

A On the Miranda form -- the time on the Miranda form is 17:10. So it would be a little less than 40 minutes, if the Miranda form was signed at 17:10.

Q So the time that is generally on the Miranda forms that you fill out, that would be the actual time that you talked with the individual, not the time of the incident, but the actual time that you are speaking with the individual in this case, the defendant?

A Yes, sir. Yes, sir.

Q And that was 5:09?

A 5:10. 17:10 is what time I wrote down, so it would be minutes before that.

Q And that timing would have been put there after you had read him his rights and explained them to him and having him sign it?

A Correct.

Q So you would have been in there with him a few minutes even before the signing of the statement?

A Correct.

Q Of the waiver form?

A Yes, sir.

Q Now, at any point in time did the defendant give

you any resistance as to wanting to cooperate or give you information about what he said happened on that night?

A He did not offer any resistance at all.

Q Did you make any notes -- during that period when the tape is not recording, did you make any notes, handwritten notes, from that?

A Not during that time typically, other than possibly to write his name and date of birth. The Miranda form is that first order of business once you establish the identity of the person and confirm that. So I would not make a great deal of notes prior to the Miranda form being completed.

Q But the tape didn't come on immediately after the Miranda form?

A It came on shortly after, because it is at the beginning of his discussion as to what occurred.

Q And that is the part I'm asking about, that period between the time you signed the Miranda and the time that you actually had the tape engaged. Was there any conversation; and if so, did you make notes of that conversation?

A If memory serves, what I did was once I got the Miranda form signed, that's the point, at that juncture, that we began the interview. I will look at

all of the paperwork. I put the Miranda form usually in my notebook, and I check the recorder. So it would be right there at the beginning. So I would have seen immediately after the Miranda form was signed that the recorder was not working and engaged the recorder.

Q Was there any other person present other than yourself and the defendant at the time that the statement -- that the Miranda was signed and at the time that the tape was engaged?

A Yes.

Q Who was that?

A Detective Greg Lent.

Q Was he there the entire time that this took place?

A Yes. Yes, sir.

Q At any point in time, did the defendant ask for an attorney?

A He did not.

Q But you advised him that he had a right to have an attorney?

A Read his rights right off the page.

Q And you were satisfied that he understood those rights?

A I am.

Q And he never waived about giving you a statement?

A He was actually excited and wanted to talk.
Q And you were happy to get a statement from him?
A Yes, sir.
Q Now, in regards to whether the defendant was under the influence of any alcohol or drugs or anything, you asked him all of those questions?
A Yes, sir.
Q And you had an opportunity to observe him?
A Yes.
Q Did you determine or was there anything to indicate to you that he may have been under drugs or alcohol or anything like that which might have affected his abilities to give you a free and voluntary statement?
A Nothing that indicated that to me.
Q And he gave you a statement which lasted almost 35, 40 minutes, thereabouts?
A Whatever that time, yes, sir.
Q What's on the tape, okay. And you didn't -- beforehand, you didn't promise him anything or threaten him in any way to get him to give a statement?
A I did not.
Q Now, when you went out to talk with him, he would have been at J. Reuben Long already?
A Yes, sir.

38

Q So you had to get him from his cell and bring him down to another cell to talk with him?

A I don't remember if he was in a cell or if he was in the holding area there in the booking area, I don't recall. His warrants had not been served on him yet, and he had just been taken into custody that day. He would have most likely been in that front area, and I believe that is where he was -- either in a holding cell or in that blue seated area.

Q When you went out there that afternoon, was your purpose to serve the warrants on him, or was it your purpose to try to get a statement from him?

A Both.

Q And you had the warrants at the time you went to see him -- the warrants had already been signed and you were intending to serve them on him as well?

A Correct.

MR. WILSON: I don't have any other questions. Thank you.

THE COURT: Redirect?

MR. DeBUSK: Briefly.

REDIRECT-EXAMINATION

BY MR. DeBUSK:

Q You said the interview began after the Miranda was read at 5:10, ended at 5:42?

A Correct.
Q So approximately 32 minutes long?
A Correct.
Q And the tape is 27 minutes and 51 seconds long; is that correct?
A I'm not sure of the length of the tape. I believe you, I just didn't memorize it.
Q That leaves about four minutes that were not recorded?
A Yes, sir.
Q And a little bit of that is you getting your things in order before you started?
A Correct.
THE COURT: Anything on that?
MR. WILSON: Nothing in reply.
THE COURT: You may step down. Any presentation on behalf of the defendant?
MR. WILSON: No, sir. I don't object to the voluntariness of the statement, I do object, as indicated earlier, to some portions of the tape, and the Solicitor indicated that he would be willing to redact it if we could provide that with him, and I would need to sit down and go back through the tape to make sure I covered all the pertinent parts, but I don't have any objections to the introduction of the

40

tape provided if it is redacted.

THE COURT: All right, sir.

MR. DeBUSK: We certainly don't seek to admit the parts about selling drugs, gang activity and other crimes that he witnessed.

THE COURT: All right, sir. Very good. With the agreed upon redactions as to the selling of drugs and the unrelated matter that they asked him about, obviously that would need to be redacted out, but I do find that the defendant's statement was a true and voluntary statement of the defendant. He was not coerced or forced in any way, or threats or promises. There is no indication from anyone that he was under the influence, that he failed to understand what he was doing. Clearly, he was given Miranda warnings, was in custody, no question about that, and he understood them and voluntarily waived them, didn't ask for an attorney. So I believe that the statement is the voluntary statement of the defendant, and I will allow it into evidence with the redactions as agreed to by State and defense, and obviously it will be still up to the jury to determine the ultimate decision about the statement, but I'll allow it in evidence.

MR. DeBUSK: One more brief matter, instead of

bringing it up in front of the jury, I have a document for the Court purposes of -- I provided this to defense. It is a document under seal showing temperature data and wind data for Myrtle Beach Airport, which is close to the scene of the crime. We would present that as a business record and as a document under seal, domestic document under seal. I don't know how to present that before the jury, I just wanted to --

THE COURT: Have you seen that?

MR. WILSON: I have, Your Honor, and I was provided it in discovery. Your Honor, I have mixed emotions. On one hand, I have no real objections, but, secondly, my concern is this report is from a weather gauge, I assume at the airport, which is probably, what, a mile and a half as the crow flies, I'm not sure, from Racepath. I don't know that the temperature is going to be exactly the same. It does fluctuate I know just from Conway to Aynor, or Aynor to Myrtle Beach. I mean the temperature can be as much as three, four degrees different, so while this tells me what the weather was at the airport, which is in close proximity, it does not tell me what the weather report was in Racepath.

THE COURT: All right. And I understand that. I

would find that I'll allow the State to use it as a business record, but obviously you're free to point out the discrepancies to the jury, and if the -- if you wanted to -- two of you wanted to enter into some stipulation that by an agreed upon calculation that the Racepath area is, you know, whatever, 1 mile, or whatever it is, from the airport, I would be glad for you all to put that in the record so that it is a stipulation. I'm sure you could agree upon how far it is, and then that would be a fact that would be in evidence along with the document, so you can make that factual argument to the jury.

MR. DeBUSK: I don't think the stipulation is necessary. We intend to put in a map that shows -- incidentally the airport relative Racepath.

THE COURT: So they can see that from the map that is in evidence, it will show how far from the airport to Racepath, correct?

MR. DeBUSK: Yes, Your Honor. May I offer it at some point in trial as --

THE COURT: Yes, sir. Yes, sir, you can. You can. Court would allow that.

MR. DeBUSK: Thank you, Your Honor.

THE COURT: All right. Anything else from the State?

MR. DeBUSK: No.

THE COURT: Mr. Wilson, you raised some issues about the record of the defendant?

MR. WILSON: Yes, sir. Your Honor, the Solicitor provided me with -- in discovery the convictions of the defendant, and I'm not sure if these are the ones that he intendeds to try and use or not, but I just, out of an abundance of caution, at some point in time -- and at this point, obviously, there is no decision made as to whether the defendant will take a stand, but I wanted to get clarification beforehand.

THE COURT: Right. Okay.

MR. WILSON: I don't know that we have to make this decision today, but I wanted the Court to be aware.

THE COURT: Right. Right. We don't have to make the decision today, but just so I'm -- I understand that these are the ones. I -- I have one here, a strong arm robbery, and it was a guilty plea, strong arm robbery on March 2 of 2010.

MR. WILSON: Yes, sir.

THE COURT: I have a burglary second degree, non-violent, guilty plea, again on March 2, 2010. I've got another guilty plea for unlawful carrying of a pistol on March 4, 2013. I have another guilty plea

of possession of cocaine, first offense, on October 22, 2014. Possession with intent to distribute cocaine base conviction on October 22, 2014. I believe those are the ones I have.

MR. WILSON: Yes, sir. The only one I have any serious contention about is the gun violation as to whether or not that would be admissible.

THE COURT: We'll look at that. Solicitor, you look at the rule also, and if and when we come to the point where the defendant is making a decision to testify or not, we'll cover it at that point in time, but look at that particular one, unlawful carrying of a pistol.

MR. DeBUSK: Will do, Your Honor.

THE COURT: Thank you, gentlemen. I told the jury to come back at 3:30, so we'll be at ease until then, bring them in and get started at 3:30. Thank you very much.

(A recess was taken.)

THE COURT: State ready?

MR. DeBUSK: Yes.

THE COURT: Defense?

MR. WILSON: We're ready.

THE COURT: Ask the jury to come in, please.

(The jury enters at 3:37 p.m., and the

following is heard in the presence of the jury.)

THE COURT: All right. Ladies and gentlemen, we're going to start the case of the State of South Carolina against the defendant, James Abdullah Wilson, on the charges of murder and possession of a weapon during the commission of a violent crime. The very first thing that will happen is the clerk is going to administer your oath, so if you would, stand at this time.

(Whereupon, the jury was sworn.)

THE COURT: Any member of the jury panel that did not affirmatively just take the oath as administered by the clerk's representative; if so, please stand.

No juror having stood, I find the jury is properly sworn in this matter.

All right. So, Mr. Davis, the jury has elected you to be the foreperson of this jury; is that correct?

FOREPERSON: Yes.

THE COURT: So if you would always occupy that particular seat when you come back to the jury room. And, again, Mr. Gillings and Mr. Ford, if you would occupy those two end seats when you come back. I need to know where the foreperson and alternates are. The rest of the ladies and gentlemen, fill in wherever you

46

walk in from the jury room.

So what is your job in this case? Your job in this case is to be the judges of the facts of this case. I will not indicate to you in any way what I think the facts of this case are, because that is not my job or my responsibility. It is going to be your job and your responsibility to listen to the facts and evidence in this case, listen to the witnesses that testify under oath, examine and receive the evidence that is presented to you, to find that evidence which convinces you of its truth, and then weigh that evidence against the State's burden to prove the defendant guilty beyond a reasonable doubt.

I told you at the very beginning the indictments -- charging documents -- the documents which brought the matter to court are not evidence, but when the State charges a defendant through the indictments of those crimes, that immediately puts the burden to convict the defendant of those crimes upon the State of South Carolina to prove the defendant guilty of the crimes charged beyond a reasonable doubt. The defendant is presumed innocent of the charges, if and until and unless you find the State has proved his guilt beyond a reasonable doubt of the crime or crimes charged.

The defendant has nothing to show to you. The defendant has nothing to prove to you. I tell juries all the time that the defendant need not even show up for trial because they don't have anything to prove to you. The State has to prove the case to you beyond a reasonable doubt. That is their job. That is their responsibility in prosecuting or bringing cases against defendants.

You will be called upon as being the judges of the facts to judge the credibility, that is the believability of witnesses that come before you and testify under oath in this case. If you are now thinking, How do I judge someone else's believability, credibility, you do it every single day of your life. When someone tells you something, you are automatically judging in your own mind whether or not you believe that person. How do you do that? You use your good commonsense. You use your good judgment in conducting your own affairs, that is what we're going to ask you to do, use your good commonsense, apply it to the facts and evidence presented in this case, find that evidence that convinces you it is true, and then you take that evidence you found to be true and say, Did the State prove the defendant guilty of the crime or crimes charged beyond a reasonable doubt. That is

48

what I'll be asking you to do at the very end when you deliberate and decide and reach an unanimous verdict in this particular matter.

How we'll proceed in this is that when I get done with the brief statements, we'll have the opening statements of the attorney. The openings statements and closing arguments of counsel, attorneys, that is not evidence. It cannot be considered by you as evidence. They are important. Opening, they introduce what they think is going to come from the evidence. The closing, their arguments about what they think the evidence said. Remembering, of course, you are the judges of the facts. What they say, that's not evidence. The evidence will be the next part. A person coming before you testifying under oath about what they know about the matter. If there is some kind of document or physical evidence that might be introduced in this particular case, photograph or map, something like that that might be introduced, that will be the evidence that you will consider and judge and weigh to see whether or not the State can prove the defendant guilty beyond a reasonable doubt. When we finish the evidentiary portion of the trial, we'll have the closing arguments of the attorneys, their arguments of what the evidence

is they think shown to you during the course of the trial.

Then, I will give you the law that you will apply to the facts and evidence that you find to be true in this particular case, and I'll submit the case to you for your deliberations and your unanimous decision in this particular matter.

Now, I'm going to ask you not to talk about this case until I give it to you at the very end for your deliberations and your unanimous decision. One, it is not a particularly long trial, potentially finishing tomorrow, may be going into Wednesday, we'll see how that goes, but it is not a particularly long trial. You'll have all the time you deem necessary to deliberate regarding this particular matter.

Also, when you hear one witness, you haven't heard the whole case. Wait until you hear all the facts and evidence. You need to wait until you hear the law to apply it to the facts and evidence you find to be true before you can logically and intelligently discuss the case with your fellow jurors. So please don't do that until we give it to you at the very end.

Now, I know you will pay attention and honor your oath and give the attention to the facts and evidence this case deserves. The State has charged the

defendant with serious matters, and it will ultimately be upon your shoulders to decide whether or not the State has proven the defendant guilty beyond a reasonable doubt, and I know that you will faithfully and will honor your oath in arriving at a true and just verdict, whatever that will be in this case. With that, I'll turn it over to the lawyers for opening statements.

MR. OSKINS: May it please the Court?

THE COURT: Yes, sir.

MR. OSKINS: Good afternoon, ladies and gentlemen. We have all heard the saying in our lives that someone was in the wrong place at the wrong time. The case you are about to see you before you is an example of that and ended in a tragic way. Simply put, Nigeria McDonald was murdered by the defendant, James Wilson, for trying to break up a fight in Myrtle Beach. You heard directly she was murdered trying to break up a fight between two other girls. She was not trying to get involved in anyone else's business. She wasn't looking for any trouble for herself. She was simply trying to help a friend out of a bad situation. Unfortunately for her, she crossed paths with James Wilson, and James Wilson was looking for trouble that night, so much so that he made sure he was properly

equipped to handle it once he found it. Because of this, the encounter of our victim and the defendant was fatal. James found the trouble he was looking for, and it escalated severely when he shot and killed Nigeria McDonald.

Let me set the scene for you. May 8, 2015 in the Racepath area of Myrtle Beach near the Coastal Grand Mall and airport. Trudy Cox was a relative and close friend of Nigeria McDonald. She had been working all day in Myrtle Beach. She stopped by the neighborhood. At that point, she wasn't there to see Nigeria. She was there to get her hair done by another girl in the neighborhood. Shortly around this time enters Jamie Spivey. Jamie Spivey is another resident of Racepath, happens to be the defendant's girlfriend, mother of his children.

At some point, as she was passing by Trudy, they exchanged words. They weren't friendly words, and the situation quickly escalated verbally. It became obvious they were headed into a physical fight, but it didn't happen right away. The defendant left in a cab, went by -- went to his nearby hotel. Tension continued to grow. He had seen these ladies and the tension going. That sounds random, grabbed a cab, but he comes right back in that same cab, and he's wearing

52

a coat, in May. Sounds even more random. Why am I saying this to you? Well, the evidence and the facts will prove why that is important at this stage.

In the meantime, the girls were not cooling off. They were going to fight. A physical fight quickly began between the two of them, so quickly that within a matter of seconds they had each other by the hair punching each other violently without remorse, without hesitation. As far as the fight goes, it is a relatively long fight. The people around the fight felt like it was 15 minutes. It was probably in the three-, five-minute range, but if you have been in an altercation like that, time passes by a little slower.

Enters Schanski Hemingway, Jamie Spivey's mother that lives in Racepath. She steps in the middle of the fight to try to break it up. She's having a little trouble, and finally -- what ties this all together -- is our victim, Nigeria McDonald. Her, alongside her friend, Niki Rush, they see the fight going on. Like I said, Nigeria, close relative and friends with Trudy Cox, she wasn't looking for trouble, wasn't looking to hit anybody, wasn't trying to hurt anyone, just trying to break the fight up. I know I'm redundant with that, but that is what I have to prove. That is what she was going to do when this

altercation happened.

As he got closer to the fight, after a lot of threats being shouted, she physically runs into James Wilson. He pushes her in the face. Nigeria stumbles backwards. As soon as she catches her balance, he withdraws a gun from the coat he got in the cab. He aims it at her, pulls the trigger, shoots her, she falls.

Now, Trudy Cox, the -- the fight finally stops at this point. Trudy Cox sees her close friend and relative on the ground. She responds. Schanski Hemingway was there. They are trying to find out where the wounds are, where and if there is any blood, what happened. Unfortunately, although she didn't die right then, it was too late for Nigeria, the damage had been done.

She died shortly thereafter in an EMS ride due to the gunshot wound inflicted by James Wilson, and because of this, James Wilson ran. He later was found, charged and arrested with murder and possession of a weapon during a violent crime. He now stands in trial in front of Your Honor and you, ladies and gentlemen of the jury, which brings in this process we're here for today, a jury trial.

As previously mentioned, I'm an assistant

solicitor of Horry County, State of South Carolina. It is my burden to prove the defendant's guilt beyond a reasonable doubt. Alongside side of Senior Solicitor DeBusk, we take it very seriously in our office, it is a challenge, and we welcome it and meet it and glad to do it. It is by no means an impossible verdict. Proof beyond a reasonable doubt is proof that will leave you firmly convinced of the defendant's guilt after the presentation of evidence.

The act of murder, as Your Honor will later define, states that murder is the intentional killing of another with malice aforethought. In order for a crime to be considered a murder, it doesn't have to be preplanned, doesn't have to be premeditated, doesn't have to have some huge agenda culminating in some final precise plan perfected murder. No. Although it can be.

Evidence of malice aforethought means the defendant meant to commit harm, inflict harm when he committed the act. We have that here by James Wilson pulling out the gun, aiming it at Nigeria Wilson and shooting her. That fits. That is malice aforethought.

Throughout this trial you will hear testimony and see evidence that further supports the facts that

James Wilson is guilty beyond a reasonable doubt. You'll hear witnesses that saw James Wilson pull out a gun from his coat. You'll hear from witnesses that saw him shoot Nigeria, and you'll hear from witnesses that saw her fall to the ground. You'll hear from witnesses that heard the shot ring out and what was going on in their minds when they heard it.

At the conclusion of this trial, which as Your Honor stated, won't be the longest trial, not the most moving parts, not the most complex, but the State will have a straightforward case from people that were there, saw it, saw who did it, saw what happened and, unfortunately, we're here to tell you who died, and that was Nigeria McDonald.

At the conclusion of the trial, the evidence will prove to you that the defendant, James Wilson, committed the crime of murder, and he was in possession of a weapon during the commission of a violent crime, the murder. Because of this, we'll stand back in front of you and you'll be asked to return the verdict that the only evidence will allow, and that is to find James Wilson guilty. Thank you.

MR. WILSON: Thank you, Your Honor. Ladies and gentlemen, Mr. Foreperson, I represent James Wilson, no relation. He's charged with murder. Murder is the

killing of one human being by another, where malice aforethought, meaning ill-will, hatred, heart void of social duties and responsibility and bent on mischief. That is not true in this case, and you'll hear that from this witness stand.

I know when you got your jury summonses and you realized you had to come here, you could all think of a hundred other things you would much rather do than sit here all week long. Let me say this to you. There is probably nothing that you could do that is more important to our society, other than probably serving in the military during time of war. That is how important jury service is to this process, because you truly stand between the defendant and the State of South Carolina; otherwise, the State could have their way with any person they charge. A charge, as His Honor has instructed you, is simply a piece of paper which tells what the allegations are. It doesn't mean that they are true, doesn't mean that they have any proof of it. It means that somebody sat down, wrote out this charge, submitted it, got it signed and then went out and arrested Mr. Wilson and put him in jail. He has to come, but then the burden shifts back to them for them to come into this courtroom and prove to you -- prove to the 12 of you collectively -- that

this defendant, James Wilson, committed the crime of murder. He's not charged with manslaughter. He's not charged with involuntarily manslaughter. He's not charged with assault. He is charged with murder.

When the State elects to charge an individual with a crime, and they assume the responsibility to come in and to prove to your satisfaction beyond a reasonable doubt. What is a reasonable doubt, what does that mean? Well, it is different than a fanciful doubt. You can have a doubt about anything. You can doubt whether or not the ocean will be in Myrtle Beach next week. That is a fanciful doubt, unreasonable doubt. That is not a real doubt. But a reasonable doubt is, for instance, are we going to grow corn in Horry County next year? Can't have a reasonable doubt about that. Of course we're going to grow it, we've been growing it for hundreds of years, and probably grow some next year, too.

What we are asking you to do -- and I ask you this not just on behalf of the defendant, I ask you on behalf of the state and on behalf of our society to listen to these witnesses when they testify, ask yourself, Is this witness really telling the truth, and if they are not, why do you think they are not telling me the truth, or are they telling you the

truth. Does the witness have a reason to lie? Even if they are not lying, do they have a reason to hide some of the truth or not tell all of the truth? Is their story consistent with the other evidence?

I think the one thing that everyone agrees on in this case is that this probably will not be a very long case, not a very long trial. But don't equate the length of this trial with the seriousness of this trial. It is important to the State of South Carolina, and it is important for this defendant, James Wilson, who is seated over there. Whatever justice there is in Horry County, it is in the hearts and minds of the jurors who sit and listen to the facts, because you are the judges of the facts. You heard His Honor explain that to you. You are the sole judges of the facts. The 12 of you collectively will decide what happened on this day, May 8th. You will decide that. So it is important as the judges of the facts that you hear the evidence, that you listen to the witnesses, that you pay attention to what they have to say and how they say it. Sometimes it is not even what they say, it is what they don't say, or it is the demeanor or the manner in which they say whatever it is they are trying to say. All of those things become important. I ask you and I plead with

you, and I know that you will, take the time to listen.

There are going to be several witnesses in this case, and I ask you to listen to those witnesses. Listen to the things that are different in their testimonies. Why is this witness saying what he or she is saying? Did that witness have an opportunity to see or hear what the witness is saying they saw or heard? Are they biased for some reason, in favor or against either the defendant or the State? Every defendant is presumed to be innocent. The reason for that -- other than it is the law and based on our Constitution -- is that it is practically improbable, unlikely, almost impossible for a person to prove a negative, that he did not do something.

If I'm home at 3:00 a.m. in the morning and they say, Ralph Wilson shot someone at J. Reuben Long at 3:00 a.m., and I'm home by myself, how in the world do I prove that I didn't do it? What do you do if you don't happen to be lucky enough to have a video camera that has a time stamp watching your every move? You get charged with murder, what are you going to do? How will you prove you didn't do it? That is why the burden is upon the State to prove it. They are the ones who elected to charge you, and what they are

supposed to do is go out and gather the evidence and the information before they get the warrant, but sometimes they do it backwards.

What you will find in this case is that there never should have been a warrant for murder. And I just ask you to be patient and let us go through this process. I know at times it gets tedious, but bear with us as we go through this process. I assure you, when we finish at the end of this process, there will be more than a reasonable doubt as to murder. Thank you, ladies and gentlemen.

THE COURT: Solicitor, first witness.

(TRUDY COX, having been duly sworn, testified as follows:)

DIRECT EXAMINATION

BY MR. DeBUSK:

Q What name do you go by?

A Trudy.

Q Where do you live?

A Surfside Beach.

Q What is your occupation?

A Little bit of everything. I sell moonshine, bartend, whatever.

Q Legal moonshine?

A Yes.

Q Legal product called Moonshine?
A South Carolina's first legal moonshine.
Q Did you know Nigeria McDonald?
A Yes, my little sister.
Q Was Nigeria known by a nickname?
A NaNa.
Q Where did NaNa live?
A In Racepath.
Q I'll show you what will be State's....
(State's Exhibit 3 marked.)
Q (MR. DeBUSK) Do you recognize this, Exhibit 3?
A Yeah, Racepath.
Q Would you demonstrate to the jury where NaNa lived on this map?
A Yes.
MR. DeBUSK: Your Honor, we move to have this admitted into evidence.
THE COURT: Any objection?
MR. WILSON: No, sir, Your Honor.
THE COURT: State's 3 is in evidence without objection.
(State's Exhibit 3 admitted.)
Q (MR. DeBUSK) Where was NaNa's house?
A Right there (indicates).
Q Below where it says [redacted]?

A Yes.
Q In that trailer on that road?
A Yeah, right there.
Q That is called Neighbor's Lane; is that correct?
A I believe so.
Q What did NaNa do for a living?
A Home care aide.
Q Did she have just one job?
A Two. I think the other was retail.
Q Okay. How was she related to you?
A My step-sister, little sister.
Q Two of you grew up together?
A Yes.
Q Were you close?
A Yes.
Q Now, what role did Nigeria play in your family?
A Basically, after my me-maw passed away, she was like the glue, kept each side of the family coming together, holidays, birthdays. She was the heart of the family.

(State's Exhibit 4 marked.)

Q (MR. DeBUSK) State's 4, do you recognize this?
A Can't miss that smile anywhere.
Q Who is that?
A My sister.

Q And her name?
A NaNa.
MR. WILSON: No objection, Your Honor.
THE COURT: State's 4 in evidence without objection.
(State's Exhibit 4 admitted.)
Q (MR. DeBUSK) How often would you see NaNa?
A For the past few years, it was once in a blue moon, but before this happened, we tried to make it more like every week or so.
Q Do you remember May 8 of 2015 last year?
A Yes, I do.
Q Did you visit Racepath that day?
A I did.
Q What time did you first go over there?
A It was early in the morning, about 5:00, 6:00 in the morning. I had to get my hair finished.
Q What do you mean by that?
A I had extensions being put in, and I had to caddy later on that day, so I wanted to get some of it done.
Q Was there someone at Racepath that did it for you?
A Yes, my cousin's girlfriend.
Q And her name?
A Deandra.

64

Q Where did Deandra live?

A [redacted], where that little star is.

Q That is right almost next door to NaNa?

A Basically.

Q Now, when you first went over there to get your hair fixed, did you see NaNa at that time?

A No.

Q What time did you leave Racepath that morning?

A Probably around 8:30, 9 o'clock, because I had a caddy, I believe, at 10 o'clock that morning.

Q Like golf course?

A Yes. I was a caddy on a golf course.

Q Where was the golf course?

A North Myrtle Beach.

Q So a ways off?

A Yes, I needed time to get there.

Q Did you go back to Racepath that day?

A I did.

Q What time?

A Probably about 1:00, 2 o'clock.

Q What happened then?

A First I went to -- I stopped by NaNa's house; and she was not there, so I went to my cousin's house, as you can see is right around the corner.

Q What did you do at your cousin's house?

A Basically exchanged words, laughing back and forth. My birthday was at the end of May.

Q Did they finish your hair?

A Yes, finally.

Q How long was that process?

A Almost two-and-a-half days.

Q Quite an intricate process?

A Yes. Us ladies love our hair.

Q And what time was it going to be when your hair was finished?

A Maybe 4:00ish.

Q What did you do then?

A At that point I was standing outside between talking with Deandra and my girlfriend on the phone going over birthday plans.

Q Where were you standing relative to Deandra's house?

A Right in the yard. I was outside and then I got inside my car and finished my conversation.

(State's Exhibit 5 marked.)

Q (MR. DeBUSK) This is State's 5; do you recognize that?

A Yes.

Q What is it?

A That is where my car was that night.

Q Whose trailer is that?
A My cousin's, Dante's.
Q Is that where you had your hair done?
A Yes.
Q Which car? There is three cars there.
A The one in the middle, black one.
Q That is yours?
A Uh-huh.
MR. WILSON: No objection.
THE COURT: In evidence without objection.
(State's Exhibit 5 admitted.)
MR. DeBUSK: May I publish?
THE COURT: Yes, sir.
(State's Exhibit 6 marked.)
Q (MR. DeBUSK) I'll show you 6 and ask you what that is?
A Basically the area where we were fighting.
Q A little closer to here?
A Yes.
MR. WILLEY: No objection.
THE COURT: In evidence without objection.
(State's Exhibit 6 admitted.)
Q (MR. DeBUSK) Where is your car?
A The four door, smaller compact.
Q The one on the right?

A Uh-huh.

MR. DeBUSK: May I publish?

THE COURT: Yes, sir.

(State's 6 published to the jury.)

Q (MR. DeBUSK) Where were you standing when you were talking to Deandra?

A Right literally on the side of my car, driver's side.

Q Were you getting ready to leave?

A Yes.

Q What happened next?

A I had gotten in my vehicle and was on the phone with my girlfriend, Monique, discussing dinner plans for my birthday.

Q So you were talking?

A Uh-huh. I had it hooked through my radio through the aux cord so it was like the radio playing, but I was on the phone.

Q What happened next?

A As I was continuing my conversation, Jamie walked past my car.

Q Are who is Jamie?

A Jackboy's baby's mama, girlfriend.

Q Who is Jackboy? Are indicating Mr. Wilson?

A Yes.

68

Q Mr. James?

A James. I know him by Jackboy.

Q Jamie was his girlfriend?

A Yes.

Q And her last name?

A Spivey.

Q How long had you known Jamie Spivey?

A I mean, honestly, she is basically my cousin, so I grew up with her too.

Q Was there any bad blood between you and Jamie at that time?

A She was just not someone I spoke to on a regular basis.

Q What happened after she spoke?

A I was in my car having this conversation and Jamie walked past and was saying something. I thought --

Q Tell us what she said.

A Don't know, because like I said, I had my phone going through my radio, so that is really all I heard. She said something. I saw her mouth moving, so I was like, hey, and continued on with my conversation. I was turning 25. I was excited about my birthday. I wasn't paying attention, but she kept saying something, and I couldn't understand, so I just ended my phone

conversation and got out of the car.

Q What happened next?

A It basically went from, Trudy, don't play with me.

Q Don't tell us what she said. What was the nature of the conversation?

A She had a problem of some sort.

Q Was it in the nature of an argument?

A Yeah. She seemed angry.

Q Who start the altercation?

A Jamie.

Q What happened as it progressed?

A We went back and forth for a good while. My sister, NaNa, pulled into Racepath on the street we were on, saw us going back and forth and stopped her car.

Q [redacted], is that the trailer in the picture I showed you?

A Right.

Q Is that where you were standing when you were talking to her?

A Yes.

Q Where were you relatively to the black cars?

A Right by my car.

Q Where did NaNa stop?

70

A She literally was in the road like driving past. She just stopped her vehicle.

Q Was it right there where you were parked?

A Like right behind my car.

Q How did that argument, verbal altercation, end?

A She basically left after my sister came, because my sister was like, There is no need for the nonsense, what are you arguing for, you have your daughter.

Q Was she alone, Jamie Spivey alone?

A No. That is basically what stopped it, she had her little girl with her.

Q So where did she go when she left your area?

A Back home.

Q Where is her home?

A Not too far.

Q Could you indicate on the map?

A Yeah, she's there (indicates).

Q So that is between Sunset and Granny Lane?

A Right on Granny Lane.

Q So she stayed less than a block away?

A Yes.

Q What did you do after she left?

A Talked with my sister for a good -- her and her best friend, Niki, for about 20, 30 minutes.

Q What vehicle were they in?

A We were standing at her car at that point. I walked from my vehicle to hers. She never left from beside her car. She just got out and stood behind her car.

Q Was NaNa's car still right where it stopped behind yours?

A Uh-huh. Yes. I mean, it was still running. She never cut it off.

Q When you had that argument or when Jamie Spivey started to argue with you, was the defendant there?

A No.

Q Did you see him at some point?

A I know he was in neighborhood; I had seen him earlier.

Q Did you see him at any point after that argument ended?

A Yes.

Q Did you hear him say anything in reference to the argument?

A Something along the words of spray, if something happened to his baby's mama, or something like that.

Q What did you take that to mean?

A That he was going to shoot somebody.

Q Why would he shoot somebody?

A He thought we were trying to get at Jamie.

MR. DeBUSK: Demonstrative purposes, Your Honor.

MR. WILSON: I objection for demonstrative.

THE COURT: Sustained. I'll mark it for identification only.

Q (MR. DeBUSK) What is the weather like?

A Hot.

Q Is it weather you would expect to have a jacket?

A No, that is what was weird.

Q Is it like winter type of clothing?

A He already had on, you know, long sleeves. It is that you added an extra layer on and it is like 77 degrees out.

Q Now, how long did you and Nigeria talk, you Nigeria and Niki at the car?

A Probably a good 20, 30 minutes, because I didn't catch her early that morning, so we were catching up, going about my hair and birthday plans.

Q And did there come a point where Nigeria left?

A Yes. She pulled out and left to her house.

Q Which is close?

A A second away.

Q What did you do after Nigeria left?

A Turned around, walked back to my car and talked to Deandra.

Q What happened next?

A After sitting there talking with her for a few minutes, she screamed out my name at the top of her lungs, so I turned around, and before I could fully get turned around, Jamie had two handfuls of hair.

Q Your hair?

A Well, uh-huh, I just had the extensions done.

Q What happened?

A We got into it. We started tussling, going back and forth. I know not long into the fight Schanski, Shack, and Jackboy arrived.

Q Let me step back. Was this a fight you wanted to be a part of?

A No.

Q Who started the fight?

A Jamie.

Q Who is Schanski?

A Jamie's mother.

Q Who is Shack?

A Jamie's brother.

Q And who is Jackboy?

A James.

Q The defendant?

A Yes.

Q What happened when they came over?

A We kept going, going at it. Schanski got between

s, and all I heard her say is, Bitch, don't hit me.
Q Was she trying to intervene to stop the fight?
A Not until everyone else showed up.
Q Who else showed up?
A That is when my brother and everyone else started howing up.
Q Who is your broker?
A Antwan Samuels.
Q How many other people came along?
A Six, seven people, whoever was out there. After everything was said and done, it started populating.
Q We're they able to break up the fight?
A The gunshot stopped the fight.
Q Before we get to that, where was Nigeria when this fight started?
A When it started, she was at her house.
Q Did she do anything in response to the fight?
A After she seen -- well, from me, they came -- she and Niki came through the field.
Q Who was with her?
A Her best friend, Niki.
Q What did NaNa and Niki do?
A Basically standing behind me making sure I was kay, no one trying to jump on me.
Q At any point did they try to stop the fight?

A Yes. A couple of times, but Schanski was right here.

Q In what way did she intervene?

A Just behind me, Let her go, Let her go. You know, yelling, Stop, let it go.

Q What happened next?

A We're fighting. I turn around, you know, catch an eye of my sister behind me. Her and James are going at it. I see her kind of come back, you know, like she was going at him, and then he hit her. Next thing I know --

Q How did he hit her?

A He punched her.

Q How so? Where?

A In the face.

Q What happened next?

A Well, after all that was said and done, we're going back and forth. It was a cat fight, girls pulling each other's hair. I have the mama in the mix, and I hear this ringing in my ear, this shot go off. I immediately turned around.

Q Did you see who fired the shot?

A No.

Q What happened next?

A I turned around and my sister was laying on the

round.

Q Where was the defendant?

A Nowhere to be seen.

Q What did you do for your sister?

A I sat there and applied pressure to her wound.

Q Was she able to talk?

A What did you say, I'm sorry?

Q Was she able to talk?

A A little bit. She just kept saying it was hard or her to breathe.

Q Now, this whole fight and the shooting and verything and where Nigeria fell, where was that area?

A Where you had that picture.

Q Between those two cars?

A Everything happened right there.

Q Between those two cars?

A Yes.

Q Nigeria is obviously badly injured, did anyone all 911?

A Yes.

Q Did the ambulance respond eventually?

A Yes.

Q And the police?

A Yes.

Q How did -- how long did it take the ambulance to

get there?

A It seemed like an eternity.

Q When they got there, did they try to help Nigeria?

A Yes.

Q How did Nigeria leave Racepath that day?

A In an ambulance (crying).

Q When she left, was she still conscious? Could she talk?

A When they made me move, she wasn't talking any more.

Q What do you mean when they made you move? Where were you when the ambulance came?

A I was kneeling down beside her trying to hold and apply pressure to the gunshot.

Q After the ambulance took NaNa, what did you do?

A I just stayed around, I mean, not knowing what to do.

Q Were the police there?

A Yes.

Q Did you talk to the police?

A Yeah, I talked to a detective, I believe.

Q Did you tell them what you saw?

A Yeah. He had me tell what happened and write a statement, but my hand would barely write.

Q What happened to Nigeria?

A We were sitting in her house saying how we were going to take care of her when she came home, and we heard a scream from outside the door. We went outside to see what they were screaming, and they told me my sister was gone (witness crying). I'm sorry.

Q It's all right. You had a funeral?

A (No verbal response.)

Q Where was she buried?

A Don't know the name of the church. It is right off of 501 (witness crying).

Q Final question. Who did you see hit NaNa before she was shot?

A Jackboy.

Q Jackboy is the defendant, James Wilson?

A Yes.

MR. DeBUSK: Answer anything defense may have.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. WILSON:

Q Ms. Cox, do you need water or something?

A No, sir.

Q Now, let's -- I understand this is difficult for you, but I just need to ask you some questions as well.

A Okay.

Q Now, you gave a statement to the police the night that this happened; did you not?

A Yes, sir.

Q And did you tell the police anything about seeing a fight between Ms. McDonald and you referred to him as Jackboy, or James?

A I'm honestly not sure what is in that statement. I was a little shaken, so writing was even a problem.

Q Is your memory better today than it was a year ago when you gave the statement to the police about what you say you saw?

A When the detective talked to me that night, I could barely speak.

Q In fact --

A I just found out that my sister had died.

Q In fact, you told the police that because you and Ms. Spivey were fighting, that you didn't get to see what happened, that you heard the shot, turned around and you saw her on the ground; that is what you told the police the night that this happened, is that not correct?

A It could be. I was just trying to get out of his vehicle to see what was going on.

Q In fact, the version that you told us today is what Nikara, who is another witness in this case, told

you about what she says she saw; isn't that right?

A I guess that is what she said, yes.

Q And for the last year, you all had an opportunity to talk about what you say happened or didn't happen, and I guess you liked her version of what happened better than you liked your original version?

A No, sir. I really haven't spoke to her much after the funeral. We recently reconnected for this situation.

Q Let's go talk for a minute about Ms. Spivey, the lady that you were having a fight with, hair pulling or whatever it was that was going on. She lived -- I don't want to say across the street, but the Solicitor I think referred to it as a block, but it isn't a block; in fact, you could throw a stone from where you were to her house, right?

A Yes.

Q And you knew she lived over there?

A Uh-huh.

Q And the two of you folks, for whatever reason, had bad blood?

A Well, see, that is the thing, sir. I knew of no bad blood between us. She was my cousin. Her mother is married to my uncle. I saw my uncle any time I went over there, like I do with all my family. Hey, I love

you. When I saw her, I spoke. When I came over there to get my hair done, Jamie was just over there and playing with my hair saying, oh, you're going to be cute when it's finished. There was no bad blood, from what I knew. I thought everything was fine.

Q So she comes over and plays in your hair. What time of day is this that she is playing in your hair?

A This was like two days before my sister died.

Q So two days before you were over there in that area, she was playing in your hair; is that what you're telling me?

A Yes. My extensions were down my back. It took quite some time to get them done.

Q What transpired in those two days?

A That is what I don't understand.

Q What transpired in those two days that would cause her to come over to you with her baby in her arms?

A This is the thing. When she walked past my car when I was on the phone, she was coming from out of my cousin's house. I was in my car in the yard, door shut, on the phone. She walked past, said something and I thought she was speaking, I threw my hand up and continued with my conversation. She kept going at my window, is what made me get out of the car to see what

she was talking about.

Q When you get out of the car, what is it that she is saying to you?

MR. DeBUSK: Calls for hearsay, objection.

MR. WILSON: I'll withdraw and rephrase it.

Q (MR. WILSON) Let me ask you this. You're saying that she was playing in your hair two days earlier, and when you see her, she comes by, has her baby in her arms and you see her, correct?

A Yes.

Q And she passes your window of your vehicle?

A Uh-huh.

Q Was your vehicle still parked as it was in Exhibit No. 5?

A It never moved from that spot.

Q Which one of these two?

A That one.

Q So she comes all the way over here?

A No. She came out the door, passed my car on the passenger's side.

Q She comes all the way over to here to where car is, passenger's side?

A Uh-huh.

THE COURT: Answer yes or no, ma'am, please.

A Sorry. Yes.

Q (MR. WILSON) When she does, what is she saying to you?

A Like I was just saying, sir --

MR. DeBUSK: Calls for hearsay, object.

MR. WILSON: I apologize. Let me reask it.

Q (MR. WILSON) She comes to the car with her baby in her arms?

A The baby was walking.

Q So she didn't have a baby in her arms?

A She was walking with her child.

Q But you didn't tell the police that. You told the police back on the day you gave the statement that she came to the car, which is why you didn't fight, because she had a baby in her arms when she came to the car window.

A She came out of my cousin's house, for whatever reason she went out there. When she walked out of the house, she had her child with her. Whether I said she was carrying her or not, at the moment my only concern was my sister was in the hospital with a gunshot wound.

Q So when she comes out, you say now the baby is walking. Is she holding the baby's hand?

A She had the baby's hand.

Q You are sitting in the car on the phone?

A Correct.

Q She says something, but then you get out of the car to confront her, don't you?

A She said something, I don't know what she said. I threw my hand up. I thought she was speaking like she was waving. My phone was going through the radio. I don't know if you know about hooking your phone to the aux cord, but it sounds like the radio. I was talking to my girlfriend. She came back, Hey, you know, whatever, continued on with my conversation. But when she came past my car, it was a stop and keep on going, so it is like what are you saying because I don't -- let me get out of my car, what did you say.

Q Didn't you tell the police that she -- when she came out to your car window, that she was argumentive with you about something? That is what you told the police, right? In your statement to them the night that this happened, you told the police that she came up to you basically trying to start an argument?

A That is what it was, though. She didn't come to the car wanting to speak with me. When I realized what she was trying to say, it wasn't, hey, how are you, are you okay. She was angry for some reason.

Q So what you are saying is when she came out to the car window, she was angry, but you get out of the car to confront her, right?

A I didn't know she was angry until she got out of the car. All I know is she was saying something, I think you're speaking, hey, and she kept going. I'm not going to be rude and let you keep talking to the window, I got out of the car and that is when I seen it wasn't a, hey, how are you.

Q Was there any licks passed between the two of you?

A At that moment, no, sir.

Q And what did you say to her? She's angry with you standing there with the child, what did you say back to her?

A Sir, we're women. We're arguing, going back and forth.

Q What were you saying?

A I couldn't tell you verbatim, but I know I was saying she shouldn't be out here arguing with her child, she should be home.

Q So you said she shouldn't be arguing, you shouldn't be out here arguing with your child, you should go home?

A That is part.

Q You were saying choice words to each other, were you not?

A Yes, sir.

Q And they weren't words that we say at First Baptist Church at Sunday school?

A When you are in an argument, you never say something you would say at church.

Q It got pretty heated. So what happens then?

A My sister pulled up and diffused the situation.

Q Who are you referring to?

A NaNa.

Q NaNa is not your blood sister?

A No, she's not.

Q You call her sister because you are close with each other?

A That is the way we were raised.

Q And you have been close all your life?

A We were raised as sisters.

Q And now when your sister pulls up, she pulls up beside your car to the passenger's side of your vehicle?

A No, sir, she stopped in the street.

Q Stops in the street?

A Yes, basically behind my vehicle.

Q What time of day is it now when we have this first argument and your sister pulls up, what time of day are we talking about?

A Afternoon.

Q What time?
A 4:00-ish, 3:00. Right after I got my hair done.
Q 3:00, 4 o'clock?
A Uh-huh.
Q And this little argument that you had lasted for how long?
A Not sure, maybe 15 minutes, 10 minutes. I'm not sure.
Q So you and Jamie Spivey stood there and argued 10, 15 minutes with the child there and your sister behind you?
A No. My sister pulled up, the argument basically deceased after that. She left.
Q And that is what I was asking, how long did that little --
A Before my sister came, maybe 10 minutes.
Q So you went at it about 10 minutes before your sister pulled up?
A Uh-huh.
Q Why did she leave when your sister pulled up?
A I'm not sure. You have to ask her.
Q As soon as your sister pulled up, she walks away?
A No, not immediately. She sat there and went back and forth with my sister for awhile.
Q So she and NaNa went back and forth?

A My sister was telling her to leave, leave it alone, we don't need to be arguing. Jamie wanted to be argumentive.

Q Now, Jamie then leaves, takes her child and she leaves. You are still there parked at this [redacted] mobile home?

A Yes.

Q So how long is it between that time and the second contact that you have with Jamie?

A Well, after she left me and my sister is outside talking, talking for awhile. After they went home, I turned around and was talking to my cousin's girlfriend Deandra, talking to her maybe 10 minutes.

Q But you weren't saying anything that she could hear about her, were you, during this time when you and your sister are still outside having this conversation, because she is still within earshot?

A Jamie is within earshot of me?

Q Yes. Yes.

A I mean, her house is that close, but I don't talk with a megaphone, so I doubt she would hear anything that we were talking about.

Q How long after your sister came up --

A NaNa.

Q NaNa, I apologize, before she comes back over to

you?

A Before Jamie comes back?

Q Yes, ma'am.

A Maybe 15 minutes. I was talking to Dee for awhile, door open, foot in the car. Next thing I know, Trudy is screaming at the top of her lungs.

Q So total of 15 minutes from the time she walks away with the child until the time she comes back, when your back is turned, and you say she grabbed your plait or hair and started to yank or pull?

A I'm not sure about time. It seems like everything happened so fast, but so slow at the moment.

Q So you don't know if it was 15 minutes? Are you saying it could have been an hour?

A Definitely not an hour.

Q Could it have been 30 minutes?

A Give or take.

Q Could it have been 20 minutes?

A Sure.

Q So you are saying that somewhere between 15 minutes and 30 minutes, but you are not really sure?

A Yes, sir.

Q Now, let's talk about the second contact that you had with her.

A Okay.

Q Now, when she comes back over, you are still out at your car?

A I was in the process of -- well, I had my foot in the car and getting ready to leave.

Q Okay. All right. The reason you hadn't left earlier is because you were still having a conversation, you said, with your sister, right?

A Yes.

Q And so when Jamie came back over to you, your sister is still standing there with you?

A The second time my sister was at her house already.

Q That's what I'm trying to figure out. At some point, your sister left you and you were by yourself?

A I was talking to my cousin's girlfriend.

Q Who is that?

A Deandra.

Q That was the lady that fixed your hair?

A Yes.

Q Did she live in the mobile home where the cars are parked?

A Yes.

Q Was she at the doorway, or was she out to the car?

A Standing in the doorway.

Q And you are standing at your car?
A Yes.
Q Driver's side or passenger's?
A I was inside of my driver's car door. I had it opened and standing in between the car and the car door.
Q So when Ms. Spivey, that is Jamie Spivey, comes back to you 15, 30 minutes later, you are still sitting in your car in front of Ms. Deandra's house?
A Standing outside of my car, yes.
Q You were standing outside of your car?
A Uh-huh.
Q So you got out of your car again?
A I never got out of the car. When I was talking to Deandra, I was standing in the car door.
Q So like a foot inside with the car door opened?
A Yes.
Q She comes up and she grabs you from behind?
A Right.
Q When she grabs you, you start to tussle; is that a fair statement?
A Yes.
Q Now, Deandra is feet away from the two of you; is that correct?
A Yes.

Q Does she come out of the house to help?

A At that point all I know is I had someone trying to punch me in my face and pull my hair out.

Q Well, I know you have Jamie, the two of you are actually tied up?

A Uh-huh.

Q What I'm asking you is does Deandra, who is standing at the door who is talking to you at your car, you guys are probably, what, 8, 10 feet apart at that point where she is standing at the door to your car?

A Yes, sir.

Q And so it is only like one step away to come and help. Did Deandra leave her door and come out to the yard right down where you were having the fight?

A She was there during. When she came down, I'm not sure.

Q What about your sister?

A The first person I saw in the yard was Schanski, Jackboy and Shack and then my sister and her friend.

Q Now, let's talk about that since you brought it up. Jackboy, did he ever hit you? Did he ever do anything to you?

A I don't really know him.

Q That is not what I asked him. What I asked is during the course of this fight, or whatever it was

going on out there, did he ever hit you?

A No, not that I know of.

Q Did he ever draw blood on you that you know of?

A No, he was standing behind me.

Q And you were the one who was actually fighting with his girlfriend?

A Correct.

Q Now, did you know him -- did you know that his girlfriend was six months pregnant when all of this is going on?

A I found out after the fact.

Q Sorry?

A I found out after the fact. Like I told you, me and Jamie are not -- it's hey, how are you. It is just -- I don't know nothing about her really. I know her mom, she's my cousin. I'm respectful, hey, how are you doing, and keep it moving.

Q And at that point, some point, there were all of these people involved. Who was holding you to try to keep you from fighting?

A My sister and Niki.

Q So who was holding Jamie to try to keep her from fighting?

A Her mother.

Q But you managed to get some licks into her in

spite of that, right?

A Yes.

Q And that was because she was being held by two of your friends --

A No.

Q -- while you beat her?

A She tries to attack me as I'm getting into my car, but -- huh, that doesn't make sense, sir.

Q I'm asking you. In fact, James never said a word to any of you all except, Leave my baby's mama alone, don't hurt her. He told you that over and over, told you she was pregnant?

A He didn't tell me that.

Q You deny that he said that multiple times to you all while you were out there?

A The only thing that Jackboy said, and it wasn't to me, it was to all of us over there at that time, me and my sister and Niki, basically if something happened to his baby he's going to spray it, or something like that. That is it. I assume that was to protect her knowing she was six months pregnant, but I didn't know. I mean, if you are six months pregnant why are you coming over here to fight me and jump on me while I'm getting in my car?

Q What did you call her, Deanna?

A Deandra.
Q Deandra, that is your friend?
A Cousin's girlfriend.
Q Cousin's girlfriend?
A That is all my family's land, so that is nothing but family that stays there.
Q Nothing but family. You all are fighting and all of these people show up, and you say there was like six, seven of you?
A Something like that, yes.
Q Who was there with Jamie?
A Jamie's family as well.
Q All of these people that you named were all with you?
A That's the problem, when my sister saw me, it was just me, Jamie, her mother, Jackboy and Shack. And from what we know of Schanski, she's the type of person that will jump in and fight with her daughter.
Q Do you know who Kendrick Green is?
A No.
Q You don't know who that is?
A If I seen his face, probably.
Q You don't know whether or not Kendrick Green was out there that night?
A Does he have a nickname?

Q I don't know.
A You have to give me a nickname.
Q Help me with this. Who is trying to separate you all when the fight is going on, and you are telling me now that your sister is there, Ms. McDonald, the lady who owned the trailer, she was there, Nikara Rush was there, right?
A Uh-huh.
Q And all of those are your people. The only person there --
A See, that is the thing, you are making it seem like everybody that was there was for me. Deandra is friends with Jamie and Jackboy and Shack, and when they have cookouts, they come over. It is not me versus them. We are all family. We all socialize. That whole community is our family.
Q You say that you saw Jackboy come up at some point. How long had you been tussling or pulling hair, or whatever it is that you were doing, before he came up and said, Don't hurt my baby's mama, or whatever?
A He said that in the first original argument. He didn't say that on the second go-around. On the second do around he wake up with Jamie -- with Jackboy and Schanski there was no words exchanged.
Q Who came with Jackboy and Schanski?

A Shack, them three came together.

Q What I'm asking you is what, if anything, did Jackboy or James Wilson, however you want to call him, what did he say specifically, and we're talking about the second fight where you say she ran up and grabbed your hair in the back.

A He said nothing.

Q Nothing?

A He wasn't there. When she walked up -- she came by herself. As we're getting into it, the mother, the brother and him all come over. In actuality, there was no one in the yard for me, it was all her family over there. I'm not related to them.

Q You were at [redacted] in the yard, and you are less than a car length from the door of [redacted] where Deandra lived. Where was your sister at that time? Where was her house?

A You can't see it.

Q I mean, how far is it from where you all were?

A Just like Jamie's was a sneeze away, so was my sister's.

Q Yeah, a sneeze away. Within seconds they were all there, right, as this fight continues?

A Yes.

Q How long would you say that the fight itself

between you and Jamie, supposedly with all of these people trying to break it up, how long did that fight last?

A In total?

Q Yes. The second fight is the only one I'm talking about, not about the --

A There was no fight the first time, just an argument.

Q So I'm talking about the second fight.

A The fight? We were fighting maybe 10 minutes -- no, I would say maybe seven, eight minutes before her mother and all of them came over, and then slowly but surely everyone started, my sister and whoever else popped up to see what was going on. I mean when there is a fight....

Q So the fight where the two of you are tussling lasted seven to eight minutes? That is a long fight?

A Yes.

Q And all of these people are there, and you are saying they are trying to break you all up, right?

A Supposedly.

Q Supposedly.

A That's like me saying Schanski tried to break it up. The only thing I know she was saying was, Bitch, don't hit me. She wasn't there to break up a fight

until there was other people around and then it was, You all stop fighting. You know, it is one of those things, sir, period. You see a fight, whether it be between families, or so on and so forth, you'll draw a crowd of people who want to see it. They'll come around, right?

Q You are a pretty small person. What are you, 100 pounds, 110?

A 140. I eat good.

Q Your sister was a pretty large woman?

A Yes.

Q Fair?

A Yes.

Q And what about Deandra?

A She's tall, yeah.

Q And then wasn't your brother out there?

A He came after the gunshot.

Q He came after the gunshot. And let's talk about him for a minute. What is his name?

A Antwan.

Q Who was it that had -- was going to shoot someone with a chopper?

A You got me, lost me on that one.

THE COURT: I didn't hear your answer.

A I don't know about that.

Q (MR. WILSON) You don't know anything about someone trying to shoot James with a chopper?

A No.

Q You don't know about that?

A No.

Q You know what a chopper is?

A A gun.

Q Yeah, it is a gun. You didn't hear that from your brother?

A No. I know he asked where one was trying to figure out what was going on.

Q Everyone, meaning James?

A Everyone -- whoever was there for the whole initial fight. He was getting his hair cut during the time.

Q And let me ask you, during the course of this fight -- now, there were pictures of -- I'm showing you Exhibit 6 for the State. Take a look at that. There was strands of hair or weave?

A Extensions.

Q Extensions. Who do those belong to?

A Jamie.

Q Any yours?

A No.

Q No? All Jamie's. How many are there down there

that you can see?

A Two.

Q Two. But you had extensions too, right?

A Yes, sir.

Q But none of your extensions are on that ground?

A Deandra is a good hairstylist.

Q Good hairstylist. One second, please.

THE COURT: Yes.

(A brief pause in the proceedings.)

MR. WILSON: Nothing further. Thank you.

THE COURT: Redirect direct examination?

REDIRECT-EXAMINATION

BY MR. DeBUSK:

Q Mr. Wilson was asking you about times. Did you look at the clock and --

A That is one of the last things on my mind.

Q Sort of guessing at the times?

A Yes, sir.

Q Could it have been later than 4 o'clock?

A I had one thing on my mind, and that is my sister, that's it.

(State's Exhibit 8 marked.)

Q Do you recognize this?

A Yeah.

Q What is that?

A Jamie.

Q Which Jamie?

A Jamie Spivey.

Q Is that the way she was dressed that night, appeared that night?

A Yes, sir.

MR. WILSON: No objection.

THE COURT: State's 8 is in evidence without objection.

(State's Exhibit 8 admitted.)

Q (MR. DeBUSK) Is there anything that night to suggest that she was pregnant?

A I mean, that is not maternity clothes.

THE COURT: You need to speak into the microphone.

A I'm sorry. It is not maternity clothes. Every time I seen her, that is what she generally dresses like.

MR. DeBUSK: May I approach?

THE COURT: Yes, sir.

MR. DeBUSK: Had you been able to tell she was pregnant, could you have avoided that fight?

MR. WILSON: Object to the form of the question.

THE COURT: I'll allow it. It was brought up in cross-examination, so I'll allow it.

Q (MR. DeBUSK) If you could have told by looking at her that she was pregnant --

A If I thought she was pregnant --

Q Could you have avoided that fight?

A Absolutely.

Q How would you have avoided the fight when she came up and grabbed you?

A I mean something (indicates). I was trying to defend myself, but if I knew she was carrying, I would have just taken that for whatever it was. I have two kids myself. I mean, I know what it is to have children.

Q But you didn't start that fight, did you?

A No.

Q You didn't choose that fight there?

A No.

Q And you didn't choose to fight with a woman six months pregnant?

A That is what didn't make sense when I found out, when I found out after that she was pregnant. Why would you jump on me when you're carrying a child?

Q Mr. Wilson said you got a few licks in that fight, didn't you?

A Yes, sir.

Q Was she pulling your hair?

A She wrapped around hers, her hand.

Q Did it hurt?

A I just got them done. I'm sure you don't know about corn rows or anything, but it is constantly being pulled at at your scalp. It is not good.

Q So when she was pulling, it hurt?

A Like hell.

Q And these extensions were like woven into your hair?

A Yes.

Q So if she grabbed and pulled it --

A They were brand new, so they weren't going anywhere.

Q Were you keeping track at who was at the scene when?

A No, sir.

Q Is there any doubt in your mind the first person -- between you and Jamie -- the first person to talk to you was Jamie Spivey; you didn't talk to her first?

A No, sir.

Q And when she was -- when you had the verbal argument, who started that?

A Jamie.

Q When did that end? What happened when that one

ended, the verbal part?

A The verbal part? I mean, everyone basically went about their day.

Q And she walked away?

A Uh-huh.

THE COURT: Yes or no?

A Yes. Sorry.

THE COURT: It's all right.

Q (MR. DeBUSK) When the physical fight began, who started that?

A Jamie.

Q And what ended that?

A The gunshot.

MR. DeBUSK: Nothing further.

THE COURT: Anything on those questions?

MR. WILSON: No, sir, Your Honor.

THE COURT: Ma'am, you may step down. Thank you. Ladies and gentlemen, we are going to stop for the evening. Now, as I told you, I don't want you talking about the case among yourselves until I give it to you at the end. That also carries when you go home, husband, wife, boyfriend, girlfriend, person down the street. You can't talk about this case because intentionally or unintentionally they'll have an opinion. They don't have one, and you shouldn't have

one at this point in time. So don't discuss the case, don't allow anyone to discuss it with you. If for any reason you see one of your fellow jurors, you can acknowledge, but don't talk about this case.

What I'll have you do is I would like to start back tomorrow morning at 9:15. The bailiff will talk to you about assembling down in the jury room downstairs to come up. The clerk's office will have something for you in the jury room. I'll leave that to them. And with that, I'll excuse you. Please be back when the bailiff asks you to be back downstairs in the jury room. Thank you very much.

(The jury exits at 5:00 p.m., and the following is heard out of the presence of the jury.)

THE COURT: I'll take an opportunity to speak to everyone in the courtroom. This is open court, and everyone is welcome to come in and observe proceedings, but this is not an interactive situation. Anyone that is here that is not active, like the attorneys, asking questions or witnesses answering questions, you will not respond to questions and answers. You will not show any emotion. You will not express approval or disapproval of answers that are given. This is not your job to decide this case, it is the 12 men and women in that jury, and they are the

only ones that will decide this case. Those are my instructions, and I hope that you will follow them, but I will not tolerate any kind of imposition on that jury by a showing of emotion favoring one side or the other. It doesn't matter what side we're talking about, all right. Please -- we want you to be here and observe the proceedings. I want you to know what is going on, but we cannot have anyone trying to indicate to the jury that something is believable or not believable. That is their job, and only their job. I told the jury I wouldn't comment on it, and I'm not going to comment on it. The only people that will decide this case are the 12 men and women sitting in the box, and that is the only people I'll allow to decide the case.

So, with that, we're going to start back tomorrow morning at 9:15. Solicitor, Mr. Wilson, could you talk to me for a second, please.

MR. WILSON: Yes, sir.

(Whereupon, a bench conference was had.)

THE COURT: With that, we'll reconvene tomorrow morning at 9:15. Thank you very much.

(Whereupon, the proceedings on June 27, 2016 concluded. The following was had on June 28, 2016 out of the presence of the jury.)

THE COURT: Solicitor, are you ready for the jury to come in?

MR. DeBUSK: Yes, Your Honor, we are.

THE COURT: Mr. Wilson?

MR. WILSON: Yes, sir.

THE COURT: Very good. Ask the jury to come in, please.

THE BAILIFF: They are just now getting up here; they need to drop their stuff.

THE COURT: Okay. Didn't I make it clear yesterday that I wanted to start at 9:15?

THE BAILIFF: Yes, sir.

THE COURT: Just relay that I want them in here as quickly as possible.

(A discussion was had off the record.)

(The jury enters at 9:24 a.m., and the following is heard in the presence of the jury.)

THE COURT: I apologize for any confusion about the time. Apparently I wasn't as clear as I thought, that we're starting at 9:15. I'll make sure that we're more clear.

Your next witness.

MR. DeBUSK: Before we call the witness, we move to admit -- let me get it marked --

(State's Exhibit 9 marked.)

MR. DeBUSK: This is State's 9, a business record and document under seal.

THE COURT: Objections to that?

MR. WILSON: No, sir.

THE COURT: In evidence without objection.

(State's Exhibit 9 admitted.)

MR. DeBUSK: For the record, it is surface water observations from Myrtle Beach Airport for May 8, 2015.

MR. OSKINS: We call Schanski Hemingway.

(SCHANSKI HEMINGWAY, having been duly sworn, testified as follows:)

THE CLERK: State your name and spell your last.

THE WITNESS: Schanski Hemingway, H-E-M-I-N-G-W-A-Y.

THE COURT: Go ahead.

DIRECT-EXAMINATION

BY MR. OSKINS:

Q Good morning.

A Good morning.

Q How old are you?

A 42.

Q Are you currently employed?

A Yes.

Q By who?
A I'm a senior technical adviser for Apple.
Q Apple Technology?
A Yes.
Q Where do you currently reside?
A I live in Longs.
Q Where did you live on May 8 of 2015, May of last year?
A [redacted] in Myrtle Beach.
Q And, Ms. Hemingway, do you know Jamie Spivey?
A Yes, I do.
Q How do you know her?
A I'm her mother.
Q Was Ms. Spivey involved in a fight May 8 of last year?
A Yes, sir.
Q Did you happen to see this fight yourself?
A Yes, sir.
Q Do you remember who she was fighting?
A Ms. Cox.
Q Is this Ms. Cox here?
A Yes, sir.
Q Please tell the jury what you did after what you saw and what the actions were after you saw the fight begin?

A Me and Jamie, we were sitting on the front porch where we were living at. I saw Jamie, she got up and walked across the street. Upon her walking across the street, I noticed several people started running, so I got up and I ran across the street to where Jamie was. Whenever I got to where Jamie was, she and Shullamite, they were involved in a physical altercation. At that point I was trying to grab Jamie and de-escalate the fight.

Q And I know you said people were running, but did you notice anyone else around the fight particularly?

A Well, wherever I ran across the street, I saw Nikara and Nigeria.

Q Nigeria McDonald?

A Yes, sir.

Q Where were they in proximity of the fight?

A They were running across the field, so whenever I got up, Nigeria, she was trying to grab Shullamite, and I was trying to grab Jamie.

Q How long do you think this fight lasted?

A In my mind, it took about 15, 20 minutes; in reality, probably five, six minutes.

Q Okay. And what made this fight finally come to a stop?

A While I was trying to grab Jamie, all of a sudden

I heard a gunshot. Whenever I heard a gunshot, everyone started to back up, dispersing.

Q Did you happen to see who fired that shot?

A No, sir. At that time my back was turned towards Racepath Street, so I only saw what was going on in front of me.

Q Anything stand out -- anything in particular after you heard the gunshot?

A After I heard the gunshot, I saw Nigeria fall. I didn't know if she tripped or if she had got hit by a bullet.

Q Who else was close to Nigeria at this time?

A At this time Shullamite was close to her. It was me and Jamie and Nikara. She was standing besides Nigeria crying.

Q Was the defendant, James Wilson, close by after the shot was fired?

A I never saw James.

Q So what did you do after she was on the ground?

A I ran to assist her. I didn't know if she fell or if she was hit or whenever she fell. I ran to her and I bent down to see what was going on. At that point I didn't see any blood or anything, so I didn't know if she was hit or not.

Q Did EMS emergency medical crews respond to the

scene?

A Yes, sir.

Q What did you do when they arrived?

A By that time, before the EMS got there, Nigeria was talking to Shullamite and telling her where she was hurt at, and I was telling the young man who lived in the house that they were at if they could get a towel or something to prop her head up. At that point a lot of people started gathering around, and I got up. So by the time EMS got there, I wasn't there.

Q Back up very briefly. Is it safe so say most people in the block, that they were paying attention to the fight until the shot was fired?

A I can't speak for everyone because my back was turned to everyone else. I was trying to pull my daughter out of the altercation, so I wasn't paying attention to the surroundings.

Q And that night did you hear any update on Nigeria McDonald?

A My husband informed me -- I was still sitting outside on the porch a little overwhelmed, and my husband said.

MR. WILSON: Objection to what her husband told her.

THE COURT: Sustained.

MR. OSKINS: Withdrawn.

Q (MR. OSKINS) Did you receive news that night that Nigeria McDonald, indeed, died that night?

A I did.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. WILSON:

Q Let me ask you, that night when the fight was going on -- you know Trudy Cox?

A Yes, sir.

Q And Trudy was the person who is fighting with your daughter; is that correct?

A That is correct.

Q And you knew your daughter was pregnant?

A Yes, I did.

Q And do you know how far along she was during that time?

A At that time, no, I did not know the exact -- I knew she was in her first -- late to early -- late first trimester to the early second trimester.

Q When was the baby actually born?

A [redacted].

Q And this would have been in May?

A That is correct.

Q And now -- the baby was a normal term baby?

A Yes, sir.

Q Now, when you got over to the fight, did you have words with Trudy who was fighting with your daughter? Did you hit her or strike her or did you do anything to harm Trudy who was fighting with your daughter when you got over there?

A No, sir. I immediately grabbed Jamie.

Q Were there any words exchanged between you and Trudy about her telling you that you are hitting her or to leave her alone?

A No.

Q That never happened?

A Not to my knowledge.

Q You were there, so who else's knowledge would it be? You were there when this was happening.

A I was there and grabbing Jamie.

Q Did you ever grab Trudy?

A No, sir. The two young women, they had each other by the hair. I was trying to pry Jamie's hands off the Trudy's hair.

Q Did you see your daughter had extensions in her hair, whatever you want to call them; is that right?

A Yes, sir.

Q Let me show you State's 6, which is a picture of the mobile home and cars parked in front of it; is that

what you saw that night?

A Yes, sir.

Q Those two cars that are parked here --

MR. WILSON: May I approach the witness?

THE COURT: Yes, sir.

Q (MR. WILSON) If you would, the two cars parked there, is that where the fight took place, in between the two cars?

A I don't recall this car being here or this car being here.

Q Do you recall which car?

A This one.

Q That one, okay.

THE COURT: You need to identify it in some way, please.

A The black small sedan was there. I don't remember the van being there, SUV.

Q (MR. WILSON) All right. Well, did you see that other car pull up before the police got there?

A No.

Q So are you saying that there was only one car there when the fight happened, or were there two cars there when the fight happened, or you don't remember?

A I just don't remember.

Q Do you see the plats -- look down on the ground,

do you see the plait down there?

A Right here?

Q Yes.

A Yes.

Q Did you see those plaits down there that night?

A Yes.

Q Who do they belong to?

A I believe they belong to Jamie.

Q And when you were there during the fight -- let me back up. When Jamie went over to the fight, was she at home?

A Yes, sir. We were sitting on my front porch.

Q What, if anything, did you keep her from going over there to have the fight in the first place?

A I did not know that she was going to fight. She just went up and walked across the street. Whenever she got across the street and saw everyone running towards, that is when I realized she was in an altercation.

Q Do you know Deandra, the lady who lives in this --

A Yes. Yes.

Q In the mobile home identified in State's Exhibit 5?

A That is correct, yes, sir.

Q Do you know her?
A Yes.
Q Was she there that night? Did you see her during the time that the fight is going on?
A As I stated earlier, I was just focused on getting Jamie. I didn't pay attention to who was out there.
Q Okay. So you don't -- let me ask you this way. Tell me who it was that you remember being out there that night?
A I remember grabbing Jamie.
Q Sorry?
A I remember grabbing Jamie, so Jamie was there. I remember she was fighting with Trudy. I remember Nigeria was trying to break up the fight, and I remember Nikara standing close to Nigeria.
Q So Nikara, Ms. McDonald, Trudy and Jamie and yourself?
A Yes, sir.
Q Anyone else out there that you remember?
A Not during the fight, because I was focused on trying to get Jamie out of the altercation.
Q And all of you all would have been in this area right here by this car? Is that where you would have -- as reflected in State's 5, all of you would have

been in this area here?

A Yes.

Q Now, after the shooting, where was the body of Ms. McDonald?

A It was closer to the front of the car, right here I do believe.

Q And are you sure about that?

A Yes.

Q And not the other car? Are you sure, or you don't know?

A To the best of my knowledge.

Q So show me where it was where she was laying, because as I understood it, at some point in time -- let me ask you this way. At some point in time did you try to help her by putting pressure on the wound or asking other people to do that?

A Yes, sir.

Q And where was she laying when this is happening and you are applying pressure to the wound, where was she laying?

A Well, the fight was up in here. She had to be laying closer to this car here.

Q And where was her head? Was her head towards the mobile home or towards the street?

A It was towards the mobile home.

Q And her feet would have been towards the street?
A That is correct.
Q And was she towards the front of the tire, front tire of the vehicle, middle or back tire?
A I do not recall, but if I had to say, it would have been the front tire.
Q Okay. Let's talk about after the shooting. After the shooting, tell me what happened? You helped to apply pressure to the wound and you got a towel from somewhere to do that, right?
A That is correct.
Q And then what?
A At that point, whenever Trudy -- she was the one applying pressure to the wound. After I made sure that that was okay, I so happened to glance around and I didn't see my daughter at this point, so I got up to see where Jamie was at.
Q And did you find Jamie?
A No, I did not.
Q Tell me what is going on now.
A At this point I saw a young man pull a gun out of the front of his pants, and he kept on saying, Which way --

MR. OSKINS: Objection, Your Honor.

THE COURT: Sustained.

Q (MR. WILSON) Just tell me what you saw. Don't tell me --

A That is what I saw.

Q You saw a young man who, what, now?

A Pulled a gun out of his pants and he was saying --

MR. OSKINS: Objection.

Q Don't tell me what he said.

A I saw a young man pull a gun out of the front of his pants.

Q Do you know who the man was that pulled the gun out of his pants?

A Kendrick Green.

Q Kendrick Green. He pulled the gun out, and what did he do with the gun?

A Looked like he was walking towards my house, so I thought he was going towards my daughter.

Q As a result of that, what did you do?

A I told him if anything happened to my daughter, I was calling the police.

Q Now, did he leave at that point, that is Kendrick Green?

A Me and him got into a verbal altercation.

Q Let me ask you about Trudy Cox, does she have a brother?

A Not that I'm aware of.

Q Was there any other man out there with a gun that you saw that night?

A No.

MR. WILSON: If you can give me one second, please, Your Honor?

THE COURT: Yes, sir.

(A brief pause in the proceedings.)

MR. WILLCOX: No other questions.

THE COURT: Redirect?

MR. OSKINS: Briefly, Your Honor.

REDIRECT-EXAMINATION

BY MR. OSKINS:

Q The victim in this case, Nigeria McDonald, she was not a part of the physical fight herself?

A No, she was not.

Q She was just there to break it up?

A Yes, sir.

MR. OSKINS: Thank you.

THE COURT: Anything on that question?

MR. WILSON: Yes, sir.

RECROSS-EXAMINATION

BY MR. WILSON:

Q Let me ask you, the solicitor just asked you whether or not Ms. McDonald was participating in the

fight. At any point in time during that night, was she trying to either hold Trudy or hold -- that you saw -- either holding Trudy or holding Jamie?

A She was trying to grab Trudy from fighting.

Q All right. So she was actually in the mist of whatever was going on. The question is, what was happening, what she was actually trying to do?

A She was trying to grab Trudy.

Q Did she ever grab Jamie, that you know of?

A No, not that I know of.

Q Who else -- what about Nikara, where was she?

A During that time, I don't recall where she was at.

Q And Deandra?

A I don't recall seeing her at that time.

Q So your focus at that point was simply to try --

A Jamie.

Q Find Jamie and protect her as best you could?

A Yes.

Q And you weren't focused on who else was out there and what they were doing, really?

A That is correct.

MR. OSKINS: At this time we ask that Ms. Hemingway be released from her subpoena.

MR. WILSON: No objection.

THE COURT: You are released from your subpoena. You may go back to your activities. Next witness.

MR. WILSON: May we approach for one second?

THE COURT: Sure.

(Whereupon, a bench conference was had.)

MR. DeBUSK: We call Kendrick Green.

(KENDRICK GREEN, having been duly sworn, testified as follows:)

THE CLERK: State your name and spell your last.

THE WITNESS: Kendrick Green, G-R-E-E-N.

DIRECT-EXAMINATION

BY MR. DeBUSK:

Q Mr. Green, it is obvious from your attire where you are staying right now.

A J. Reuben Long Detention Center.

Q You are facing criminal charges?

A Yes.

Q You also have a little bit of a record, don't you?

A Yes, sir.

Q In 2002, unlawful carrying of a weapon?

A Yes, sir.

Q 2003, possession of cocaine?

A Yes, sir.

Q 2004, possession with intent, crack cocaine?
A Yes, sir.
Q 2005, possession of stolen pistol?
A Yes.
Q 2006, trafficking cocaine base?
A Yes, sir.
Q 2012, assault and battery first degree?
A Yes, sir.
Q Is it fair to say that at one time in your life you were making your living selling drugs?
A Yes, sir.
Q Before you got in your current predicament, where did you live?
A Where did I live?
Q Yes, sir.
A [redacted]
Q Did you know Nigeria McDonald?
A Yes, sir.
Q Where did she live?
A I don't know the current address, but I can see her house from where I stay.
Q Was Nigeria known by any nicknames?
A Yeah, NaNa.
Q How long have you known NaNa?
A All her life.

Q You grew up in Racepath as well?
A I know all of her family, everyone.
Q Let me ask you about May 8, 2015; do you remember that day?
A Yes, sir.
Q What were you doing that day?
A I was spending time with my youngest son.
Q Did there come a time that day where there was an altercation involving Jamie Spivey?
A Yes, sir.
Q How did you find out about that?
A A friend of mine, Mario, came and approached me.
Q And Mario approached you, and you became aware, so what did you do?
A I told him wasn't much I could do at first. I had my son with me. I said I'll go to make sure it don't get out of hand. He informed me there was a fight that was supposed to happen, you know.
Q Let me show you -- I don't know if you've seen this. You might need a moment to look at it. This is the Racepath area, sunset, [redacted]. Where were you when you had this conference?
A Granny's Lane, the apartments there on Granny's Lane.
Q Where did you go after you had this conversation?

A I walked from Granny's Lane to [redacted].

Q What did you see?

A On my way walk, Nigeria and Niki were walking to Trudy to where I guess the fight was about to take place. I was walking this way, they are walking this way, and Jamie is walking towards Trudy.

Q Were you behind Nigeria?

A I was behind, yes, sir.

Q What did you see?

A Trudy get attacked, they started fighting. Nigeria went to break it up.

Q Was this defendant, Mr. James Wilson, present at that time?

A Yes, sir.

Q Where was he?

A He walked from Granny's lane to where the fight was going, [redacted] I mean to --

Q (MR. DeBUSK) Is this [redacted]?

A No. This is -- that is where the fight was going on, right there in the doorway of the car, right there, black car.

Q Let me get it closer.

A In the doorway right there.

Q What happened next?

A Trudy and Jamie were fighting, fighting, fighting and NaNa tried to break the fight up, because she's kin to both of them, and Jackboy pushed her.

Q What do you mean?

A Mashed her in the face and told her to stop, let them fight. She attempted to swing at Jackboy, and while her arm was extended, he shot her through the heart.

Q Was this an accidental shot?

A No.

Q How did it happen?

A While she swung, he pulled a gun and, pop, shot her right through her heart.

Q What was he wearing?

A I know he had shorts on.

Q Did he have a jacket on?

A I believe so. He keeps a jacket on.

Q Now, when Nigeria came around and took a swing at the defendant to a reaction of being --

A Being mushed, exactly.

Q How far was the defendant from the victim when he shot her?

A Face-to-face.

Q Where did he pull the gun out? I know you are chained.

A Had to be his coat pocket. I couldn't really see where exactly he pulled it from. I know I seen her swing at him, he shot her and she fell straight back.

Q Did he point the gun at her and aim?

A Yeah. While she was swinging, he pulled a gun out like (indicates), shot her through the arm, right through here, right through her heart.

Q What happened to Nigeria after she was shot?

A Fell straight back. Jackboy ran off. I ran and got --

Q Did you see where Jackboy ran to?

A Down Sunset.

Q Where does that go?

A Really dead ends. Like there's two, three houses back there in the back.

Q At the end of Sunset is there any way out?

A Yeah, if you jump the ditch, jump the ditch and proceed to 501.

Q Did you see Jackboy again that night?

A No.

Q When you saw the shooting -- back to the picture -- where were you?

A Standing right on the other side of the Jeep. The Jeep was not -- it is like a path coming like, and I could see right down directly over Trudy's little

car.

Q Was it still daylight?

A Fairly, yeah.

Q Enough light to see good?

A Yeah, enough light to see good.

Q After you saw the defendant run away and Nigeria is on the ground, what did you do?

A Ran to [redacted] I proceeded to get her uncle, tell him that she's been shot. I had my son in my arms. I told -- pointed to where he ran, and I put my son in Mario's baby mom's car to take my son away, and I proceeded to go and assist her uncle in apprehending Jackboy. When I was told by someone else if I --

MR. WILSON: Objection. Objection.

Q (MR. DeBUSK) Don't say what anyone else told you. What did you do?

A I ran back to NaNa, because everyone was crying. NaNa was basically -- she was gone. I grabbed her hands, Friend, talk to me, friend. Her eyes started fluttering. She opened her eyes up and she was like, Friend, he shot me, friend. He shot me. And I was like, I know, Friend, I'm going to get him, I promise, Friend. She just kept repeating, He shot me. I started crying, and I was like, I know, Friend. I

know, Friend. And she was like, Friend, I want to talk to my uncle. I want my uncle. And I said, Friend, I'm about to get him right now, hold on. I called her Uncle Jay, and told Uncle Jay she wanted to talk to him, and I proceeded to let Jay go and talk to her, and I backed away. I started crying, you know.

Q At any point did you have a gun in your hand and express a desire to shoot the defendant?

A Yes.

Q Why?

A Because she was my friend. I was mad because her uncle acted like he was scared to go after him and, you know, I snatched the gun from him and I was like I'll go get him since you're scared.

Q Did you?

A No. I was stopped.

Q Who stopped you?

A Schanski.

MR. DeBUSK: Answer any questions defense may have?

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. WILSON:

Q Mr. Green, you are in jail now, right?

A Yes, sir.

Q And you didn't tell the police officers anything about what you just told us the night this happened, did you?

A No, sir.

Q Not a single word of it?

A No, sir.

Q You saw them out there looking for witnesses, trying to find out what happened that night, and not one word to the police about what happened that night, did you?

A No, sir.

Q In fact, it wasn't until, what, four days ago?

A Yes, sir.

Q That you made this story up and went to the solicitor because you are in jail now for what? What are you in jail for now?

A Distribution.

Q Distribution of drugs, which is like your fifth offense, sixth offense. So you are facing, what, mandatory 25 years without parole?

A No, sir.

Q And you went to the solicitor and said, hey, look, I have a deal for you, I was out there that night, I saw what happened and I want to tell you what happened so that you can give me a deal, because I

don't want to go to jail for 25 years for selling drugs again, right?

A No, sir.

Q No, sir? You didn't wait until four days ago to go and talk to the solicitor?

A Yes, sir, I did, because Nigeria is my friend.

Q Yeah.

A And the night she was shot, officers came on the scene all automatically thinking I had something to do with everything, so I was upset and didn't want to talk to the cops.

Q You were her friend the night that she got shot, right?

A Yes, sir.

Q So you just didn't become her friend four days ago, you were her friend the night she got shot, is there any question about that in your mind?

A After she got shot and before.

Q That's right. In fact, you said to the Solicitor just a minute ago that you were so concerned, you were going to take the gun from her uncle and go hunt for this fellow and try to kill him, right?

A Yes, sir.

Q That is how much of a friend you say you were, but really the truth is you are just a gangster and a

drug dealer; that is all you really are, right?

A If that is what you want to call it.

Q You sell drugs, right?

A Yeah, I used to sell drugs.

Q And you still do until you got arrested and put you in jail, right?

A That is what I'm accused of.

Q Accused of it now, and now you want a deal, right, because you don't want to go to jail for 25, 30 years, so you want a deal, right?

A We don't have a deal.

Q No, but didn't he tell you that I will talk to the judge for you?

A No, he did not.

Q Go ahead.

A No, he did not say he would talk to the judge for me.

Q Did he say he would make a recommendation for you?

A No, he did not. He said he doesn't have anything to do with -- all he has to do with is this case.

Q So you just four days ago, out of the goodness of your heart, after a year -- over a year of not saying a word, four days before this trial starts, you run over to the Solicitor's Office and say, Hey, look, I was

sitting here for a whole year and I forgot to tell you all what I saw that night. Truth of the matter, you weren't there that night, were you, until after the shooting occurred?

A I was there.

Q You came after the shooting occurred when you heard about the shooting and you wanted to go look for the person who you thought did the shooting, and you had your gun, and you got on Ms. Schanski, you had a verbal argument, didn't you? Didn't you have an argument with her?

A Who?

Q Ms. Schanski Hemingway.

A No.

Q After the shooting?

A No.

Q That didn't happen either?

A No.

Q And she didn't see you with a gun either?

A Yes.

Q She saw you with a gun, so that much of what she said was true?

A Yes. She said she would testify if I do anything, and I turned around and gave the gun back and proceeded to -- when the cops came, I was standing out

there.

Q Now, listen, because what you said -- think about what you just said. NaNa is your friend, and you say that you saw the whole thing happen. You are standing there watching the whole thing happen, but you don't do anything?

A I have my two-year-old son in my arms, you are right, I didn't do anything.

Q Didn't do anything. And then you say you then leave, take your son to the barber shop to drop him off at someone's car, Mario's baby's mama -- someone's car, drop the baby off, and then you come back to where the shooting occurred, right?

A Excuse me, sir, but you are trying to twist my words. I never said it like that. I said I went to get her uncle from the barber shop to let him know that Nigeria was shot. My two-year-old son was in my arms. When I left the barber shop, Mario's baby's mama was out there on the way coming from the barber shop. I put my son in her car to take him away, because I didn't want him around that.

Q Okay. All right. So, now -- you finished? So you take the baby to the barber shop to drop the baby off? No, you don't take the baby to the barber shop?

A My son is with me when I got to the barber shop,

but not to drop him off at the barber shop, no.

Q But you are taking him over there so you can come back to --

A So I can get her uncle, because I have my son, so I am not doing anything, just going to get her uncle to tell her uncle she's been shot.

Q Did you get the uncle?

A Yes.

Q Who is the uncle?

A Antwan.

Q Antwan who?

A I don't know the last name.

Q Whose uncle is Antwan?

A Nigeria's.

Q So Antwan is Nigeria's uncle, so you go and get Antwan, and then you and Antwan come back to where the shooting occurred?

A Yes.

Q And Antwan has a gun, right?

A Yes.

Q And where is your gun?

A I didn't have one.

Q What is your street name? Dede? What is your street name?

A I have a couple different street names. Deeda.

Q And the other one?

A DaDa.

Q So you have a bunch of names you go by, right?

A I guess people don't know how to say my real name, so they just put whatever.

Q They don't know how to say "Kendrick"?

A A lot of the people don't know me by that name.

Q They don't know how to say "Green"?

A Only close people know me by my government name.

Q By your government name? All right. You have been in the government for a long time, right?

A Yes, sir. All my life.

Q And jail is all your life?

A Just about.

Q In fact, you just got out of jail before this happened, hadn't you?

A I just -- yeah, January.

Q Four months you just got out of jail. How long did you serve before you got out of jail that last time?

A A year and -- like 20 months.

Q And you just got out of the jail and you are out there again. When you come back and say he's got a gun, but you don't have a gun -- are you also in some kind of gang where you --

A I used to be.
Q You're a Folk Nation kind of guy, right?
A Used to be.
Q And that is a really bad gang, like the Bloods and Crips and all of that?
A I guess if that is what you want to call it.
Q What do you do, sell drugs and --
A I don't do anything. I'm not a part of it anymore.
Q You are in jail, right, now so you are really not a part of anything, right?
A Just because you are in jail doesn't mean anything.
Q But let's go back to what you say you saw. You say that you were standing there and you see the actual shooting occur, right?
A I see the actual fight, during the fight, fight, the actual shooting, after the shooting.
Q Saw it all. Saw it all, right? Now, what I want you to tell me is this, how many cars were out there when the fight is going on? How many cars are parked in front of the mobile home at the time Trudy and Jamie are actually fighting?
A I know Trudy's car, Bootsie's red car, Antwan's burgundy car, truck on the other side -- maybe four,

five cars in the yard. Black Jeep -- four, five cars.
Q I'll show you State's 5.
A Uh-huh.
Q Where are those other vehicles?
A One was parked right over here, and the other one was parked on the other side of that car.
Q Over here, where?
A Back over here (indicates).
Q What is over there?
A A parked car and like a slab with concrete and open field.
Q Now, what I want you to tell me is where in this area was it when Trudy -- sorry, when NaNa and --
A Nigeria.
Q Where was she shot?
A Right there (indicates).
Q Right where? I want you to be --
A The passenger car door is opened.
Q So your story is that she was shot not inside of here, but over here, is that right, to the opposite side of this vehicle?
A Yes.
Q Is that your story?
A Right over here.
Q And where did she come to rest?

A What do you mean?
Q Where did her body come to rest, because you say you saw her fall?
A Her head facing the truck. She fell straight back.
Q So your story is that when she fell, she fell back here to the back tire of this car, and she fell straight down; is that what you are saying?
A That is the front tire.
Q That is the back tire. Is that not the back of the vehicle?
A She didn't fall towards the back of the car.
Q That is what I'm asking you.
A I told you, her head fell towards the truck, I said it precisely.
Q I heard you. What I'm asking you is to tell me -- I want you to show me --
A I done showed you already.
Q Show me again. If you would please, show me on there.
A Right in there (indicates).
Q So you got her on the opposite side of the small vehicle between the trailer and the red car, that is what you are saying -- where you are saying she fell; is that what your story is?

A Between those two cars, yeah.
Q Between the red car and this car here?
A Yeah, closer to the black car.
Q Not in here?
A No.
Q And you know that, because you say you were there?
A Yeah, because I went and I talked to her, grabbed her hand and spoke to her.
Q Well, do you know that, in fact, that is not where she was found? Did you know that?
A She had to be moved.
Q She had to be moved? You were there the whole time so you saw her fall.
A When she was put in the ambulance, I wasn't there, I left.
Q You weren't there. You weren't there ever until after the shooting occurred, which is when you came in. But, you know, open --
THE COURT: Is that a question?
MR. WILSON: Yes, sir.
THE COURT: Ask him a question.
MR. WILSON: Thank you, Your Honor.
Q (MR. WILSON) Is that right?
A That is not right.

Q Let's go back. After the shooting occurs and you leave, right, to go get your uncle -- get her uncle to bring him over there, fair? Okay. Is that a yes?

A Yes.

Q And once you get him over there -- now, you leave her on the ground bleeding, dying perhaps, to go get somebody, and this is your really good friend?

A Yeah. She had her -- she had Trudy right there talking to her, checking on her. There was nothing I could do. I'm not a medic or doctor. Just by the grace of God, I believe she was already passed on, but when she heard my voice, she came back, by the grace of God.

Q So she was dead and heard your voice, and you brought her back?

A When I came, her eyes weren't moving, they were closed. It was like she wasn't breathing. I talked to her, grabbed her, and her eyes fluttered and opened her eyes and started talking to me.

Q Let me ask you this about the actual shooting, because you say you saw it. You say your story is that she swung -- let me back up. You say that Mr. Wilson pushed her, that she swung back and he shot her, right?

A He mushed her, she swung and he shot her.

Q Who else was standing there when this shot

occurred? Who else was standing there that saw it with you?

A Niki Daniels, Trudy, I believe Deja was out there, too.

Q Who?

A Dej. I think that's how you pronounce her name.

Q You mean Deandra?

A Yes.

Q So Deandra was out there; is that what you are saying?

A When the fight first started, Trudy was talking to Deandra. Deandra was standing in her door, Trudy was standing in her door.

Q So Trudy is standing -- Deandra is standing in the door, Trudy is talking to her. Who else is with Trudy when they are having this conversation?

A I'm mistaken.

Q Are you mistaken, or just making stuff up as you go along?

A I have several witnesses that place me at the scene before the shooting, during the shooting and after the shooting. I'm not making it up.

Q Let me ask you this, because what I asked you was who was standing closest to Ms. McDonald when she was shot?

A I know Trudy was talking to her. Trudy was in her car door -- was it driver or passenger -- either on the driver's door or passenger's door talking to her with her back, so she was in her driver's door.

Q Talking to who?

A Talking to Dej. Because her back was to Granny's Lane, Sunset, all of that. So when Jamie struck her from behind, so it had to be the driver's side. Because if it was the passenger's side, she would have been able to see Jamie coming, so I had been mistaken.

Q My question was, who was standing next to --

A I don't know.

Q -- Ms. McDonald when she was shot?

A I don't know. Trudy, Jamie.

Q Trudy --

A Niki Daniels.

Q Trudy is in a fight with Jamie, right, at the time that the shooting occurs, right?

A You said who was standing beside her, they are all beside her.

Q Yes. And so what I want you to do is I want you to tell us exactly where everyone is standing, especially I want to know where Ms. McDonald was standing, who was standing next to Ms. McDonald, where you say James Wilson was standing when the shot was

fired?
A Two girls are fighting.
Q So where is Trudy?
A Trudy is fighting.
Q Look at State's Exhibit No. 5 again. Show me where Trudy is standing and fighting. Where is Trudy at when she's fighting?
A I'm trying to remember, because I know she had her back to Granny's Lane when they were fighting. Everybody, Niki and Nigeria came and stood around and trying to break the fight up.
Q Let me make it easy for you. Where were you standing when you saw this?
A Coming over there in the path, right -- there is a path right there on the other side of this -- in front of this Jeep.
Q So you are not there, you are coming over there from where?
A From Nigeria's house.
Q But now you say you saw the shooting, so what I'm asking is -- I want you to tell me exactly where you were standing when you saw the shot fired where you say you saw Ms. McDonald fall?
A I was standing maybe --
Q Point out to me on this map.

A Put it down some. I was standing probably right over here (indicates).

Q Opposite side of the far car to the left?

A Yeah, but from where I'm at, this car is not blocking my view. I have a clear shot of everything going on.

Q So tell me where it is that Ms. McDonald is standing at this time and where it is that Jamie Wilson --

A She's standing her back to the trailer. She's facing him, and he's facing her.

Q Point for me on this map and show me exactly where it is that you claim they were standing, that is all I'm asking?

A It had to be in the middle. I had to be mistaken if I said that side.

Q Truth is, you don't know where they were standing.

A I mean, I do remember where they were standing. It's been a year now.

Q Listen, the police were there that night talking to everyone who would talk to them, and for 12 months you didn't talk with the police, did you?

A When they first came, they screamed my name and said I had something to do with it. I was like --

Trudy and Niki Daniels, and a couple others, and I believe Dej had to restrain me because I was so upset. I was going under the yellow tape to ask the officers why they were screaming my name when I had nothing to do with it, and the girls told the officers I didn't have anything to do with it, that I was a witness to it.

Q You were out there with a gun, so you had something to do with something. You had a --

A I was not out there with a gun.

Q You said you took the gun from --

A Yes, but I didn't -- I got the gun from him and gave it back to him.

Q And you got the gun for the sole purpose of trying to kill someone, so that is -- there is something wrong with that, right?

A Yeah, something is wrong with that.

Q All right. Now, let me ask you this. After the shooting had occurred, you have some kind of conversation with Ms. Schanski, Ms. Hemingway, you testified earlier, right?

A Yes.

Q And what was it that you were mad at her about, and why were you trying to go to her house?

A I wasn't trying to go to her house. I didn't say

anything to her. She made a statement towards me, and I looked at her and I just walked away.

Q Now -- so -- and just so I'm clear, you said that the reason you didn't talk to the police that night was because the police were thinking that you had something to do with it, right?

A Yes.

Q So you didn't want to talk to them. What about six months after that, why didn't you go to them and say, Look, now that you have decided that I didn't do anything wrong, I want to tell you the whole story, tell you what happened? Why was it that you waited until you got rearrested for more drug charges and facing a whole bunch of time that you decided --

A My charges don't have anything to do with me being here today. I'm here on my own freewill.

Q That is true, you are here of your own freewill because you want help, right?

A No, sir.

Q And the only person who can help you in the whole world is this solicitor's office, right, because that is who has you charged, right?

A No, sir.

Q All right.

A God first and foremost.

Q So when did you get this Good Samaritan attitude that you wanted to now bear your soul and tell everything you know four days before trial?

A When it was brought to my attention by your client that it was an accidental shooting, that Nigeria tried to take the gun from him and the gun discharged, that is when I decided to -- because I wanted to see justice done.

Q You wanted to see justice done, at the same time you wanted to see justice done that night when you had that gun wanting to kill him, right?

A Yes, sir.

Q And in your mind, that is justice, right?

A At that time I wasn't thinking clear. Yes, that was my -- that was the way I was thinking.

Q You are thinking clear today, right?

A Yes, sir.

Q How long had you been in jail on this last trip?

A Not even two months.

Q So after you got in jail, you were there, what, a month-and-a-half before you decided to call the Solicitor's Office and say, hey, look, I have information you guys might need?

A No, I didn't call at all. I was told the information by your defendant, what was going on, and

he was going to trial. I was coming to court to get a bond, and I explained to my lawyer that -- what was going on, what I heard and it was not true and I wanted to speak to the solicitor to, you know -- I wanted to let him know what happened.

Q So you heard from James Wilson he was going to have a trial?

A That he was trying to get off on an accidental shooting.

Q He said he wanted a trial, and you weren't going to have none of that, were you?

A Of what?

Q Having a trial.

A I'm nobody -- I can't stop him from having a trial. He has rights, if that is what he wants.

MR. WILSON: Bear with me for just one second.

THE COURT: Yes, sir.

(A brief pause in the proceedings.)

Q (MR. WILSON) You said you were in jail when you ran into Mr. Wilson here, that is when you knew you needed to come forward and tell this story, right?

A No. My words were Mr. Wilson -- Mr. Wilson one day was like, I'm about to take this to trial. He was like -- not like he said that, man, they saying I shot her, this and that, my gun fell, I picked my gun up and

she tried to take the gun and the gun discharged, and I looked at him like, Are you serious.

Q You said you got in jail, and while there, you decided that you needed to tell the story, but you have been in jail at least twice, if not three times, before now, right?

A Exactly. So that has nothing to do with charges or anything. I'm doing this because it is the right thing to do.

Q You were in jail in August until September, and then you got a bond and got out, right?

A Yes, sir.

Q And then that is last year, and then you got back in jail in October and stayed until February?

A Yes, sir.

Q And you never told anyone any of this during any of the other incarcerations, right?

A No, sir.

Q And you were there from, what? What were you there for?

A Attempted murder, PWID.

Q Something different happened this time that didn't happen the other times when you were in jail?

A Yes.

Q What was that?

A I wasn't locked up with Mr. -- the defendant, and he didn't tell me what he told me that -- the lie he spoke, that the gun fell, and I know that that is a lie.

Q Something else different happened this time that had not happened to you before?

A And what is that?

Q They didn't give you a bond this time.

A You're wrong. My bond was denied all the previous times, too.

Q But your bond was denied this time; was it not?

A It was denied every time.

Q And you don't have a bond even now, do you?

A Correct.

Q But after you testify, you might get a bond, right?

A Sir, I was in the process -- I have in my pocket a motion for a bond, so I was going up for a bond regardless.

Q But you have been -- when did you get arrested this time?

A May 2, May 3rd.

Q So you have not gotten a bond. In fact, the magistrate denied your bond?

A Yes.

MR. WILSON: Nothing further.

REDIRECT-EXAMINATION

BY MR. DeBUSK:

Q Would you describe your relationship with him as friendly?

A No, sir.

Q A little bit --

A We don't have a relationship.

Q They are out to get you?

A Yes, sir.

Q Is there -- when someone talks to the police and tells something to someone else, is that called a snitch?

A Yes, sir.

Q Is that a good thing to do on the streets?

A No, sir, not at all.

Q So is it safe to say there is a code on the streets that you don't snitch?

A Yes, sir.

Q So until you heard this story in the jail, you were following that code, right?

A Yes, sir, 100 percent.

Q What made you leave that code?

A Because Nigeria was my friend. When I didn't have no one that had my back, Nigeria had my back.

When I needed simple things like a ride, babysitter, Nigeria even getting off of work tired, she would do those things for me.

Q So you decided after hearing what he was going to say you had --

A Yes. I couldn't sleep that night. It didn't sit right with me because she never bothered anyone. If she helped a person, she would go out of her way to help a person.

Q These are the cars and we already went through this, but let's touch on it.

MR. WILSON: May I move to see?

A When I started to think about it, Ms. Trudy was -- she was facing the door to the truck, so then I had to be mistaken, if I had to be mistaken. It had to take place on this side because she's facing -- this is the door, she's facing the door.

MR. DeBUSK: I don't think the jury can see. May we stand in the middle of the floor?

THE COURT: Certainly. Mr. Green, stand up. Make sure he's somewhat close to a microphone or speak up, sir.

MR. DeBUSK: Come on down. That one.

Q (BY MR. DeBUSK) This is the trailer?

A Correct.

Q Where was the door that -- was it Dede?

A Dej. She was standing in the front door here.

Q Talking to Trudy. Where was Trudy standing?

A She had to have been standing in this door because her back was to me and all of this side over here. She was facing talking to her. If her door opened, talking to her getting ready to leave.

Q Who started the fight?

A Jamie.

Q How?

A Walked from Granny's Lane from her porch, walked straight over there and started hitting Trudy.

Q And where was the fight going on?

A In this yard.

Q Are these the same two cars?

A Yes.

Q Was the fight going on between the two cars?

A Yes, sir, I believe so.

Q Now, where was the fight going, closer to this car, or this car?

A Closer to this car (indicates).

Q Where was NaNa standing when the fight was going on?

A Right -- fight started in the doorway of her doorway of her car. NaNa and Niki standing in this

area right here.

Q Where did NaNa fall?

A She fell like straight back when she got shot.

Q What was her head facing, to the frailer or Racepath Street?

A Her head was pointing to the truck.

Q And feet towards Racepath?

A Yes.

THE COURT: Come back and have a seat.

Q One quick question. You referred to a barber shop when you went to find Nigeria?

A Yes, sir.

Q Can you tell the jury where the barber shop was?

A Barber shop is right behind (indicates).

Q Is this the scene where the fight took place?

THE COURT: Speak up.

A Yes. The barber shop is directly behind it.

Q (MR. DeBUSK) So the barber shop is behind the trailer of the shooting?

A Yeah. Like you can see through the woods, and the barber shop is right there.

Q Not very far. How long would it take you to walk over there?

A A minute, no more than two minutes. Running, 30 seconds, 20 seconds.

Q Now, despite your anger, you -- or because of the anger, you were ready to shoot the defendant, weren't you?

A Yes, sir.

Q Would you have followed through with that if --

A If I didn't have my two-year-old or if Schanski wouldn't have -- yes.

Q But you didn't?

A I didn't.

Q That was your reaction in anger?

A Yes, sir.

THE COURT: Redirect examination -- recross?

MR. WILSON: Nothing further.

THE COURT: All right. Take him back. Thank you.

We're going to take a short break and come back in about five, seven minutes, something like that. Thank you very much. Everyone else remain seated while the jury retires, please.

(The jury exits at 10:27 a.m., and the following is heard out of the presence of the jury.)

THE COURT: Anything from the State before we take a break?

MR. DeBUSK: No, Your Honor.

MR. WILSON: No, sir.

THE COURT: Take a short break, about five minutes. Thank you.

(A recess was taken.)

THE COURT: The jury wrote a note and didn't say which solicitor, but said when you are speaking, you probably need to speak up some because they might be having a difficult time hearing.

MR. DeBUSK: Yes, sir.

THE COURT: So you all try to do that. Mr. Wilson has enough practice to know that he basically ignores the witness and talks directly to the jury, and so they never have a problem hearing him; that is a good thing. With that, bring the jury back in, please.

(The jury enters at 10:43 a.m., and the following is heard in the presence of the jury.)

THE COURT: Mr. Solicitor, the next witness, please.

MR. DeBUSK: State calls Nikara Rush.

THE COURT: Come up here and let by the clerk of court, right up here, please. Thank you.

(NIKARA RUSH, having been duly sworn, testified as follows:)

THE CLERK: State your name and spell your last for the Court.

THE WITNESS: Nikara Rush, R-U-S-H.

DIRECT-EXAMINATION

BY MR. DeBUSK:

Q Do you go by any nicknames?

A Niki.

Q Where do you live?

A I say probably about five minutes away from Racepath.

Q Did you spend a lot of time in Racepath?

A Yes, that is where I grew up at.

Q What do you do for a living, your occupation?

A I was working at Ross, but after my friend's death I quit working, going through depression.

Q Let's talk about your friend. You know Nigeria McDonald?

A Yes, that was my best friend.

Q State's Exhibit 4, do you recognize that?

A Yes, sir.

Q Who is that?

A Nigeria.

Q Did Nigeria, did she have a nickname?

A NaNa.

Q How often did you see NaNa?

A Every day.

Q You were real close?

A Yes.
Q Where did Nigeria live?
A She stayed in Racepath. It was probably -- you are going to show me a map?
Q Yeah, here is a map.
A I'm guessing where the crime scene happened?
Q Uh-huh.
A She stayed right above (indicates).
Q Was she close to Granny's Lane?
A Yes. The house diagonal from Neighbor Lane, yes.
Q Was she the first house on Neighbor Lane?
A Yes, sir.
Q What did NaNa do for a living?
A She worked two jobs. She worked with two people, and then she was cleaning rooms on the side.
Q So a caregiver and cleaner?
A Yes, sir.
Q Did she have any children?
A No, she didn't.
Q How old was she?
A 21.
Q Was she right-handed or left?
A Right-handed.
Q Did you see Nigeria May 8, 2015 last year?
A Yes, sir.

Q What all were you doing?
A We were in the car right before it happened. We were coming from the store.
Q Do you know about what time that was?
A It was around 7:05.
Q How do you know so precisely?
A We were coming from the liquor store and we didn't make it to the liquor store.
Q So it closed at 7:00?
A Uh-huh.
Q And so it was after 7:00?
A Yes, sir.
Q What were the two of you doing together that day?
A We were planning on having a cookout, getting some bottles, have some fun.
Q That day you were going to have a cookout?
A Yes.
Q You were with Nigeria the whole day, and specifically at the time the shooting happened. Was she under the influence of drugs or --
A No, sir.
Q Perfectly normal?
A Yes, sir.
Q After you left the liquor store because it was closed and came back to Racepath, what happened?

A When we were pulling in right where the incident happened at, at the trailer, we heard commotion. We had the windows down, so we heard commotion. She drove up a little bit past the trailer and she stopped, backed up. I heard Jamie saying she --

Q Don't tell us what she said. What was the general nature of what was going on?

A A lot of people out there at the time.

Q Who -- was anyone speaking? You said something attracted your attention?

A We heard Trudy and Jamie I guess arguing, and she stopped.

Q Where were they standing when they were arguing?

A In the yard where the trailer was.

Q Let me show you State's Exhibit 5 and ask if you recognize this?

A Yes, sir.

Q What is that?

A That's the trailer where she got shot at.

Q Do you know who lives in that trailer?

A Yes, sir, Dante.

Q And anyone live with Dante in that trailer?

A His girlfriend, Deandra.

Q How long did that argument go on?

A We sat there about 15, 20 minutes telling Trudy

to go home, don't worry about it.

Q Now, was the argument still going on at the time, or did it end?

A Well, after that, she walked to her car and sat in her car.

Q Let me ask you this. When you pulled up, was the argument still going on?

A Yes.

Q How long did it go on after you pulled up?

A They argued about five more minutes, and that is when --

Q Who left the argument?

A Okay. It was me, Jamie, Trudy, they were standing on the outside of the car, James and I think Jamie's -- it was Jamie's brother that was out there.

Q It was just an argument, verbal fight, no blows were exchanged?

A Yeah, just threats.

Q So when you pulled up, argument is going on. It went on for awhile. Did someone leave to make the argument end?

A Yes.

Q Who was that?

A James.

Q How about Jamie, did she walk away too?

A Yeah, she went to take her baby to the mother so she could come back and fight.

Q What happened when -- after Jamie left? Trudy is there, what happened then?

A We sat there, like, probably five more minutes talking to Trudy saying her to go home. She said she was going on a date or had something to do and wasn't worried about it. She got in the car and pulled in the yard.

Q Where was she -- you and Nigeria were in the vehicle?

A Yes, sir.

Q Whose vehicle was it?

A Nigeria's vehicle.

Q How close was Nigeria's house where this was going on?

A Just around the curve, right around the curve.

Q So after Trudy walked away and went back in the car, what did you and Nigeria do?

A Pulled in the yard and just sitting in the car.

Q Around the time of the argument, where it was just words, did you see the defendant, James Wilson, there?

A Yes. He jumped in the cab and left.

Q Before he left, did he say anything?

A No. I'm not sure what he was saying, but he was talking to Jamie, and he left.

Q How long was he gone?

A He was gone about five minutes. He was up at the hotel over the bridge, America's Best Value.

Q You know that for a fact?

A Yes, because a week before that, Nigeria dropped him and Jamie off at their room.

Q When he came back, had he changed in any way?

A Yes. At first he had a T-shirt and some pants on. I'm not sure what he had -- when he came back out, he had a heavy jacket, brown heavy jacket.

Q Was it the kind of weather where you needed a big heavy jacket?

A No, it was hot outside. Maybe he was on some drugs or something.

Q Let's step back for a minute. Who is Trudy?

A She's NaNa's sister.

Q Did you see James Wilson return to the scene?

A Yes.

Q And you said he had his jacket on?

A Uh-huh.

Q And it was not appropriate for the weather?

A No.

Q What happened after that, when you returned to

the scene?

A When he returned to the scene, Jamie gave her baby off. I guess she was waiting for him to return before she went over to fight, that is where she gave her baby off to, her mom. She went running across the street, and she charged at Trudy, but we were in the car looking from the opposite direction, so I seen where she tried to jump in Trudy's car and tried to pull her out.

Q Where were you parked?

A We were parked over -- the yard is right there, but we were in Nigeria's yard, right around the corner, but you could see from there because there is no woods or anything.

Q And you saw Jamie Spivey run over there?

A Uh-huh.

Q And what happened?

A When she ran over there, she ran over there -- me and NaNa were sitting in the yard, and at first we didn't get involved, but when she saw Jamie's mama jump off the porch.

Q Who is that?

A Schanski. NaNa was like I know the type of person she is, I'm going to help my sister, we're going to break it up, so that was our intentions.

Q What did you and Nigeria do?

A We ran over there. At the time, Nigeria, she wasn't breaking it up at first. It was like three more ladies in the yard. All of us were crowding over to break it up.

Q Where was all of this going on?

A Right in the middle of those cars, if I'm not mistaken.

Q This is State's Exhibit 5, where would it have been?

A In the middle of the cars.

Q These two dark colored cars?

A Uh-huh.

Q Happened between the two dark colored cars?

A I'm thinking that is where it's at. I can't....

Q What was this fight like, moving punch fight or --

A It was a lot of pulling hair. Trudy was, I guess, trying to get her off of her.

Q And how many people were there to separate the two of them?

A It was about four people, and that wasn't included NaNa, because she was just standing there at first, because there was a lot of people trying to pull two people apart already.

Q Were anybody except Trudy and Jamie fighting?
A No.
Q Those two were fighting and everyone else was --
A Trying to break it up.
Q Was the defendant over there at that time?
A Yes, he was.
Q What happened next?
A After that, as soon as NaNa reached her hand in to break the fight up, that is when he pushed her face, mushed her in her face, and she looked at me like, Did he just hit me. So we were both going to jump on him, and that is when she swung. When she swung, she missed. It was like a reflex thing. She missed, and he stepped back and shot her and looked at her, and that is when Jamie's mom said, You better run because someone is going to get you.
Q Where did he pull the gun from?
A Out of the side of his jacket.
Q Did he pull it out intentionally, or did it fall out?
A It was pulled out intentionally.
Q Did he aim the gun at Nigeria?
A Yes.
Q And purposely fired a shot?
A Yes, sir.

Q How far apart were they?

A About 3 feet apart. Not that far.

Q What happened?

A As in?

Q To Nigeria?

A She dropped, fell and was holding her stomach, and that is when she was like, My stomach burns, my stomach burns. That is when her eyes started getting gray. Deda came running over.

Q Who is Deda?

A Kendrick Green. He came running over, and he was like, What is going on, what happened, what happened. That is when he started rubbing her on her face, Nana, it's Deda, get up, get up, and she opened her eyes. She was like, I just want my uncle. And at the time, her uncle was at the barber shop, and he went and got him.

Q Where was Nigeria laying?

A She was laying right there in between the cars.

Q I'll show you State's Exhibit 6. Where was she?

A Right there on the end, like right at the front of the cars.

Q Was her head facing the trailer or --

A The trailer.

Q Now, when all of this went on, was it still

daylight?
A Yes.
Q Was it light enough to see?
A Yes, the sun was about to set.
Q But there was plenty of light to see?
A Yes.
Q Was it pretty obvious to you that Nigeria had been hit? Anyone call help?
A Well, instantly everyone went to try to apply pressure where she got hit at. I guess someone called the police or ambulance.
Q Did the ambulance show up eventually?
A Yes.
Q Until the ambulance got there, was Nigeria able to talk?
A No, sir.
Q What happened when the ambulance got there?
A She was laying there just kind of breathing, but not able to talk.
Q How did Nigeria leave the scene?
A Could you --
Q How did she leave Racepath?
A The ambulance picked her up.
Q Did you find out what happened to Nigeria? How did you find out?

A Schanski told me.
Q What happened?
A I was walking down the road to take one of my friends that was out there, walk her half way home. She came running up to me, I want to tell you something, I want to tell you something. I was like, I don't want to hear it. I don't want to hear it, because of all that was going on. She was like, Nigeria is dead. And I was like, No, her mama just told me otherwise.
Q You found out that she was, in fact?
A Uh-huh, right after.
Q How long had the defendant, Mr. Wilson, came back to Racepath in the cab did they come over and start the fight?
A It was -- it took them, I guess, seven minutes to get to the room that was over the bridge, and she waited to get there before she ran in the yard to fight.
Q He left after the first argument?
A Yes.
Q And he came back, and right after he came back, he came over and started the fight?
A Yes.
Q What did the defendant, James Wilson, do after he

shot NaNa?

A He stood there and looked, and like I said, her mom was like, Take off running before someone shoots you. He took off running through Sunset Drive and took the path. I guess he jumped on 501 and someone picked him up.

Q You can get to 501 off of Sunset?

A Yes.

Q Did the police come to the scene?

A Yes, sir.

Q Did you talk to them when they were there?

A Yes, sir.

Q Did you tell them what you saw?

A Yes, sir. At the time I was worried about her because I was going to the hospital to check on her, so I didn't tell them much.

Q And did you get to the hospital before it was too late?

A No.

Q Did they have a funeral for Nigeria?

A Yes.

Q Where did they bury her?

A I'm not sure. It is in Pine Island. I'm not sure of the name of the grave.

Q If you would, briefly --

MR. DeBUSK: Your Honor, may she stand in front of the jury to demonstrate?

THE COURT: You may step down.

MR. DeBUSK: Thank you, Your Honor.

Q (MR. DeBUSK) If you would, step down in front of the jury.

MR. WILSON: May I?

THE COURT: Yes.

Q (MR. DeBUSK) Where would you say the fight was?

A Right into those cars. Right in between those cars.

Q And where was the fight going on?

A It was in between those cars.

Q Thank you. Please have a seat.

THE COURT: Yes, ma'am, come back and have a seat. Thank you.

Q (MR. DeBUSK) To finish up, who shot Nigeria?

A James.

Q James Wilson, the defendant?

A Yes.

Q Was it intentional or an accident?

A Intentionally.

Q Where did he pull the gun from?

A Inside of the coat pocket.

Q How far apart were they when he shot her?

A About 3 feet.

MR. DeBUSK: Thank you.

CROSS-EXAMINATION

BY MR. WILSON:

Q Ms. Rush?

A Yes, sir.

Q You said that -- well, let me ask you first, what time of day or evening are we speaking of?

A This was around 7:05 when we pulled back in.

Q And that would be 7:05 when the first incident occurred, the argument, right?

A Yes.

Q And now let's talk about that for a minute first. You were riding in the car with Ms. McDonald?

A Yes.

Q And when you pulled up, you all pulled up, Trudy and Jamie are standing there between two cars having a disagreement?

A No, they weren't standing in front of the two cars at the time.

Q Where were they standing?

A They were standing more in the yard.

Q Okay. Where in the yard if they were not between the cars?

A They were standing in front of the trailer, just

in front -- okay.

Q Let's look at what is State's Exhibit No. 5, which shows three vehicles, two dark colored vehicles and a red vehicle. Where were they standing in relationship to those vehicles?

A They were right there in front of the yard (indicates).

Q So between the doorway and the red vehicle in the yard?

A Yeah, standing in the grass.

Q Okay. All right. And when you and Ms. McDonald pull up, where did you pull up to?

A We never pulled up. We were riding down the road with the windows down doing the speed limit, and we had the windows down, of course, and we overheard them arguing. We stopped in the road.

Q That is what I'm asking. Where was it that you stopped?

A Right probably just right there in front of the trailers.

Q You stopped right here. Were you behind the red car, or between the red car and black car?

A No. We weren't doing none of that. We were in the road. So how can we be behind the car if you are in the road?

Q There were two cars parked there?
A Oh, we were behind the car.
Q Okay. And so when the two of you pull up, you and Ms. McDonald are in the car, you hear Jamie Spivey and Trudy Cox having an argument?
A Well, yeah, but it was more of just Jamie arguing. Trudy was --
Q So Jamie was arguing, and Trudy was standing there?
A Yes.
Q So Jamie is arguing, Trudy is standing there, and Jamie has her baby with her?
A Correct.
Q And they are arguing. You and Ms. McDonald pull up in Ms. McDonald's vehicle?
A Yes, sir.
Q And you are kind of in the road? You never actually pulled off, you were still in the roadway I assume facing the direction which you were going?
A Yes, sir.
Q And after you pull up, do you and Ms. McDonald get out of the vehicle at that point?
A No.
Q But you all pull up. What happens after the two of you pull up and the two of them are in the yard

arguing?

A So this is what happened. Trudy was telling her, like, You have your baby in your hand, why are you trying to --

MR. DeBUSK: Object to hearsay.

Q (MR. WILSON) Tell me what happened, not what was said. Tell me what happened after you pulled up. After you pulled up, you and Ms. McDonald, what happened after that point?

A We seen -- after we pulled up, they were fussing. We saw James hop in the cab to leave.

Q So while they are fussing, James gets in the cab and leaves while they are fussing?

A Yes. The words died down and he hopped in the cab and left.

Q So?

A Once the argument died down.

Q When you say "died down," had they left? Had Ms. Spivey left from arguing with Ms. Cox before -- let me finish the question, please, ma'am -- before -- before James Wilson gets into a taxi and leaves?

A Could you say that again?

Q What I'm asking is had the argument between Trudy and Jamie ended before James Wilson gets in the taxi?

A It was pretty much at the end, because she was

saying that she was going to put her baby down and coming back to fight.

Q Did she have a conversation with Mr. Wilson?

A Yes, they were talking on the side.

Q So where are you and --

A Where were they?

Q No. Listen to my question. Where are you -- where are you and Ms. McDonald and Trudy when she's having a conversation with Mr. Wilson?

A Me and NaNa were sitting in the car, and Trudy was standing to the car talking to us.

Q At what point does Trudy leave the argument with Ms. Spivey, come over to the car to have a conversation with you and Ms. McDonald?

A Say that again.

Q At what point does Trudy leave the argument or the disagreement, whatever she's having with Ms. Spivey, and come over to the car where you and Ms. McDonald are seated to have a conversation with you?

A When she seen us stop. Once we stopped and telling her to go in her car and go on.

Q You are telling who that, Trudy that?

A Yeah. We were telling her to get in her car and go home, me and Nigeria.

Q So you and Nigeria are telling her to get in her

car and leave?

THE COURT: Was that yes or no?

A Yes, sir.

Q (MR. WILSON) Does she leave?

A No. She was just about to leave, and that is when Jamie came.

Q But let's -- before we get there. After you -- she comes over to the car and is talking to you. You and Ms. McDonald are still parked in the road, and she's having a conversation with you, right?

A Yes, sir.

Q Has Ms. Wilson left yet in the taxi, car?

A Yes. While we were having the conversation, him and her walked down and they were talking, then the cab pulled up and he jumped in it.

Q So the cab pulled up and he got in the cab and he leaves?

A Yes, sir.

Q And Trudy does not leave?

A No.

Q She stays there?

A Yes, sir.

Q How long does she stay talking to you and Ms. McDonald at the car after the taxi leaves?

A She stayed there for about -- we were talking for

about seven minutes, ten at the most.

Q So the three of you all talked from seven to ten minutes. After you pulled up and you parked on the road behind the red car, or between the red car and black car in front of the door of [redacted], that is when Ms. Spivey walks away?

A Yes -- no. No. No. No, that is actually wrong.

Q Tell me what is right.

A They were still there arguing.

Q So how long did they argue after you all pulled up?

A For about ten minutes. They were going on, I guess, before that, but by the time we got out there, we were just catching the end of it.

Q So you and Ms. McDonald sat in the car for ten minutes while the two of them were arguing with or at each other?

A We were just telling her to get in her car and leave, get in her car and leave.

Q For ten minutes?

A Yes. That is not all we were talking about. We were talking about what she was going to go eat, she was about to go on a date, what she was about to do.

Q Who is telling you they are going out on a date to eat?

A Trudy.

Q During the fight?

A No. While they were arguing, I guess, she was like, I'm not worried about her --

Q Maybe I'm confused, and I apologize if I am. What I'm simply asking you, ma'am, is there was at some point in time during this where Jamie Spivey walked away with her baby and left?

A Yes.

Q What I'm asking is how long after you and Ms. McDonald pulled up in the vehicle and on the road was it before she left?

A About ten minutes.

Q So what you are telling me is for ten minutes, after you all pulled up and the two of you are sitting in the car for ten minutes, the two of them are still going at it?

A No. They were arguing for about five minutes after that, and that is when we were sitting there still talking to Trudy, so it was about ten minutes talking to Trudy.

Q What I'm asking you is after five minutes -- after you pulled up, Jamie walked away, and then Trudy stayed there another five minutes talking at the car?

A Yes. Correct.

Q Now, as I understand it, after they walked away, Mr. Wilson supposedly got in the cab and he left, right?

A Yes.

Q And she went on about her business?

A She went to take her baby to her mother, and I guess she was waiting on him to come back so she could come back in yard to fight.

Q And so you and Ms. McDonald have a conversation with Trudy where you say it was five minutes after that, right?

A Yes.

Q And you are trying to get her to leave?

A Yes.

Q But she won't leave?

A Yes.

Q In fact, she didn't leave?

A No. She was -- as soon as she was trying to leave, Jamie came charging at her from across the road.

Q You said earlier she was there for at least five minutes after he got in the taxi to go, right?

A Correct.

Q And you all were talking to her about trying to get her to leave?

A Yes.

Q And she wouldn't leave?

A Yes, but at this -- okay.

Q I mean, is that not correct?

A I mean, at the same time I didn't see no purpose in her leaving because she was in her family's yard.

Q So now you didn't see any purpose in her leaving, so you aren't really telling her to leave, you are waiting for the fight?

A No. No. That is wrong. I never knew she would come across and jump on her.

Q In fact, when you and Ms. McDonald pulled up is when Jamie left, because she knew the score at that point when you pulled up and blocked her in? When you pulled up, what you did -- if they were over here arguing, you all pulled up right here on this road with that car of Ms. McDonald's and blocked her in?

A No, sir.

Q That is not where you pulled up?

A We never blocked her in.

Q You were parked right here behind the other vehicle, were you not?

A We were never parked. We were in the road, and the road is probably about -- not even that close to the yard.

Q The car was not running, was it?

A Yes, the car was still running.
Q In park?
A Yeah, it was in park.
Q So you parked behind --
A No. We were not behind that vehicle, because we were in the road going this way (indicates).
Q Okay. Show me -- point to me on here where it was that you parked.
A Right about -- right here in the road.
Q Right there in the road. Is that car in front of you or to the side of you or behind?
A It is behind.
Q So you parked behind her, and then she left. When you and Ms. McDonald pulled up and parked there, she left. After she left, you tried to talk Ms. McDonald -- sorry, Trudy into leaving, right?
A Correct. We were telling her it wasn't worth it, just go the other way, pay her no mind.
Q But Trudy wasn't having none of it?
A Actually, she said you all are right, I'm about to leave, she's not worth it.
Q Okay. All right. You and Ms. McDonald, where do you all go?
A Pulled in the yard.
Q So you all --

A In Nigeria's yard.
Q So you pulled around to Nigeria's house?
A Yes, sir.
Q How far away is that?
A It's probably -- I'm not sure.
Q From here to the back of the courtroom, maybe a little further?
A Yes.
Q You pulled there. So you could still see and hear everything that is going on?
A No, sir.
Q You can't see and hear from here to there?
A We could see, but not hear what was going on. It was probably a little further.
Q You could see, but couldn't hear?
A Yes, sir.
Q But didn't you all hear when the fight started, didn't you overhear it and come running out there?
A No. Wrong. We never -- when the fight started, we sat there in the car, and that is when we seen Jamie's mother running across the street.
Q So you saw Jamie's mother running across the street?
A So we took off to break up the fight.
Q So you took off to break up the fight at that

point. Who else was at Ms. McDonald's house when you all are there?

A Nobody was there.

Q Kendrick wasn't there?

A No. He was actually in the yard. It is like a big ole yard, like a curve. He was standing on the curve. I don't know where he was at the time.

Q That is not what you told the police, is it? In fact, you told them that that night that there wasn't but two men -- wasn't but two men there; one of them was Jamie Wilson, and the other was the brother of Ms. Spivey.

A Correct.

Q That is what you told the police that night. So this whole story about him being there has never been told prior to today in this courtroom, is it?

A Because I didn't really -- at the time I wasn't really worried about who was there or focused on that, I was just worried about my friend who had got shot.

Q The police sat down and you gave two statements, an oral statement and a written statement. In both of the statements you said there was no one there except -- in terms of men -- except Jamie Wilson and the brother of -- I think Shack.

A Yeah, it was the brother. You are correct, I did

say that, because at the time of the fight, all of the other men were in the road. The only two men in the yard when the girls were fighting was James and Jamie's brother.

Q So when did Mr. Green and all of these other men that we're now talking about get in the road? Because the road we're talking about is less than 10 feet from the house, right?

A You are correct, but to the right -- to the right it is a big yard full of grass, and that is where all the other guys were standing. They were never a part of the scene.

Q They were never a part of the scene?

A You probably couldn't even see it on the picture.

Q So you couldn't see it on the picture?

A You can see it on the map, if that is what you want.

Q Let's talk for a minute about what you say happened in terms of the shooting. What you are saying is this. As I understand it -- and tell me if I'm wrong -- your story is that Mr. Wilson came up and that he thought that Nigeria was trying to harm his girlfriend?

A Oh, no, I never told you that.

Q What are you saying?

A What happened was that when we were in the car -- can I tell you what was said?

Q No. Tell me what happened in terms of -- you said that is not correct. I was telling you what I thought you said happened. If that is not what happened, tell me what happened. Don't say what someone said, what you saw.

A What happened was we were in the car and -- actually, at the time, when they were arguing, at first he wasn't even there. When he heard the arguing, he came out of the trailer, and I guess he overheard what was going on and overheard his baby's mother was going to fight, and his words were if a "B" touches my baby's mama, someone is going to die today.

Q What I asked you, ma'am -- I'm asking you about the shooting. You were talking about the shooting, which is the second fight, right, or second incident, whatever you want to call it. What I'm asking you is about the shooting. Tell me what happened with the shooting of Ms. McDonald, how it happened. That is all I'm asking.

A Oh, she reached her hand in to break up the fight. He mushed her in the face, he stepped back, when she swung, he stepped back and then he shot her.

Q So your story is that she's trying to do

something with the fight. Are there any words between Ms. McDonald and Mr. Wilson?

A Yes.

Q What were the words that either of them said?

A He said that if anyone was to put their hands on his baby's mama, that they would die, and she was like no one is going to kill my sister, ain't none of that is going to happen.

Q Did you tell the police that, because I didn't see that in your statement?

A That was like a year ago. I'm not sure what I told them. At the time I was just frustrated and more worried about my friend than anything.

Q All right. So you are saying that there were words passed between Ms. McDonald and Mr. Wilson?

A Correct.

Q And Mr. Wilson was coming to the aid of his girlfriend who was pregnant. You knew she pregnant, right?

A No. She was smoking a cigarette. I don't think anyone would have expected her to be pregnant.

Q So you didn't know that she was pregnant?

A No.

Q Well, don't you do Facebook with her and have been doing Facebook with her forever?

A Yeah, until she deleted me, but I didn't go on her page. She didn't say anything about being pregnant on Facebook.

Q She deleted you after this incident occurred, but you knew she was pregnant?

A No.

Q In fact -- in fact, weren't you -- didn't you -- weren't you at Ms. McDonald's house when they were all over there a week or two earlier and all talking about it? You don't remember none of that?

A No.

Q And you didn't see it on Facebook?

A How can you believe someone is pregnant if they are smoking a cigarette?

Q So the fact she was smoking a cigarette made you think she must not be pregnant?

A If so, she wasn't too concerned about the baby.

Q Be it as it may, let's go back. I want to talk to you about the fight -- about the shooting, I apologize. This is important. Your story is you actually saw the shooting?

A Yes, sir. I was standing right beside Nigeria.

Q Standing right beside her. Tell me how close you were to Ms. McDonald when the shot was fired?

A So close that it could have been me.

Q Listen to the question. When I get to as close to you --

MR. WILSON: If I can approach the witness?

THE COURT: Yes.

Q (MR. WILSON) When I get as close to you as you were to her, you tell me (indicates).

A Yep, standing side-by-side.

Q Side-by-side. Were you touching shoulders?

A Pretty much.

Q Pretty much touching shoulders. You were all facing -- where was Mr. Wilson standing?

A In front of us.

Q How far in front of y'all -- if he's standing in front of you and the two of you were facing him -- is that what you are saying?

A Yes.

Q Is his back to the road?

A Yes, sir.

Q Back to the road, and your face is to the road?

A Yes, sir.

Q Is that fair?

A Yes, sir.

Q How close was he to you?

A He was -- you want to come? He was about touching distance.

Q You told the Solicitor about 3 feet from you?
A That is when he shot the gun that he was about 3 feet away.
Q So he backed up or came closer?
A He stepped back and shot her.
Q So he took a step and fired the shot?
A Yes.
Q And you all were standing up, both of you standing upright?
A Correct.
Q I want you to be as honest with me as you can.
A I am, sir.
Q So you are all facing each other, two of you standing face-to-face. He pulls out a gun --
A No, that is not how it went. He swung first.
Q He swung first?
A Correct. He swung at her when he realized -- she only had one arm in the fight and she was just like, Y'all, stop. He swung at her and hit her in her head, and that is when she tried to swing, and he stepped back and shot her.
Q So he swung at her and hit her in the head. What did he hit her with, his fist?
A It was his fist. Or maybe it was a slap, I'm not sure which one it was, but it was a swing.

Q You are standing next to her, but you don't know if it is a slap or a hit with a fist?

A It was probably his fist.

Q Probably? But you don't know?

A It was a hit, I know that much.

Q All right. So hit her, and where did he hit her?

A In her forehead.

Q Forehead. And then what happened?

A With her reflex, she swung, but she gave off a weak swing.

Q She gave a weak swing?

A And he stepped back.

Q Hold on a second. She's right-handed, that is what you told the Solicitor. So she swung at him with her right hand?

A Yes.

Q That is your story, right?

A Yes.

Q And when she swung at him with her right hand, then you say that is when he pulls out the gun --

A No.

Q Still doesn't pull it out?

A He stepped back.

Q He stepped back?

A And then that is when he pulled the gun from the

inside of his coat, pulled the gun out, stepped back and shot her.

Q And shot her. And that is what I'm saying, your story is that he -- that they are 3 feet apart, he takes a step back after he hits her, she swings at him?

A He stepped back and he shot her.

Q You told the police that the two of you were walking towards him when the shot was fired; isn't that what you told the police?

A We were never walking towards him. She gave me the look like, Did he just hit me, and we were both going to swing at him, but she swung first, and he stepped back and shot her.

Q You told the police that the two of you were walking towards him and he pulled out his gun and shot her. That is what you told the police on the night that this happened; is it not?

A Yes, sir (witness crying).

Q But now what you are saying -- you need water or something?

THE COURT: Continue on, Mr. Wilson.

A (Witness crying.)

(A brief pause in the proceedings.)

Q (MR. WILSON) Let me ask you this. After the shot was fired -- and my understanding from your

testimony is that the two of you were walking towards him, right, after he had pushed her, you said, and hit her in the forehead?

A Before I could even step towards him, she swung and he shot her.

Q Okay. All right. She swung with her right hand?

A Correct. Yes.

Q And you all were facing him, and he was facing you?

A Well, him and her were standing more -- he was facing more to her, but I was standing right beside her.

Q Okay. What relationship are you to Kendrick Green?

A Nothing.

Q You know him?

A Yes, ma'am.

Q Have you had any conversations with Kendrick after the shooting happened?

A No.

Q You haven't seen him in a whole year?

A Well, I seen him, but haven't talked to him.

Q So you've seen him. Now, you were there the entire time after your good friend was shot, right?

A Correct.

Q And did you leave her side after she was shot?
A No, sir. I was there trying to apply pressure like everyone else to her wound.
Q When is the first time that you saw Mr. Green that night?
A Well, he ran -- I guess once he heard the gunshot, he ran over there and seen that she was laying there on the ground, and he rubbed her face.
Q So he came over after the gunshot and rubbed her face?
A Uh-huh, and he was talking to her.
Q Was she coherent at that point?
A Yes, she was still....
Q You also told the police that you saw a gun, right?
A Yes.
Q And that it was a little black gun, and you thought maybe it was a .22?
A I'm not sure of the gun, so I don't know what type of gun it was.
Q Well, I'm just asking you did you tell the police that?
A I really don't remember.
THE COURT: I didn't hear you, I'm sorry. You need to speak up.

A I can't remember what I said what the gun was. I don't remember.

Q (MR. WILSON) Let me ask you this. Did you ever meet with the Solicitor to talk about your testimony for this trial and get prepared over what you told the police and that kind of thing before you came in here today?

A Yes, just only once.

Q Did he give you a copy of the taped statement or written statement that you had given to the police?

A No, sir.

Q So you never have seen it or read it again over a year?

A No, sir.

MR. WILSON: Just one second, Your Honor.

(A brief pause in the proceedings.)

Q (MR. WILSON) You said you all were standing shoulder-to-shoulder almost touching -- your shoulders touching each other. Were you on her left or right?

A I was on her right -- I was on her left side.

Q You were on her left side?

A Yes.

Q You sure about that?

A Yes. Because at first, when they were fighting, I was breaking it up. I looked and seen when he swung

at her, so I stepped to her left side.

Q So when the shot is fired, you're shoulder-to-shoulder with her on her left side?

A We weren't really shoulder-to-shoulder, but standing side-by-side. Not (indicates).

Q It is important. How close were you?

MR. WILSON: May I approach, Your Honor?

THE COURT: Yes.

A Like this (indicates), but I was this side.

MR. WILSON: Can she come down, Your Honor?

THE COURT: Yes.

Q Show me where you were standing.

A Right here (indicates).

Q This far apart?

A Yes.

Q And where was Mr. Wilson in relationship to the two of you all?

A (Indicates.)

Q Directly in front of you?

A In front of her.

Q In front of her?

A Yes.

MR. WILSON: Nothing further.

THE COURT: Redirect?

REDIRECT-EXAMINATION

BY MR. DeBUSK:

Q I know this is difficult for you.

A Yes, sir.

Q I want to go through and make sure it is clear. You pulled into Racepath about 7:05; is that correct?

A (Witness nods head.)

Q When you pulled up, you parked behind on the road in the area of this trailer, correct? That part of the road was behind those cars; is that correct?

A Yes.

Q Was there plenty of room for anyone to walk, come and go?

A Yes. She was actually -- while she was fussing, she was walking towards her mama's house -- her mama's apartment.

Q When you came over there, you and Nigeria were parked in the streets, they were still arguing for awhile?

A Correct.

Q And Trudy came over to the car?

A Correct.

Q Was Jamie still there for a short while after Trudy walked over to the car?

A They exchanged some more words, and I guess she

was saying she was putting her son down so she could come back and fight.

Q But that was when Trudy was at the car talking to you all?

A Yes.

Q There was a conversation after Jamie left, right, between you and Nigeria and Trudy?

A Yes.

Q Did you just talk about her leaving and avoiding a fight, or other things?

A We were telling her to go home, it is not worth it, you can go to jail or anything could happen, and she was like, yeah, I'm about to go on a date anyway, I'm not worried about her.

Q Did she talk about other things, too, about the date and what is going on -- what did you talk about the five minutes before?

A Oh, yeah, we were telling her that we were going to cook on the grill and stuff.

Q So you are exchanging news of the day, basically?

A Yes.

Q And then after that, you pulled over in Nigeria's yard; is that correct? And where did Trudy go?

A She went back to her car. I guess she was just about to get in the car and leave.

Q And during that time, Jamie Spivey left the area where the argument was?

A Yeah, she went ahead with her mama with her baby and just standing on the side I guess waiting for him to come back.

Q When she walked away from the argument, and before he left in the cab, did they exchange words, Jamie Spivey and the defendant?

A Standing by the tree talking, but I don't know what they were saying.

Q You couldn't hear what was being said?

A I knew for a fact that he was going to get a gun, because I know what type of person he is.

Q He left, and then he came back and got out of the cab. It was after he got out of the cab that he came back over?

A Yes. That is when she went to fight, once he got back.

Q Where you able from where you were in Nigeria's yard to see the start of the fight?

A I seen her running across, and I started to get out of the car. She was like, No, we're going to wait. Give it a second. Because there was a lot of people over there at the time him. That is when we seen Jamie's mom running across, and she was like, We have

to go help my sister because I know what type of person her mother is.

Q So she was going to let it sort itself out, but when she saw Jamie's mom go over there, she decided to go there, too?

A Yeah.

Q While they were fighting, how long were you and Nigeria over there while they were fighting?

A It wasn't no longer than three or four minutes.

Q What were you and Nigeria doing during that three, four minutes?

A I was trying to break it up. She was just standing there, because like I said, there was enough people trying to get them apart. So she was standing there, and that is when Jamie grabbed Trudy's hair, and she reached in and I guess trying to break it up, and he swung.

Q Did Nigeria touch anyone in the fight?

A As soon as she tried to touch I guess Trudy or whoever's hand it was, he swung at her.

Q You said that he said, If the bitch touches my baby's mama, someone's going to die?

A Yeah, that is when we were sitting in the car.

Q So that was before he got in the cab and left?

A Uh-huh.

Q So the statement that someone is going to die was made before he got in the cab and left and came back?

A Yes.

Q You said you are Facebook friends with Jamie?

A Uh-huh, but she deleted me.

Q So you had no animosity with Jamie at that time?

A No. It was the week before that I think where he had blacked her eye, and me and my mama helped her get --

Q Please don't go into that. Now, when this fight was going on, you said there was a lot of people around. Were they all paying attention to the fight?

A No. There was a whole bunch of girls in the yard. And, you know, guys -- that is girls stuff.

Q Let's talk about -- it is a little confusing here. There was a group where the fight was between these two cars, right?

A Yeah, pretty much all the women and James.

Q Were there any men between the cars?

A No. James and Jamie's brother.

Q James and Jamie's brother were there between the cars?

A But Jamie's brother was just trying to break it up also, everyone was pretty much trying to break it up.

Q In the area were there other people?
A Yes. There were some guys -- it's a corner, and they were standing on the corner in the grass.
Q This is Racepath. You are talking about the corner here?
A Yes. All in that grass right there (indicates).
Q Was Kendrick Green among them?
A I think so -- well, at that time I wasn't looking for Kendrick Green. I don't know.
Q So you know there is people over there?
A I know he was there, though. I wasn't watching.....
Q When the defendant came up and hit NaNa in the face, what was your intention at that point?
A I was breaking up the fight. As soon as he hit her, I came and stepped to the other side and she gave me a look like, Okay, we're about to jump on him, and as soon as she swung first, he stepped back and shot her.
Q The first time anyone -- between the two of them hit anyone, the defendant hit NaNa, right?
A Correct.
Q And you stepped up to help NaNa?
A (Witness nods head.)
Q And you said you were standing on her left side?

A At first I was standing on the right side breaking up the fight. As soon as I seen him swing at her, I moved to the other side. It happened so fast, though.

Q Did NaNa see him pull the gun out?

A No, she didn't. I don't think she seen him because she probably wouldn't have swung if she saw him pull a gun out.

Q Did he pull the gun out before she swung, or after she swung?

A Right after she swung -- yeah, it was right after she swung, but it was -- he seen her swing and he -- it was her reflex that she wasn't able to see it.

Q Did she swing for any reason other than she had been hit?

A No, sir.

Q You talked to the police after this happened, right? Told them it was a small black gun?

A But I didn't really know what it really was.

Q Did you say anything about a caliber?

A I know it was a .40 caliber.

Q Did you tell the police anything about the caliber, to your recollection?

A I can't -- I really can't remember.

Q But you remember seeing a small black gun?

A I know it was a handgun.
Q Is it fair to say once he pulled the gun out, your eyes were on that gun?
A Yes.
Q And is there any doubt in your mind that this was an intentional act to pull that gun out, that he reached in and pulled that gun out?
A Yes, he did.
Q And that he shot NaNa intentionally?
A Yes, sir.
Q And not an accident?
A No.
Q Did NaNa at any time grab the gun?
A No, sir.
Q Push the gun?
A No, sir. She didn't even see it.
Q And one point to clarify, the statement of, If someone touches my baby's mama, they are going to die tonight, that was made at the time of the first verbal argument before the fight, before he got in the cab and left?
A Yes, sir.
MR. DeBUSK: Thank you.
MR. WILSON: Nothing further.
THE COURT: You may step down, ma'am.

MR. OSKINS: State calls Timothy Cast.

(TIMOTHY CAST, having been duly sworn, testified as follows:)

THE CLERK: State your full name and spell your last.

THE WITNESS: Timothy Cast, C-A-S-T.

DIRECT-EXAMINATION

BY MR. OSKINS:

Q Who is your employer, Mr. Cast?

A Horry County Police Department.

Q How long have you worked for Horry County Police?

A About nine years.

Q Any previous law enforcement before Horry County?

A No.

Q Could you describe for this jury briefly the nature of your work?

A I'm a corporal. Prior, I was a patrolman for eight years.

Q How long have you been engaged in the work you're describing now?

A Total of nine years.

Q How about in May of 2015 of last year, what were your duties then?

A Patrolman.

Q What area?

A Generally the Socastee and southern area of Myrtle Beach.

Q Were you on duty on May 8 of 2015?

A I was.

Q Did you respond to the Racepath Street area during that day?

A I did.

Q And is Racepath in the City of Myrtle Beach?

A It is, but it is Horry County jurisdiction.

Q So within the county of Horry?

A Yes.

Q What was the nature of the call that made you respond to Racepath?

A A call over to dispatch as a shooting incident.

Q Do you remember what time you responded?

A Roughly, approximately, 7:30 p.m.

Q What was the visibility like outside?

A It was May, so it was pretty light out. It wasn't dark.

Q To what address did you respond?

A It was [redacted] Racepath Street.

(State's Exhibit 10 marked.)

Q (MR. OSKINS) I'll show you State's 10. Do you recognize it?

A I do. This is actually a large part of my area

for patrol for eight years.

Q If you would, would you show the general landmarks around your patrol?

A Racepath is here, and one of the main roads is Robert Grissom and then --

THE COURT: Speak up, sir.

A 17 Bypass runs parallel to Robert Grissom, and Racepath is off of Robert Grissom.

Q (MR. OSKINS) What is this here, south of Racepath?

A Harrison Boulevard.

Q And then --

A Of course you have the airport, uh-huh.

MR. OSKINS: Let the record reflect I'm showing defense counsel what is marked as Defense 10.

MR. WILSON: No objection.

THE COURT: In evidence without objection.

(State's Exhibit 10 admitted.)

Q (MR. OSKINS) What did you do when you responded to the scene at Racepath that night?

A Upon arrival, I was met by Ms. McDonald and Ms. Cox in the driveway of [redacted] Racepath Street where I parked my vehicle. Ms. McDonald was laying down in the driveway, and Ms. Cox was kind of kneeling over her applying pressure to her left side under the armpit.

Q That is Nigeria McDonald, the victim in this case?

A Yes, that was the victim.

Q And I believe you are headed that way, but what was the condition of Ms. McDonald when you arrived at the scene?

A She was conscious, but kind of in and out of consciousness. I didn't want her to speak. I knew she was injured. Ms. Cox basically was speaking for her. Because of her medical condition, I didn't want her talking.

Q And do you remember who else was close to you other than Ms. Cox?

A At that time I know that Ms. Spivey was running around, but I can't confirm that she was standing there at the time I was talking to Ms. Cox.

Q How did Nigeria McDonald leave the scene that night?

A In an ambulance.

Q Did EMS arrive before or after you and the other officers arrived on scene?

A After. I was literally around the corner. This was during Bike Week, so we had our task teams out. I was literally around the corner, probably two, three minutes from the incident location, but EMS was

literally a minute behind me.

Q In total, how many people were around you when you first arrived?

A Initially, there was a good 15 to 20 people and spread throughout the neighborhood. It was very hectic at first.

Q And at that time, did you question anyone about the incident, or did you leave that for the detectives?

A I did initially because I really wanted to know what happened. I asked Ms. Cox what happened, because visibly there was a victim on the ground and she said that --

MR. WILSON: Objection.

MR. OSKINS: We won't get into what other people said, just as far as your general procedure when you arrived at the scene.

At that time, did you or anyone else establish a perimeter to safeguard the crime scene?

A We did. I was the initial officer, so I responded directly to Ms. McDonald. Officers were right behind me who basically pulled security for the crime scene, and we established a crime scene at that time.

Q Briefly, few more details on how you established and secured the crime scene.

A Right. So, basically, you at first need everyone to step back, and that is tough in a situation like this because the emotions are running. Basically, you want everyone away at, what I assumed, was Ms. McDonald, the victim. When the other officers arrived on scene, we surrounded Ms. McDonald and also to expedite medical attention so they could get in quickly and expedite a trip to the hospital if needed.

Q Thank you. Do you remember what detective responded to the scene?

A There was multiple, but I do remember Detective Rhodes.

Q Did you do anything else at this time, anything further after securing the scene?

A Just -- not really, just pulling security was a big thing, because the community was in an uproar, so we called for additional units. It was basically a multi-jurisdictional effort. Myrtle Beach arrived, as well as some SLED units, but they were there for Bike Week. It took roughly 10, 15 officers and patrol vehicles to secure the neighborhood.

Q You said Racepath is on the cusp where city limits run, so that is why multi-jurisdiction units are there?

A Yes. It is very common.

Q Lastly, how long did you stay at the scene total, if you can?

A Approximately an hour-and-a-half to two hours.

MR. OSKINS: No further questions. Please answer any questions defense counsel may have.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. WILSON:

Q When you got there, Officer, what was the position of the -- Ms. McDonald; do you recall?

A I do. She was actually -- go ahead, I'm sorry.

Q I'll show you State's No. 5. I want you to show the jury where it was that you found Ms. McDonald lying.

A There is a total of three vehicles in the driveway. Ms. McDonald was actually in between these vehicles more towards the front tires.

Q Between these vehicles? Which vehicles?

A The two vehicles to the left -- I mean, it is basically a dark photo. I know this is a darker SUV, and this is a darker sedan.

Q Now, was she closer to the SUV, or to the smaller car?

A I can't contest to that. To me, what I remember, is she was in between the actual vehicles.

Q Did you mark -- did you mark where the hair braids were found; did you do that?

A No, I didn't document that because those were in between -- roughly over here between the vehicles, but, no, I didn't physically mark them, no.

Q So is there any question in your mind that when you got there, that the body is found here lying between these two vehicles?

A Right. In this approximate area, yes.

Q And it was not over here on this side of the vehicle?

A No.

Q And what was the weather like that night?

A A little warm.

Q Do you recall whether it had rained earlier in the day?

A I cannot recall.

Q Do you recall whether the ground was wet?

A It was not wet, I do remember that.

Q Well, let me show you State's Exhibit No. 5 again. Take a look at that. You'll see little puddles of water in the driveway.

A Right. So the asphalt was not wet at the time, but this is a dirt driveway with potholes, and so water stays in this driveway for at least a few days after it

rains.

Q So you don't recall whether it rained, you just know there was potholes, and the potholes had water in it?

A It didn't rain that night, no.

Q Had it rained earlier in the day, is what I asked?

A I don't know what the weather was like the day before.

Q Not the day before, the day of.

A It was over a year ago, I can't contest to that.

Q All right. You said that it was hot?

A Yes, it was warm. I said it was warm.

Q What would you think the temperature would have been?

A I can guess.

Q If you remember, tell me --

THE COURT: Can't guess. If you know.

A I don't know the exact temperature, no.

Q (MR. WILSON) Okay. All right.

MR. WILSON: I think, Your Honor, this is in evidence?

MR. DeBUSK: It is, Your Honor.

THE COURT: Go ahead.

Q (MR. WILSON) Let me share with you what is

State's Exhibit 9. It says, Surface weather, Myrtle Beach, South Carolina, International Airport, which is Friday, May 8th at 20:15. Take a look at that. I'll show you here on State's Exhibit 9 -- look at the time for the rain, 1:45 to 3:50. So there was some rain that day, you just weren't aware of it, or didn't recall it?

A Six hours prior?

Q Yes.

A That is what the sheet is saying.

Q And I asked you earlier about what the temperature was, which was my real question here. It is 7:45 p.m. -- well, let's go back, 4:45. Look at this for me. At 4:45 p.m., what time does the temperature show at 4:45?

A It is 69.8 degrees.

Q All right. Sometimes when we don't write things down it is hard to remember. Normally in May it is warm, right?

A Usually it is warm in May.

Q Would you consider 69 degrees in May to be warm?

A 69 degrees to me is not cold.

MR. WILSON: Nothing further.

THE COURT: Redirect?

MR. OSKINS: Yes, sir, briefly.

REDIRECT-EXAMINATION

BY MR. OSKINS:

Q Okay.

MR. OSKINS: May I briefly approach the witness?

THE COURT: Certainly.

Q (MR. OSKINS) I'll show you State's 9. If you could, please, tell this jury what the temperature says at 6:45 p.m.?

A 73.4 degrees.

Q And the temperature at 7:45?

A 74.4 degrees as well.

MR. OSKINS: Nothing further.

THE COURT: Anything?

MR. WILSON: No, sir.

THE COURT: You may step down. Do you wish him to be excused?

MR. WILSON: No objection.

THE COURT: You are excused and released from your subpoena to go back to your regular duties. Next witness.

MR. OSKINS: State calls Investigator Jill Domogauer.

THE COURT: If you will, come around here and meet the clerk at the corner, please, ma'am.

JILL DOMOGAUER - DIRECT EXAMINATION

(JILL DOMOGAUER, having been duly sworn, testified as follows -)

DIRECT-EXAMINATION

BY MR. OSKINS:

Q Who is your employer, Ms. Domogauer?

A Horry County Police Department.

Q What is your position there?

A Crime scene investigator.

Q How long have you been employed by Horry County?

A I've been with Horry County since June of 2008.

Q Did you have any previous law enforcement?

A City of Conway for almost 11 years before that.

Q How long have you been engaged with crime scene investigation and in that work?

A With Horry County, been about five years. When I was with the City of Conway, it was about seven years with them.

Q And, Investigator Domogauer, were you on duty on May 8, 2015?

A I was called out.

Q And on that day, did you respond to Racepath area of Myrtle Beach?

A Yes, I was.

Q Is that in the City of Myrtle Beach?

A All I can tell you is it is in Myrtle Beach, but

Horry County jurisdiction.

Q So it is in Horry County, though?

A Yes, it is.

Q What was the nature of the call to took you to Racepath that evening?

A There was a crime scene I was called to investigate, a shooting that subsequently turned into a death investigation.

Q What time did you respond, time of day?

A If I can refer to my notes, please? I was advised to respond from my lieutenant at 19:59, 7:59 in the evening, and I arrived, it appears, at 9:25.

Q And what did you see when you arrived to the scene?

A I observed uniform patrol and other officers with Horry County Police Department had secured the scene with crime scene tape. In fact, right when you turned onto Racepath, there was tape up there, beyond Sunset there was also tape. You had patrol vehicles, and the area was secured.

Q Is there a particular plan -- did you begin to take photos? What did you do?

A When I first got there, I was briefed by investigations of what transpired prior to my arrival on location, at which point they gave me a rundown of

the general areas of what the officers had discovered. At that point, I started taking what is overall photographs, and then throughout the investigation I will take closer photographs, closeups, identifying gathering of any evidence and being called to other scenes as necessary.

Q So I believe you just testified a particular plan when you take photos at a scene?

A Yes.

Q Any other details particular to that night that we may have left out?

A I mean, on every crime scene I go, I sketch, take photographs, identify and collect evidence, package evidence.

Q Regular procedure?

A Yes.

(State's Exhibit 11 marked.)

Q (MR. OSKINS) This is State's 11. Do you recognize this photo?

A Yes, I do. It is one of photographs I took that evening.

MR. OSKINS: I would like to move State's 11 in evidence.

MR. WILSON: No objection.

THE COURT: Without objection.

(State's Exhibit 11 admitted.)

Q (MR. OSKINS) This is State's 5; do you recognize that photo?

A Yes, I do.

Q Did you take that photo as well?

A Yes.

Q How about State's 6?

A Yes, it is one of my photographs.

Q Lastly, here again, State's No. 8?

A One of my photographs.

Q What evidence did you locate at the scene?

A Well, I collected several pieces of evidence from the scene, several pulled hair dreads, spent shell casings and a phone down the street from the actual scene.

Q Where would that evidence be stored?

A I collect the evidence and then I inventory the evidence and bring it back to Horry County Police Department where I then log it in our system, give it an evidence inventory number, and then it is secured into our evidence warehouse.

(State's Exhibit Nos. 12, 13 & 14 marked.)

Q (MR. OSKINS) I'll show you State's 12; do you recognize that?

A Yes. One of the photographs I took that evening

of evidence I marked.

Q What is the yellow?

A That it is Tent No. 4, that is a number I mark a piece of evidence. The evidence I marked is a spent shell casing. You might not be able to see it from where you are at.

Q And State's Exhibit No. 3, did you take that photo as well?

A Yes. It is a closer up -- the one picture you showed me was an overall picture, this is a closer up of Item No. 3, which are hair dreads, one like a burgundy and one black in color.

Q And, lastly, what is marked as State's 14, do you recognize that photo?

A Yes.

Q Yes. That is capturing two pieces of evidence in the same photograph -- actually, three pieces. If you can see the "No. 4" way down here, just evidence collected of hair dreads.

THE COURT: Thank you.

MR. OSKINS: I'm showing you defense counsel what is marked as State's 12, 13 and 14.

MR. WILSON: No objections, Your Honor.

THE COURT: 12, 13 and 14 are in evidence without objection.

(State's Exhibits 12, 13 and 14 admitted.)

Q (MR. OSKINS) Can firearms be compared to fired casings?

A Yes, they can.

Q Was any firearm recovered during this investigation to compare to the spent casing?

A No, there was not.

Q Throughout your work on the scene that night, did you take photos of any people at the scene?

A I took a photograph of a young lady, the name escapes me. If I can refer to my notes?

Q Did you see visible injuries on the lady you took photos of?

A I noticed her hair style, she had hair that was ripped out.

(State's Exhibit Nos. 15 & 16 marked.)

Q (MR. OSKINS) Do you recognize State's 15?

A Yes. It is a photograph I took that evening.

Q And State's Exhibit No. 16?

A The same woman, but different parts of her body.

Q I'll show you what is already entered as State's 8; do you recognize that?

A The same woman, just different part of her body.

MR. OSKINS: Your Honor, I'm showing defense counsel what is marked as State's 15 and 16.

MR. WILSON: No objection.

THE COURT: 15 and 16 in evidence without objection.

(State's Exhibits 15 & 16 admitted.)

Q (MR. OSKINS) Were you able to remember the name of the lady in the photograph?

A I was looking, I'm sorry.

Q Okay. No problem.

(A brief pause in the proceedings.)

A Jamie Spivey.

Q (MR. OSKINS) Did you process any other scenes that night?

A Like I said, this investigation came out initially as a shooting. It turned into a death; the victim died. I responded to the hospital to process the body before it was sent for autopsy.

Q What hospital was that?

A Grand Strand.

Q What did you do once you got there?

A When I get there, I was brought to the room in which the body was located. I took all photographs, examined the body for what I could, nothing invasive, took any possessions that she had with her. I completed a GSR kit, collected a buccal swab, like I said, photographed the body, and that is all I can do.

Q What is a GSR kit?
A Gunshot residue kit. It is standard procedure any time you respond to a shooting, we take that.
Q Investigator Domogauer, based on your experience, is it unusual for a person shot at close range to have gunshot residue on their hands even if they did not handle a gun?
A Is it unusual? No.
Q What did you do with the clothing on the victim?
A I collected it. I had to hang it in what is called a dry chamber for it to dry. It was wet with blood. Once it gets dried properly, I then fold it and secure it into evidence.
Q Where was that stored?
A Crime scene. Our crime scene -- trying to explain it better. Our crime scene division has a lab. It is key carded only to investigators who work in the lab. For example, that officer can't get inside of it. We have a lot of chambers that the chambers themselves lock with a key. I will log in my evidence on the outside of the chamber showing it is mine with corresponding case number, and then hang it up in the dry chamber and lock the doors, and all that area is locked inside the crime scene lab.

(State's Exhibit Nos. 17 through 22 marked.)

Q (MR. OSKINS) I'm showing you what is marked as State's 18, labeled as "victim's T-shirt"?
A Yes.
Q Open that and authenticate it, please.
A Okay.
THE WITNESS: May I stand up, Your Honor?
THE COURT: Yes, ma'am.
A You want me to take it out of the bag?
Q (MR. OSKINS) Please, ma'am.
A (Witnesses complies.) It was cut by EMS, but you can puzzle it together.
Q You can step here so defense counsel can see it, due to the nature of the exhibit.
A Sorry, sir.
(A brief pause in the proceedings.)
A Other than laying it flat and making sure everything lines up properly, this is the best I can hold it up.
Q (MR. OSKINS) And that was the shirt taken from the victim, Nigeria McDonald, that night that you were at the hospital?
A Yes.
MR. OSKINS: I would like to move that into evidence.
MR. WILSON: I have no objection.

THE COURT: All right. You can just put it back in the bag then, please. In evidence without objection.

(State's Exhibit 18 admitted.)

Q (MR. OSKINS) I'm showing you what is marked as State's 19; do you recognize that?

A Yes. It is a spent casing with case numbers that coincides with this case.

Q Would you again open that and show it to defense counsel?

A Here is a casing here taken out of my box by SLED.

MR. OSKINS: I'll show the defense counsel State's 19.

MR. WILSON: No objection.

THE COURT: 19 is in evidence without objection. You may proceed 19.

(State's Exhibit 19 admitted.)

Q (MR. OSKINS) I'll show you State's 20; do you recognize that?

A It is what you see in my photographs with the "No. 1" next to it, one black in color hair dreadlock.

Q If you could, show us that dreadlock from the package.

MR. WILSON: No objection to it.

THE COURT: State's 20 is in evidence without objection.

(State's Exhibit 20 admitted.)

Q (MR. OSKINS) I'll show you State's Exhibits 21 and 22, they are similar. If you will follow the same procedure there.

A State's 21 is labeled Case No. 15039210, and marking CS, dash, 2, one black in color hair dreadlock.

MR. WILSON: No objection.

THE COURT: All right. State's 21 and 22 in evidence without objection.

(State's Exhibit 21 admitted.)

Q (MR. OSKINS) State's 22?

A State's 22 is labeled 15039210 and given the number CS, dash, 3 by me. It is labeled, Black in color hair dreadlock, brown in color hair dreadlock.

MR. WILSON: No objection.

THE COURT: In evidence without objection.

(State's Exhibit 22 admitted.)

Q (MR. OSKINS) Did you obtain the autopsy of Nigeria McDonald?

A No, I did not.

Q Are you aware where it was taken place?

A It was scheduled at MUSC, Medical University in Charleston.

Q And to your knowledge, did anyone from Horry County Police Department attend that autopsy?

A Not to my knowledge. When I arrived at the hospital and met with the coroner, I requested copies of all photographs that were taken at the autopsy, and of course to be notified to pick up any evidence of that was collected. MUSC doesn't let you inside during an autopsy. You can view it from, I guess, a gallery, but you are not allowed to be inside the room.

Q But you are not there when it took place?

A No, I was not.

MR. OSKINS: Answer any questions Mr. Wilson has.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. WILSON:

Q A couple of things. You said you took a GSR kit of the hand of Ms. McDonald?

A Yes, I did.

Q Do you have that?

THE COURT: Finish doing that because you are answering and crumpling paper. Go ahead and finish that.

A I'm sorry. Let me refer to my notes. Do I have it with me here today? No, I don't have it with me today.

Q (MR. WILSON) Explain to the jury what a GSR kit is and why you do it?

A Gunshot residue kit is the particular kit that was used is given to us by the State Law Enforcement Division. We follow their protocol and use the kit that they submit to agencies. With their particular kit, there are little tiny round magnets. I would take a person's hand, left hand and right hand, back hand, the palm. Each magnet is labeled. Say if it was for the palm of your hand, I would take it to wrist up your fingers and in with the magnet, and I would do that for each container that corresponds with each hand.

GSR is a very fine powder. If you can imagine throwing flour up in the air, and as it comes down, just that little small cloud there. If you stick your hands in and out, that is like GSR -- gunshot residue, excuse me. I collected it because it is protocol for us to collect on any kind of shooting. If there is a suspect, we'll collect it from the suspect, and if there is a victim, we'll collect it from the victim.

Q And what information are you looking for when you do a GSR kit on the hands of a victim, say, for instance? What are you looking for?

A Gunshot residue.

Q Why?

A If you are shot, you are going to have gunshot residue.

Q You are saying that everyone who is shot has gunshot residue?

A Not everybody, but there is a likelihood. If -- gunshot residue is extremely sensitive. If you are within a certain proximity -- let me correct myself. If you are within a certain proximity of a gun going off or handling a gun, there is likelihood there will be gunshot residue upon your person, hands, clothing. So that is just our procedure. If there is a shooting, we collect these samples from the victim.

Q So you are looking to determine if the victim may have fired a weapon, or if the shot was fired in close proximity to the victim, then you would look to see if there is residue there from the powder from the gun from the firing of the weapon?

A Only thing a gunshot residue kit can tell you is whether there is residue present. It can't tell you distance or if they handled it. It tells you the elements involved in gunshot residue are present. Those questions, an analyst from SLED would probably be best to answer that.

Q So you can't tell us that, but you can actually tell, can you not? You've been doing this for 12

years?
A Over, yes, sir.
Q And you, in fact, can tell how far away or how close a gun was fired to a person if there is gunshot residue, because if it is fired from a long instance, you wouldn't find residue, right?
A There wouldn't be a large amount, no, sir.
Q Well, if I'm standing at the back of the courtroom and shoot you with a .22 caliber pistol, you won't find residue on that shot, will you?
A No.
Q If I'm standing 3 feet from you, or if you are touching me or I'm touching you, I fire a gun, then you probably would have residue, right?
A Yeah. If you are shooting me, yes.
Q There's a likelihood that you would have it. Now, you bagged -- that is the term you use -- you bag both her hands?
A I did not. The EMS bagged her hands and medical tape them down and sign it, and then the nursing staff signs it. When I arrive at the hospital, her hands were bagging with the initials and tape still intact.
Q And then you collected these items, right?
A Yes.
Q For what purpose?

A If we needed to test on a future date. Those are protocols. We collect cheek swabs, the clothing. The shirt had evidentiary value, and other biological samples. I also photograph.

Q Right now I'm asking about the gunshot residue kit. You collected that kit from her hands, what did you do with the kit?

A I sealed the kit after collection and logged it into evidence.

Q Did you send it to SLED for them to analyze it to make a determination as to whether or not there was gunshot residue?

A Let me refer to my notes to see if that was sent. No, sir, it was not sent.

Q So you went to the trouble of bagging her hands, performing the kit, and for a year you don't send it to SLED to be analyzed?

A It is our protocol that we collect it on such cases. It did not meet the criteria for SLED to be accepted for testing.

Q What does that mean?

A SLED would not accept it because they do not accept GSR kits on victims who were shot.

Q Why?

A That would be a question for SLED, sir.

Q Okay. All right. Fair enough. Let's talk about this. What about fingernail clippings, my understanding is that you did fingernail clippings on this victim, Ms. McDonald; is that correct?

A I believe that is down at MUSC. I wasn't present.

Q Were they turned over to you?

A Yes.

Q You are the crime scene specialist, the expert, the person responsible for collecting all of the forensic evidence or physical items of evidence in order to preserve and protect and submit to SLED for further testing; is that a fair statement?

A Yes, they were turned into our department.

Q What I'm asking is if it was turned in directly to you? Did you ever have possession of it?

A When they get logged in, they get issued and assigned to me because it is my case. Yes, I saw them, they were sealed, everything was intact and they got put with the evidence.

Q Why is it that you would want to do fingernail clippings in a homicide case?

A Again, it is protocol for autopsies.

Q What is the purpose of it? What is the purpose of taking fingernail clippings?

A I don't take them on all of my autopsies, but I believe it is MUSC's pathological protocol that they take it on every autopsy, but certain aspects would be to get sent off for testing.

Q What are you looking for? When you test fingernail scrapings that you collect, what is it you are looking for?

A Possibly DNA.

Q Of what?

A If the victim scratched or grabbed or touched anyone.

Q And so you would want to have those scrapings in case the person scratched the other person or got the blood of the other person on their fingernails or DNA of the other person on the fingertips or hands of the victim coming from perpetrator, right?

A Yes.

Q And you actually did collect fingernail scrapings or you were sent or given fingernail scrapings?

A Yes.

Q Once you got those, what did you do?

A Checked for integrity and they were sealed with the case pending if they would in the future be tested.

Q What was the result of those findings from the fingernail clippings?

A They were never sent for testing.
Q So they were never sent for testing either?
A No, sir.
Q So you didn't send the GSR kit, didn't send the fingernail clippings, right?
A No, sir.
Q The reason for not sending fingernail clippings was, what?
A I have no DNA to compare it to. The only cheek swab I collected was from the victim. I know those are her fingernail clippings. If you have a suspect, you can sent for comparison per SLED's protocol.
Q You have the main suspect in this case, you have James Wilson on trial for murder.
A Yes, sir.
Q And you have known that since May the 8th or May 9th when he's been arrested, right?
A I would assume so. I don't know when he was arrested.
Q He's been at J. Reuben Long all this time where you work at the Horry County Police Department, right?
A Yes, sir, crime scene.
Q All right. And is there any -- as an investigator for Crime Scene, are you saying to me that you don't have access to know whether or not a

defendant or alleged perpetrator has been arrested for the charge you are investigating?

A If the detectives tell me he's been arrested then, yes, sir. Most of the time I'm doing other stuff. Or if they tell me I need to process that suspect.

Q Well, wouldn't you want to meet with the detectives on the case? Officer Rhodes back here was the chief investigating officer on this case, right?

A We have meetings, yes, sir.

Q And did he not tell you, hey, look, we have him arrested, he's in jail? You want to come to court and proffer that he is guilty, he did this crime?

A Okay, yes, sir.

Q Well, when Detective Rhodes told you that he was arrested, that didn't prompt you to want to send the gunshot residue and fingernail clippings to SLED to have them analyzed to test to see if he did or didn't do them?

A That would require his DNA, sir, which you consent or they have to get it by other means.

Q And there is a process with that, too?

A Yes.

Q Where you can go to the Solicitor's Office, and they can come to this court and ask the judge to hear

it and decide whether or not they are entitled to it; did you all do that?

A That is not what I do, sir. You will have to ask the detectives. That is not what I do in crime scene.

Q So whose job would it have been? Detective Rhodes?

A I can't tell you whose job it was. I can tell you for a Schmerber hearing -- that's the actual name of the hearing he's talking about -- the crime scene analyst does not do that.

Q So is there some confusion in Horry County Police Department about who is supposed to do what?

A No, sir, there is not.

Q Well, are there cases that you do the crime scene on that are more serious than a murder?

A All my cases are serious, sir. I take them all serious, from murders to other crimes.

Q And if they are all serious, you always want to do everything you can to make a determination as to whether or not the person is guilty or not guilty of the crime so that you can present that evidence, right? Fair?

A Yes, sir.

Q All right. And these are things you certainly could have done; is there any question about that?

A I did my role as the investigator. Everyone has a different role. It is a team -- not an individual -- effort.

Q Okay. So it was somebody else's job, not yours, right?

A I can tell you it is not my job to make the preparation for a Schmerber hearing. I can't tell you whose job, but it is not mine.

Q Now, you said you got there sometime after 9:00 p.m.?

A Yes, sir.

Q When you arrived, the victim had already been taken to Grand Strand?

A Yes.

Q Is that correct?

A Yes.

Q And did you ever take pictures? Because I saw where in one of the photographs where you did -- and I probably should have asked a question first. Let me show you State's Exhibit No. 11. I see that there are some yellow markings in those photographs?

A Yes, sir.

Q Did you place those marks there?

A Yes, I did.

Q Now, did you place any marks as to where the

victim's body was lying at the time it fell?

A I don't know where the victim's body was laying at the time it fell. It was the general area, but no one could be specific.

Q So no one could be specific about where the body was?

A The only specifics they could give me was between the numbers of 1 and 4, in that area there, in the dirt.

Q So based on your investigation, the body was laying somewhere between what you got marked as 1 and 4 with those yellow markers?

A Not based on my investigation. That is what was told to me. The body wasn't there, so I can't say where it was if I don't know where it was.

Q Wouldn't you think that that would be important in determining what might have happened, where the body was and where it was located?

A I asked, and that is when I was given the proximity between the Items 1 and 4.

Q When you got there -- Officer Cast was the first officer on the scene. Did you have a conversation with him about where the body was when he got there?

A I believe I was talking to him, yes, sir.

Q All right. And did he sit with you and say let's

draw a diagram, here is where she was laying, so you know the position of the body at the time he arrived?

A No, sir, he did not draw a diagram for me.

Q Did you ask him?

A No, sir, I did not.

Q Any particular reason you didn't ask him to show where she fell lying, the position she was in?

A By the time Officer Cast was there, the body was moved again by other people. She wasn't where she was originally laying. This woman was still alive at the time. People were trying to render aid.

Q You do understand as a crime scene expert and crime scene investigator that the position of the body can be vitally important as to how and where the shot was fired and the angle of the bullet at the time the person was killed; you understand that?

A Oh, absolutely.

Q But in spite of that, and in spite of knowing that, you and Officer Cast decided you wouldn't do that, you wouldn't mark off or show where the body was?

A Again, I'll try to say this. I don't know if I'm not clear enough. She was alive, so it wasn't a body, it was a victim. She was moved multiple times by people trying to save her life, so it is not that I failed to document something. At the time she was on

scene, there was nothing to document. I had a general broad knowledge from where Officer Cast told me she was, from witnesses, from what he could observe and EMS moved her and everything else, sir. So there was no -- it would be different -- let me rephrase. There are several cases where I worked where, yes, documentation of the body, where it is, is absolute. Majority of those cases that I have been able to successfully document a body and get measurements and trajectory and everything I need, unfortunately, those victims are still there and have never been touched because they are deceased. This woman was still alive.

Q She was still alive, but she had been -- by the time you got there, she already was taken to Grand Strand, but Officer Cast was there and he saw her lying there before you arrived. The other items you marked -- because you marked -- you went to the trouble of marking pieces of hair -- pieces of hair that were on the ground; did you not?

A Yes, sir.

Q And you went to the trouble of finding one gunshot casing and marking that as well?

A Yes, sir.

Q But -- and those things were more important because -- you are right, at that point when you got

there the person is gone, she's not there, but everything else is in place, right?

A Yes, sir.

Q And Officer Cast is there, who got there and saw her lying on the ground and helped to render aid to her, right?

A Yes, sir.

Q Okay. All right. After you took -- let me back up. What was the purpose of taking photographs of the hair, pieces of hair that were found? You had them marked in three or four separate packages. I think it was Exhibit 20, 21 and 22. What was the purpose of that?

A I photographed the evidence and the scene, or photographed items of collection.

Q Do you know based on your investigation, what direction was her head when she fell?

A No, sir. Again, I don't know any of the body positioning.

Q Or her feet? But I thought you told me that you talked with Officer Cast about this -- you are one office, one department, and what he tells you as a law enforcement officer would go into your report or to your investigation, because you are a team, he and you are working together even though he's the first guy

that gets there?

A I'm going to refer to my notes.

(A brief pause in the proceedings.)

A I have this in between the two vehicles on the east yard side of the above address that was given to me.

Q What address was that?

A [redacted] Racepath Street.

Q That's it?

A That's it, sir.

Q You said something earlier. You said that the body had been moved multiple times; who told you that?

A Officers who arrived on scene told me that people were trying to assist her. The officers and EMS personnel were trying to assist her.

Q And EMS took her to the hospital. What I'm asking is before. Let me rephrase and ask you this way. Is there anything in your report or during your investigation to show that the body was moved or she was moved before Officer Cast arrived?

A Other than people speaking, no. You have to ask who he talked to.

Q That is my next question. Who was it that told you that she was moved?

A The first responder officers. When I asked, Was

the body touched, they said, yes.

Q Not touched. Moved.

A Moved, touched.

Q They are the same?

A No, they are not, but if you touch and roll the body over from the original position, that is moving the body.

Q Right. And that is my question. Who told you that the body was moved?

A I believe I thought I answered that. The first responding officers, Cast and....

Q Told you that the body was moved?

A That the body was not in the original position.

Q So Officer Cast told you that when he got there, that the body was not in the original position?

A I don't think he can tell me what the original position was.

Q That is what you just said, that he told you that when he got there, the body wasn't in the original position.

A Okay. I understand what you are trying to do. Hang on, let me answer your question. The woman was not dead. Her friends didn't stand by and not touch her and say, Wait a minute, don't touch her so the police can record how she fell. When the officers got

there, they didn't say, you know, this might be a crime scene so we're not rendering aid to this lady. EMS won't say, We think she might die, so we are not going to touch her. People, while trying to save this woman's life, touched her, manipulated and moved the body. When the officers arrived, this was going on. When EMS arrived, they go -- they are not going to stop, wait a minute. This woman is alive, they are going to try to save her. Her life matters more than her body position at the time in which the officers got there.

Q I'm not asking you, ma'am, what other people did. I'm asking you from your investigation what you were told by your first responding officer from your police department as to where the body was locked, and if that body or person was ever moved, other than when EMS took her away, at any point in time?

A I'm sorry, I answered that awhile back. The only general area they told me was between Items 1 and 4. They did not tell me specifically where her head or feet were. They told me she was moved.

Q All right. You didn't mark off the general area either as to where she was supposed to have been?

A There is markers 1 and 4, and in between that area, between the two cars. Right here, I have the

picture.

Q The markers 1 and 4 are identifying?

A In this area right over here.

Q The markers 1 and 4 are identifying different objects that you found on the ground, right, not identifying where the body was, and they are not attempting to identify where the body was?

A It was in that general area, sir.

Q Fair enough.

MR. WILSON: Court bear with me for one second.

Q (MR. WILSON) So bottom line is we didn't do the GSR, didn't do the fingernail clippings, didn't do a sketch of where the body was or where she was laying, or even identify the general area, other than you say that you had four marks, right?

A GSR collected was not sent to SLED. Fingernail clippings was not submitted to SLED. A sketch was done and a general area was identified, but not marked where the body was.

Q But just for a second, with fingernail clippings, if two people are fighting or tussling and you do fingernail clippings, you might get DNA of the person they were fighting with or struggling with, right?

A Possibly.

Q We'll never know now, though, will we?

A We still have them.

Q How long does it take to send an item to SLED and get the results back?

A I know it takes time.

Q So we stop the trial six, eight weeks send it to SLED and come back?

A I'm telling you, it can still be tested, sir.

MR. WILSON: Nothing further.

THE COURT: Redirect?

REDIRECT-EXAMINATION

BY MR. OSKINS:

Q Ms. Domogauer, investigators, do they decide what to do and how to proceed based upon everything they know about a case at the particular time?

A Yes.

Q And would it be possible for you to take a picture of Officer Cast's memory the night that Nigeria was shot and killed?

A I wish I could.

Q You would if you could?

A Yes, sir.

Q However, you took pictures of everything you were able to take pictures of when you arrived on scene.

A Yes, sir.

Q Because that's your job?

A Yes, sir.

MR. OSKINS: Thank you. No further questions.

MR. WILSON: Nothing further.

THE COURT: You wish the witness to be excused?

MR. WILSON: Yes, sir.

THE COURT: Any objections?

MR. OSKINS: None, Your Honor.

THE COURT: You are excused and go back to your regular activities. Hand the exhibits to the court reporter, please.

Solicitor, as I understand it, the time for your next witness has not yet arrived, so what we'll do is break for lunch at this point in time.

Ladies and gentlemen, I'm going to ask that you be back at 2 o'clock, be back at 2 o'clock and we'll start at 2 o'clock. While you are at lunch, if you need to inform anyone at home or elsewhere that you probably will be working late tonight, please do so, because it is my intention that most likely we'll work late tonight. So let anyone that needs to know, know that fact. With that, don't talk to anyone about the case.

(The jury exits at 12:47 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Before we break for lunch, anything

from the State?

MR. DeBUSK: No, Your Honor.

MR. WILSON: No, sir.

THE COURT: Very good. Thank you very much.

(A lunch recess was taken.)

THE COURT: Is the State ready to proceed?

MR. DeBUSK: Yes, Your Honor.

THE COURT: Defense?

MR. WILSON: We're ready, Your Honor.

THE COURT: Ask the jury to come in please.

(The jury enters at 2:06 p.m., and the following is heard in the presence of the jury.)

THE COURT: Your next witness.

MR. DeBUSK: State calls Nicholas Batalis.

(NICHOLAS BATALIS, having been duly sworn, testified as follows:)

THE CLERK: Clerk state your name and spell your last to the court

THE WITNESS: My name is Nicholas Ike Batalis, B-A-T-A-L-I-S.

DIRECT-EXAMINATION

BY MR. DeBUSK:

Q Who is your employer?

A Medical University of South Carolina down in Charleston.

Q What is your duties there?

A Employed there as a forensic pathologist.

Q Are you a licensed physician?

A Yes, I am.

Q What states?

A Here in South Carolina.

Q How long have you been licensed to practice?

A Since I graduated medical school in 2003, so about 13 years.

Q Now, you could explain to the jury your educational background?

A After completely my undergrad degree at Butler University Indiana, I went on to complete medical school at Indiana School of Medicine. After graduating medical school, I came down to MUSC in Charleston for general training and anatomical and clinical pathology. A general pathologist does a couple of things. One of the main roles of a pathologist would do is if a surgeon takes a biopsy, they hand it to the pathologist and we are the ones to determine if it is cancer or not. We also run clinical laboratory. So if you have a blood test, that is a pathologist who overlooks that. It is a four-year training program to learn general pathology. After completing that, I passed a board exam to become board certified and went on to one year

of fellowship in forensic pathology at the Dallas County Medical Examiner's Office. Forensic pathology is the subspecialty that involves the legal aspects of medicine, usually performing autopsies to determine a cause and manner of death.

After completing the fellowship, I passed a national board examination to become certified, and then went on to take my current position at MUSC.

Q In your work, does that include performing autopsies?

A Yes, that is one of the primary responsibilities.

Q How many have you performed?

A I don't have an exact count, but around over 2,000.

Q I think you might have mentioned, but do you have a specialty in the field medicine that you're specialized in?

A Yes. I have three board certifications, one is anatomic pathology, one in clinical pathology and my primary practice is forensic pathology.

Q Could you tell the jury what forensic pathology involves?

A Primarily it involves conducting autopsies, again, to determine the cause and manner of death. It also involves teaching, involves testifying on those

cases.

Q You mentioned you were a certified pathologist; who certifies you?

A American Board of Pathology who is responsible for certifying pathologists.

Q They are the keeper of the standards for the pathology profession?

A Yes, they are.

Q Have you been qualified before as an expert in the field of forensic pathology?

A Yes, numerous times in South Carolina, twice in North Carolina and once in Texas.

MR. DeBUSK: State offers Dr. Batalis as an expert in forensic pathology.

MR. WILSON: No objection.

THE COURT: So you do not wish to voir dire the witness?

MR. WILSON: I do not.

THE COURT: Very good. He is qualified to give his opinion. You may proceed.

MR. DeBUSK: Thank you.

Q (MR. DeBUSK) Did you have occasion to perform an autopsy on Nigeria McDonald?

A Yes, I did, on May 89, 2015.

Q Where was it done?

A At the morgue at University of South Carolina.

Q Down in Charleston?

A Yes.

Q What was the condition of Ms. McDonald's body when you received it?

A When we received the body -- well, it had been previously stripped. There was evidence of medical therapy at another institution before she passed away.

Q What evidence of medical treatment was there?

A The major evidence of treatment was she had two incisions, one on the left side of her chest and one on the mid-abdomen. She also additionally had tubes, so an endotracheal tube and an oral tracheal tube, so a tube going through her mouth into the airway, and also a tube going from the mouth into the stomach. There were blood pressure cuffs wrapped around her right arm and right leg, urinary catheter extended into her urethra, and a chest tube that had been inserted into the left side of her chest.

Q Are these the kinds of treatment that a hospital performed, not paramedics?

A Correct. Some could have been done either way. She had a couple IVs, those could be done by the paramedics, but the surgical interventions would have been by the hospital.

Q How tall was Ms. McDonald?

A 66 inches, which is 5 foot, 6 inches.

Q Did you see any external injuries?

A Yes. There was a couple healing abrasions or scrapes, and one bruise on the left leg. The major finding or injury was a gunshot wound on the upper left side of the chest just in front of where the armpit is.

Q Was there any indication around the wound of the distance which the gunshot was fired?

A Sure. So when we determine the range of the gunshot, we take into consideration what comes out of a gun. So when the gun is fired, obviously the bullet comes out, but there is other materials that helps us determine how far the gun was from the body when it was fired. One of the things is what we call "soot," the gun powder that is burned up and combusted when the explosion happens. That travels -- depending on the ammunition and weapon -- somewhere between 6 inches and a foot. The other thing that comes out of the gun is pieces of gun powder that is burning or not burned up when the trigger is pulled. Those will fly out and can strike the skin and cause scrapes on the skin called stippling. Depending on the ammunition or weapon, that can extend out anywhere from 2 to 4 feet from the barrel of the gun. So regarding this case, we did see

an area of stippling on the left arm that kind of directly overlaid the left chest where the gunshot wound was. So the fact we saw stippling there would tell us that the gun had to be at least within 4 feet from the body when it was fired.

Q 2 to 4 feet; is that correct?

A 4 feet is the outside range. It may be -- depending on the weapon, it could have been definitely closer to that as well.

Q Let me show you State's 23 and ask if you recognize this.

(State's Exhibit 23 marked.)

A Yes, I do.

Q (MR. DeBUSK) What does that show?

A This is a photograph of the entrance wound on the left side of the chest. It also includes her left arm where you can see the stippling, and a tag with a unique number identifying this case.

MR. DeBUSK: We offer State's 23 into evidence.

THE COURT: Any objection.

MR. WILSON: No objection.

(State's Exhibit 23 admitted.)

THE COURT: Can I see it? All right. It is in evidence without objection.

Q (MR. DeBUSK) Dr. Batalis --

MR. DeBUSK: May the witness step down?

THE COURT: Yes, sir.

Q (MR. DeBUSK) Could you explain for the jury anatomically where it is?

A The picture is kind of close up, but actually -- the Solicitor here is in the correct position we're looking at. So down here is the left side of the chest, and the structure up top is the left arm.

Q Kind of like that (indicates)?

A Exactly.

Q Where is the stippling to which you are referring?

A So the stipplings are the little red marks that are on the left arm right there (indicates).

Q Underneath the FA15, dash, 291?

A Correct.

Q Is that the autopsy number?

A Yes, it is.

MR. DeBUSK: May I publish to the jury?

THE COURT: Yes, you may.

(State's 23 published to the jury.)

Q (MR. DeBUSK) So the stippling tells you the gun was 2 to 4 feet away from the victim?

A No further than that, correct.

Q What internal injuries are associated with that

entrance wound?

A Sure. So this bullet, as you can see, was on the left side of the body near the armpit. It tracked cross the body from left to right, and also went downwards. So it entered the chest cavity past and between two of the ribs on the left side. As it went downward, it went through the diaphragm which separates the chest from the abdominal cavity. At that point, it hit the left adrenal gland, the pancreas, the aorta and stomach, all kind of in the middle. The aorta is the major blood vessel that takes blood to the rest of the body. As it continued past the aorta, the pancreas and stomach, it went through the right kidney and right adrenal gland, through the right side of the diaphragm and exited the right side of the chest.

Q Where did it exit the right side of the chest?

A It exited -- whereas the entrance wound is kind of in the armpit, but just in front of the armpit, the exit wound on the right side was in the posterior aspect of the armpit. This was 21 inches below the top of the head, whereas the entrance wound was 11 inches below the top of the head, so it shows it was a downward trajectory.

Q In terms of ribs, what did it enter and exit?

A When it entered, it went between the third and

fourth rib, so the third intercostal space, and exited through the right 12th rib, the last rib on the right side.

Q You mentioned a lot of injuries there, what were the results of those injuries?

A So the major result would have been massive bleeding. The aorta is a very large blood vessel that carries blood through the body. Additionally, going through the other organs, the intestines with some bleeding would be a risk for infection had she survived any longer. Going through the kidney, it is a very vascular organ, filters your blood, so that would have resulted in quite a bit of bleeding. Going through one of the adrenal glands, that is a small gland that sits on top of the kidney maybe a couple inches big, but it has a lot of hormones it produces, as far as your salt hormones and regulating your sugar and stuff. So damage to adrenal gland can cause someone to -- kind of their whole cardiovascular system not to respond to any challenges. Those are the major insults from the injury.

Q Would any of those injuries be fatal?

A Certainly. Perforations of essentially any of those organs could be fatal independently, and taken together when you have multiple organs hit and

bleeding, that would compound the issue.

Q If you could -- I'll ask you to step down -- using this rod, could you demonstrate for the jury the possible trajectory using me as the model?

A Sure. It came through here.

THE COURT: Could you face the jury?

A Sure. About 10, 12 inches -- 11 inches below the top of the head, just in the front side of the armpit, and this went downward, and from the left side to the right side. What I can't do, because I can't put the rod through him, it went a little front to back.

Q (MR. DeBUSK) Give the trajectory from the entrance.

A About like that (indicates).

Q Almost from the side and to the center?

A Correct.

Q Based on the autopsy and within the bounds of reasonable medical certainty, have you formed an opinion as to what the cause of death was?

A Yes. The cause of death was the gunshot wound to the chest.

Q As part of your autopsy, you did a toxicology of the victim?

A We do collect various body fluids and submit them to a national laboratory -- a nationally accredited

laboratory for toxicology testing.

Q What did you see in the toxicology results?

A In this case we sent a sample of blood, which is the best sample for toxicology testing. Just for an example, the screen we extended for tests for 3-, 400 different drugs, so medications, illegal drugs, all sorts of stuff are included. Her test was positive for four different items, one being caffeine, which is in all sorts of beverages and chocolate. One was Rocuronium, it is a drug to intubate somebody, it helps the airway to relax to put the tube down their throat.

Q And she did have tubes in her?

A She did.

Q That could be the result of medical treatment?

A Correct. She also had a Marinol metabolite, not the active drug Delta 9 THC, but a breakdown product of marijuana. And then --

Q What would that breakdown product tell us about smoking marijuana?

A It would tell us that she ingested it at some point. It was not within a few hours before the death. If it was within a couple of hours before she died, you would still see that active drug. So the fact that it is just a metabolite, she is not under the influence. For all we know, it could have been the day before she

ingested it.

And then the last thing that was detected was hydrocodone, so that is a pain medication, last drug that was detected.

MR. DeBUSK: Thank you. please answer any questions defense may have.

THE COURT: Cross-examination?

MR. WILSON: Thank you.

CROSS-EXAMINATION

BY MR. WILSON:

Q Before I start, let me show you this report and ask you to take a look at it, if you would, please.

A (Witness examines document.)

Q Is that a report you prepared?

A Yes, it is. It is a copy of the report I prepared. After the report there is a toxicology report from the national laboratory, and the last page is a diagram that I did not prepare.

Q Okay. I'll take the last page out of there. Have you ever seen this diagram before?

A I don't believe so.

Q Would you take a look at it for me? Let me ask you if in your opinion that accurately represents the angle of the wound that you saw or observed on Ms. McDonald?

A I believe so.

Q Now -- so a forensic pathologist is -- is -- the job is to determine the manner and cause of death, right?

A Correct.

Q And in determining the manner and cause of death, one of the things, for instance, in a gunshot, that you would want to know is the location of the wound, right?

A Correct.

Q And you would want to know -- once you know the location of the wound, you can then try and determine the angle at which the shot would have been fired if it is a bullet or if it is some other object that is lodged into the body?

A Yes. So by examining the body externally and internally, we can follow the pathway or course of the bullet.

Q Okay. And in this case, in Ms. McDonald's situation, you determined that the bullet entered where?

A Entered the left side of the chest just in front of the armpit.

MR. WILSON: If you would, may I ask him to come down?

THE COURT: Yes, sir, you may.

MR. WILSON: Would you come down for me, Doctor. Solicitor, can I borrow your ruler for just a second, please?

Q (MR. WILSON) Now, the bullet that entered from the left side -- is that a fair statement?

A Yes.

Q And I want you to take the ruler and show on me where it was that the bullet entered her left side.

A Approximately, right here.

Q Now, your report says it was the --

A Says the anterior axillary line.

Q Okay. Well, I'm looking on Page 2 of your report and it says there are additional possible areas of stippling on the axilla, and before that it says that the gunshot entrance wound is on the left side of the trunk and the anterior axillary line. What I'm asking is, that is under your arm, right?

A Well, axilla is a fancy term for armpit. So there is no one specific point that, okay, my axilla is right there. The axilla generally is the region underneath the arm.

Q Okay. All right. What I want you to do is show me where that bullet entered again.

A (Indicates.)

Q So it entered there. Did it -- did it go through

her arm skin in order to get under her armpit?

A It did not go through her arm and did not go under her armpit. The anterior axillary line implies it is anterior to the armpit.

Q Okay. All right. That shot was fired from left to right; is there any question about that in your mind as an expert?

A The bullet traveled from left to right as it moved, no question.

Q From left to right?

A Correct.

Q Is there any way that a person who is standing in front of her could have fired that shot into her at that angle?

A The arm was to be reached out like that, if the person -- if the decedent was not facing forward -- if I was turned like this, it would essentially be straight on.

Q So if we're facing each other, my question is simply this. If she was facing her -- the person who shot her, as I am facing you now, is there a way with a gun to have made that angle, that bullet at that angle?

A It would be possible if you were able --

Q If you took the gun and reached around like this did it like that maybe (indicates)?

A That is one way, given the scenario you are explaining to me.

Q Okay. You were showing me another way, if the arm was raised, and what was happening now? If you would go through that. If the arm was raised that is a way to do it?

A I don't believe I said that.

Q When you raised your arm just now, what did you tell me?

A I was reaching out like that.

Q So you are saying that if the person -- if the gun was reaching out, or if Ms. McDonald was reaching out?

A You asked if there was a way that someone could cause this angle from face-on. So if I was the shooter and if I was to reach out sideways and close enough, you can do it that way. The other thing I mentioned is if the decedent was not facing straight on, if she was at a slight angle, then it is much easier to get that same pattern.

Q All right. So if we are facing each other, and I have a gun and I'm trying to shoot you, there is no way for me to make a frontal assault on you with that gun and shoot you at this angle without either doing some exaggerated movement as you described where I take my

hand and come around and point it to the side and shoot you in the side?

A I can't testify to every possible scenario. I can say I know that the pathway that the gun -- I know the relationship of the gun to the body when it was fired, and so, I mean, bodies could be in motion, but given the circumstance where two people are directly facing each other, you know, one way would be like that. It is hard to imagine another way to have the left-to-right pathway if they are facing like this. A slight turn like that (indicates) would change everything.

Q Okay. All right. The other thing is that you found stippling, which is powder burns, on the arm of Ms. McDonald, correct?

A Correct, but not where you are placing -- you were touching your wrist on the arm, which is above the elbow directly adjacent.

Q So you found it here (indicates)?

A Correct.

Q And then it says your report says this was a two to two-and-a-half inch area of stippling on the left arm; that is what the report says, is it not?

A It does.

Q But you are saying it is not on the arm, it is on

the shoulder?

A No.

Q No, you are not saying that?

A I'm not saying that. Below your elbow is your forearm. Above the elbow is your arm. Your shoulder is up top. It's an anatomy issue.

Q Point for me where it was that you say the stippling was. I'm trying to figure it out, because it says the arm.

A Right. For the jury, to me this is the forearm, this is the arm, between elbow and shoulder. The entrance wound was right here. The stippling was on the arm immediately adjacent to that entrance wound, and it was shown in the exhibit rather well, I believe.

Q Okay. You can -- let me go back and ask you, when you examined the body of Ms. McDonald, did you find any facial bruising on her at all?

A I did not.

Q Any contusions or -- and I noticed you said earlier that you found some healing spots on her; what does that mean?

A So those are the scrapes on her forearms, so the fact they were healing means they would not have occurred immediately before the death, it would have been the day before, couple days before, but not

approximate to the death.

Q At any point in time did you try to make a determination as to -- being a forensic expert, did the Solicitor ever discuss with you prior to -- let me ask you it this way. Has the Solicitor had a conversation with you prior to today about this case?

A Yes, I know we have spoken on the phone once or twice.

Q Were you asked at any point in time to try to make a determination as to how the shot was fired or the angle that the shot was fired that killed Ms. McDonald?

A I believe that is two questions. We didn't talk about how the shot was fired. We did talk about the pathway as we discussed, left to right and downward, and I believe what structures it injured.

Q And when you say left to right and downward, so the shot had to have been to the left and also going down at the same time?

A Correct. Correct.

Q Now, to be fair, once a bullet enters and it strikes different arteries or organs inside the body, the trajectory of the bullet can change?

A It can change slightly.

Q And do you know whether there was any change in

this?

A It does appear that the bullet, after it entered, traveled downward. It kind of levels off a little bit and went a little bit more left to right than downward.

Q Now, you said that there was marijuana metabolite, and then you said there was hydrocodone, and you described hydrocodone as a pain killer or reliever?

A I believe I said pain medication.

Q Is that prescribed?

A It is.

Q What was the level of that?

A 45.4 nanograms per milliliter, and the reference range the laboratory produces as far as a therapeutic is between 10 and 40.

Q So 10 and 40 is for therapeutic purposes, which means if the doctor was giving it to you for pain or something. So hers was what?

A 45.4.

Q Do you know whether or not hydrocodone was administered by either EMS or Grand Strand?

A I don't have a record of that, and I don't believe hydrocodone is something generally used in an acute situation.

Q So it normally would not have been something that

doctors or EMS would use?

A It is not something we generally see in an emergency situation.

Q The therapeutic level of that would be from 10 to 40, and hers was at 45?

A Correct.

Q I asked this once before, and I think you gave me an answer and I think I understand what you are saying, but I want to be clear. When we talk about the shooting and how it happened, I asked you specifically if the two people facing each other, three or four feet away from each other, they are facing each other and a gun is pulled out, the arm is lifted and the gun is fired, is there a way to have made that particular shot like that?

A Yes. Again, if the arm was out, not straight out, but if it was up at an angle, or if the decedent sees the gun presented and would turn, that would be another way which it could happen.

Q What if -- what if the person was standing there and they were -- there was some sort of a struggle in regards to the gun, could a shot have been made in that way?

A Yes. Again, the thing we run into -- a struggle with the gun with the decedent?

Q I'll give you an example. If the two of us are facing each other and the gun is on the ground and I reach down to get it and you grab my hand and pull it back and the gun goes off, is that conceivable that that shot could be made that way?

A Well, the gun would have had to have been at least 6 inches to a foot from the body as we didn't have any evidence of soot. If there was a way to get in that situation -- the gun, 6 inches to a foot from the body, I believe that would be possible. Again, I can testify to the relationship of the gun to the body. With the decedent and shooter both in motion, there is many different ways it could occur.

Q So there are, in your opinion, more than one way that the shooting could have happened?

A Given solely the injuries and pathway of the bullet.

Q But the one thing that we agree on is that if two people are facing each other, as you and I are facing each other, and in a normal gun situation pointing like that, that is not consistent with the angle of that?

A Correct. If you were to hold like that and I was to face you, you would not get this injury.

MR. WILSON: Court bear with me just one second?

THE COURT: Yes, sir.

Q (MR. WILSON) With hydrocodone, what is the effects of it if it is taken more than a prescribed dose? Other than relieving pain, what does it do?

A You know, that is the main way to use it, to relieve pain. Hydrocodones, or opiates in general, are known to have a calming effect, kind of a numbing effect.

Q Kind of like cocaine?

A No. Cocaine is more opposite. Cocaine gets the system more revved up.

Q What about marijuana, is it consistent with -- more -- I'm trying to determine what the symptoms are that a person would experience who is under the influence of it?

A Sure. You know, given the fact that any individual can react differently, two people can drink a beer or smoke marijuana and act differently, but generally speaking, the most common effects are like a numbing sensation, much more similar to marijuana than cocaine.

MR. WILSON: I don't think I have anything else. Thank you.

THE COURT: Redirect?

MR. DeBUSK: Yes, Your Honor.

REDIRECT-EXAMINATION

BY MR. DeBUSK:

Q The position of the stippling here, does it tell you anything about the position of the arm when the gun was fired, if the arm was up, out or over?

A The fact that the stippling is essentially immediately adjacent to the entrance wound implies the arm was most likely against the body. If the arm was reached back like that, it would be very difficult to get the stippling on top of the arm and then have the entrance wound down here.

Q And if it was up here, the position would have come through the arm to get there, correct?

A Yes.

Q So it sort of had to be down like this (indicates)?

A Most likely.

Q Is this approximately the trajectory; am I right (indicates)?

A Approximately, yes.

Q And if someone was standing face-to-face and someone pulled a gun --

JUROR: If the Solicitor can speak up a little bit.

THE COURT: You need to speak up.

MR. DeBUSK: Yes, Your Honor.

Q (MR. DeBUSK) If the trajectory is about like that --

A It is going to be more -- right now that would come at your back, so more like that (indicates).

Q Okay. Just maybe I'm not understanding, would you approach. If you could, demonstrate to the jury where the entrance wound was and where the exit wound was.

A Entrance wound was just in front of the left armpit, again about 11 inches below the top of the head. Exit wound a bit lower, 21 inches, so 10 inches lower, posterior axillary line, so towards the back of the armpit.

Q So, hence, the slightly descending trajectory and coming from the side?

A Correct. Slightly from front to back. In front of the armpit here, and out of the back of the armpit on the right.

Q So more like that (indicates)?

A There (indicates).

Q Okay. Standing face-to-face, it is different to get that, but if someone was to duck away from a threat, it would be much more likely; is that correct?

A Correct. As you see, the rod was essentially

pointing at me.

Q If someone pulled a gun, is that an unusual reaction to have?

A I wouldn't think so.

THE COURT: Go ahead and have a seat. Thank you very much.

MR. DeBUSK: Nothing further.

THE COURT: Anything on those, Mr. Wilson?

MR. WILSON: No, sir.

THE COURT: Solicitor, do you wish the witness to be excused?

MR. DeBUSK: We do.

THE COURT: Any objection?

MR. WILSON: No objection.

THE COURT: You are released from your subpoena. Your next witness, please.

MR. DeBUSK: That is the case for the State.

THE COURT: State rests?

MR. DeBUSK: Yes, Your Honor.

THE COURT: There is matters of law at this point in time?

MR. WILSON: Yes, sir, Your Honor.

THE COURT: Very good. Ladies and gentlemen, we have concluded the State's presentation of the evidence at this stage of the trial, and in every

criminal case there are matters of law that the Court has to take up with the attorneys regarding the case, and I need to do that outside of the presence of the jury. So I need for you to go to the jury room. We'll move that along with it as quickly as possible, and I'll call you back out whenever we're ready to resume. All right. Thank you.

(The jury exits at 2:46 p.m., and the following is heard out of the presence of the jury.)

THE COURT: Yes, sir.

MR. WILSON: At this point we move for a directed verdict on the grounds that the evidence that has been produced by the State fails to meet the elements of either murder and/or possession of a pistol during the course of a violent crime by the defendant, and we ask the Court to direct a verdict of not guilty on both charges.

THE COURT: All right, sir, very good. When ruling on a directed verdict motion, the Court is concerned with the existence or non-existence of evidence, not with its weight, not judging believability or creditability, that is for the jury. The defendant would be entitled to a directed verdict when the State would fail to produce evidence of the offense charged, or when the evidence merely raises a

suspicion that the accused is guilty. I'm not required to find the evidence infers guilt or innocence to the exclusion of any reasonable hypothesis. What I have to do is look at all of the evidence and all of the reasonable inferences deducible therefrom in the light most favorable to the non-moving party, that here is the State. If I find that there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, then the case should be submitted to the jury.

In this particular case, we have the testimony of Trudy Cox, then the testimony of Schanski Hemingway, the testimony of Mr. Kendrick Green, testimony of Nikara Rush, Officer Timothy Cast, Jill Domogauer and the autopsy from the forensic pathologist. There has been specific testimony from the witnesses that the defendant intentionally went and procured a weapon, brought that weapon to the scene, intentionally pulled that weapon out, intentionally pointed it at the victim and fired the fatal shot. The testimony -- again, it is not my job to judge creditability and believability, both is for jury, but that evidence exists.

Further, evidence exists that the trajectory was

in a downward manner, that there is evidence of stippling that projects a distance of 2 to 4 feet, the absence of soot as testified by the forensic pathologist, that the gun had to be at least 6 inches to a foot away from the victim when it was fired because there is no soot found, and all of that argues that this was a deliberate and intentional act on the behalf of the defendant. Again, it is up to the jury to weigh that evidence and judge the believability and creditability, but the evidence exists.

If the jury finds the defendant guilty, there would be more than sufficient evidence to support that verdict. I respectively decline to grant your motion for a directed verdict.

Further motions?

MR. WILSON: Yes, sir. The defendant is likely to take the stand. I would ask the Court to inquire of him if that is his desire to take the stand and testify, and I would also ask the Court to discuss with him his criminal history before he takes the stand.

THE COURT: Very good. All right. If you would, Mr. Wilson, Mr. James Wilson, stand up, please, sir. Place him under oath.

JAMES WILSON - EXAMINATION BY THE COURT

(JAMES WILSON, having been duly sworn, testified as follows:)

EXAMINATION

BY THE COURT:

Q At this time I'll explain to you certain of your rights. If at any point in time you don't understand anything or you need an explanation, you need to let me know. You can raise your hand, you can tell your attorney, but you have to indicate it to me that you don't understand or you have a question. Are we on the same page?

A Yes, sir.

Q We've reached the stage of the trial where you can present your defense. You have the right to claim the protection given to you by the Fifth Amendment of the Constitution of the United States of America. That amendment states, in part, that no person shall be compelled to testify against themselves, that means nobody can make you testify. You are welcome to do so, and you can do so if you want to, but no one can make you do that; you understand that?

A Yes, sir.

Q It has to be your choice, and your choice alone; you understand that?

A Yes, sir.

Q You can ask your attorney questions and family questions, but they are not making the decision, you are the one making the decision; you understand that?

A Yes, sir.

Q Now, if you decide to testify, you will be under the same rules as all the other witnesses that you have seen testify in this case. You will be examined or asked questions about your attorney, cross-examined by the State as to any matters the Court deems proper or relevant; you understand that?

A Yes, sir.

Q That includes the potentiality of a prior criminal record as to the ability of the State to ask you if you have been convicted of those crimes in the past; you understand that?

A Yes, sir.

THE COURT: So, Solicitor, I want you to state for the record exactly which crimes that you would intend to examine the defendant about.

MR. DeBUSK: From March 2, 2010, strong arm robbery. From March 2, 2010, burglary second degree, non-violent. From March 4, 2013, unlawful carry of a pistol. October 22, 2014, possession of cocaine, first offense. From October 22, 2014, possession with intent to distribute cocaine base. Those are the

ones, Your Honor.

THE COURT: Mr. Wilson, do you object to the State presenting that record to the -- as questions to the defendant?

MR. WILSON: The only one that I have any objection to, Your Honor, I think is the March 13, the charge of -- conviction for carrying a pistol, unlawful pistol.

THE COURT: And the grounds would be?

MR. WILSON: The penalty, I'm not sure that -- is it more than a year?

THE COURT: Let's look at Rule 609. And Rule 609 says, For the purpose of attacking the credibility of a witness, evidence that a witness -- other than the accused, okay. All right. We'll read it. Evidence that a witness, other than an accused, has been convicted of a crime shall be admitted subject to Rule 403 if the crime is punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an excused has been convicted of such crimes shall be admitted if the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused and -- then there is the crimes of dishonesty, and that's not what this is

about.

So we have two categories. Evidence that a witness, other than the accused, has been convicted shall be admitted subject to Rule 403 if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted. And then it says, And evidence that an accused has been convicted of such a crime shall be admitted if the Court determines that the probative value of admitting this evidence outweighs the prejudicial effect to the accused.

Now, what about the one-year argument that defense is making?

MR. DeBUSK: It is clear that unlawful pistol carries up to one year, not over.

THE COURT: All right. So you'll not be asking him about that one?

MR. DeBUSK: Yes, Your Honor.

THE COURT: So other than that, any other objections to those crimes as stated by the State?

MR. WILSON: No, sir.

Q (THE COURT) So, Mr. James Wilson, for the purposes of the record, I do find that, and we'll go over these crimes in a second. If the State asks you about the crimes that I'm allowing, and you admit that

you committed those crimes, that is as far as it goes, that you have been convicted of those. If you deny such, then the State would be allowed to produce evidence to prove the conviction, if it is possible; do you understand that?

A Yes, sir.

Q Further, I do find for the record, under 403 and an analysis of the probative value and prejudicial effect, that the probative value, judging the creditability and believability should you testify outweighs any prejudicial effect to you. I find it is proper cross-examination. It is proper for the jury to judge your creditability and believability to know these particular offenses; therefore, I find, again, that the probative value outweighs the judicial effect.

So I'll allow the State to ask you if you were convicted on March 2, 2010 of strong arm robbery; if you were convicted on March 2, 2010 of burglary second degree, non-violent; if you were convicted on October 22, 2014 of possession of cocaine, first offense; and that you were convicted on October 22, 2014 of possession with intent to distribute cocaine base. If you decide to testify -- as I indicated to you, it has to be your decision, freely made, voluntarily made, knowing everything that we have just

talked about; do you understand that?

A Yes, sir.

Q Do you have any questions, whatsoever, that you need to ask the Court or your attorney or have something explained to you about this?

A No, sir.

Q If you decided not to testify, you wanted to exercise your Constitutional right, I would instruct the jury and make it clear to the jury that they can't give that fact any consideration, whatsoever. They can't talk about it in the jury room. They can't use it mentally to make a decision. They can't use it in any way, the fact that you did not testify in this case, and I'll make it clear to them, that that is not part of the case and they can't use it in any way; do you understand that?

A Yes, sir.

Q All right, sir. Now, again, have you understood everything we've talked about?

A Yes, sir.

Q Do you want to ask your attorney questions before I ask you what you want to do?

A No, sir.

Q Do you wish to exercise your Constitutional rights, or you do want to testify in this case?

A Testify in this case.

THE COURT: Very good. Thank you very much. With that, let's take a short break for five minutes, get organized and then we will come back in and start the defense's evidence.

(A recess was taken.)

THE COURT: Ready to proceed?

MR. DeBUSK: Yes, Your Honor.

THE COURT: Defense?

MR. WILSON: Yes, sir.

THE COURT: Ask the jury to come in, please.

(The jury enters at 3:09 p.m., and the following is heard in the presence of the jury.)

THE COURT: Mr. Wilson, the defense please.

MR. WILSON: Yes, sir. We call Jamie Spivey.

(JAMIE SPIVEY, having been duly sworn, testified as follows:)

THE CLERK: State your name and spell your last.

THE WITNESS: Jamie Spivey, S-P-I-V-E-Y.

DIRECT-EXAMINATION

BY MR. WILSON:

Q Ms. Spivey, if you would, how old are you?

A 20.

Q And do you have children?

A Three.

Q And who is the father of those children?
A James Wilson.
Q Now, back in May of 2015, were the two of you all having another baby?
A Yes, sir.
Q And did that baby come about sometime in October of 2015?
A Yes, sir.
Q Now, let's go back to May the 8th of 2015, and let's talk about that day and what happened that day. If you would, let's start earlier in the day before -- at some point in time you had a confrontation with Trudy on May 8th; is that correct?
A Yes, sir.
Q When that initial contact occurred, where were you coming from or where were you going with your child?
A [redacted] Racepath Street.
Q Why were you going there?
A For cigarettes.
Q Is that a store or something?
A No. I got some from the girl who stayed there.
Q So you got some cigarettes. So you went to borrow cigarettes from a friend or someone that lives at that location?

A Yes, sir.

Q And then what? As you are leaving this location with the cigarettes, where are you going?

A I was walking back home.

Q And who do you have with you, if anyone?

A I had my son.

Q And how old was your son at that time?

A About [redacted].

Q Could he walk?

A No.

Q So he was an arm baby?

A Yes.

Q So you were having to carry him from wherever you went to wherever you were going?

A Yes.

Q Now, tell us what happened from that point?

A I walked outside and I heard Shullamite say something --

Q Shullamite is?

A Trudy Cox. So I looked at her and I said, I'm tired of you playing with me. She was like, What the F, something, something, something, and she was going on and on, and we were going back at it.

Q What had she said about you that got you --

MR. DeBUSK: Objection, Your Honor, hearsay.

THE COURT: Are you talking about then, or are you talking about the past? I don't understand the question first.

MR. WILSON: All right, sir. I'll rephrase it, Your Honor.

Q (MR. WILSON) Let me ask it this way. You and Trudy had words, correct?

A We were never cool. We always didn't like each other.

Q So tell me what it was that she said to you on this day, which is May 8th, that got you --

MR. DeBUSK: Objection, Your Honor, hearsay.

THE COURT: I'm going to allow it. You may proceed.

Q (MR. WILSON) Tell me what she said to you on May 8th that got you upset.

A I was walking by and she said, You look dirty, or something.

Q She said you were dirty?

A She said I looked like I was dirty.

Q What did you say in response to her?

A I said, I'm tired of you playing with me.

Q Then what happened?

A We argued for awhile, and she was like, Go be a mother, go take your baby in the house. I said, It's

okay, I'll take him in the house and I'll come back for you.

Q Now, at some point in time did you see -- while you were standing there with Trudy, did you see Nikara and Ms. McDonald?

A Yes, sir.

Q Tell me about that.

A I was walking in the yard -- well, we was still arguing when they pulled up in the middle of the road, and I was walking away, but Trudy was talking junk about me to Nigeria and Nikara, and I heard her, but I kept walking because I didn't want to be jumped or anything by those three.

Q So you leave there, and where do you go when you leave them?

A I went back to my mama's house.

Q How long would you say the two of you argued there?

A About five minutes.

Q And then you leave, and where do you go?

A I went home.

Q Do you make any stops between the time you leave the argument and the time you get to your mom's house or home?

A No.

Q And so tell me what happens once you get home.
A I was mad. I was watching her steady talking junk, and I was telling James -- I was like, I don't know why she's starting with me, and he's like, Jamie, don't go over there. Jamie, go back in the house with your kids; it's not worth it.
Q So when you got home, you could still hear her?
A Yeah, she was being loud in the road.
Q And she was having conversations with whom?
A Nikara and Nigeria.
Q About you?
A About me.
Q So you are home, but you can hear all of this going on?
A Yes.
Q So then what happens?
A James told me he was going to get a jacket from the hotel, and I asked him to grab some baby wipes.
Q And did he leave then?
A He left about five minutes after that.
Q Was there any discussion between you and James about your going back over there to fight with --
A No. I was arguing with him, and James instructed me not to go back over there. He told me to go in the house with my kids.

Q And at some point in time -- how long did you stay in the house before you went back over there?

A About 10, 15 minutes.

Q Now, when you were in the house, who was in your house with you?

A I have an autistic brother, step-father, mother and my two kids.

Q And were they all home?

A Yeah.

Q And I don't want to know what they said, but did you have a conversation with them about what Trudy was saying about you?

A Yes.

Q And as a result of that, what did you do?

A I told my mom I was going to cool off, if she can watch the babies for me.

Q And then what?

A And then whenever I seen Nigeria and Nikara leave, I went back over into the yard where Trudy was.

Q So once Nigeria and Nikara left, you went back over there?

A Yes, sir.

Q Now, was there any reason that you didn't stay over when Nigeria and Trudy and Nikara were there?

A As I said before, I didn't want for get jumped.

Nikara likes drama, and I knew she would try to get into it, so I decided when they leave, I can go there by myself.

Q So you thought then that they were going to jump you together?

A Yeah, no telling what they were going to do.

Q And that is why you left?

A Yes, sir.

Q Then you go back when they leave, and you all end up having a fight?

A Yes, sir.

Q Now, when you go back over to where Trudy is, where is James at that point?

A I'm not sure.

Q Well, did you see James between the time he left and the time you went back over there to confront Trudy?

A No, sir.

Q You did not?

A No.

Q Did you have any conversation with him between the time that you walked away -- or he left in a cab, and the time you went back over there to have a confrontation with Trudy?

A Huh-huh.

Q Huh-huh, meaning?
A No.
Q When is the first time that you knew that James was back from wherever he had gone?
A When the fight was going on.
Q How did you know it then?
A Because I heard him screaming, Please let go of my baby's mama, she's pregnant. You all, she's pregnant. She's pregnant, let go of this fight. She's pregnant. She's pregnant.
Q Now, you knew Ms. McDonald and you knew Nikara and you knew Trudy?
A We all grew up together.
Q So you all knew each other?
A Yes, sir.
Q Did they all know you were pregnant?
A Yes.
Q And at the time you and Trudy were fighting, there is no question about the fact that you were the one that went back over there to where she was?
A Yes.
Q And you thought you were just going to have a one-on-one fight with her?
A Yes.
Q So had you all ever had a fight, you and Trudy?

A No, we never fought before.
Q What about Ms. McDonald?
A No, we never fought.
Q And Nikara?
A No, we never fought.
Q Now, what I want you to tell me now is this. When this fight -- and this is the second altercation, tell me what happened from the time you get over to come back across the road or path, or whatever you call it, over to where Trudy is, tell me what happens from that point?
A I went back across the street and Trudy was on the phone, and she said, Dirty being this --
Q Listen to me. You talk kind of soft, so I need you to speak slowly and use the microphone so they can hear what you are saying.
A I went back over there and Trudy was on the phone with someone and she was steady calling, This dirty B this, this dirt B that. So I walked up behind her, and Deandra, the girl who lived there, she was like, Trudy, and when Trudy turned around, we started fighting.
Q Go ahead and tell me what happened.
A So we started fighting. After awhile, we heard people coming over there. I heard my baby's daddy. He was saying, Please get off of her, she's pregnant. My

mom was trying to talk to them to get them off of me, and I remember right before the gunshot Nikara was holding onto me, and I remember because I was pulling, and she was like, Ha, ha, ha, this is Niki girl.

Q So you felt like she was holding you?

A Yeah, and I felt when she was holding me, Trudy was still hitting me.

Q Okay. Those plaits that we've been talking about for the last day-and-a-half, those were plaits from your head?

A Yes, the black ones. And I had some red color ones, too.

Q So you had black and red ones. And they were pulled out?

A Yes, sir.

Q Do you know who pulled them out?

A No, sir.

Q Were there other people -- let me ask it this way. How many people, to the best of your knowledge, was in that little circle where the two cars were, how many people in that little area?

A I would say about 15, 20 people.

Q And who do you remember being there before the shot was fired?

A I don't remember seeing people, I just heard

people. Because when that was going on, me and Shullamite were both pulling each other's hair, so we both couldn't see anything.

Q Shullamite, meaning Trudy?

A Trudy, yeah.

Q So you were tussling, so you couldn't see all what was happening?

A Right.

Q But you could hear voices and knew other people were around?

A Right.

Q So what I want you to tell me is other than Nikara, who else was holding you or held you, to your knowledge?

A There was so many people over there I just remember her words exactly, Ha, ha, ha, this is Niki.

Q Where were you struck during the course -- obviously we know your hair was pulled out, where were you struck?

A In the face.

Q More than once, or just once?

A A couple of times, I know that. It was wet outside, and I did slide on the ground.

Q Now, the two of you tussling, how long would you think that this tussling, or whatever it was that you

were doing, hair pulling, how long did that go on?

A I don't think we were doing it more than four, five minutes before people were coming over there breaking it up.

Q Did you break up or stop fighting at any point in time before a shot was fired?

A No, sir.

Q So tell me about that. Take me through this. You are fighting, you hear a shot, tell me what happens.

A Well, after that, I believe we both let go of each other's hair. Everyone was looking around, and I guess everyone thought shot a gun in the sky.

Q Go ahead. Tell me what happened. What did you do from that point?

A I was walking away, and I turned around and I saw James, and he was just like this (indicates), and I heard someone say, You better run, he got a gun.

Q Then what?

A Then I turned around, and I didn't see him anymore. When my mom looked over, she saw Nigeria on the ground. She wasn't screaming or anything, just quiet.

Q Did you see Nigeria on the ground?

A Yeah.

Q You did?

A Yes.

Q How many shots were fired? Was there just one shot, or more?

A One.

Q And after the shot was fired, did you have a conversation with James?

A Yes.

Q Tell me what you said.

A First, I called him and he answered the phone, You okay, he was like, Yeah, and we didn't talk.

MR. DeBUSK: Objection to hearsay, Your Honor.

THE COURT: Come and talk.

(Whereupon, a bench conference was had.)

THE COURT: Go ahead.

MR. WILSON: Thank you, Your Honor.

Q (MR. WILSON) So did you call him, or did he call you?

A The first time, I called him.

Q And then did you talk to him a second time?

A Yeah.

Q Now, let's go back to when the shooting happened. When the shot was fired, did you see James at that point? Did you see him there at the time the shot was fired?

A No.
Q Did you see the shot being fired?
A No.
Q Did you see Ms. McDonald being hit by a bullet?
A No.
Q Did you see her actually fall?
A No.
Q When you saw her, where was she after the shot was fired? When you saw her again, where was she?
A From my knowledge, she was closer to the trailer.
Q Closer to the trailer, meaning up towards the front of the cars?
A Yeah.
Q And so when -- but you saw her there after the shots on the ground?
A Right. Right.
Q So once the shots are fired and Ms. McDonald is on the ground, where do you go?
A I was freaking out. I was just trying to find somewhere to go for me and my kids.
Q You and your kids?
A Kids.
Q You had all of them with you? So I guess my question is a little vague, let me try to -- how long did you stay right there in that little general area

where the shooting took place after the shot was fired?
A Two, three minutes.
Q And what did you do during those two, three minutes?
A I walked down the road.
Q So immediately after the shot, you walked down the road?
A No. My mom went over there, and I looked for a minute, because like she said before, she didn't know if she was shot or anything, but when I saw that she was shot, I just walked away.
Q So after you saw that Ms. McDonald was shot, you turned and left?
A Yeah.
Q And where was James when you turned to leave after you saw Ms. McDonald had been shot? Where was James at that point?
A I'm not sure.
Q You were telling us earlier you saw him after the shooting?
A I did.
Q Where was he, that is what I'm asking? After the shot was fired and you saw Ms. McDonald on the ground, where was James and what was he doing?
A He was in the yard, and he was just like this

(indicates).

Q How far away from Ms. McDonald would you say James was at the time you saw him doing this (indicates)?

A Like 10, 15 feet away.

Q Further than I am from you, or closer?

A About this much.

Q The distance between the two of us at this point?

A Uh-huh.

THE COURT: Yes or no?

A Yes, sir.

Q (MR. WILSON) When you are all standing -- and don't tell me the conversation, but when you are standing there and you see that she's been shot and James is doing this --

A At that point --

Q No. No. Listen. Hold on. Listen to my question first.

A Okay.

Q James is standing there with his hands up, and what do you say to him? Don't say what he said, but what did you say to him, if anything?

A Nothing.

Q You didn't say anything to him? What did he do then after he had his hand up and you didn't say

anything to him? Don't tell me what he said to you, but what did he do after that?

A He left.

Q He left, okay. Do you know why he left? Don't tell me why, but do you know why he left?

A Yes.

Q Now, when James leaves, how long is he gone before you have another conversation with him by phone according to you?

A Maybe about 45 minutes to an hour.

Q And then you said you had a second phone call where you all talked a second time?

A Yeah.

Q Tell me -- can't tell me what he told you, but what did you tell him on the phone, as best you remember?

A She's dead.

Q You told him that Ms. McDonald had died?

A Yeah.

Q Is this in the first conversation that you had on the phone, or the second conversation?

A Second.

Q Did you have any more conversations with him that particular day, that being the 8th?

A No.

Q What about the morning of the 9th?
A Yes.
Q You know where he was when you talked on the morning of the 9th?
A Yes.
Q Where was he?
A He was on his way to turn himself in.
Q And did he actually turn himself in on the morning of the 9th?
A Yes, sir.
Q Do you know Kendrick Green?
A Yes.
Q Did you see Kendrick Green out there that night before the shots were fired, or shot was fired?
A Yes, I seen him just about every night.
Q You see Kendrick about every night? What I'm asking is specifically when the shot was fired -- before the shot was fired, did you see Kendrick in this -- let me show you what is marked as State's Exhibit No. 11, a photo of the vehicles that were parked in front of the mobile home. Did you see Kendrick in this area here before the shots were fired?
A No, sir.
Q Did you see Kendrick after the shot was fired?
A Yes.

Q I don't want to know what Kendrick said to you, but what did you observe or see from Kendrick when you did see?

A He was behind me with a gun.

Q Have you had any more contact with Kendrick after that?

A Yes.

Q Was that on the same night, or different night?

A Different night.

Q When was that that you had more contact with him?

A It could have been like a week or two after the murder.

Q Don't tell me what he said to you, but what did he do?

A He just said stuff, he didn't do anything.

Q As a result of that, did you feel threatened?

A I don't trust him around me.

MR. WILSON: Can I have one second, please, Your Honor?

THE COURT: Yes, sir.

(A brief pause in the proceedings.)

Q (MR. WILSON) One last thing the conversations -- you said that you had two conversations on the night that this occurred who initiated those calls? What I'm asking is did he call you, or did you call him?

A Both. He called me and I called him.

MR. WILSON: I don't think I have anything else. Thank you.

CROSS-EXAMINATION

BY MR. DeBUSK:

Q You've been out there and watched this whole trial?

A I've been here.

Q The other witnesses, they didn't come in here until you testified; you watched the whole trial, right?

THE COURT: You need to answer.

A Yes.

Q (MR. DeBUSK) On May 8, 2015, after Nigeria was taken away by the ambulance the police came to Racepath, didn't they?

A Yes.

Q And you spoke to Detective Rhodes, didn't you?

A Yes.

Q And you lied to him, didn't you?

A Yes.

Q What did you lie about?

A About the hotel room we were at.

Q Did you also tell him when he came back he hadn't changed his clothing, didn't say anything about a

jacket?

A I didn't see a new jacket.

Q So when you saw him come back, you didn't see him with a jacket?

A He didn't get one, but I told you I don't remember seeing him afterwards.

Q When he was standing there like this, did he have a jacket on?

A I don't remember.

Q You also told the police that he rented the room, that was a lie, too, wasn't it?

A Yes, I just said I lied about the room.

Q But you said he paid for the room, but it was actually Peanut, wasn't it?

A Peanut got the room in his name, but James paid for it.

Q But you were willing to lie about the hotel to protect him?

A Yes.

Q You are willing to lie about James Wilson because you have three babies with him?

A I had two babies with him.

Q The one in the womb, was that his too?

A Yes.

Q So two babies and one coming with him, so you are

willing to lie to protect him; is that correct?
A No.
Q You weren't lying to protect him? Why were you lying? Any reason why you were lying other than to protect him?
A No.
Q You talked to the police twice, didn't you?
A Yes.
Q Once at the station, and once at Racepath?
A Yes.
Q You didn't say anything about Nikara saying anything to you taunting or touching you, did you?
A She did, but I didn't tell them anything --
Q You didn't tell the police?
A I really didn't tell them anything.
Q You did tell them that Nigeria didn't touch you, didn't you?
A She didn't touch me.
Q You say you stopped to get cigarettes?
A Yes.
Q Weren't you pregnant?
A Yes.
Q Isn't it a bad idea to smoke when you're pregnant?
A My daughter didn't complain about it.

Q Bad idea to get in fights when you are pregnant?
A Yeah.
Q Any doubt that you started that fight with Trudy?
A Well, she started it with the talking, but, yes, I did start the physical fight.
Q Despite the fact that you were pregnant, despite the fact you were pregnant, you started a physical fight?
A Yeah.
Q Did you know James Wilson's other baby's mama Tatiana Dahli (phonetic)?
A He doesn't have another baby.
Q You are saying he doesn't have another baby mama?
A No.
Q When you went back to start that fight, where were Niki and Nigeria?
A Like I said, I waited for Niki and Nigeria to leave.
Q Where did they go?
A They were in Nigeria's yard, house.
Q How far away is that from where the fight started?
A About two, three minutes.
Q If you are really afraid of them, you knew they could have gotten over there?

A But I waited until they left.

Q They could have walked right back over there. They could parked and walked from where they were parked to where you were fighting in seconds, couldn't they have?

A They could have, yeah.

Q Just like your mother walked in there to intervene in the fight?

A To do what, break up the fight?

Q Just like your mother walked over there to intervene in the fight?

A To break up the fight.

Q In fact, they were closer than your mother was. Your mother was across the street. They were on the same side of the street?

A Right.

Q You talked to the police and you said your head was down. You didn't see who was around, did you?

A Right.

Q You didn't tell them anyone that was there, but now you are saying that you know Kendrick Green was there?

A He was not out there.

Q But you told the police?

A They said when the fight happened was he out

there; no, he was not out there.

Q But during the course of the fight, couldn't he have walked up behind the cars?

A Yeah, but I heard the voices. They were all girl voices except for James and Shaquile's (phonetic).

Q So you were listening to voices, cataloging voices at the same time --

A Yes, I was.

Q If he walked up and not said anything, he could have been there?

A He could have been there.

Q You know James to carry a gun before?

A Yeah, before.

Q What kind of gun?

A I'm not sure.

Q Was it black?

A Yeah, he had a black one.

MR. DeBUSK: Nothing further.

MR. WILSON: Nothing further.

THE COURT: You may step down. Next witness?

(JAMES ABDULLAH WILSON, having been duly sworn, testified as follows:)

THE CLERK: State your name and spell your last for the Court.

THE WITNESS: James Abdullah Wilson, W-I-L-S-O-N.

JAMES ABDULLAH WILSON - DIRECT EXAMINATION

DIRECT-EXAMINATION

BY MR. WILSON:

Q James, how old are you?

A 23, sir.

Q And you have children?

A I have three children, sir.

Q And who are your children with?

A Jamie Spivey.

Q Now, how long have you and Jamie been seeing each other? How old is your oldest child?

A My oldest is [redacted], sir.

Q How long have the two of you guys been a couple or been significant others?

A For four years, sir.

Q Before we get started, let's talk a little bit about you. You have a criminal record, do you not?

A Yes, sir, I do.

Q Strong arm robbery and burglary second non-violent in 2010?

A Yes, sir.

Q Possession of cocaine, and possession of cocaine with intent to distribute base in 2014?

A Yes, sir, I did.

Q Now, you don't deny that?

A No, sir.

Q Let's talk about what happened here. First of all, let's go back and talk about after you were arrested, let's do that first and work our way back. Tell the jury how it was that you got arrested, what happened? How did you get arrested?

A I called dispatch and told dispatch there was a murder or an accidental death in Racepath, Myrtle Beach, South Carolina, and I was the one that was accused of it. I told them where I was at, and I asked the lady would she stay on the phone with me, please, until the officers get there, because I didn't want the officers to do anything to me and I was turning myself in.

Q When you called dispatch and told them to come and get you, where were you at?

A Baptist Church, Longs, Fremont Road.

Q Longs, Fremont Road in the parking lot there?

A Yes, sir.

Q And you are saying that you stayed on the phone with dispatch until the officers arrived and took you into custody?

A Yes, sir.

Q And when you got to the police station, did you meet with this officer, Detective Rhodes?

A Yes, sir. Next day, sir.

Q Very next day you sat down with Detective Rhodes. Did you give Detective Rhodes a detailed audio taped statement about what happened that night?

A Yes, sir, I did.

Q Did you leave out anything that happened that night in your conversations with Detective Rhodes?

A No, sir, I didn't.

Q When you went -- in fact, you were in jail when Detective Rhodes came to see you, right?

A Yes, sir.

Q Did he read you your Miranda rights, a form that tells you you have a right to have a lawyer and a right to remain silent and all of that? Did they tell you all of that?

A Yes, sir.

Q And did you sign it?

A Yes, sir, I did.

Q Did you tell them that you understood it?

A Yes, sir, I did.

Q And you did, you understood exactly what you were doing, right?

A Yes, sir.

Q And you made a full statement to them about everything that happened; did you not?

A Yes, sir.

Q Did they ask you if they could tape-record the conversation between you and them?

A They told me if I made a statement that it would be recorded.

Q Did you ask for a lawyer?

A No, sir.

Q You gave them a statement?

A Yes, sir.

Q Told them what happened?

A Yes, sir.

Q What I want you to do is I want you to go back to -- well, let's do it this way. Tell us what you told Detective Rhodes that day. Tell us what you told him, that it is a good starting point. Start from -- just listen. Start from the beginning of what your conversation with Detective Rhodes was and tell us exactly what you told him?

A He asked what happened, so I told him that I was in Racepath. I was sitting at Racepath at my baby's mama's mother's doorstep. I seen Trudy pull up, and she stopped at her cousin's house. I seen her get out of the car, but I didn't know who she was at that moment. I hadn't seen her in like 2011, 2012. I ain't know who she was at first. She got out of her car and parked her car at her cousin's house. She knocked on

the door. So I'm looking. She left off the porch -- I guess ain't nobody home, she left off the porch and started walking back to her car. Then the dude next door called her name, Hey, Trudy, come here. So she turned around and came in the yard and she looked at me and was like, I remember you, you are Girl's baby daddy. I was like, Yeah. She was like, I remember you, but I don't remember your name. I was like, Yeah, that's me, whatever. My phone rung. I answered my phone, and when I answered my phone, my uncle was like you got some weed --

Q Don't tell me what someone said to you, tell me what you say.

A I told my homeboy that I had weed or whatever, so he came to Racepath.

Q Meaning marijuana?

A Yes, sir. I come back and sat on the porch. Trudy is still in the yard. I see this Cadillac pull up behind her car. I see Trudy walk up. So I'm sitting on the porch and I hear arguing. So I know my baby mama's voice, so I got off the porch and she got my baby, so I'm like I'm going to get my baby. I walked over there to get my baby. I asked Trudy what is going on, what are you arguing, and she was like that bitch said something to me. I know how my baby's

mama is, so I (witness crying) -- I went in the house to get my -- ask my baby's mama why are you always arguing, why are you always bothering people.

Q I need you to slow down. I need you to speak slowly and straight into the microphone, so slow down and speak clearly as best you can.

A I asked her -- I was like, man, why are you all arguing? She was like, That bitch said something to me, man, so my baby mama's brother came and he said, You know what type of baby mama you got. You know what type of baby mama you got. So I grabbed --

Q Who is saying "you know what type of baby mama you got"? Who is saying that?

A My baby mama's brother.

Q His name is Shack?

A Yes, sir.

Q Go ahead.

A So I grabbed my baby and started walking outside. My baby's mama and Trudy still arguing. So Nana is just sitting in the road in her car, just sitting in her car. She ain't in the car, ain't arguing about it, she's just sitting in the car. So they still arguing. My baby's mama's brother is behind me, and my baby's mama is behind my brother. So they still arguing. So my baby's mama like, I'm tired of you, tired of you.

She's like, What's up, you want to fight, you want to fight. So Trudy was like, B, I'm not going to fight you, I'll just pop my truck, I'll just pop my trunk. So I'm like, man, I ain't going to let you use no weapon on my baby's mama, she's pregnant. I was like, Both of you all got kids, you all can fight, you all can fight, but ain't none using a weapon on my baby's mama.

So my baby's mama's brother is like, No one ain't using no weapons on my sister, man. We got weapons, too. You ain't using no weapon on my sister. So Nigeria was like, There ain't going to be none of that. So I was like, Man, ain't nothing like that, NaNa. You need to tell your friend to stop threatening my baby's mama. She ain't threatening to use no weapon against her. So I'm like, Man, come on, Jamie. I'm like, Come on, you need to stay from over there.

So we walked back to my baby's mama's house, and I put my baby down. I tell my baby's mama, I said, man, I'm about ready to get my coat, me and you need to chill. You need to go in the house, man. I didn't come down here for all of that. I ain't come down here for all that. I came down to make some money. I ain't got no money. I was like, Man, I got to pay for

a room, because I stayed with her cousin, Dante, like the day before. I stayed with her cousin, because when I came down, I ain't had no where to stay.

Q (MR. WILSON) Let me ask you this. When they were having the argument the first time, and you was telling them that -- they were saying they were going to pop the trunk, or whatever they were going to do, did you have a gun?

A I had my gun on me.

Q What kind of gun did you have?

A Glock 40.

Q What?

A Glock 40, sir.

Q Glock 40?

A Yes, sir.

Q And a Glock 40, is that bigger than a 9-millimeter, or smaller than a --millimeter gun, or do you know?

A It is bigger, I guess.

Q Now, when a Glock fires, what happens to the shell that has been fired, cartridge; what happens to it?

A Comes out.

Q Which side does yours come out of, the right or left?

A Comes out of the right side.
Q So it ejects from the right after shots are fired?
A Yes, sir.
Q So what I want you to do is -- so you are leaving to go get a jacket; is that what you said?
A Yes, sir. I tell my baby's mama, I'm going to get my jacket, you need to chill, you need to go in the house. She's like, Well, fuck that shit, F that. I ain't going back over there. Just grab baby wipes so you don't have to buy no more wipes from Walmart. So I was like all right. I call a cab, get in the cab and go to the room. I grab my coat and grab the wipes. I get back in the cab and come back. When I get back to Racepath, NaNa is still in the same spot she was at. Trudy at the passenger's side talking to Nana, and my baby's mama was in her yard.
Q (MR. WILSON) Before we go any further, do you own a car?
A No, sir.
Q Back then, did you own a car?
A No, sir.
Q Did Jamie own a car?
A No, sir.
Q So the only way you could get back and forth was

by taxi?

A Yes, sir.

Q Go ahead.

A When I get back, I get out of the cab, I see Jamie's mama sitting on the porch, and I seen her stepdaddy in the doorway. So I get out of the cab, and she has my son in her hands.

Q "She," meaning Jamie?

A Jamie. My baby's mama got my son in her hands. She was like, Here, get your baby, I'm about to go back over. I was like, Go back over? Man, chill, my baby is out there. And she was like, I don't care, I don't care, I'm tired of her playing with me, I'm going back over there. So I get frustrated, I'm like, Man, give me my son, and I take my son (witness crying) -- I get my son to her stepdaddy. He was standing in the doorway. By the time I give my son to the stepdaddy, my daughter was in the yard playing, so I tell my daughter to come in the house, and I start hearing fists and start hearing hits or whatever, but I can't see them fight. Only thing I can see is their feet under the car. I can't see them fighting, I just see the feet. So by the time I tell my daughter come in the house, I see her mama jump off the porch and run over.

Q You saw whose mama?

A My baby's mother's mom.

Q Jamie's mom, Schanski?

A Yes, and she ran over there. So when I turned around, I'm thinking now like, she got my baby, she's pregnant with my baby. Trudy was bigger than my baby's mama then. She was actually kind of bigger than my baby's mama, you know what I'm saying. So if something happened, I might lose my child, you know what I'm saying. So when I turned around, I see Nikara, I see Shack and I see Nana run to the fight. NaNa had pulled out of the yard by this time.

So I see NaNa, Nikara and Shack run to the fight, so I jump off the porch and I run over there. So when I get there, they just holding each other's hair. They ain't fighting. So right then ain't really no need for me to jump in or try to break up nothing. And Ms. Schanski was on this side, and NaNa on this side holding Trudy. Ms. Schanski holding Jamie. I was like they'll break the fight up, you know what I'm saying. So I was standing there looking.

Next thing I know, my baby's mama drops her hands and was like, B, get off of me. I ain't going to fight no more. You ain't trying to do nothing. So Trudy was like, F that, and she started yanking my

baby's mama's hair out. My baby's mama was like, B, get off of me, get off of me. So I come in and like, Chill, she don't want to fight no more. She's pregnant. She's pregnant, you know what I'm saying. So NaNa -- when I grabbed Trudy's hands -- I wasn't trying to hurt her, just pry her hands off of my baby's mama's hair, you know what I'm saying. Nana was like, You a nigger. You a nigger. You need to watch out, you a nigger. So I was like, man, that's my baby's mama, she's pregnant. She ain't trying to fight no more, that's my baby's mama. She was like, I don't care, you are a nigger, you need to move. So she bumped me like this, you know what I'm saying. She put her weight into me. She wasn't like pushed me or like tried to hit me or nothing, she was just trying to budge me out of the way. When she budged me out of the way, her hip hit my hip, and my gun fell off my hip. So when my gun fell off my hip, I picked my gun up. And she was kind of like -- I guess she seen my gun fell off my hip, but she was like this, and my gun fell off my hip. I picked the gun up, and she looked at me. She turned like this and looked at me. So I wasn't holding my gun like this, it was like this (indicates), and I pushed her. I was, Man, you need to chill (indicates). When I pushed her, she

fell, like she stumbled back and tried to catch herself like this (indicates), but as soon as she fell back, she tried to grab me, but when she tried to grab me to keep the balance, she grabbed me and slid and her hand was on my hand like this (indicates). So I yanked, but when she first grabbed, the gun was like this and I ain't had my gun tight, you know what I'm saying. When she grabbed my gun, it almost fell out of my hand, so I yanked my gun and all I hear is, Boom, the gun went off. So I'm like -- she falled (sic). She was like this, and she spinned, the whole body spinned. By then, I ain't think -- I didn't think I hit her. She spinned. I thought she was exaggerating, so I'm like, you know what I'm saying. And my baby's mama's brother -- my baby's mama didn't say anything to me. My baby's mama's brother was like, Bro, you need to run. You need to run. They going to try to shoot you. They are going to try to shoot you. So I don't know if he seen somebody grab a gun coming my way or not, only thing I felt like is if they come over here with a gun and they see me with a gun in my hand, and she on the ground, only thing they know is he got a gun in his hand and she's on the ground, that is the only thing I felt. So I did what I know best, I ran, you know what I'm saying.

Q And where did you run to? Tell me where you ran to.

A I ran closer to my baby's mama's house, down Granny's Lane, and I ran through a ditch, and when I got in the woods, I called -- my baby's mama called me first, called me, called my phone.

Q So you ran into the woods, and Jamie called you on the cell phone?

A Yes, sir.

Q What did you talk about?

A She called me and she was like -- she was like, You all right? I was like, Yeah, man. I was like, That girl got hit. At first she was like, I don't know, you just need to run, man. She was like Kenny is going to come behind you, they are going to kill you.

Q Kenny, Kendrick?

A Kendrick. I guess that his name. I don't know his name. She said, They are going to kill you. They talking about they going to kill me. But I was like, But I ain't mean to shoot her. I ain't mean to shoot her. She was like, You need to go, you need to go. So I was like, Man, all right. So I start running.

Q And what happened to the gun?

A I ran through the woods. I put the gun back on my hip when I got in the woods. The woods is deep, you

have to go through vines and all. I'm going through vines, so I had -- first time gun dropped, you know what I'm saying, and I picked it up the first time, put it back on my hip. So I was running through the woods and jump over this big log, like half the size of the table. I jump the log. When I came down, this leg went in the hole, you know what I'm saying. So I felt the gun come off, but when I went down, there was a lot of vines under me, too. So I fell over in the vines, and I ain't seen the gun. So I was like, I'm still in Racepath, they know these paths, so I was like, Man, I got to get out of Racepath. So I keep running through the woods. I come out on Cannon Road, you know what I'm saying. There is this white guy, and he on the fence and he was like, Man, you all right, and I was like, Man, no, man. I accidentally just shot somebody. You need to call the police. You need to call the police. He said, What are you running from. I said, Man, someone behind me, they are going to kill me. So I took off again. When I took off again, I jumped a big fence. I ran to the Dollar General. When I came out, I was on Third. So I knew where I was at, so I ran into Dollar General. I called a taxicab. So when I got in the -- taxicab came and picked me up. I got in the taxicab and went back to my room.

Now I'm thinking I have no protection, you know what I'm saying. They know where my room is at, because this dude let my baby's mama's stepdad use his car to let me get this room, and I'm sure he went back and said, Well, Jackboy has a room at American Best Value, or whatever. So now I'm thinking I'm still in the beach, I need to get home where I'm safe. So at first I called my cousin. He is like I ain't got no ride. I was like it's important, I really need to come home. He said, No, man, I'm going to try to come get you, Man. I'm like all right. I called my friend I sold weed to. I was like, man, I really need to get home, it's important. It's important. He said I'll come get you. I was like, I'll give you something, man. I'll give you something, just take me home. He came and picked me up and took me to Longs. When I got to Longs. My people was like, man, you all right. I was like, man, yeah, I'm all right, I think I just shot someone on accident.

Q Did you have a cell phone?

A Yeah, I had a cell phone.

Q What happened to your cell phone?

A When I got out of the car, I was searching for my cell phone. I ain't find my cell phone. I don't know what happened to my cell phone. I could have dropped

it in the car, could have dropped it in the woods. I don't know. But after I got out of the car, I was searching for my cell phone. This is how I find out that I lost my cell phone. I was looking. I was like, man, I need to call someone and check on the girl to see if she's all right. When I looked for my cell phone, man, I ain't got my cell phone. So I asked my cousin, let me use your phone. So he let me use his phone. So I called Jamie's mom, Ms. Schanski. I was like, man, is the girl all right, and she was like I don't know, I don't know, I'll call you back. So when she hung up, five minutes later I called back and said is she all right, is she all right, where did she get hit. Ms. Schanski was like she's dead. She was crying, You need to turn yourself in because everyone at Racepath wants to kill you right now, you know what I'm saying.

Q So the next morning you turned yourself into the police?

A Yes, sir.

Q Is that what you told Detective Rhodes?

A Yes, sir.

Q And you told him this on May 9th?

A Yes, sir.

MR. WILSON: Court bear with me for just one

second.

THE COURT: Yes, sir.

(A brief pause in the proceedings.)

Q (MR. WILSON) Let me ask you, when you said earlier you had the gun before you ever left in the cab, right?

A Yes, sir.

Q And you carry that gun pretty much most of the time?

A Yes, sir.

Q Now, let me ask you straight out. Was there ever a time where you wanted or intended to shoot Ms. McDonald or anyone else?

A No, sir. I didn't even want the fight to happen, period. I didn't even want to be over there. I never go over there, period. The only reason I went over there that time is I heard my baby's mama arguing and my baby was over there. I didn't want her to be over there because she was pregnant, and I take my kids seriously. I didn't want her to be over there because she was pregnant with my child, but can't stop her. She's a grown woman, I can't stop her.

MR. WILSON: Nothing else. Thank you.

THE COURT: Cross-examination?

332

CROSS-EXAMINATION

BY MR. DeBUSK:

Q When the shooting took place, was the sun still up?

A Excuse me?

Q When the shooting took place, was the sun still up?

A It had been raining that day early. I don't remember if the sun was up.

Q Was it still daylight?

A Oh, yes, sir, it was still daylight.

Q You could still see well?

A Yes, sir.

Q What was the temperature when the shooting took place?

A Around, I guess, about -- temperature was dropping at that time. It had been raining and wind was blowing, so probably like 66, something like that, 67.

Q Would it surprise you to know it was 73.4 degrees? Where were you around 4 o'clock?

A I wasn't really looking at the time around 4 o'clock.

Q Were you in the Racepath area?

A Oh, yes, sir.

Q Were you sitting on the porch at that time walking around?

A Possibly.

Q Would it surprise you to know it was 66.2 degrees at 4 o'clock?

A I don't know what the temperature was, sir.

Q So if it was 7 degrees warmer at 7 o'clock than it was at 4 o'clock, why did you all the sudden feel like you needed to get a jacket?

A It was raining, sir -- well, it wasn't raining, but it was misty, and I was getting cold, so I went home to get my jacket.

Q But you didn't feel that you needed that jacket earlier in the day when it was colder and it was actually raining?

A No, sir.

Q Who is that, State's 8?

A That is my baby's mother.

Q Is that the way she was dressed that night?

A Yes, sir.

Q Did you offer to get her a jacket, too?

A No, sir.

Q When you came back from your taxi ride, did you have a jacket on?

A Yes, sir, my vest on, sir.

334

Q Vest? Winter vest, thick insulated vest?

A Kind of.

Q Where was the gun?

A On my hip, sir.

Q And had it been there the whole day?

A Whole day.

Q Was it visible to anyone who saw it there on your shirt?

A I don't try to make it visible. I have my pants up, sir. My shirt was covering it and I don't -- excuse me.

Q You just testified to Mr. Wilson that it was a big gun?

A Oh, yes, sir.

Q So big gun, so it wouldn't be hidden?

A No disrespect, but, yes, sir, it could be hidden. If I'm sitting on the porch all day and not around and not trying to be in nobody's face, just sitting on the porch, yes, sir, it could be hidden.

THE COURT: Solicitor, let him finish his answer.

THE WITNESS: I appreciate that, Judge.

THE COURT: Sir?

THE WITNESS: I appreciate that.

THE COURT: I appreciate that. Let's just cover the general rules. Solicitor asks you questions, you

answer them, all right?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

Q (MR. DeBUSK) You told the police when you talked to him that you came in with force when you went in there to deal with Nigeria, didn't you?

A I said I came in to break the fight up. I said the force I had she might have thought that I was trying to hurt her friend.

Q You said, Like the way I came through with force, she must have felt that I was trying to hurt her?

A I was trying to hurt Trudy.

Q You must have had sufficient force to make someone feel that you were going to hurt someone?

A I came with force and I grabbed her hands and I tried to pry her hands off of my baby's mama's hair.

Q So you were putting your hands on Trudy?

A I was trying to pry her hands off my baby's mama hair trying to break up the fight, yes, sir.

Q You didn't tell the police about that, did you, about putting your hands on her?

A Excuse me, sir.

Q You didn't tell the police that you put your hands in the fight, did you?

A Not at the moment. I was just trying to get the

big parts out of the way.
Q The fact that you were engaged in the fight wasn't a big part?
A I wasn't engaged, I was just trying to break it up.
Q The police, when they talked to you, they told you they wanted to find that gun, right?
A Yes, sir.
Q But you didn't tell them about this huge log as big as the table?
A I told them it was in woods.
Q You didn't tell them about the big log, which would be a perfect landmark?
A If they went in the woods, they would have seen it.
Q But you didn't tell them about the big log?
A No, sir.
Q How close were you to Nigeria when you pulled the trigger?
A Actually, we was kind of -- I can't explain. Kind of touching each other. She was touching and -- she was holding me like this, and my gun was like that, and I pulled my hand out of her hand.
Q Where was she? Was she standing?
A Yes, sir.

Q Standing in front of you?
A Yeah. She was like -- when I pushed her -- when I pushed her, she grabbed me like this. She was like this (indicates).
Q Like this (indicates)?
A When I pushed, she kind of turned and tried to, and I pulled my wrist out of her hand.
Q You didn't tell the police anything about her falling that night you talked to them, did you?
A No, sir.
Q You didn't tell them anything about her grabbing your hand?
A Yes, sir, I did.
Q You said she tried to grab your hand, you didn't say she grabbed your hand?
A I said she grabbed my hand. It is on the recorder, sir.
Q You told the police, so when she -- so, damn, she -- damn, the way she moved, she bumped me. When she bumped me, my gun fell off my hip. When my gun fell off my hip, I picked the gun up. When I picked my gun up, I pushed her like this, Man, you need to chill the F out. She tried to grab my arm. She tried to grab my arm, I pulled the gun back and the gun went off?

A She tried to grab my arm.
Q Is there a difference between trying to grab your arm and grabbing your arm?
A Excuse me, sir.
Q Is there a difference between trying to do something and actually doing something?
A Yes.
Q But you told the police she tried, you didn't tell the police she grabbed you?
A Yes, sir.
Q Any doubt you shot Nigeria?
A No, sir, no doubt.
Q Any doubt that you left in a taxi right after the argument between Trudy and your baby's mama?
A No, sir, no doubt, sir.
Q Any doubt that she went back over there to resume the fight as soon as you got back?
A No, sir, no doubt, sir.
Q You went over there, and there were plenty of people over there trying to break it up?
A Well, not everyone was trying to break it up, just two people trying to break it up.
Q Who was trying to break it up?
A NaNa and Ms. Schanski.
Q And you didn't think they could handle it

themselves, you had to stick your hands in there and do it yourself?

A They weren't getting them apart, they were still holding each other, so I tried to pry her hands off.

Q But you never told the police about touching her in the fight, putting your hands in there?

A No, sir.

Q Any doubt you left with a jacket and came back with a jacket?

A No doubt.

Q And it was a vest jacket?

A Yes, sir.

Q Any doubt the first time you threatened anyone who messed with your baby's mama?

A Excuse me?

Q Any doubt that you threatened anyone that messed with your baby's mama the first time they had a fight?

A I didn't threaten them. I just told Trudy that she wasn't going to use no weapon on my baby's mama.

Q And there wasn't a threat in there?

A No, that was no threat.

Q What would be the alternative?

A Excuse me?

Q What is the alternative if she used a weapon?

A I was just telling her that she wasn't going to

use no weapon. I could have tried to pull my baby's mama away or anything. I didn't say, well, if you do something to my baby's mama I'm going to do this to you. That is a threat.

Q You said that you fled Racepath for fear of your life?

A Yes, sir.

Q Thought people were going to kill you?

A Yes, sir.

Q So instead of holding the gun in your hand where you could use it, you put it on your hip?

A I wasn't trying to hurt no one. I was not down there for that. I don't know who had it -- he could have seen someone behind me with a gun. There was so many people out there, anyone could have had a gun in their hand.

Q But you had a gun?

A I wasn't going to look around, okay, who has a gun.

Q You had a gun when you left Racepath?

A Yes, I did.

Q And it was in your hand at some point?

A Yes.

Q And instead of carrying it in your hand where you could use it if you needed it, you said you put it back

on your belt?

A Actually, sir, I put it back in my belt when I got to the woods, sir.

Q And you already had dropped it resulting -- according to your testimony -- shooting Nigeria, right?

A Say that again.

Q You already dropped that weapon once, and that drop resulted in shooting Nigeria, right?

A What you mean, before I got to the woods?

Q When you were in front of the trailer at Racepath.

A Yes, sir, I did. It dropped out of my pants.

Q And the second time it fell out of your pants and you picked it up?

A Say that again.

Q Didn't you testify that when you ran through the woods, you dropped the gun and bent down to pick it up?

A When I was running through the woods.

Q And after it fell out and you put it back in your belt knowing it would fall out a third time?

A I can't put it nowhere else, sir.

Q You didn't stop to pick it up the third time?

A No, I didn't.

Q The first time, but not the second time?

A When I dropped the third time, I looked down, but

I didn't see it because there was a lot of vines, so I kept going.

Q You dropped it by a large log that you didn't tell the police station?

A I dropped it after I jumped a log, there were vines on the other side of the log, and I jumped the log, and my foot went down in the hole and it dropped off my hip, sir.

Q Where did you go after you left Racepath?

A I went to -- on Cannon Road.

Q On what?

A Cannon Road, right about when I came out. I told the white dude, I think I shot someone on accident.

Q Down Cannon Road?

A Let me see. Yes, sir. Actually, I didn't go down that road, I went across that road, sir.

Q Where were you then if you weren't on Cannon Road?

A You asked did I go down it, sir, and I said I went across it.

Q And then where did you go?

A It was a fence across the road, and I jumped the fence, sir.

Q Where did you go?

A Dollar General.

Q And you called a friend to pick you up?
A No, I didn't call a friend right then. I called another cab to take me to my room, sir.
Q That cab could have taken you to the police station where you would have been perfectly safe, right?
A Yeah, but they would have charged me.
Q They charged you the next day?
A Excuse me?
Q They charged you the next day, too, didn't they?
A What do you mean?
Q You were charged with murder?
A No. No. Not like that. They would have charged me when they take me to the police station, sir.
Q Did she not charge you money to take you to the hotel?
A That is the only money I had, sir.
Q And instead of going to the police station, you went to the hotel room?
A They would have charged me a lot more.
Q Where is the closest police station? Isn't there one at Joe White and Oak Street?
A Yes, sir.
Q That is closer than America's Best Value, which is way out here on 501?

344

A Yes, sir, but at the same time I didn't know that she was -- I didn't mean to shoot her, so -- and I didn't know she was hurt bad.

Q You just told someone on the street that you shot someone, didn't you?

A Excuse me?

Q Didn't you say you told some stranger on the street, somebody you didn't know, some white dude that you shot someone?

A I told him I think I shot someone on accident, can you call the police.

Q But you didn't go to the police?

A No, sir.

Q You went to your hotel and then Longs?

A Yes, sir.

Q And you could have called the police yourself?

A Yes, sir.

Q Any time?

A Yes, sir.

Q I mean, you got in that cab, you could have taken it straight to the police station?

A Yes, sir.

Q And you would have been perfectly safe because the police would have kept you safe?

A Yes, sir.

Q But you didn't?
A No, sir.
Q Where did you spend the night?
A Longs.
Q With who?
A I was going to tell my stepdaddy to -- I mean, my father to take me to the police station, but I didn't want to go to the police station. I wanted to go straight to J. Reuben, and he said I can't take you to J. Reuben tonight, son, because I'm drunk. He said this is what you do, in the morning I'll pick you up and take you to the police station to turn yourself in. I know you don't want to go to jail tonight, but I said, Dad, I didn't mean to shoot her. He was like, Son, I know you didn't mean to shoot her. If someone was out there that saw it, they're going to testify --
Q Don't tell us what someone else said. You could have gone to the police station, but you didn't, you went to Longs?
A Yes.
Q Who is Tatiana Nellie?
A A girl that I had been talking to, sir.
Q And at that time, you thought she was pregnant with your child?
A Yes, sir.

Q And you spent the night with her?
A Yes, sir.
Q Did she have a phone?
A Yes, sir.
Q You could have used her phone to call the police?
A Yes, sir.
Q Any time?
A Yes, sir.
Q But you didn't?
A No, sir.
Q So you told the stranger on the street that you think you just shot someone?
A Yes, sir.
Q It was your father or step-father?
A Father.
Q Did you tell Tatiana Nellie that you shot someone?
A Yes, sir.
Q And you told the police that by the time you got to Longs everyone knew someone was shot, right?
A Yes.
Q And you knew they were looking for you, didn't you?
A No, sir.
Q You didn't see the news reporter? You didn't

hear them --

A No, sir. They didn't have a warrant for my arrest until May 9, the day I turned myself in.

Q You told the police that everybody in Fremont already knew that you shot someone?

A They asked me what was going on and what happened, yes, sir. They said, What happened?

Q You said that Nigeria told you -- I think you used the N word, you are an N word, you are an N word?

A Yes, sir.

Q You didn't tell the police anything about that, did you?

A Yes, sir.

Q You said something completely different?

A Sir?

Q You said something completely different, didn't you?

A I told them that she told me that I'm a nigger and this ain't got nothing to do with you, that is what I said, sir.

Q You didn't tell the police, I'm trying to get that girl -- I'm trying to get the girl that is fucking with my baby's mama. So, shit, she's like, man, you got to move the fuck out of the way. I'm like, man, what for. She said you better recognize where you are

at. I'm not from the beach, I'm from Longs. I just came down here to see my baby's mama. Where in there did you say anything about the N word?

A I didn't mention the N word.

Q You didn't mention that anywhere until today, did you?

A Yes, sir.

Q You are saying when you had an interview with Detective Rhodes, you told him that Trudy came up to talk to you and asked if you were Jamie's baby's daddy?

A Yes, sir.

Q That is what you said to Detective Rhodes?

A Yes, sir.

Q You didn't tell the police about baby wipes, you said you went to get the jacket?

A Excuse me?

Q You just said that you went to get your jacket, right?

A No, sir.

Q You didn't say anything about baby wipes?

A No, sir.

Q You didn't mention baby wipes until today?

A I told my baby's mama that I was -- I told the police what I said. I didn't tell them what they asked me.

Q She says you are going to get baby wipes --

MR. WILSON: I'm going to object. He's pitting testimony of witnesses.

THE COURT: Just ask him what he said and his responses, please. Thank you. Move along.

Q (MR. DeBUSK) You told the police that you pulled the trigger and you shot Nigeria?

A Yes, sir, I did.

MR. DeBUSK: Nothing further.

MR. WILSON: No redirect.

THE COURT: You may step down, sir.

MR. WILLEY: May we approach?

THE COURT: Just a second, please.

(A brief pause in the proceedings.)

THE COURT: Come on up.

(Whereupon, a bench conference was had.)

THE COURT: Next witness.

MR. WILSON: Detective Rhodes, Marcus Rhodes, R-H-O-D-E-S.

(MARCUS RHODES, having been duly sworn, testified as follows:)

DIRECT-EXAMINATION

BY MR. WILSON:

Q You were the chief investigating officer in this case?

A I was the case agent, yes, sir.
Q What is the difference in being a chief investigating officer and a case agent?
A It is just a title. Chief investigating officer sounds more lofty than it is.
Q And so as the investigating officer -- what did you call, your term?
A The case agent.
Q Case agent. So as the case agent, who did you answer to for this case?
A To my sergeant and other supervisors.
Q And what about to Ms. Domogauer, did you answer to her in this case, or did she answer to you?
A Investigator Domogauer and I hold the same as far as rank. In the investigating situations, she is assigned crime scene. I'm assigned the detective role where I investigate and put the case together. I'm not over her. We're equals, but we do different jobs.
Q Did you go out to the scene?
A Yes, sir.
Q What time or when was it that you went out there?
A If it is acceptable, Counselor and Judge, I would like to grab my notes just for that -- some of that recall I won't remember.
THE COURT: Any problem with that?

MR. WILSON: No, sir.

THE COURT: Go ahead.

(A brief pause in the proceedings.)

A I arrived at Racepath Avenue at approximately 10 minutes after 8:00 p.m.

Q (MR. WILSON) And once you arrived, what would have been your duties and responsibilities as the case agent for this particular situation. To gather as much information as possible as to what occurred, how it occurred, who the active parties were in the incident and any witnesses of the incident, and then the overall picture of what was going on and the seriousness and gravity of the incident.

Q Very well. Now, did you talk with Kendrick Green?

A I did not.

Q The night that this happened, when is the first time that you had a conversation with Kendrick Green about this incident?

A I do not recall having a conversation with Kendrick Green about this incident. There were several that declined to talk with us. I don't recall Kendrick Green being one, but I can't swear that he wasn't somewhere there.

Q Have you ever had a conversation with Kendrick

Green about what transpired in this case prior to his testimony in this courtroom yesterday or today or whatever it was?

A I have not.

Q Now, let me ask you about there has been talk about fingernail clippings and GSR kits not having been performed on the hands of Ms. McDonald. Who requested or directed, first of all, that the clippings be made and GSR kit be done?

A According my understanding, and Officer Domogauer's testimony, the GSR kit for victims is something that is protocol in the Crime Scene Unit. It is my understanding from the testimony of Investigator Domogauer that the fingernail clippings and/or scrapings is a protocol of the Medical University of South Carolina.

Q As case agent, is it your responsibility to make sure that whatever needs to be done for a successful prosecution is done?

A Yes.

Q And in this case you were aware that the defendant was arrested and charged with this murder; were you not?

A Yes.

Q Not only were you aware of that, you also were

aware that he gave you a detailed tape-recorded statement; did he not?

A He did give me a statement.

Q And you recorded it?

A Yes, sir.

Q And it is recorded and, in fact, Solicitor has been reading from portions of it?

A Correct.

Q And you have that tape-recording?

A Yes, sir.

Q And he told you that it was an accident; did he not?

A He said that he didn't mean to shoot her.

Q Did he tell you specifically word for word that it was an accident? He used the word; did he not?

A I would need to refer to the transcript.

Q Would you get your tape and play it for us? Do you have a copy of the tape?

THE COURT: Come talk to me.

(Whereupon, a bench conference was had.)

MR. WILSON: Your Honor, may I?

THE COURT: Yes, sir.

(Whereupon, a bench conference was had.)

Q (MR. WILSON) Any question he told you in the tape-recorded statement that he gave you on the

354

afternoon of May 9th that this was an accident, and he specifically used that word; did he not?

A Mr. Wilson, I answered that question. I would be more than happy to consult the transcript. You are asking me if I remember a specific word, and I can't testify that I remember a specific word. I will be more than happy to read the transcript or we can listen to the --

THE COURT: Solicitor, do you have a problem with him looking at the transcript?

MR. DeBUSK: I have no problem with him reading the transcript.

THE COURT: All right. Can you narrow it down at all?

MR. WILSON: I will be happy to.

A Line No. 165 on the transcript, he says, When I pulled my arm back -- when I pulled my arm back, man, I on accident pulled the trigger. I pulled the trigger.

Q (MR. WILSON) All right. That's all I wanted. Now, knowing that, Officer, and he told you that she grabbed his arm, was pulling it, wouldn't you want to get the fingernail clippings to see if she scratched him and maybe his DNA is on her fingernails?

A No, sir.

Q You wouldn't want to do that?

A There is no testimony either by him or by anyone else that Nigeria McDonald had a gun or shot anyone, and there is no testimony by him that said that she scratched him. There was no argument that he made that said that he was not physically present and that he was not engaged in the fray there at the site at the fight, so I did not see any benefit that would be gained by those tests.

Q So you decided you didn't want the test done?

A I did not know of any positive evidence that could occur that would change the fact since he said that he shot her, and he's not contesting his presence, nor is he contesting that he had the gun, and he's not contesting that he shot her, and she was, in fact, shot and killed.

Q He's telling you that it was an accident, and if she is scratching him and pulling on him, might not that show that she was -- they were actually fighting?

A He did not say that she scratched him.

Q I didn't say that. I'm asking the question, you don't know what happened at this point, right?

A I was learning. I had already spoken to several different witnesses the night before.

Q You have him in jail and you would want to get a version to try to either prove or disprove what he is

saying?
A He gave me a version.
Q Right. And as the case agent, wouldn't you want to prove or disprove what he is saying to you?
A Correct.
Q And maybe if we had gotten those fingernail clippings, and maybe if we had gotten the gunshot residue kit -- we don't know, because you never did --
A Counselor, that is not a question.
Q I'm asking you, did you ever get it?
A I saw no reason to request those tests.
Q You saw no reason, all right. Let me ask you, when he came to you and he gave you this conversation, how many pages is that statement that he gave you?
A Transcript is 22 pages.
Q 22-page statement he gave you. And what day and time is that statement given to you?
A Transcript is the typed interview. The time on the -- that we talked was on May 9, 2015, 10 minutes after 5:00.
Q How long did the interview last?
A It was somewhere in the neighborhood of 32 minutes. I don't remember exactly, Counselor.
Q Was all of the statement recorded?
A No.

Q In fact about 5, 10 minutes of that tape statement, which there is no reporting of --

A I think you've exaggerated the amount of minutes.

Q How many would you say it was?

A I don't remember exactly how long it was, but the -- at the beginning of the interview, when Detective Lent and I met with the defendant, James Wilson, we introduced ourselves and read Miranda statements to Mr. Wilson, and during that time that we were reading the Miranda statements, and Mr. Wilson was signing each particular statement saying that he understood, inadvertently the recorder was not on. I caught that after we finished the Miranda statements. I recognized that the recorder was not on as we began to talk with Mr. Wilson. At the conclusion of the interview, I went back and said that to Mr. Wilson on the tape-recording and reiterated the fact that I recognized that and acknowledged that the tape-recordings was not on. I also asked him if we had, in fact, gone over the Miranda rights, and he indicated affirmatively that we had, and he recognized that that was done prior to the interview beginning.

Q All right. And as the case agent, is your job to find the truth, or is it just to prosecute somebody?

A I don't prosecute, I simply investigate the crime

and look for the truth. The Solicitor's Office is the ones that do the prosecution. As the detective in the case, it was my job to determine the facts to learn as much as I could about what occurred, assemble that together and make the appropriate charges and present the evidence and case file to the Solicitors.

Q And if he's given you his version of the facts that day, and as the chief or case agent, as you call it, of that particular case, you would want to either verify or disprove what he is saying to you, right?

A He did give me his version of the facts that day. His version of the facts were not consistent with the rest of the evidence, which is why he was charged with murder.

Q My question is, would you want to prove or disprove?

A That is exactly what we work to do.

Q And he's telling you that the arm was grabbed, that he had the gun, they were pulling, and if that were true, might there not be his DNA under her fingernails?

A His statement on Line 165 is, When I pulled my arm back, when I pulled my arm back, man, I on accident pulled the trigger. He did not say that she grabbed his arm or his arm was on her. I'm happy to read some

of the other transcript to see if it is there.

Q Yes, sir. Let me show you another paragraph. Where are you reading from?

A Line 165.

Q Read from 165 and read down to 173?

A When I pulled my arm back -- when I pulled my arm back, man, I on accident pulled the trigger. I pulled the trigger. Then Detective Lent said, okay.

Wilson: I pulled the trigger, man.

Lent responded -- Detective Lent responded: So it wasn't that -- that this was just was -- excuse me. That this -- that it just was fucked up.

And Wilson said -- pardon my language, I'm reading from the script. Wilson replied: No, it wasn't. Damn, fucked up. When she grabbed my arm like when I -- when I -- when I pushed her like this, she grabbed -- she grabbed me. She -- she's like get the shit off me. I pulled my arm back. When I pulled my arm back, the gun -- I -- I on accident pulled the trigger. I pulled the trigger. I had -- I wasn't intentionally meaning to, boom, shoot this girl, you know what I'm saying. I didn't mean to shoot her.

MR. WILSON: No other questions.

CROSS-EXAMINATION

BY MR. DeBUSK:

Q Did he tell you about a tug of war with the gun, about her falling?

A He did not.

Q About her falling and grabbing his arm?

A No.

Q If he told that story like he told today, would you might have possibly viewed things differently?

A Correct.

Q You tried to help find some evidence in the case, didn't you?

A We did.

Q You wanted to find the gun?

A We looked for the gun that night in the direction that he fled, and then others went -- after the conversation -- and looked for the gun.

Q Did you see any logs as big as a table?

A No, sir.

Q Did you see young pinewoods?

A Some trees, brush, vines.

Q But no huge logs?

A Correct.

Q If he told you there was a huge log where he dropped the gun, would you have looked for it?

A Yes.
Q That would have been an excellent landmark?
A Correct.
Q He didn't tell you he dropped the gun twice, did he?
A He did not.
Q He only told you he dropped it once, and he didn't know where?
A He said somewhere in the woods.
Q He didn't say anything about a giant log.
A Correct.
Q Anywhere in that transcript or anywhere in your memory, did he say anything about using the N word?
A No, sir.
Q Specifically about the victim in this case using the N word?
A No, sir.
Q Did he give other words entirely -- did he try to tell what she said? Look in the transcript. I know I might have that.

(A brief pause in the proceedings.)

A Line 85 reads, Let my baby go. So the girl, NaNa, must have felt that I came through -- like I came through with force, and she must have felt that I was going to try to hurt her homegirl. So she was like,

you know, hold the fuck up -- excuse my language again -- hold the fuck up, hold the fuck up. She's like this ain't got shit to do with you. I'm like, man, that is my baby's mama and I'm trying to get -- and I'm trying to get the girl that is fucking with my baby's mama, you know what I mean. So, shit, she's like you got to move the fuck out of the way, and I'm like, man, for what, she better recognize where you at. I'm not from the beach, I'm from Longs.

Q (MR. DeBUSK) Nothing about using the N word?

A Correct.

Q Nothing about little specifically the victim using that?

A Correct.

Q Offensive terminology?

A Correct.

Q And if that had been the case, you could have questioned other witnesses about it?

A Yes, sir.

Q But you didn't hear that until today?

A Correct.

Q And if there was a giant log, you could have looked for the gun, but you didn't hear about that until today?

A Correct.

Q How about when he said that Trudy came and talked to him on the porch and asked if he was Jamie's baby's man?

A Today is the first time I heard that.

Q Nothing in the interview?

A No, sir.

Q So there is a lot of things he's saying today that he didn't say in the interview?

A Correct.

REDIRECT-EXAMINATION

BY MR. WILSON:

Q He was asking you what was said. There were how many minutes when there was no recording going on what he was telling you?

A Mr. Wilson, I don't understand what you are asking.

Q My question is simple. How many minutes did you sit there and question him before the tape recorder started up?

A When I finished writing the Miranda form, I put the Miranda form in my notebook to get it out of the way. At that point, I began to take notes and look around the desk or table we're operating on immediately, and that is when I noticed that the tape recorder was not recording. What I read to you today

is the transcript from the recordings, not from something that occurred when the recorder was not on. It was actually -- the transcript is from the recording. The Solicitor's Office actually prepared the transcript, I think. I didn't prepare the transcript.

Q But the transcript only reflects what was in the recording. My question is, how many minutes were you talking to him when the recording was not recording?

A I understand your question, sir. There was maybe a couple of minutes. I do not believe it was as many as five or seven, as you referred to earlier. We would have to look at the tape-recordings time and then the time stamp on the Miranda form to try to glean that, if it was necessary.

Q But there is no question, is there, that there was a period of time when you're questioning him and there is no recording for that time?

A There is a question to that. Your question to me is were there times that I was questioning him, and that is not the same as when I'm putting the Miranda form in my notebook and beginning the interview. So I cannot testify to you that I asked him questions prior to the recording beginning. It was short, and he was talking.

Q Is there any question that the tape-recording that was done, when it comes on, he is in mid-sentence about something; is there any question about that?

A No, sir.

MR. WILSON: Nothing further.

THE COURT: Anything?

RECROSS-EXAMINATION

BY MR. DeBUSK:

Q You remember that interview?

A I do.

Q Do you remember in that interview saying any of those things we talked about?

A No, sir.

Q So you have an independent recollection that he did not say those things?

A Correct.

MR. WILSON: Defense rests.

THE COURT: Any reply testimony from the State?

MR. DeBUSK: No, Your Honor.

THE COURT: At the end of State's case there is matter of law I need to take up with the defense at this point in time. We're going to do that, and then we'll go into the arguments. So if you take a break, I'll be with you as quickly as I can. Thank you very much.

(Whereupon, the jury exits at 4:55 p.m., and the following is had out of the presence of the jury.)

MR. WILSON: Yes, Your Honor, I would renew my motion of directed verdict that I made at the end of State's case and on the same grounds that I made.

THE COURT: I'm not going to reiterate all that I said at the time about the law that is in existence, but clearly what I'm looking at is whether evidence exists or does not exist. I'm not looking at creditability or believability. I find there is more than sufficient evidence that exists if the jury believes it -- again, that is their job -- if the jury believes it, to sustain the conviction for the crimes charged against the defendant. I do find there is more than sufficient evidence to submit the case to the jury and, therefore, respectively decline to grant your motion for directed verdict.

MR. WILSON: Thank you, Your Honor.

THE COURT: Any other motions on behalf of the defense?

MR. WILSON: No, sir.

THE COURT: Gentlemen, we're going to take a break. It is my intention -- I'll tell you now, it is my intention to submit this to the jury tonight, and the reason is they've heard all of the testimony

today. It is fresh in their minds. I think it is more important than the time for them to hear this case and have an opportunity to discuss it tonight. If at some point in time tonight it gets late, I may send them home and have them come back tomorrow, but I do want to give them an opportunity tonight after they heard all of the testimony today to discuss this case. Thank you very much.

MR. DeBUSK: May we approach briefly?

THE COURT: Yes, sir.

(Whereupon, a bench conference was had.)

THE COURT: We'll take a short break and come back. Mr. Martin, I'll take that matter that you have to the Court and we'll proceed with the closing arguments.

(A recess was taken.)

MR. DeBUSK: Yes, Your Honor.

THE COURT: Where is your co-counsel?

MR. DeBUSK: Certain members of the family walked out; is it okay if they step in?

THE COURT: Yeah, I don't have a problem with that. Mr. Wilson, are you ready?

MR. WILSON: Yes, sir.

THE COURT: Ask the jury come in, please. With the presentation of --

368

MR. WILSON: I apologize. In terms of your charge, so I know --

THE COURT: We'll take a break because I'll let the jury decide if they want to continue on or not. Before I charge, we will talk about it.

MR. WILSON: I don't want --

THE COURT: Murder and voluntary manslaughter I'm charging.

MR. WILSON: Murder and involuntary?

THE COURT: Voluntary. Not involuntary. I'm not charging involuntary. I'm charging murder and voluntary.

MR. WILSON: That is what I wanted to discuss with you.

THE COURT: All right. We need --

DEPUTY: I just told him to hold them.

THE COURT: Good. Good. Let me hear from you.

MR. WILSON: The reason why I submit that involuntary is appropriate, that if you accept the testimony of the defendant, even though he had a gun, which is a reckless act, going into a fight, without question, and that gun then was used in a reckless manner and that caused the death of an individual, that that would constitute involuntary manslaughter, if he had no intentions of killing the person. But

the gun was used in such a reckless manner, whether he was picking it up or jerking it away, or whatever it was, that that would constitute or could constitute involuntary manslaughter as opposed to manslaughter, even though I do think that manslaughter is an appropriate charge as well.

THE COURT: Solicitor, what is your position?

MR. DeBUSK: Your Honor, in arguing against voluntary manslaughter. I think there is evidence on the record that he shot her unprovoked. There is no evidence of sufficient legal provocation. Since he is arguing accident, I can't see how he can argue voluntary manslaughter.

THE COURT: So you think it should be murder and involuntary manslaughter?

MR. DeBUSK: That is what I think it is, Your Honor.

THE COURT: Mr. Wilson, what do you say about that?

MR. WILSON: And as just explained, there was legal provocation. According to him, if you, again, listen to his side of the story, he is trying to get her away from his girlfriend to keep them from harming her, who is pregnant, and then there starts to be some kind of -- I don't want to -- not a tussle, but

something going on between him and Ms. McDonald. He admits that he pushed her, or she pushed him, and that they then start -- he says, according to him, he -- she bumped him, the gun falls to the ground. He reaches to get the gun, and as he is coming up, she grabs his arm and the gun goes off as he's pulling back from her with the gun. I would submit that that would or could be involuntary manslaughter. Plus, Your Honor, before you rule --

THE COURT: No, I wasn't going to rule, I was going to ask a question.

MR. WILSON: Yes, sir.

THE COURT: So for voluntary manslaughter there has to be -- it has to be based on sufficient legal provocation, okay. So sufficient legal provocation must be the type that would make a person of ordinary reason and caution become enraged and to lose control temporarily. The provocation needed for voluntary manslaughter must come from some act of or related to the victim. Words alone, however vulgar or insulting, are not enough to be legal provocation. Where death is caused by the use of a deadly weapon, the words must be accompanied by some overt threatening act which could have produced the heat of passion.

So tell me what specific facts that were either

testified to by the defendant or his witness that would show legal provocation to the defendant.

MR. WILSON: We're speaking about voluntary?

THE COURT: Voluntary manslaughter at this point in time.

MR. WILSON: In terms of voluntary manslaughter, the reason I believe it is voluntary is that that should be charged, is if you listen to the defendant's story, his story is that he came over there for the protection and defense of another, that being his girlfriend who is six months pregnant at the time. There are multiple people over there surrounding her, regardless of what their intent might be. So justify he's over there defending her, in my opinion, would be enough to suffice for that.

THE COURT: That sounds like you are arguing self-defense of others, not having voluntary manslaughter. Voluntarily manslaughter -- to prove voluntary manslaughter, the State must prove beyond a reasonable doubt that the defendant took the life of another in the sudden heat of passion based on sufficient legal provocation. Both heat of passion and sufficient legal provocation must be present at the time of the killing to constitute manslaughter.

Jumping over to heat of passion, which we'll

372

probably need to get back to because he hadn't said a word about I'm not in control, I'm enraged -- you know, upset. You know, he's not saying any of that. Skip over that sufficient provocation, okay, sufficient legal provocation must be the type that caused the defendant, okay, to be -- or cause the person of ordinary reason and caution to become enraged and to lose control temporarily. So the defendant had to become enraged and lose control temporarily.

Provocation needed for voluntary manslaughter must come from the victim. So she had to do something to do that, and words alone are not enough. She can be calling him -- which there aren't any -- but, you know, she's not calling him words, but -- you know, because -- even if she did -- even if she did, he has two different statements. So here he says she's calling him the N word, and in the recorded statement he doesn't say anything about it, but he does say she's calling him that.

Words alone, however vulgar or insulting, are not enough to be legal provocation. The words have to be accompanied by some overt threatening act that caused heat of passion. What facts exist there?

MR. WILSON: What he says is that -- and the

reason he was enraged is because --

THE COURT: Tell me -- point to the testimony that says he's enraged. I never heard that word or him saying that he was enraged at any point in time.

MR. WILSON: Multiple people for the State testified that the defendant kept saying let my baby's mama go. Don't hurt her. Leave her alone.

THE COURT: That is not enraged, it is a statement.

MR. WILSON: It is a statement, and not only did he do that, but he came up to fight and tried to part them, and that is when he encountered Ms. McDonald, and that he tried to break Ms. McDonald loose from his wife -- I mean from his -- Ms. Spivey, and she wouldn't let go. Then they got into some kind of a pushing match where she pushes him, according to him, with her hip, which is when he says the gun falls out.

THE COURT: What do you say, Solicitor?

MR. DeBUSK: My position is that he says that it was not a voluntary act. There has to be a voluntary act for voluntary manslaughter. He is saying it was an accident. He doesn't -- there is no testimony of a voluntary act by him other than testimony by the other witnesses that said it was a voluntary act of murder. There is no meeting of sufficient provocation and

374

voluntary act. That is what I'm worried about, if we charge manslaughter, he is convicted of manslaughter without --

THE COURT: Well, I appreciate you can make that argument, but I have to look at the totality of all of the evidence presented, presented by the State and the evidence presented by the defense. When you put it altogether, there is some evidence that could argue to say that might reduce or mitigate or excuse, in some fashion, what happened, and if that is the case, it is not only an accident, it's the facts are that combining the two that he acted in a manner that could be said to have been to have lost control temporarily, or become enraged, and then you combine it with his testimony about what she's doing and her -- the witness' -- the other girl in the fight about what the victim was doing and saying. So I'm going to have to leave it to the jury. The evidence exists. I'm going to charge murder, voluntary manslaughter and involuntary manslaughter, I'll charge them all. I'm not charging self-defense. I'm assuming that wasn't requested.

MR. WILSON: No, sir, not self-defense, but --

THE COURT: Accident.

MR. WILSON: Accident and defense of another.

THE COURT: Well, that is self-defense and defense of another. That just doesn't exist in this case. Accident, murder, voluntary manslaughter, manslaughter. Self-defense is not -- does not exist in this particular case.

MR. WILSON: All right, sir. Thank you.

THE COURT: Based upon his testimony and his presentation of evidence, what he argues, he's never said that he drew the weapon in the defense of another. He didn't say he had the weapon in defense of another. He said he always has the weapon. He had it on him long before this occurred. He didn't arm himself to because of threats to his baby's mama. He didn't act with the weapon to do that. All he has said is that he had it because he always has a gun, and there was an accident that occurred. So I'm not charging self-defense. All right.

Ask the jury to come in, please.

(The jury enters at 5:26 p.m., and the following is heard in the presence of the jury.)

THE COURT: Ladies and gentlemen, we have heard all of the evidence in this case, and we are now going to hear the closing arguments of the attorneys. Remember, as I told you at the beginning, closing arguments are not evidence, cannot be considered by

you as evidence in the case. You already have heard all of the evidence in this case. Now, they are important. It is each side's summation to you of what they believe the evidence has shown to you during the course of this trial, remembering of course that you are the judges of the facts of this particular case.

Now, I will also tell you that when we get done with the closing arguments, we'll take a short break. Mr. Foreman, I'll have you ask the jury at that point in time whether or not they wish to proceed further tonight, or come back tomorrow for the charge and the deliberations, or do you want to continue on with the deliberations or the charge and deliberations tonight. That is your decision after you hear the closing arguments. With that, Mr. Wilson.

MR. WILSON: Thank you very much, Your Honor. Mr. Foreman and ladies and gentlemen, I said at the outset that it wouldn't be a very long trial, and I ask you not to equate the length of this case as to the importance of this case, both to the State of South Carolina and to James Wilson, who is seated at the defense table.

We are now going to talk to you, and I know you're probably thinking, My lord, last thing I need to hear is lawyers come up here and talk and talk and

talk, but the process is important. It is important. This is just not an idle thing that we do. Everything that we do in this courtroom is based on our Constitution and the laws that we have in this country, and those apply equally to everyone, regardless of age, race, color, doesn't matter, financial income, doesn't matter. The law should treat everybody the same, equally. Nobody is entitled to any more than that, and nobody should expect anything less than that.

His Honor told you that you are the judges of the facts in this case. That means you will decide -- you, the 12 of you collectively, will decide what happened the night or late evening of May 8 of 2015. It is not me, it is not the Solicitor, not the investigating officer, none of us were there. I wasn't there when this happened. Solicitor wasn't there either. The investigating officer was not there either. We don't know what happened. You have heard everything that the State has brought you. I ask you to listen, and you have done that, and I'm grateful for that and I appreciate that on behalf of the State and on behalf of the defendant, that we have had your undivided attention for the time we have been here.

You are being asked to render a verdict that

speaks the truth. You have no friends to reward, you have no enemies to punish. Your job simply is to find a verdict that speaks the truth, wherever that is and wherever it lies. I'm going to talk with you, and if I say something that is inconsistent with what you remember the evidence or the testimony having been, then I'll ask you to disregard what I say. A lot of times I'm over there and witnesses are talking and I'm trying to talk to my paralegal, trying to listen to or read something to see what the next sentence says, and I'll miss something or mishear it or misstate it in some way, and I apologize to you if I do that during the course of this trial or if I do it during the course of this closing argument. It is not really an argument, because I am not arguing with you. It is really a summary of what I believe the testimony is and has shown.

We have a cardinal rule in our Constitution which says that every defendant, no matter how great or how serious or how meager the charge might be, that defendant is presumed to be innocent until proven guilty by the evidence coming from a witness stand beyond a reasonable doubt, not some fanciful whimsical doubt, but a substantial doubt.

As we sit here now, James Wilson is not guilty.

He's not guilty because Ralph Wilson says he's not guilty. He's not guilty because the laws of South Carolina and every state in this union, so far as I know, says that at this point of the trial, he is presumed innocent to be not guilty. So unless and until His Honor charges you on the law and you have gone back in your jury room to deliberate and you make a decision about what you find to be the truth, he will remain innocent.

Let's talk about the testimony you heard. I won't stand here and go over everything you heard. You heard it as well as I did. You saw each of the witnesses that testified. You are the judge of their believability. Is the witness telling the truth? Is the witness consistent with what all the other witnesses say? Were they able to see what being said and done? Does the witness have some bias or reason to not tell the truth? Those are all of the things that you, as honest jurors, who are trying to find the truth are going to consider.

Let me talk a minute first about law enforcement. You know, law enforcement, that is a tough job, it is. They do a good job for the most part, but sometimes, like the rest of us, they make mistakes, fall short because they are not perfect, but none of us are. If

I had a dollar for every mistake I made, I wouldn't need this job, I could retire now. It happens. A person is on trial for their life for murder. There is no more serious a charge in our criminal repertoire than murder, it is the most serious charge there is, and because it is so serious, it is so important that everyone does their job. Even to prove the person did it or prove that he didn't do it, because there ought not be -- there ought not be things left undone that might prove or disprove whether the person committed the crime, because that is how important, how serious this charge is. It is not shoplifting at K-Mart.

Both the State and the defendant is entitled to that. When I said the State, the Solicitor represents the State, but he's not the State; the people are the State. All of us are the State. He's just a representative of the State.

There are things that weren't done that needed to be done, and it is not too late to go back and do those things. Maybe they wouldn't have shown anything, maybe they wouldn't have, but we don't know, and now we will never know. Someone had to make that decision. Someone had to decide what you were going to hear and what you are not going to hear. The case agent, chief investigating officer, he made that

decision. You heard Ms. Domogauer, she said, well, it wasn't my job to make that decision. I asked him, well, was it your job to make that decision. I don't know if I really got an answer. I mean he gave me rambling, but I don't think I really got an answer about whose job it was. All we know for a fact is that no one did it. We don't even know the position of the body when Ms. McDonald fell to the ground, we don't know.

Forensic evidence, that is the good thing about forensic evidence, it doesn't have friends or bias. It is what it is. If you go out and find a blood spot, that is where the blood spot is. They did the small things. They found a shell casing and put a marker by it. Then found four plaits of hair, and I don't know why they couldn't label them as one, but they put three different markers on the plaits found on the ground. But no one bothered to tell us where she was at, where she fell. The reason why is important, folks, because you heard the pathologist. There is a question about how the shot was fired, the angle of the bullet that hit her, that is why that is important.

What we do know is that on the morning of the 9th -- they can't say, well, we didn't know this was

going to be important on the morning of the 9th after the shooting happened. James Wilson goes to the police department on his own. Nobody makes him. They don't find him hiding under a bush. He calls up and says come get me, I'm here, talks to dispatch, come and get me, I'm here. I'm at the Presbyterian church waiting for you to come pick me up. He stays on the phone with dispatch until the officers arrive, and the reason is because he's afraid of what the officers will do to him when they get there, so that is why he wants to stay on the phone with the dispatcher until they arrive. If they say, well, he tried to run, we had to shoot him, no one would dispute that.

So he's afraid. He has these other guys chasing him. He goes to the police, but he doesn't just go -- he doesn't turn himself in, what does he do? He gives them a detailed tape-recorded statement not a week later, not a month later, not -- less than 24 hours later. He gives them a detailed statement about what he says happened. So, you know, this is not a story that he made up on the witness stand, this is something he told them that very next day, and even when he told them that, do they try to prove or disprove what they say? No, they don't do anything. Don't send fingernail clippings off, just don't do

anything. We got him. He was there. He says he was there, that is enough for us. Let's charge him. We're through with this. Then they expect you to do the rest of their job. We'll tell them anything and we'll go home and we'll be happy. The system doesn't work that way. It does not. It doesn't work that way for James Wilson, doesn't work that way for the investigator, doesn't work that way for any of us.

Let's talk about something else. Let's talk about what happened that night. Obviously there is bad blood out there. Why? I don't know. I don't know that even after this trial that I really understand what the fight was about. I'm not even clear on that. We know that there was arguing, bickering going on. Then you have Mr. Kendrick Green, star witness for the Solicitor's Office, shows up. Yeah, I saw everything. I saw everything. I know everything that happened. I tried to get them to show me where the body was. What does he do? He said, no, she was back here, back here by the tire, by this tire on the car. Nobody else says that. You are talking about someone has a reason to not tell you the truth, and even Nikara says he came up when after the shooting. He was wasn't there, folks, until after the shooting. He didn't see what happened. The only

other person that said they actually saw the shooting is Nikara.

So let's talk about that for a minute, because I think it is important, and the reason it is important is when you listen to the pathologist, what Nikara says couldn't have happened. It is a physical impossibility. That is why it is important. What her story is, is that she says they were standing there, that James goes over to Ms. McDonald and he tries to pull her away from the fight, or whatever it is, or she's trying to break up the fight and there is something said between them, that she -- he hits her, I think she says, he hits her in the face. If you notice, the pathologist said there is no bruises on her face. She says he hit her in the face and he tried to swing at him, and he then pulls out his gun and he levels it and shoots her. Couldn't have happened because, see, the bullet enters from the left side going downward. There is no way to make that shot. Even the pathologist said, well, if you take your arm and you twist it like this and come around, maybe you could do it, maybe. No.

What did James tell you happened? That is why they didn't play the tape for you. Did you hear the tape when he made the statement? No. Do you think

they would tell you about it? The only reason you heard it is because we put James on the witness stand for him to tell you. And then I called -- because they weren't calling him, they had him sitting there the whole time. He heard every word of this testimony. Do they call Officer Rhodes to come up here and tell you what really was said by this defendant? No. Were they trying to hide it? And even then -- I asked him, He told you it was an accident, didn't he tell you that? Well, I don't -- I don't know. I mean, he said something, but I don't even remember what he said. I can't remember. It wasn't until, what? Until I called him to the witness stand himself, put him up there, and then all of a sudden when we got the papers, lo and behold, what did he say? It is an accident. He tells them exactly how it happened. They try to deny than, too. That is not how the system is supposed to work. The prosecutor's job is not just to prosecute people, his job is to seek justice for the people, not to hide evidence, not to tell things that are not true in order to get a conviction. That is not what is supposed to happen in this process.

Now you have a better understanding that defendants need lawyers before they start talking to

the prosecutor and to people, because even when you go and tell them everything that happened, they will still hide it from you and keep it from you, and when you come to trial, they won't bring it and tell the Court about it, because they will have you believe, well, he just made it up today, like Mr. Green did. Mr. Green knew about -- according to him -- all of this for, what, a year? Had two separate arrests while he stayed in jail for months at a time and never said a word to the prosecutor until they denied his bond. When they denied his bond, all the sudden he knew stuff because he wanted a deal, and he got one. You don't think he won't get a deal? He'll get a deal. Now he's got attempted murder and drugs and all of this. He will get a deal for coming in here and telling stuff not true. But that is the State's choice. They get to decide what you are going to hear and who you will hear it from. They get to make that decision.

Let's talk for a minute about James Wilson. He was wrong. One, he had no business having a gun in the first place, don't dispute that. No one is denying that. I told you he had the gun. He's not trying to deny it, didn't deny it when he went to the police the next morning. He shouldn't have had the

gun, shouldn't have been there with it. And maybe -- maybe if he hadn't had the gun, maybe none of this would have happened. Maybe.

When the pathologist is telling you where the powder burns are on her arm -- see, if you listen to what Nikara says, when they approach, what she says is after there was pushing between James and Ms. McDonald, that she and Ms. McDonald, side-by-side with her on the left side of Ms. McDonald, the two of them are approaching James frontally. There is no way for the shot to be that way, because if he's here on her left -- and I asked specifically were your shoulders touching each other. She said, well, we were that close together. There would be no way that shot could be shot. It would have to come across her in order to enter from here, from that angle, and he would have to be on the left side shooting her, not in the front. It couldn't happen. It is a physical impossibility, folks. Even the pathologist said, no, it can't happen that way, but maybe you can do it like this here and try to get it that way. It didn't happen that way. It happened just the way he told you, that she was falling back. She grabbed at his hand as he's trying to get the gun off the ground, she grabs, the gun goes off and hits her under the arm.

Lastly, I have learned over the years that when I do closing arguments and sit down, the Court won't let me get back up. Your Honor is not going to let me get back up, oh, I forgot to tell you something. It doesn't work that way. When I sit down, I'm done, that is the end of that. So I want to say this to you. You remember what happened. You remember what the testimony was, collectively you do. If you have a reasonable doubt about how it happened or what happened, then the law provides that you are to give the defendant the benefit of that and, folks, there is more than ample reasonable doubt about what happened here and how it happened. The only thing we honestly know that happened that night is that Ms. McDonald was killed. There is no dispute about that. We know who fired the shot, there is no dispute about that. I simply ask you, when you go back in your jury room and you consider the facts of this case, that you remember what each of the witnesses testify to, that you remember the inconsistencies in the testimony, that you remember the creditability or believability of people like Mr. Green, that you remember whether or not the witnesses who say that they saw the shooting, whether that is consistent with what the pathologist said in how the shooting occurred. All of those

things will go into your decision making about what your verdict might be, and when you render your verdict, no matter what it is, so long as it speaks the truth, nobody -- nobody -- not the defendant, James Wilson, and not the State of South Carolina has any reason to complain.

As I said, you have no friends to reward, no enemies to punish. You have one simple job, to find a verdict that speaks the truth. Thank you so much.

THE COURT: Solicitor.

MR. DeBUSK: May it please the Court?

THE COURT: Yes, sir.

MR. DeBUSK: I agree with one thing, murder is about the most important thing you can do. It is important because Nigeria McDonald, she's dead, not coming back. She deserves justice. It is up to you to look at the facts and decide what justice is.

On May 8, 2015 there was a fight on Racepath, a girl fight, hair fight. Without the defendant, it would have been just that. They would have separated those two girls and gone home and told stories about what happened and talked about it in Racepath for a couple of weeks, and it would have been forgotten. But, instead, the defendant brought a gun to a girl fight and turned it into murder.

You heard testimony from the stand recently, one witness today and rest of it yesterday, there is a lot of facts in this case undisputed. There is some sort of verbal altercation between Trudy Cox and Jamie Spivey. They talk. They yell at each other. They probably called each other bad names. It was just that, verbal talk, and it ended. Shortly after Nigeria and Niki pulled up in their car, it ended, undisputed.

Trudy Cox talked with her sister, the person who she grew up with who she considered a sister for a few minutes. Around that time, before all of this, before Jamie Spivey came back, the defendant left the scene in a car, in a taxicab. Few minutes later, he came back wearing a jacket. Shortly after, he came back, Jamie Spivey charged over at Trudy Cox knowing that Nigeria and Niki were very close by. You have a map here. You heard the testimony. [redacted] Racepath Street where, where the fight happened. Right here. First house on the corner of Neighbor Lane. That is the house of Nigeria. Look at the scale, not even a hundred feet away. She wasn't afraid of Nigeria and Niki. She was waiting for the defendant to get back from the cab ride. After Jamie Spivey went over there, they started fighting, hair pulling fight. It

appears -- and you have them in evidence -- it appears that Jamie was losing. She is the one that lost all the hair. Looks like Trudy was a better fighter than her. So the defendant comes over there, comes in with force, as he says, and in the course of that, the victim, Nigeria, is killed, shot fatally.

All of that is agreed. There is not one witness that would disagree with that. That is all agreed to. There are substantial points of disagreement, and that is what you have to look at and decide which is true. State's witnesses, Trudy Cox, Niki Rush and Kendrick Green says it was a deliberate act of murder. Defendant came over there, had the gun, hit Nigeria, and then when Nigeria reacted, he shot her dead. Defendant says it was an accident. Both of those can't be true. You have to look at them and the witnesses, look at the motivations to decide who is telling the truth.

Let's look at the State's witnesses. What is the motivation of Trudy and Nikara? They want justice for their friend. Lying isn't going to do them any good. They just want justice for their friend. Kendrick Green, he came in here and he was incensed when he heard in jail the story that the defendant was going to tell about it being an accident. He said I know it

is not an accident. He came up voluntarily and testified. He told you about his background. Kendrick Green, by himself, is a bad witness because of the criminal background, but the fact that everything he said corresponded directly with what Ms. Nikara said makes him believable. What else makes him believable? The fact that they didn't sit here through the whole trial and heard every word said. They were sequestered. Kendrick Green is back there in a jail cell, and Nikara Rush is back in the back room. They didn't hear the testimony, yet they told the same story.

Now, down to where the body was. Kendrick mistakenly said he was on the other side of the car. He wasn't prepared. He wasn't coached during the course of his testimony. He changed his mind and said thinking back it was between the cars, where everyone else said it was. If he had been coached, he wouldn't have made that mistake. He said that because it has been a year and probably hasn't been thinking about it and only started thinking about it because he heard the defendant was going to say the murder he committed was just an accident.

Nikara Rush, she told her story to the police, not the next day after she sat around and thought

about it all night, but that very night. She talked to detectives and told the same story today that she told all along. She was there with her friend watching her back, and the defendant pulled out a gun and shot her dead. Same story she told all along.

What is the defendant's motivation? If he's convicted, he faces a long prison sentence, no doubt about that. His motivation wasn't to tell the story initially. He ran away from Racepath, and that might have been a good idea because there were guys that wanted to shoot him. But he didn't go to the police. He could have called the police right away, something bad happened, I need to talk, but he told a stranger on the street that he met that he shot someone. He goes back home all the way to Fremont, and the next day talks to the police. That story has to be consistent with the facts. He tried. When he talked to the police initially he told the story that she tried to grab the gun, the gun went off. That wasn't enough. It wasn't enough details like on the stand today. He had to fit his testimony into everything he heard in this trial before today, so he came up with this idea that there was a tug-of-war over the gun, she grabbed his arms as she was falling and tried to line up with the gunshot. He tried, but he failed.

State's Exhibit 23, autopsy photo showing the stippling. You heard the pathologist testify that that arm had to be against the chest for that stippling to be there. If that arm was raised like this, the stippling wouldn't have been (indicates), instead it was on the arm, because that is what Dr. Batalis testified. Her arm had to be down when she was shot. He also told you how it probably happened. Trajectory down around here (indicates), going across the body and slightly down. He didn't have to come across and shoot like this. When someone pulls a gun, what is the first reaction? You'll duck. If Nigeria McDonald ducked just a little bit, it goes right back to where the person standing pointing a gun at. It is not difficult. She sees the gun pointed. What is her first reaction? I'm in trouble, she ducks, and that's where she's hit. It lines up. With her arm down by her side, and she ducks, and that is where the stippling is. Arm is raised, it would be down here under her arm, not up here under the arm.

Another thing from Dr. Batalis' testimony you can infer. If there is a tug-of-war with the gun and it was fired by the hand, the stippling would be along the arm. That is where the gun powder burns would have been, underside of the arm and down here under

the arm, not confined to this area right here. The only way those injuries could have been inflicted, just as Dr. Batalis said, is in the arm down. If the arm is down, the defendant lied when he was on the stand, the story he never told the police about the tug-of-war, the story that was just heard today. This is proven to be a lie by Dr. Batalis.

Niki's story is consistent. Face to face, he pulls a gun, first thing she'll do is duck, goes back to it slightly descending from the side and she's hit, falls to the ground. Those are the things you have to look at. Who is telling the truth in this case? Kendrick Green is consistent with the physical evidence. Niki Rush is consistent from the very day it happened. Before Nigeria was even dead, before she found out Nigeria was dead, she told the police that story, same story she came in and told you in court today.

The defendant was fitting facts from the evidence he heard from the stand, but he did not quite get it, not quite fitting them correctly. Who is telling the truth? Niki. Who is lying? Defendant. You put up another witness, Jamie Spivey. She already admitted that she lied, lied about which hotel they were staying at to keep the police from catching him. She

lied for the defendant once, and she'll lie again. The defendant is lying for his own benefit, try to fit his story to the evidence to convince you it was an accident, when it wasn't. When her arm was down, when she was shot, where it had to be keep her from getting powder burns under the arm. You heard Dr. Batalis' testimony.

So what really happened? Just fill in the undisputed facts. When the defendant left Racepath Street in a cab, he was angry because there was a disagreement between his baby's mama and Trudy Cox. He made threats, If anyone messes with my baby's mama, they are going to die. I'm going to shoot him. No one is going to mess with my baby's mama. The other witnesses filled in the rest. Did he have his gun with him at that time? It is a warm day, just a T-shirt on. He admits that a Glock is a pretty big gun. People would have seen it, but it wasn't there. When he left, he said he left to get a jacket. You have the weather reports from Myrtle Beach Airport, very close to Racepath Street. The temperature will be the same. At 4:05 p.m. when he was sitting on the porch, it was 66.2 degrees. He didn't think he needed a jacket. He sat there and did his thing. 6:45, it is up to 73.4 degrees. It hadn't gotten colder. It

is seven degrees warmer. It is warming, not cooling. Yet, just after he made these threats that he's going to kill anyone who messes with his baby's mama, just after his baby's mama had this argument with Trudy Cox, he leaves the scene and comes back wearing a heavy winter jacket, 73-degree weather. He didn't leave to get a jacket. He didn't leave to get baby wipes.

You notice when they first talk with the police Jamie said he went to get baby wipes, and the defendant said I went to get my jacket, I went to get a jacket and baby wipes. Just different stories trying to reconcile. He didn't go to get either. He got the gun, jacket to hide the gun he went to get. Went to get the gun to fulfill the threats he made previously, anyone messes with my baby's mama, they are going to die.

As soon as he gets to the scene, as soon as he's armed to handle any potential threat from this hair-pulling fight, that's when the fight becomes physical. Nigeria, they are less a hundred feet away from their car directly across the street where Jamie Spivey came from. She knew they were there. She wasn't afraid of them. She just wanted her boyfriend there with a gun. They go over there and start

fighting. Who is getting the best of the fight? Trudy. Whose hair is on the ground? Jamie Spivey's. She goes over, and he doesn't like that. His mother -- her mother comes over, Schanski. She had a good reason, that is her daughter. She wants to get her daughter from getting hurt. She's not going after Trudy. She's separating the fight. Nigeria and Niki come over for the same reason, they are not trying to get into a fight, they are trying to separate, keeping people from getting hurt. Defendant goes over there and he has a different motivation. He told them don't mess with my baby's mama, so someone is going to get shot. So he goes over there and comes in with force.

You heard three witnesses describe it. He hit Nigeria in the face, pushed her back. Nigeria, as anyone would do, when she's hit, she tries to hit back. He's not going to take this, so he pulled out the gun and he shoots her while her arm is down in a defenseless position, while she's trying to duck away from a fatal encounter. Then he runs. Murder. It wasn't involuntary manslaughter.

If it was an accident, her arm would have been up, powder burns under her arm like Dr. Batalis said. They wouldn't be right here for the arm to be down. So it is not involuntary manslaughter. It is

voluntary manslaughter, that is a killing of another without malice, in the heat of passion in response to sufficient legal provocation. What was the sufficient legal provocation here? He hit Nigeria, and she reacted. If that was enough for sufficient legal provocation, anyone who wanted to commit a murder would have it reduced to manslaughter just by hitting the victim first. If you slap them and they try to slap you back, you shoot them, so it wasn't murder, it was manslaughter. no. This was a killing of another with a malice aforethought. The killing of another, of Nigeria McDonald, with malice aforethought.

Malice aforethought doesn't mean premeditated or planned. Premeditation and malice can be evidence of aforethought. Leaving the scene to get a gun, making threats ahead of time, anyone mess with my baby's mama, they are going to die. That could be part of malice. The defendant's -- the victim in a defenseless position, that could be part of malice. Nigeria was unarmed. There is no evidence that she had any weapon, whatsoever, not a nail file, box cutter, nothing. That is evidence of malice. Pulling out a gun and shooting an unarmed person that you just hit in the face, that is the ultimate malice, intent to do harm to another. The killing of another is

malice aforethought, murder. That is what the defendant is guilty of. Shooting poor Nigeria when her arm was down, ducking away to avoid the gun he just pulled on her, not when she had her arm out.

Remember, powder burns have been down here. You have the picture. You have testimony of Dr. Batalis. Only way to get the powder burns is if it is close down to the body. He shot a defenseless woman with malice aforethought, and that is for going back and getting the gun, not a jacket, on a warm night, a night getting warmer, not colder, not in reaction to some legal provocation by Nigeria who was doing nothing but trying to help breakup a fight. He killed her with malice aforethought, that's what makes this murder.

Think carefully about all the testimony you have heard. Everybody has a little bit of bias, but there is one witness you heard from that doesn't have malice. He doesn't have a dog in this fight, Nicholas Batalis from MUSC. He's the one that told you the only way this shot could have happened is if her arm was down by the side in a defenseless position. Malice aforethought.

I ask you to go back and find the only verdict that makes sense here, that has been proved beyond a

reasonable doubt, that he's guilty of murder. Judge will instruct you on the law and what reasonable doubt is, but he can't draw you a picture of reasonable doubt. Reasonable doubt is something that comes from you, from your brains, from your heart. You have to decide whether you are firmly convinced that he is guilty. I'll tell you, when you shoot someone and they are in a defenseless position, their arm down by their side, after going to arm yourself on a warm May night, that is murder. I ask you to bring back a verdict that does justice to Nigeria. Thank you.

THE COURT: Mr. Foreman, what is left in this proceeding is the charge on the law and then the dismissal of the case to you for your deliberations and unanimous decision in this matter. What I'll ask you to do, Mr. Foreman, is take the jury back to the jury room and make a decision if you want to continue on tonight, or come back tomorrow morning and hear the charge on the law and start your deliberations. If you will do that, and then immediately let the bailiff know what your decision is or what the jury's decision is, okay. Thank you. Everyone else, remain seated.

(The jury exits at 6:20 p.m., and the following is heard out of the presence of the jury.)

THE COURT: We'll be at ease for a few minutes

while the jury decides what to do.

(A recess was taken.)

THE COURT: The jury informed us they would like to go home and resume in the morning, so I'll call them in and we'll give them instructions about when to be here and then send them home. Ask the jury to come in, please.

(The jury enters at 6:27 p.m., and the following is heard in the presence of the jury.)

THE COURT: Ladies and gentlemen, we're going to send you home for the evening. As you know, what remains is the charge on the law and then deliberations, so even at this point in time I don't want you talking about this case, because even though you heard all of the evidence and closing arguments, you don't know the law to apply to the facts and evidence you find to be true in this particular case. So we'll do that first thing in the morning. I want you to arrive by 8:45. No delays. The Clerk's Office will have something for you in the morning, expecting something different, but whatever it is, we'll have something for you in the morning. After that, we'll call you in and get started with the charge on the law and then I'll submit the case to you for your deliberations and your unanimous verdict.

As I told you yesterday, go home and don't discuss this with your husband, wife, girlfriend, boyfriend, person down the street. You can't discuss it. Once it is over and you reach an unanimous decision, you talk about it as much or as little, or not at all, that will be your choice, but until then, the only people that will discuss this is the 12 of you in your jury room when I give it to you. Again, you are not researchers, investigators, you can't look up anything, so I'll see you in the morning at 8:45. Thank you very much.

(The jury exits at 6:29 p.m., and the following is heard out of the presence of the jury.)

THE COURT: I'm see you tomorrow at 8:45 in the courtroom.

(Whereupon, the proceedings for June 28, 2016 concluded. The following was had on June 29, 2016 out of the presence of the jury.)

THE COURT: State ready for the jury?

MR. DeBUSK: Yes, Your Honor.

THE COURT: And Mr. Wilson?

MR. WILSON: Yes, Your Honor.

THE COURT: Very well. Ask the jury to come in, please.

(Whereupon, the jury enters at 8:55 a.m., and the

following is had in the presence of the jury.)

THE COURT: Good morning, ladies and gentlemen. It is now my duty and responsibility to give you the law that you will apply to the facts and evidence you find to be true in this particular case. I told you at the very beginning I wouldn't indicate to you in any way what the I think the facts of this case are, because that was not my job, not my responsibility. It is your job and responsibility. Now, in that same vein, if you came in the courtroom with preconceived ideas of what the law is, what you hope it would be, should be, you can disregard that. You'll take the law as I now give it to you, apply it to the facts and evidence you find to be true, and with that combination arrive at a true and just verdict in this particular matter.

I told you, again, at the very beginning, one of your jobs and duties and responsibilities was to judge the credibility, that is the believability of the witnesses that came before you and testified under oath in this case. Now, in doing that, you can look at whether or not a witness exhibits to you any kind of interest, motive, bias, prejudice that they might have in giving you the testimony they gave you. You can consider obviously the opportunity for knowledge.

How did they come about that information that they gave you from the witness stand? You can consider their demeanor. How did they appear when they testified before you when they were answering questions and responding to the State and the defense in this particular matter? You can believe one witness against several, several against one. You can believe a portion of what a witness says, disregard the remaining portion of it. If you have a good, sound reason for doing so, you can disregard it in its entirety, the testimony of a particular witness. Your job is to look at all of the evidence in this case and find that evidence that convinces you of its truth. You are using your good commonsense, that is what we're asking you to do, use your good commonsense, apply it to the facts and evidence, find that evidence that convinces you it is true.

You don't have any friends to reward, don't have any enemies to punish. Your verdict cannot be as a result of passion, prejudice or sympathy. It has to be an examination of the facts and evidence, finding that evidence that convinces you it is true.

There is two types of evidence produced in virtually every single case that is tried called direct and circumstantial evidence. Direct evidence

is the testimony of a person who comes into court under oath and tells you what they saw, what they heard, what occurred in their presence. Circumstantial evidence is proof of a chain of facts indicating the existence of a fact. The law does not make any distinction between the two, a greater degree of proof one over the other is not required.

Now, to the extent that the State relies on any circumstantial evidence, all of the circumstances have to be consistent with each other when taken together and point conclusively of the guilt of the accused beyond a reasonable doubt.

A person who has a past criminal record can testify during a trial. Their past criminal record doesn't affect their ability to testify. The past record may only be considered by you, if at all, in determining that witness' creditability or believability. You, again, are the sole judges of the facts, the creditability and believability of all of the witnesses.

The prior record of the defendant, again, may be considered by you, if you conclude it is true, only for the purpose of evaluating the creditability and believability of the testimony presented by the defendant and for no other purpose. You cannot, and

you must not, consider any prior record of the defendant as any evidence of his guilt of the charge for which he is now being tried. It is only presented to you, again, on that issue of creditability and believability for which you are the sole judges.

In order to establish criminal liability, criminal intent is required. Criminal intent must be proven by the State of South Carolina beyond a reasonable doubt. Criminal intent is a matter that must be determined by you from the circumstances surrounding the situation. There is no way it can be proved to you in some mathematical certainty. There is no way medical science can look into someone's brain and tell you what they intended. So the law says you have to find the criminal intent, if it exists, and it can be inferred from the circumstances what occurred, circumstances that exist, and that is how you make a determination of whether or not the element for criminal intent was present.

Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the defendant intended to do based on the circumstances shown to have existed. We started off with me reading to you from the indictment, the charging document that brought the matter to court. I told you that the

defendant was presumed innocent. When the defendant was present and charged in the indictment, he pled not guilty, and that put the burden of proof immediately upon the State of South Carolina to prove the defendant guilty of the crime or crimes charged beyond a reasonable doubt.

A person charged with committing a criminal offense in the State of South Carolina, and in the United States, is never required to prove themselves innocent. It is an important rule of law that a person is presumed innocent of the crimes for which the indictment or the charge has been brought, and that presumption of innocence doesn't end at the start of the trial. It hasn't ended now. It only ends if and when you believe the State has proved to you beyond a reasonable doubt the guilt of the defendant of the crime or crimes charged.

This presumption of innocence, we liken it to a robe of righteousness, and it stays on the shoulders of the defendant until the State, if it can by the evidence, rips that robe of righteousness from the defendant by the evidence proving him guilty of the crime or crimes charged beyond a reasonable doubt. This is not just some legal theory that we have. It is not some legal phrase. It is a substantial right

to which every defendant, to which every American is entitled unless you, the jury, are satisfied from the evidence of the guilt of the defendant beyond a reasonable doubt.

What is reasonable doubt? A kind of doubt that will cause an ordinary reasonable person to hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Now, there are very few things we can know with absolutely certainty, and the law of South Carolina doesn't require you to have that kind of proof. What is required is that if based upon your consideration of the evidence, the evidence you find to be true, you are firmly convinced that the defendant is guilty of the crime or crimes charged, you must find the defendant guilty.

On the other hand, based upon the evidence you find to be true, if you are not firmly convinced that the defendant is guilty of the crime or crimes charged, you must give the defendant the benefit of the doubt and find him not guilty.

The defendant has raised the defense of accident. An act may be excused on the ground of accident if it is shown that the act was unintentional, that the defendant was acting lawfully, that reasonable care

was used by the defendant. The burden is on the State of South Carolina to prove beyond a reasonable doubt that the act was not an accident, but was caused by the intentional act or the negligence or the carelessness on the part of the defendant, or by some unlawful activity of the defendant. Remember, the burden is always on the State of South Carolina to prove the defendant guilty beyond a reasonable doubt in all matters.

If you have any reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of accident, if you find that that exists -- again, that is your job, you are deciding that -- you must find the defendant not guilty. On the other hand, if you have no reasonable doubt of the defendant's guilt after considering all of the evidence, including the defense of accident, if you find that it existed, you must find the defendant guilty.

The defendant is charged with one of the crimes that is murder. What is murder? The State has to prove beyond a reasonable doubt that the defendant killed another person with malice aforethought. Malice, that's hatred or ill-will or hostility towards another person. It is the intentional doing of a

wrongful act without just cause or excuse with an intent to inflict an injury, or under circumstances that the law would infer an evil intent. Malice aforethought does not require that malice exists for any particular time before the act is committed, but the malice has to exist in the mind of the defendant just before and at the time the act is committed. So there has to be this combination of the intent and the act.

Now, this malice aforethought can either be expressed or inferred, that is either direct evidence or inference from the facts and circumstances. Now, expressed malice is shown when a person speaks words that express hatred or ill-will for another, or when the person prepared beforehand to do the act which was later accomplished. If you find that the State has failed to prove the defendant guilty beyond a reasonable doubt of the crime of murder, you can consider a lesser included offense.

Now, that lesser included offense is called voluntary manslaughter. To prove voluntary manslaughter, the State has to prove to you beyond a reasonable doubt that the defendant took the life of another in the sudden heat of passion based upon sufficient legal provocation. Both heat of passion

and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter.

Sudden heat of passion is such that for a time it would affect a person's self-control and temporarily disturb that person's reason. The sudden heat of passion must be the type that would make an ordinary reasonable person unable to cooly reflect on their actions and would produce an uncontrollable impulse to do violence.

Sufficient legal provocation must be the type that would make an ordinary reasonable person to become enraged to lose control temporarily. The provocation needed for voluntary manslaughter must come from some act or related to the victim. Words alone, however vulgar or insulting, are not enough to know legal provocation. Where death is caused by the use of a deadly weapon, the words have to be accompanied by some overt threatening act which could have produced that heat of passion.

The exercise of a legal right, no matter how offensive it is to another, is never sufficient legal provocation for voluntary manslaughter. If the heat of passion had cooled or there was enough time between the provocation, if any, and the killing for the

passion of a reasonable ordinary person to cool, the killing is not voluntary manslaughter. You consider all of the circumstances surrounding the killing. You may consider the nature of the provocation, if you find any existed. The defendant's mental and physical state and the circumstances and relationships between the parties.

If you find that the State of South Carolina has failed to prove beyond a reasonable doubt that the defendant committed the crime of voluntary manslaughter, so you have gone from murder, voluntary manslaughter and found the State hasn't proved beyond a reasonable doubt either one of them, there is another lesser included, and it is called involuntary manslaughter. You may consider whether or not the State has proven to you beyond a reasonable doubt that the defendant committed the crime of involuntary manslaughter. To prove involuntary manslaughter, the State has to prove to you beyond a reasonable doubt that the defendant unintentionally killed the victim without malice, but while engaged in an unlawful activity, not naturally tending to cause death or great bodily harm, or that the defendant unintentionally killed the victim without malice while engaged in a lawful activity before reckless disregard

from the safety of others.

So I'm not suggesting anything here, but that it is a lot in one paragraph. I'll read it to you again.

To prove involuntary manslaughter, the State has to prove to you beyond a reasonable doubt that the defendant unintentionally killed the victim without malice, but while engaged in an unlawful activity that does not naturally tend to cause the death or great bodily harm, or that the defendant unintentionally killed the victim without malice while engaged in a lawful activity with reckless disregard for the safety of others. Unintentional means that the defendant did not intend for anyone to be killed or seriously injured.

Reckless disregard for the safety of others is more than negligence or carelessness. Recklessness is a conscious failure to use ordinary care. Reckless disregard for the safety of others means that you are not interested in the consequences of your acts or the rights and safety of others.

The State has to also prove beyond a reasonable doubt that the defendant's act was the proximate cause of the death, that means the direct cause, immediate cause, cause without which the death would not have happened.

If you have any reasonable doubt as to whether the defendant is guilty of a greater or lesser offense, it is your duty to resolve that reasonable doubt in favor of the defendant and find him guilty of the lesser offense, if that is your view of the evidence and, again, it is has been proven to you beyond a reasonable doubt by the State.

If you find the defendant guilty of the crime of murder or involuntary manslaughter, one of those two, then you consider the other crime for which the defendant is charged, and that is possession of a weapon during the commission of or an attempt to commit a violent crime. I'll explain it to you. It has to be a violent crime. Murder and voluntary manslaughter are violent crimes. Involuntary is not a violent crime. So only if you convict him of murder or voluntary manslaughter, you consider possession of a weapon during the commission of a violent crime. So if that was the evidence and that is what you found, the State has to prove beyond a reasonable doubt that the defendant was in possession of a firearm, or visibly displayed what appeared to be a firearm during the commission of a violent crime. A firearm means any gun, rifle, revolver, pistol, any weapon which is designed to expel a projectile.

In order to find the defendant guilty of possession of a weapon during the commission of a violent crime, you must find the defendant guilty of committing a violent crime, and I'll tell you, again, murder and voluntary manslaughter are classified by the State of South Carolina as violent crimes. Involuntary manslaughter is not so classified. The State must move beyond a reasonable doubt that the weapon further advanced, helped, the commission of the crime. That is the law.

Now, the Court is prepared -- or has prepared for you a verdict form. I'll go over it and help guide you in this matter. State of South Carolina versus James Abdullah Wilson, very first charge, murder. On the charge of murder for killing Nigeria McDonald, we, the jury, by unanimous consent find the defendant, James Abdullah Wilson -- and there is two choices. I put one before the other because I have to put one before the other, don't assign anything to that, guilty or not guilty. You have to pick one, has to be unanimous. Once that is done, sign your name, Mr. Foreman.

If you find the defendant guilty of murder, you go on to the possession of a weapon during the commission of a violent crime. If you find him not

guilty of murder, then go to the lesser included offense, voluntary manslaughter. Voluntary manslaughter, on the charge of voluntary manslaughter for the killing of Nigeria McDonald, we, the jury, by unanimous consent find the defendant, James Abdullah Wilson -- again, two choices, not guilty or guilty. Mr. Foreman, the jury has to check one unanimously, check the box and sign. If the decision is not guilty of murder, not guilty of voluntary manslaughter, then go on to the final lesser included charge, involuntary manslaughter. On the charge of involuntary manslaughter for the killing of Nigeria McDonald, we, the jury, my unanimous consent find the defendant, James Abdullah Wilson -- again, two choices, not guilty, guilty. Mr. Foreman, if you are at that point and by unanimous consent have found not guilty of murder, not guilty of voluntary manslaughter, then check the block and sign it and put today's date. Only if you found him guilty of the crime of murder or voluntary manslaughter, if you have, you must consider the possession of a weapon during the commission of a violent crime. Again, on the charge of possession of a weapon during the commission of a violent crime, we, the jury, by unanimous consent find the defendant, James Abdullah Wilson -- two choices, check one, sign

your name. So at any point in time with that, you know, that you've reached a final decision, Mr. Foreman, your jury has reached a final decision and you have filled out the appropriate paperwork, checked the appropriate blocks, signed it, that is when you knock on the door and let the bailiff know that the jury has reached an unanimous decision in this matter.

Now, I said unanimous and it means exactly what you think it means. It means 12 zero. It does not mean 10/2, 11/1 any combination thereof. Whatever verdict reached on these matters must be unanimous, and that is what you are saying, Mr. Foreman, when you check the box and sign your name. The Court examines it when you come back, so that if required, all of the members of the jury can raise their right hand and say, yes, that is my verdict when it read in open court.

What I'll ask you to do, Mr. Foreman, is take the 12 members of the jury, the two alternates, that is Mr. Gillings and Mr. Ford, if you two would remain in the courtroom with us. Mr. Foreman, take all of the other members of the jury to the jury room. Do not -- do not begin your deliberations until the bailiff hands to you the verdict forms and the exhibits. When

the bailiff hands the exhibits and verdict form to you, you may start your deliberations. Please take the jury to the jury room.

(The jury exits at 9:20 a.m., and the following is heard out of the presence of the jury.)

THE COURT: All right. From the State, is there any reason why the State could not excuse the alternates?

MR. DeBUSK: No, Your Honor.

MR. WILSON: None, Your Honor.

THE COURT: All right. Mr. Gillings, Mr. Ford, I want to thank you for your service in this case. Your job was to step in the shoes of one of the regular members of the jury if they cannot go forward, someone was ill or whatever the situation is. That did not happen in this case. I'll tell you, it happens a lot, just didn't happen in this particular case, but that is why we need alternates, because it happens frequently that we have to substitute an alternate in for one of the regular members of the jury. You are free to stay, but obviously you are free to go. I'll excuse you from your jury service for the rest of the week. You are exempt for three years, and I want to thank you for your service. I appreciate it. You are now excused.

(Whereupon, the alternates exit the courtroom.)

THE COURT: Exceptions, deletions, additions to the charge from the State?

MR. DeBUSK: None, Your Honor.

MR. WILSON: None, Your Honor.

THE COURT: Solicitor and Mr. Wilson, I want to thank all of you. You did exactly what the Court would have expected of you in representing the interest of your respective clients. You worked hard and presented a good case on behalf of your respected side. I appreciate that, and I want to commend all of you for the good job you did for the State and defendant in this matter.

MR. WILSON: Thank you, Your Honor.

THE COURT: If you would, get with the court reporter and make sure that we have the proper exhibits going back to the jury. With that, we'll be at ease until the jury needs us. Thank you very much.

(Whereupon, the jury deliberates at 9:22 a.m.)

THE COURT: Gentlemen, the jury sent a note saying they wanted a copy of the definitions of murder and the manslaughters as pointed out by the State and the defense. The copy of the entirety of the charge has to go into the jury due to the Court of Appeals' decision. So we've now marked it as Court's Exhibit 2

to go into the jury. Has the State had an opportunity to look at it?

MR. DeBUSK: Yes, Your Honor.

THE COURT: Do you have any problems with it?

MR. DeBUSK: No, Your Honor.

THE COURT: Do you have any problems with it?

MR. WILSON: None, Your Honor.

THE COURT: It is submitted to the jury then as Court's Exhibit No. 2. Thank you very much.

(Court's Exhibits 1 and 2 marked.)

(A recess was had while the jury continues to deliberate.)

THE COURT: All right. We have another question. What's the difference between intent and heat of the moment? I think we just need to say the definitions are in the charge. If they want them reread, we can bring them back in and reread them.

MR. WILSON: That's fine.

THE COURT: State?

MR. DeBUSK: That will work, Your Honor.

THE COURT: So I have written, The definitions are in the charge on the law regarding the crimes defined, and we will wait to see if they want more.

(Court's Exhibit 3 marked.)

(A recess was had while the jury continues to

deliberate.)

THE COURT: Okay. We have a couple more questions. Can we get the transcript of James Wilson? And, Can we listen or read the transcript of what Mr. Wilson told to Officer Rhodes last May 2015?

MR. WILSON: That wasn't in.

THE COURT: I don't believe that it was. I think simply advising that this is not in evidence and is not available -- State?

MR. DeBUSK: I think that's fair, Your Honor.

THE COURT: On the other issue, I'll just say that there is not a transcript, but if they would like to rehear Mr. Wilson's testimony, we could do that. Anything from the defense?

MR. WILSON: No, Your Honor. I think that is the best way to handle that.

THE COURT: State?

MR. DeBUSK: That's fine, Your Honor.

THE COURT: I put that there is no transcript of his testimony in court. If you want to rehear his testimony, this will have to be done in the courtroom.

MR. WILSON: That sounds fine, Your Honor.

MR. DeBUSK: Yes, Your Honor.

THE COURT: All right. Let's see what happens.

(Court's Exhibits 4 and 5 marked.)

VERDICT

(A recess was taken while the jury continues to deliberate.)

THE COURT: Check outside and make sure everyone that wants to come in, can come in, and then we'll shut the door and not let anyone in or out. The bailiff indicated that the jury reached a verdict in this matter. Is the State ready to proceed?

MR. DeBUSK: Yes, Your Honor.

THE COURT: Defense?

MR. WILSON: Yes, sir, Your Honor. Before we bring the jury in, let me say just a few words to everybody involved. I would like to reiterate what I said earlier. We've given an extremely difficult task to this jury. I don't know what the verdict is. We'll all receive the verdict together. It will be received with respect and silence no matter what the verdict is. I will not tolerate any kind of showing of emotion or outbursts or reaction to the verdict in any way. If you do so, you will be detained by a member of the Horry County Sheriff's Office. When these proceedings are over with, I will hold a contempt of court hearing to see if I will send you to jail. I can send you to jail, Department of Corrections, for a period of one year for contempt of court. So if you cannot follow these instructions,

I'm giving you the opportunity to leave the courtroom now. If you stay, you are bound by this order. Again, I will not tolerate any kind of emotion, outbursts of any kind. Anyone wants to leave, please do so now.

Very good. Everyone is subject to the order then. Ask the jury to come in.

(The jury enters at 2:28 p.m., and the following is heard in the presence of the jury.)

THE COURT: Mr. Foreman, has your jury reached an unanimous verdict in this matter?

FOREPERSON: Yes, Your Honor.

THE COURT: Very good. Could you hand the forms to the clerk's representative, please, sir.

(A brief pause in the proceedings.)

THE COURT: You may publish the verdict.

THE CLERK: Indictment 2015-GS-26-4026, State of South Carolina versus James Abdullah Wilson on the charge of murder for killing Nigeria McDonald. We, the jury, by unanimous concept find the defendant, James Abdullah Wilson, not guilty.

On the charge of voluntary manslaughter for the of killing Nigeria McDonald. We, the jury, by unanimous consent find the defendant, James Abdullah Wilson, guilty.

VERDICT

Indictment 2015-GS-26-4027, State of South Carolina versus James Abdullah Wilson on the charge of possession of a weapon during the commission of a violent crime. We, the jury, by unanimous consent find the defendant, James Abdullah Wilson, guilty. Signed by foreperson James -- Patrick Davis, Juror 71.

Ladies and gentlemen of the jury, if this is your verdict, so signify by raising your right hand.

Thank you.

THE COURT: Jury having affirmed the verdict by raising of the right hand.

Does the State wish the jury polled?

MR. DeBUSK: No, Your Honor.

THE COURT: Does the defense?

MR. WILSON: No, Your Honor.

THE COURT: Thank you very much. As to the jury itself, is there any reason the Court should not excuse the jury at this time, from the State?

MR. DeBUSK: No, Your Honor.

MR. WILSON: None, Your Honor.

THE COURT: Very good. Mr. Foreman, ladies and gentlemen of the jury, I will thank you for your service. You did exactly what the Court asked you to do, to well and truly deliberate and reach an unanimous decision. You paid close attention to the

facts and evidence of this case. I want to commend you for that. I can tell you that you were taking your oath seriously and doing what you were supposed to do in this matter. Clearly, from the questions you asked, you had discussions, you talked about this significantly before you reached your unanimous decision. We understand we asked you to do a difficult thing, and we appreciate that, but I want to tell you, your service is everything that you could expect our fellow citizens to want to have when they come into the court, have 12 men and women honestly view the matters, take the evidence, take their oath seriously and then come to a resolution of the matter. I thank you for your service. You earned that exempt from coming back for three years to circuit court jury, and with that, I'll excuse you for the balance of the week. You are done with your jury service for the week. I'm going to excuse you. We will proceed to sentencing, but I'll need to excuse you first. If you want to come back for that, it will proceed fairly shortly, that is fine. There is no obligation, it is solely up to you. But, Mr. Foreman, if you will, take your jury room back to the jury room at this time. Thank you very much.

(The jury exits at 2:34 p.m., and the

following is heard out of the presence of the jury.)

THE COURT: Mr. Wilson, I'll hear from you.

MR. WILSON: At this point in time, I would renew all of the motions I made at the end of the State's case and at the end of defense. I also would, at this time, move for a judgment of acquittal notwithstanding on the verdict for new trial in regards to this jury's verdict. I think that there was substantial amount of evidence in the record of it being an accident, and that the verdict is inconsistent. So I would ask the Court to grant us a judgment of acquittal in that regard.

THE COURT: In this particular matter, I find as far as the issues raised earlier that were raised by the defense in their motion for directed verdict at the end of the State and Defense's case, I'm not going to reiterate the standard, but I did find that there was more than sufficient evidence to submit the case to the jury on the charges as levied by the State of South Carolina and reaffirmed that decision.

Regarding your motion for a new trial, I do find that there is, again, more than sufficient competent evidence to sustain the jury's verdict. The jury's standard was much greater than mine was sending it to them, but their standard was beyond a reasonable

doubt. This is more than sufficient evidence in the record, if that evidence was so believed by the jury, and it must have been since they had returned a verdict that they did, but the evidence exists that, again, beyond a reasonable doubt in the record that is competent to sustain the jury's verdict and, therefore, I respectfully decline to grant your motion for a new trial.

MR. WILSON: Your Honor, I apologize.

THE COURT: No, that's all right.

MR. WILSON: In regards to the motion, I was making that in regards to both murder and manslaughter, just so the record is clear.

THE COURT: All right. Very good. And I appreciate that, but as far as the motion for directed verdict, you know, I ruled that those matters can go to the jury. Obviously, the jury found the defendant not guilty of murder. The jury found him guilty of voluntary manslaughter, and obviously did not proceed onto involuntary manslaughter, and found him guilty of possession of a weapon during the commission of a violent crime, and I'll respectfully decline to grant your motion for a new trial as to the jury's decision to convict him on voluntary manslaughter and possession of a weapon during commission of a violent

crime.

MR. WILSON: Thanks, Your Honor.

THE COURT: Any other motions?

MR. WILSON: Nothing further, Your Honor.

THE COURT: Is the State ready to proceed?

MR. DeBUSK: Mr. Oskins is printing up the sentencing sheet. If I can have a moment to speak to the family and see if they would like to address the Court?

THE COURT: Yes, please.

(A brief pause in the proceedings.)

MR. DeBUSK: As soon as we have paperwork ready, we're ready.

THE COURT: That is fine. We'll be at ease and wait for the paper to show.

(A brief pause in the proceedings.)

THE COURT: Solicitor, I'll hear from you as to any presentation you would like to make.

MR. DeBUSK: Your Honor, this case ended the life of a young woman, 20 years old, Nigeria McDonald. Her family is present in the courtroom. It is a loss to them that can't be replaced. The fact is Mr. Wilson with the prior record was not even supposed to carry the gun. He was carrying it illegally. He has a prior record, as I stated before, but there was some

that was not put forth. Common law robbery and burglary second degree, non-violent, 2010; possession of marijuana -- simple possession and shoplifting from 2012; criminal domestic violence from 2013; parole revocation, 2013; possession of cocaine first from 2014; possession with intent of cocaine 2014; he had pending at this time -- though it is not a conviction -- a criminal domestic violence that the State will null pros after this trial.

As I said, there is many family members present today, and two would like to speak to you. First is Trudy Cox, and then the mother of the victim, Donna Graves.

THE COURT: State your name, and remember you are addressing the Court. Thank you, ma'am.

MS. COX: Shulamite Trudy Cox. I just really wanted to state it wasn't just a family member that was taken away from me, it wasn't just a sister, a friend, I didn't have to talk to Nana for two weeks a month, and it didn't matter, because whatever I needed, my kids, anyone in the neighborhood, anyone anywhere, she had the biggest heart, a smile that would light up a room with no lights. She kept our family together. She made sure when we were separate -- I wouldn't even speak to half of them, but

on account of her (witness crying), I came back around and I came back around to have my sister to protect me. If it wasn't for her, I probably wouldn't be here for my two kids, and we probably would be here for me. I know they say everything happens for a reason, but there is no reason good enough for me to be here. I just wanted to let you know what kind of person she really. In all of this, you get lost in who she really is, because everyone is trying to change it to make it something that was -- (witness crying).

THE COURT: Thank you, ma'am.

MR. DeBUSK: Donna Graves, mother of the victim.

THE COURT: State your name for the record.

MOTHER: Hi. I'm Donna Graves, and I'm Nigeria's mother.

THE COURT: Yes, ma'am.

MOTHER: I wanted to state that I'm sorry for this unfortunate situation for all parties involved, and not only did I lose my best friend, I lost my first born and I could never get that back, never. I have four other kids and a grandchild. My other two daughters would never see their best friend, Nana, their oldest sister, Nana, again. All they have is memories, memories and a ground to sit down to see her grave. She has aunts that has never seen their niece,

grandmothers that will never see their grandchild. She has other sisters and brothers that will never see the oldest sister. This was the oldest child out of all of them, out of all of them. It is just sad that out in world we can't have the commonsense that God gave us. Like I tell my kids all the time, it is a two-way street out here, stay in your lane and remember treat others how you would want to be treated, no matter the situation. No matter if it is ugly, still, stand tall and stand high, don't fall to that level. If you see something negative going on and it involves someone you love, step in, because you can always make a change. You know how much I beat myself up because I feel responsible for my daughter's death because I raised her to do the right thing just because we came from all the wrong things. I knew what was out in that world. So I just want to say, please, and I'm begging with everything in me, that when you go for sentencing, I want the max. I will be honest, I want to say I want an eye for an eye, but I know it won't happen because other parties can see -- still see their loved ones. Can't see my daughter. Other parties can see their kids grow. They can still say, Daddy, I love you. Daddy, I miss you. I can't get that from my daughter. Can't get nothing from

her, but memories I have. Thank God all I have is fond memories. Not one time has she ever disrespected me in any type of way, no sucking up -- let me take that back, she had when she was about six. She got in trouble, and I whipped her for it. Her reaction, she jumped like that. In my eyes, you are raising your hand to your parent, that is something you don't do. After that, I never had a problem. Always yes, sir, no, ma'am, even when she died. She was 20 years old, always yes, ma'am, no, ma'am. Every morning, Mama, what you cooking today. Every day she came to my house after work. I never get that back. I can never get her falling on my bed, kissing me, Mama, thank you for being the woman you was, thank you for telling me no when I wanted to do things that I had no business doing. This is crazy, because three days before she passed, she came to me and flopped on the end of my bed. I was sick that day. That Tuesday, I was sick that day. She came up, flopped up on the end of my bed along with Niki Daniels with some waist trainer -- they were talking about they were about to lose some weight because their stomachs was getting big. I was so sick, and I laughed. She flopped down and said, Mama, I just want to thank you, thank you for everything you ever did for me, because it made me the

woman I am. I'm finally happy in life. It didn't take a man, no money, material stuff to make me happy, I found all of that within me. You know how good that made me feel? That is the only reason I keep going today, I know I did my job as a parent, I know that. And the crazy thing, I got pregnant for her when I was 14. I had her by the time I was 15. I was young and growing myself. We grew together. Everything I taught her, I was learning in the process, because I didn't have parents in my life growing up. I was in the street, you know, eating out of the trashcan, wondering where I would sleep at at night, and I promised if I ever had kids, I would never let my kids feel the pain I had in me for not having family and parents in my life. You get adults who see situations like this and instead of helping, they want to -- never judge the book by its cover, take the time to read page by page. Don't skip a piece. Know what someone is going through before you judge. You never know. You never know. Thank you, sir.

THE COURT: Thank you, ma'am. Anything further?

MR. DeBUSK: No, just the needlessness of this killing. There was nothing about a fight that -- no one was getting injured in it, and it turned into a killing. Thank you, Your Honor.

VERDICT

THE COURT: Thank you. Mr. Wilson, I'll hear from you.

MR. WILSON: Thank, Your Honor. Your Honor, you know, this is obviously a very difficult place to be. Obviously Ms. McDonald lost her life, and obviously that is serious. As I said to the jury, perhaps if the gun hadn't been out that day, none of this would have happened. Unfortunately, it did happen. We can't undo the fact it has happened. I can't imagine the pain that her family feels. I never lost a child, so I don't know how that feels. I can imagine it has to be one of the most painful things you can possibly have happen in your life.

And then on the other hand, you have a defendant who I represent, Mr. Wilson, who made obviously a huge mistake and really poor judgment in going out there that night or that evening with a weapon in the first place, and he understands that. He understands that. He always understood that, and to his credit, he never denied, ever, to anybody that he didn't shoot the gun that killed Ms. McDonald. Not saying that that it is some consolation, not offering it as that, but I'm simply saying that after it happened, he immediately -- when he turned himself into the police, he told the police station that he had the gun, he had

the gun all day, fired the gun and that the bullet from that gun killed her. There was never any dispute about that from day one. The only issue was how did it happen, and that is the only reason why we're here today for a trial. We were never here claiming that he didn't do it and that he was not guilty. Even when I spoke to the jury, I never said at any time that he wasn't guilty of something. The issue was always what was he guilty of? Was it an accident, involuntary manslaughter? Was it murder? Those were the issues. The jury came back and they decided that it was voluntary manslaughter. It is hard to really disagree with that verdict when you see all of the evidence and when you hear all of the testimony. It is really difficult to disagree with that. You know, obviously we thought that it would have -- should have been involuntary. The jury chose differently, and I think there is support for either way in the record of this case.

Now, we have a young man who is just starting out in life, who made obviously a very, very serious judgment mistake, and he's going to end up going to prison for a very, very long time. No matter how long you put him in prison for, that will not change what has happened. We can punish him, and I know that His

Honor will do it, and there no question about it in anyone else's mind, but I think, too, that he has learned a lot during this process. He has learned a lot. He has learned that it was -- he said this to me throughout, If I only hadn't had that gun that day. Based on my conversations with him, his position always has been I had the gun on me, I never even thought about it until we were there and I went over there and we got into the fight. Everything just kind of happened from there.

Unfortunately for him, he has a criminal record. Solicitor already has explained that for the Court, and His Honor heard this trial, and as always, His Honor listens closely and is attentive to what is going on. So you know everything that has happened in this trial. What we -- only thing we can do at this point is ask the Court for as much mercy or as much leniency as the Court can seem fit to grant under the circumstances of this case.

He testified, so the Court had the opportunity to hear directly from him what he said happened, how it happened. So there is really not much more I can add to what already has been presented to the Court, so I ask the Court to be as merciful as you can under the circumstances of this particular case.

THE COURT: Thank you, sir.

MR. WILSON: His family said that they did not want to speak, I asked.

THE COURT: Thank you, sir. I appreciate that.

(A brief pause in the proceedings.)

THE COURT: Mr. Wilson, would you please stand up, sir. 2015-GS-26-4026, State of South Carolina, County of Horry versus James Abdullah Wilson. As indicated, obviously whatever sentence the Court imposes in this matter does not bring back the life that was taken. It is an absolute tragedy all the way around.

Sentence of the Court regarding voluntary manslaughter, defendant is committed to the State Department of Corrections for a determinate term of 27 years. Defendant is given credit for the time he has served.

2015-GS-26-4027, State of South Carolina, County of Horry versus James Abdullah Wilson regarding possession of a firearm during the commission of a violent crime, the sentence is five years to run concurrent with 2015-GS-26-4026, the voluntary manslaughter charge. Again, credit for time he has served. Thank you very much.

(Whereupon, the trial proceedings concluded for the case of State of South Carolina vs. James Abdullah Wilson.)

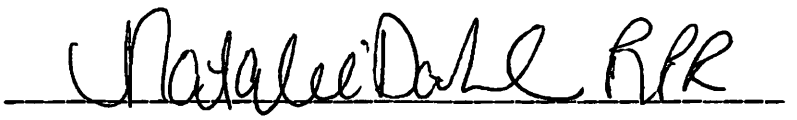
CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 27th through the 29th days of June, 2016.

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

April 4, 2017



Natalie Dahl, RPR
Court Reporter

2017 CP26 00597

James Allen, #332474
BBCI Max Unit, 1052
4460 Broad River Road
Columbia, SC 29210

January 10, 2017

Honorable Melanie Huggins-Ward
Clerk of Court, Horry County
1301 2nd Avenue
Conway, SC 29526

RE: James Allen v. State,
Post-Conviction Relief Application

2017 FEB -1 P 3:30

Dear Ms. Huggins-Ward

Enclosed for filing in the above referenced matter, please find an Application For Post-Conviction Relief. Also enclosed, please find an additional copy of each document that I wish to have clock-stamped and returned to me for my records.

I have enclosed a self-addressed, postage prepaid envelope for your convenience as is customary.

Thank you in advance for your assistance in this matter.

Sincerely,

James A. Allen

cc: File

2017 CP26 00597

FORM 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
James A. Wilson, #339674,	)	C/A No. _____
	)	
Applicant,	)	
	)	
v.	)	**APPLICATION FOR**
	)	
State of South Carolina,	)	**POST-CONVICTION RELIEF**
	)	
Respondents.	)	
	)	

2017 FEB 15 AM 8:55

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized) and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached to the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution, Bishopville, SC

2. Name and location of Court which imposed sentence The Horry County Court of General Sessions, 1301 2nd Avenue, Conway, SC 29702

3. Name(s) of co-defendant(s) (if any) N/A

CP26 00597

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2015-GS-32-604026, Voluntary Manslaughter;
(b) 2015-GS-32-604027, Poss. Of Weapon Dur. Violent Crime
(c) N/A

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 6/29/2016, Committed to the State Department of Corrections
(b) for twenty seven (27) years; plus five (5) Years Concurrent.
(c)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty N/A
(b) after a plea of not guilty After Plea of Not Guilty & Trial
(c) after a plea of nolo contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence? NO

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N/A
ii. N/A
iii. N/A

(b) the result in each such Court to which you appealed:

i. N/A
ii. N/A
iii. N/A

(c) the date of such result:

i. N/A
ii. N/A
iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A
ii. N/A
iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Attorney failed to file notice of appeal after request that he do so and when counsel knew that I wanted to appeal.
(b) N/A
(c) N/A

10. State concisely the grounds on which you base you allegation that you are being held in custody unlawfully:

(a) Please see pages 5(a) et seq.
(b) Please see pages 5(a) et seq.
(c) Please see pages 5(a) et seq.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Please see pages 5(a) et seq.
(b) Please see pages 5(a) et seq.
(c) Please see pages 5(a) et seq.

2017 FEB -1 AM 9:35

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO
(b) any petition in State or Federal Courts for habeas corpus or post-conviction relief? NO
(c) any petition in the U.S. Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A
ii. N/A
iii. N/A
iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A
ii. N/A
iii. N/A
iv. N/A

2017 CP2600597

(c) the disposition thereof:

i. N/A
ii. N/A
iii. N/A
iv. N/A

(d) the date of each such disposition:

i. N/A
ii. N/A
iii. N/A
iv. N/A

(e) if known, citations of any written opinion or orders entered pursuant to each such disposition:

i. N/A
ii. N/A
iii. N/A
iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No.

2017 FEB 1 AM 9:36

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A
ii. N/A
iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A
ii. N/A
iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) No remedy available to raise grounds.
(b) No remedy available to raise grounds.
(c) No remedy available to raise grounds.

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes
(b) your trial, if any? Yes
(c) your sentencing? Yes
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Ralph J. Wilson, Sr., Attorney At Law P.O. Box 1827 Conway, SC 29528
ii. N/A

iii. N/A

(b) the proceedings at which each such attorney represented you:

i. Arraignment, Trial and all proceedings
ii. N/A
iii. N/A

2017 FEB -1 AM 9:36

19. State clearly the relief you seek in filing this application.

Applicant seeks to have his conviction and sentence vacated, set aside, or corrected, remanded back to the lower court for a new trial, or to be Granted such other relief as is Fair and Just.

20. Are you now under sentence from any other court that you have not challenged? No

17CP26 00597

CONTINUED FROM PAGE 3, Questions 10 & 11.

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

11. State concisely and in the same order the facts which support each of the grounds set out in (10).

GROUNDS AND SUPPORTING FACTS

I. Applicant was denied the effective assistance of counsel that he is guaranteed pursuant to the Sixth and Fourteenth Amendments to the United States Constitution and Art. I, Sections 3 & 14, of the Constitution of the State of South Carolina, as more specifically set forth below:

1. Trial counsel provided ineffective assistance by failing to file a Notice of Appeal on behalf of Applicant where Applicant asked counsel to appeal and counsel should reasonably have known that Applicant would want to appeal.

(a) During trial, Applicant told counsel that if the jury found him guilty, he was going to appeal all the way to the Supreme Court because the incident was an accident and he did not intentionally shoot the victim. Counsel however, did not respond.

(b) After trial, counsel spoke with Applicant and his parents about an appeal whereas he informed them that he did not see where there was anything to appeal. Applicant again stated he wanted an appeal, but counsel reiterated that there was nothing to appeal.

(c) Counsel unreasonably failed to appeal and turn the case over to the Office of Appellate Defense after Applicant had shown a clear desire to appeal and where counsel either knew, or reasonably should have known, that Applicant wanted to appeal.

(d) Applicant was prejudiced in that he was deprived of his vital interests in having the assistance of someone trained and experienced in appellate practice and procedure to ensure that Applicant had the opportunity to have a higher court review his unlawful conviction and sentence through the state appellate process.

2. Trial counsel provided ineffective assistance in failing to adequately inform Applicant and the court of the existence of a potential or actual conflict of interest where counsel and his son, who also ia a lawyer, are cousins to the victim and the son represented a state witness who testified against Applicant, prior to, and after the incident.

(a) Prior to trial, counsel told Applicant that the victim who died as a result of the incident for which Applicant was standing trial, was a cousin of defense counsel and he asked Applicant if that bothered Applicant and if he still wanted counsel to represent him.

(b) Applicant informed counsel that it did not bother him and that counsel could represent him since his parents had already hired him, however, Applicant did not understand the ramifications in that counsel did not explain anything as to why Applicant might not want counsel to represent him solely because the victim was his cousin and counsel failed to provide Applicant with all necessary information in which to make a reasoned and intelligent choice.

(c) Counsel had a duty to inform Applicant and the court of the existence of a potential or actual conflict of interest in that counsel and his son were relatives of the victim and counsel's son (also a lawyer) had represented a person who was a witness against the Applicant prior to and after the incident.

(d) Had counsel adequately explained to Applicant that there was a potential or actual conflict of interest at any time when counsel became aware of same, even during trial, Applicant would have asked counsel to take appropriate action to have counsel disqualified and moved for a replacement counsel or take such other action as necessary to ensure that Applicant was provided another attorney.

(e) Applicant was prejudiced in that among other things, counsel failed to advocate for Applicant in a manner that might be expected of attorneys in criminal matters.

3. Trial counsel provided ineffective assistance in failing to object to the Solicitor's closing argument and ask for a curative instruction, where the Solicitor acted as a witness by arguing alleged facts that was not in evidence, which tended to bolster the credibility and false testimony of State witnesses, and where his argument was contradicted by testimony and other evidence, to the clear prejudice of the Applicant.

(a) During closing arguments, the Solicitor improperly argued that the victim ducked so the bullet would miss her and that is why the bullet entered and exited the victim the way it did. This was improper because, among other things, the State's witness testified that the victim never saw the gun and did not try to move out of the way of the bullet.

(b) The Solicitor also argued that the bullet's trajectory

(where it entered and exited the victim) showed that Wilson had unlawfully shot the victim. This was improper in that the only expert to testify regarding the trajectory of the bullet testified that it was not possible for the shooting to have occurred at an angle that placed the victim and the Defendant at a face to face angle as asserted by a State's witness and he said nothing of the victim ducking to avoid the bullet.

(c) The bullet entered the victim's left breast area and exited through the right breast area, which is consistent with the testimony of Applicant, defense witnesses, and the expert witness. No testimony or other evidence was presented to insinuate or establish that the victim saw the gun and ducked to try to get out of the way of the bullet, or, that even if the victim did duck, that doing so could cause the bullet to enter and exit the victim the way it did and be consistent with an intentional shooting as opposed to an accidental shooting.

(c) The Solicitor's closing argument was also improper in that it made it appear that he was a witness, he was not qualified in the area of ballistics or the trajectory of a bullet, and his closing argument tended to confuse the jury, bolster the credibility and false testimony of the state's witnesses whom the Solicitor knew were testifying falsely, and led the jury to believe that the Solicitor had knowledge of facts and evidence other than that presented in court.

(d) Counsel unreasonably failed to object and ask for a curative instruction.

(e) Applicant was prejudiced in that his defense was that of "accident," and his guilt or innocence hinged on whether the jury believed the State or Defense witnesses, as well as whether an expert was able to explain the ramifications of the bullets trajectory to the jury in terms that the jury could understand. However, the Solicitor's argument acted to bolster the credibility of the State's witnesses despite the Solicitor and the jury knowing that the State's witnesses were testifying falsely, improperly urged the jury to consider the argument as facts and evidence, and improperly urged the jury to believe that the Solicitor was an expert in the trajectory of a projectile to the extent that the jury disregarded substantial evidence showing that the shooting was an accident.

(f) Applicant was also prejudiced in that but for counsel's failure to object to the Solicitor's improper argument and ask for a curative instruction, no reasonable juror would have voted to find Wilson guilty of voluntary manslaughter.

2017 CP26 00597

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	FIFTEENTH JUDICIAL CIRCUIT
James A. Wilson, #339674,)	C/A No. _____
Applicant,)	
v.)	**VERIFICATION**
State of South Carolina,)	
Respondent.)	

2017 FEB -1 AM 9:37

Personally appeared before me, James A. Wilson, who first being duly Sworn upon his Oath, states the following:

I, James A. Wilson, herein being duly Sworn upon my oath, depose and say that I have subscribed to the foregoing application, that I know the contents thereof, that it includes every ground known to me at this time for vacating, setting aside or correcting the conviction and sentence attacked in this application; and the matters and allegations therein set forth are true and correct to the best of my knowledge and belief.

Sworn to and Subscribed to before me

this 15 day of Dec, 2016.

Notary Public For South Carolina

My Commission Expires: 3/3/2020

James A. Wilson

James A. Wilson, #339674
Lee Corr., Inst., RHU-052
990 Wisacky Highway
Bishopville, SC 29010-1775

450

2017CP2600597

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	FIFTEENTH JUDICIAL CIRCUIT
James A. Wilson, #339674)	C/A No. _____
)	
Applicant,)	
)	
v.)	APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF
)	
State of South Carolina,)	
)	
Respondent.)	

I, James A. Wilson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application, I declare under penalty of perjury that the following facts are true and correct.

1. I am the Applicant in this action and I believe I am entitled to redress;

2. Because of my incarceration I am neither gainfully employed nor able to obtain gainful employment and I live in poverty, and therefore, I am unable to pay the costs of service of this Application, the costs of these proceedings, or to give security thereof.

FILED
2017 FEB 9 A 9:37
CLERK OF COURT
HORRY CO., S.C.

Sworn to and Subscribed to before me

this 15 day of Dec, 2016.

Notary Public For South Carolina

My Commission Expires: 3/3/2026

James A. Wilson

James A. Wilson, #339674
Lee Corr., Inst., RHU-052
990 Wisacky Highway
Bishopville, SC 29010-1775

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
James A. Wilson, S.C.D.C. No. 339674,	)	Case No.: 2017-CP-26-00597
Applicant,	)	
	)	**RETURN**
v.	)	
State of South Carolina,	)	
Respondent.	)	

FILED
2017 DEC 15 PM 1:20
CLERK OF COURT
HORRY COUNTY, SC

In response to the application for post-conviction relief filed by James A. Wilson (Applicant) on February 1, 2017, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the September 2015 term of the Horry County Grand Jury for murder (2015-GS-26-04026), and possession of a weapon during the commission of a violent crime (2015-GS-26-04027). Ralph Wilson, Sr., Esq. represented Applicant. George DeBusk and Seth Oskins, of the Fifteenth Circuit Solicitor's Office, prosecuted the case.

On May 8, 2015, Nigeria McDonald (Victim) was shot and killed by Applicant in the midst of a large fight involving multiple individuals.[1] Tr. 63, 74-78, 128-130, 169-173. Victim was still alive when first responders arrived, but later died at the hospital. Tr. 211-212, 226. Forensic examination determined the bullet that killed Victim was fired from a distance between two to four feet away, entered through her left side near the armpit, traveled downwards between

[1] Some testimony indicates the fight was only between two individuals and all others involved were merely trying to break up the confrontation. See Tr. 170, ll.1-4.

two ribs on her left side, then struck the aorta, pancreas, stomach, right kidney, right adrenal gland, passed through the right side of the diaphragm, and then exited the right posterior side of the chest. Tr. 257-260. After initially fleeing the scene, Applicant turned himself in to law enforcement the following morning and told authorities that his gun accidentally discharged, striking Victim as Applicant tried to extract his pregnant girlfriend from the fight. Tr. 315, 324-330.

Applicant proceeded to trial before the Honorable Steven H. John and a jury on June 27, 2016. The jury found Applicant guilty of the lesser-included offense of voluntary manslaughter, and as indicted for the weapon charge on June 29, 2016. Judge John sentenced Applicant to imprisonment for concurrent terms of 27 years for voluntary manslaughter, and 5 years for the weapon charge. Applicant did not appeal his conviction or sentence.

II.

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Trial counsel provided ineffective assistance by failing to file a Notice of Appeal on behalf of Applicant where Applicant asked counsel to appeal and counsel should reasonably have known that Applicant would want to appeal."
    a. "During trial, Applicant told counsel that if the jury found him guilty, he was going to appeal all the way to the Supreme Court because the incident was an accident and he did not intentionally shoot the victim. Counsel however did not respond."
    b. "After trial, counsel spoke with Applicant and his parents about an appeal whereas he informed them that he did not see where there was anything to appeal. Applicant again stated he wanted an appeal, but counsel reiterated that there was nothing to appeal."
    c. "Counsel unreasonably failed to appeal and turn the case over to the Office of Appellate Defense after Applicant had shown a clear desire to appeal and where counsel either knew, or reasonably should have known, that Applicant wanted to appeal."

d. "Applicant was prejudiced in that he was deprived of his vital interests in having the assistance of someone trained and experienced in appellate practice and procedure to ensure that Applicant had the opportunity to have a higher court review his unlawful conviction and sentence through the state appellate process."

2. "Trial counsel provided ineffective assistance in failing to adequately inform Applicant and the court of the existence of a potential or actual conflict of interest where counsel and his son, who is also a lawyer, are cousins to the victim and the son represented a state witness who testified against Applicant, prior to, and after the incident."
    a. "Prior to trial, counsel told Applicant that the victim who died as a result of the incident for which Applicant was standing trial, was a cousin of defense counsel and he asked Applicant if that bothered Applicant and if he still wanted counsel to represent him."
    b. "Applicant informed counsel that it did not bother him and that counsel could represent him since his parents had already hired him, however, Applicant did not understand the ramifications in that counsel did not explain anything as to why Applicant might not want counsel to represent him solely because the victim was his cousin and counsel failed to provide Applicant with all necessary information in which to make a reasoned and intelligent choice."
    c. "Counsel had a duty to inform Applicant and the court of the existence of a potential or actual conflict of interest in that counsel and his son were relatives of the victim and counsel's son (also a lawyer) had represented a person who was a witness against the Applicant prior to and after the incident."
    d. "Had counsel adequately explained to Applicant that there was a potential or actual conflict of interest at any time when counsel became aware of same, even during trial, Applicant would have asked counsel to take appropriate action to have counsel disqualified and moved for a replacement counsel or take other such action as necessary to ensure that Applicant was provided another attorney."
    e. "Applicant was prejudiced in that among other things, counsel failed to advocate for Applicant in a manner that might be expected of attorneys in criminal matters."
3. "Trial counsel provided ineffective assistance in failing to object to the Solicitor's closing argument and ask for a curative instruction, where the Solicitor acted as a witness by arguing alleged facts that was not in evidence, which tended to bolster the credibility and false testimony of State witnesses, and where his argument was

contradicted by testimony and other evidence, to clear prejudice of the Applicant."

a. "During closing arguments, the Solicitor improperly argued that the victim ducked so the bullet would miss her and that his why the bullet entered and existed the victim the way it did. This was improper because, among other things, the State's witness testified that the victim never saw the gun and did not try to move out of the way of the bullet."

b. "The Solicitor also argued that the bullet's trajectory (where it entered and exited the victim) showed that Wilson had unlawfully shot the victim. This was improper in that the only expert to testify regarding the trajectory of the bullet testified that it was not possible for the shooting to have occurred at an angle that placed the victim and the Defendant at a face to face angle as asserted by a State's witness and he said nothing of the victim ducking to avoid the bullet."

c. "The bullet entered the victim's left breast area and exited through the right breast area, which is consistent with the testimony of Applicant, defense witnesses, and the expert witness. No testimony or other evidence was presented to insinuate or establish that the victim saw the gun and ducked to try to get out of the way of the bullet, or, that even if the victim did duck, that doing so could cause the bullet to enter and exit the victim the way it did and be consistent with an intentional shooting as opposed to an accidental shooting."

d. "The Solicitor's closing argument was also improper in that it made it appear that he was a witness, he was not qualified in the area of ballistics or the trajectory of a bullet, and his closing argument tended to confuse the jury, bolster the credibility and false testimony of the state's witnesses whom the Solicitor knew were testifying falsely, and led the jury to believe that the Solicitor had knowledge of facts and evidence other than that presented in court."

e. "Counsel unreasonably failed to object and ask for a curative instruction."

f. "Applicant was prejudiced in that his defense was that of 'accident,' and his guilt or innocence hinged on whether the jury believed the State or Defense witnesses, as well as whether an expert was able to explain the ramifications of the bullets trajectory to the jury in terms that the jury could understand. However, the Solicitor's argument acted to bolster the credibility of the State's witnesses despite the Solicitor and the jury knowing that the State's witnesses were testifying falsely, improperly urged the jury to consider the argument as facts and evidence, and improperly urged the jury to believe that the Solicitor was an expert in the

trajectory of a projectile to the extent that the jury disregarded substantial evidence showing that the shooting was an accident."

g. "Applicant was also prejudiced in that but for counsel's failure to object to the Solicitor's improper argument and ask for a curative instruction, no reasonable juror would have voted to find Wilson guilty of voluntary manslaughter."

Applicant requests relief as follows:

- "Applicant seeks to have his conviction and sentence vacated, set aside, or corrected, remanded back to the lower court for a new trial, or to be Granted such other relief as is Fair and Just."

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its

"reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges that he was denied the right to a direct appeal of his conviction and sentence. "Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal." Turner v. State, 380 S.C. 223, 670 S.E.2d 373 (2008) (citing White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974)). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967). Id. Where an Applicant does not knowingly and voluntarily waive his right to an appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, "White permits consideration of the full trial record on [an] issue in

conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served." Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

Respondent lacks sufficient information to admit or deny this allegation at this time, and the allegation may raise questions of fact that the record does not conclusively refute. Respondent requests an evidentiary hearing on this ground for relief. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP; Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. refiled October 4, 2017) (Shearouse Adv.Sh. No. 38 at 12). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests

that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII.

Respondent denies each allegation not expressly admitted, qualified, or explained.

VIII.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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Assistant Attorney General

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13 Dec, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

2017-CP-26-0597

JAMES A. WILSON, #339674,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

FILED
2017 DEC 15 PM 1:20
CLERK OF COURT
HORRY COUNTY, SC

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this 13th day of December, 2017.

Mallory Morris, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF HORRY	)	**2017-CP-26-00597**
JAMES A. WILSON,	)	
Applicant,	)	**Transcript of Record**
	)	(Post-Conviction Relief)
vs.	)	
	)	May 21, 2018
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

James K. Falk, Esquire
Attorney for Applicant

Johnny E. James, Jr., Esquire
Attorney for Respondent

Kay H. Richardson
Circuit Court Reporter

INDEX

MAY 21, 2018 Pg.

By the Court 3
James A. Wilson
Direct by Falk 4
Ralph J. Wilson, Sr.
Direct by Falk 11
Cross by James 30
Redirect by Falk 33
Recross by James 37
Samuel Robert McCoy
Direct by Falk 38
James A. Wilson
Direct by Falk 39
Ralph J. Wilson, Sr.
Direct by James 44
Argument of Counsel 45
By the Court 49
Certificate of Court Reporter 55

EXHIBITS

No. ID EV

(No exhibits were marked or admitted.)

MAY 21, 2018 - 3:31 P.M.

BY THE COURT:

THE COURT: All right. Call your case.

MR. JAMES: May it please the Court, Your Honor, this is the matter of James A. Wilson v. State of South Carolina, docket number 2017-CP-26-00597. Mr. Wilson is present here in the courtroom today and is represented by Mr. James K. Falk, Esquire.

Mr. Wilson was indicted at the September 2015 term of Horry County Grand Jury for murder and possession of a weapon during the commission of a violent crime. He was represented on that indictment by Mr. Ralph Wilson, Sr., Esquire, who is present here in the courtroom today. That case was prosecuted by Mr. George DeBusk and Seth Oskin of this circuit's solicitor's office.

Your Honor, he proceeded to trial before the Honorable Steven H. John and a jury on June 27th, 2016. The jury found Applicant guilty of the lessor included offense of voluntary manslaughter and as indicted for the weapon charge on June 29th, 2016. Judge John then sentenced him to 27 years for voluntary manslaughter and five years for the weapon charge to run concurrent. He did not appeal his conviction or sentence.

Your Honor, there are three broad-stroke allegations that appear to have been set forth by Mr. Wilson, that being failure to file a notice of appeal, a conflict of interest as

it relates to closing arguments, and failure to object therein.

With that stated, I will give the floor to Mr. Falk.

THE COURT: All right. Mr. Falk?

MR. FALK: Yes, Your Honor. We would like to call James A. Wilson to the stand.

THE COURT: All right, you may.

JAMES A. WILSON, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: Please have a seat and state your name for the Court.

MR. WILSON: James Abdullah Wilson.

MR. FALK: Can the court reporter hear me if I stand here?

COURT REPORTER: Move the microphone over, please.

MR. FALK: Your Honor, is it okay if I stand here?

THE COURT: Certainly.

DIRECT EXAMINATION OF JAMES A. WILSON BY MR. FALK:

Q: Mr. Wilson?

A: Yes, sir.

Q: How did you retain Ralph Wilson, what -- tell me the history of that. How did it come about that he was representing you in this case?

A: Well, my parents hire him.

Q: Okay.

A: I had -- they told me that they hired him as my defense attorney, and he would be taking my -- he would be representing me as my attorney.
Q: Were you out on bond at the time or were you ---
A: No, sir, incarcerated.
Q: Okay. How many times did he speak with you while you were in custody?
A: Maybe about three, four, maybe.
Q: Now, when did he -- when did -- in your PCR allegation -- application, you're alleging that there was a conflict of interest.
A: Yes, sir.
Q: Why don't you explain to the Court the conflict of interest?
A: Well, he came to me after my parents had paid him and told me that he was cousins with the victim and he -- and I asked him, well, he asked me do he want me to step away from the case and I was like, will my parents get their money back, and he said no. And he was like -- he said, no, but if you want me to get off your case, back off your case, I will.
Q: And did he give you any other options?
A: No, sir. He never explained to me what a conflict of interest was, period. He never gave me any other options to where I can get another lawyer, to where I would have a fair trial or anything. He just told me would step off my case if

I wanted him to.
Q: At the time, where were you working?
A: Where was I working?
Q: Yes.
A: I was incarcerated.
Q: I'm sorry. Prior to being arrested, where were you working?
A: I wasn't; I didn't have a job.
Q: Okay. In this process here, did you ever apply to indigent defense for help? Did you ever apply for a public defender's office?
A: No, sir.
Q: Okay. But you were not working at the time; is that correct?
A: No, sir.
Q: Okay. And did he explain to you how the conflict might affect the case?
A: No, sir. He never explained to me anything about anything of conflict of interest, nothing about the conflict. The only thing he told me that he was the victim's cousin and if I wanted him to step off my case, he would. That's the only thing he told me.
Q: And what did you think your choices were at that time?
A: That if I -- if I told him to get off my case, I would have to go with a public defender and my parents wouldn't have

any money to pay for me a new lawyer.
Q: And do you know Ralph Wilson, Jr.?
A: Yes, I heard of him.
Q: Okay. And did you become aware that Ralph Wilson, Jr. was representing Kendrick Green at some point?
A: No, sir. I didn't know till after I got my time, after I got sentenced.
Q: And who is Kendrick Green?
A: Kendrick Green was someone who came forth about four days before my trial.
Q: Did he testify for the state at your trial?
A: Yes, sir; he did.
Q: Okay. Now, moving forward, you had also alleged that you would ask for an appeal to be filed in this case?
A: Yes, sir; I did.
Q: And so tell me, so you went to trial, the jury found you guilty?
A: Yes, sir.
Q: And were you advised that you had a certain amount of time in order to file an appeal?
A: No, sir. Not at the moment. Before I went to trial, I told him that if I lose, I was going to file an appeal ---
Q: Okay.
A: --- for my -- if I lose, I was going to file appeal because I didn't mean to shoot anybody.

Q: Okay.
A: And after trial, after I got my time, he walked me in the back and he said you got 27 years, you'll have to do 23 off of 27. And he said, but you can appeal. And I said, how would I go about appealing my charge, and he said, get with your parents and they will get with me.
Q: Okay. How much contact did you have with your parents after your trial?
A: Well, I went -- when I went to Kirkland, I could call my parents like every -- I could call my mom like every Wednesday and Fridays. And I called my mother and I try to tell her to get in touch with him to file for my appeal, but she -- she only got in touch with his secretary. And she said that they never said anything about my appeal.
Q: And you never told him at that conference -- immediately after your sentencing, you never told him that you didn't want an appeal; is that correct?
A: No, sir.
Q: And when you filed your PCR application, you do want to have the right to file a belated appeal; is that correct?
A: Yes, sir, I did wanted to file a belated appeal, yes, sir.
Q: Okay. So, you still -- I mean, that is still a remedy that you're looking for?
A: The remedy I'm looking for is relief because it's not

fair that he didn't file when I have substantial and concrete evidence in my case and in my trial that the shooting was a accident by the expert witness and the witness that ---

Q: I'm gonna bring us around to that in a minute. But, at this point, if nothing else, you would like to -- you would like the right to be able to file a belated appeal; is that correct?

A: Yes, sir.

Q: Okay. Now, you were -- obviously, you sat through your entire trial; is that correct?

A: Say that again?

Q: You were -- you were in the trial from the beginning to the end; is that correct?

A: Yes, sir; I did.

Q: All right. And when I'm looking at the transcript, it's fair to say that there was a certain amount of testimony that went before the jury that really was people demonstrating things; is that correct?

A: Yes, sir; it was.

Q: What is your recollection of how the solicitor was demonstrating how the victim got shot?

A: Well, he used improper statements ---

Q: No, I mean, just physically what was he doing?

A: I mean, he took a ruler and he demonstrated like the victim duck from the bullet and that's how it hit her the way

it hit her because he knew that the state witness was testifying falsely from the expert witness' testimony.

Q: Okay. But is it fair to say that when he was before the jury he was sort of showing with his body how he thought the ---

A: Yes, sir.

Q: --- trajectory was going?

A: Yes, sir; it was.

Q: And how as he doing that? Is it fair to say -- you're saying that he was showing the victim had ducked?

A: Yes, he tried to say that she ducked from the bullet and that's how the bullet hit her when he knew that my innocence or guilt hinged on whether the state believed the state witness or the defense witness.

MR. FALK: Your Honor, I really wanted to call Mr. Wilson to establish his contention that there was a conflict of interest that he did not necessarily waive in writing and that he wanted to file an appeal.

THE COURT: Okay.

MR. FALK: I think to move this case along, I would like to call the attorney, Mr. Wilson, to the stand and maybe I could recall my client at the end.

THE COURT: I'll allow it.

MR. FALK: Thank you.

MR. JAMES: Do I get an opportunity to cross ---

THE COURT: Yes, you do, but it's -- do you want to do it now or do you want to do it once you -- we've recalled -- and I'll let you do it either way, Mr. James.

MR. JAMES: I'd like to just ask -- I'll go ahead and sit down and we can move on to Mr. Wilson.

THE COURT: You know, we'll do this any way you want to do it, but ---

MR. JAMES: I'll put it off until later.

THE COURT: I thought you might want to do that. Okay.

MR. FALK: I'd like to call Mr. Wilson to the stand.

THE COURT: All right. Step down if you would, sir.

RALPH J. WILSON, SR., HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: State your name.

MR. WILSON, SR.: Ralph J. Wilson, Sr.

DIRECT EXAMINATION OF RALPH J. WILSON, SR. BY MR. FALK:

Q: And you were retained in this case; is that correct?

A: I was.

Q: All right. And did you have a conversation with my client regarding a conflict of interest?

A: Yes, sir; I did.

Q: And what is your recollection of the conversation?

A: That conversation took place -- let me find my notes here for you -- on February 23rd ---

Q: Okay.

A: --- out at J. Reuben Long. I had a meeting with the defendant at jail to discuss his case and any potential conflict of interest that I may have. The victim is a second or third cousin of mine, but we are not close and I have never had any relationship with him. That's a note that I made on the 23rd of February of 2016, which would've been maybe five, six months before the trial.

Q: And looking at it the other way, how long -- do you recall about when you were retained or when ---

A: I think, I think I first saw him July of '15 is the first time I saw him. I don't think I was retained then. I think I went out to see him and then I was retained shortly after that is what I think. I'm not a hundred percent certain, but that's what my memory recollects.

Q: And did he ask you about -- once you advised him of the conflict, did he ask you about whether there'd be a refund of the fee that was paid?

A: No, sir. There was never any discussion about any refund. And because his dad -- Mr. McCoy is the one, if I remember correctly, who actually retained me but I never had any discussions with him about money at all, period.

Q: So, what did you tell him his choices were, his options were?

A: What I told him was, was that these people were related to me and that I had -- that I didn't even know them. If that

young lady had walked in the room, I wouldn't have known who she was, but I did find out during the course of this that they were related to me and I wanted him to be aware of that and that if he wanted me off the case, then I would get off and then he could get new counsel, be it the public defender or be it some retained counsel.

Q: Okay. All right. So, had he asked you at that time about whether or not the fee would be reimbursed?

A: No, sir. I don't remember any kind of question about whether the fee would -- and that's something I would've probably taken up with Mr. McCoy since he was the one who had paid me to represent his son.

Q: Okay. Who is Ralph Wilson, Jr.?

A: That's my son. He practices law here in Horry County as well.

Q: Okay. Is he with the public defender's office?

A: No, sir. He's in private practice. And just so the record is clear, at that point in time the two of us were not practicing together. We last practiced together in May of 2015.

Q: Were you aware that he was representing Kendrick Green?

A: I would have no way of knowing that; no, sir.

Q: Let's talk a little bit about sort of the facts in this case. The jury was charged on accident, voluntary, involuntary murder; is that correct?

A: That is correct; as best I recall, yes, sir.
Q: So, is it fair to say that there was a -- at least in the Court's mind, some type of possible issue of fact as to how the person got shot?
A: Yes, sir; there was.
Q: Okay. And part of that would be whether or not it was some type of accidental discharge of the gun while there was a scuffle going on?
A: Yes, sir.
Q: Okay. And do you recall any testimony from either Trudy Cox or Nakira Rush about whether or not the victim in this case had ducked? Let me back up. Let me put this in a clearer context. Do you understand -- do you recall in the closing argument how the solicitor was suggesting to the jury for the first time that the victim had ducked; is that correct?
A: Going back looking through the transcript, I do recall the solicitor making some -- what he was doing -- during the course of a trial what we lawyers do, fortunately or unfortunately, is we try to find a theory that suits our case and then we try to work that theory as best we can based on the facts in the record. And if there's anything in the record which tends to support what we say then we usually try to go with that. That's fairly common, typical practice. And I'm sure the solicitor would've done that. I would've done

the same thing on the other side.
Q: Do you recall the testimony from Nakira Rush?
A: I do not. If you're asking me do I recall it today, no, I do not.
Q: Well, if ---
A: But the record will speak for itself. I mean, I -- whatever is in there. If I said it, I said it.
Q: No, so, I mean -- as I reviewed the testimony of Nakira Rush, it sounded like she was testifying that the two people, my client and the victim, were about three to four inches apart, but face-to-face, and that he then stepped back but he's still face-to-face and then pulled the gun. Is that sort of your recollection?
A: Well, if I remember correctly, there's conflicting testimony about how this happened. What you have to understand was that this was a situation where there was several people involved here. Some saying that they were trying to break up the fight, some saying that they were trying to intervene in the fight. And depending on who you ask and whose side they were on whether they were gonna say, you know, that it as an accident or whether they are saying that it was intentional or they -- I mean, and that's fairly typical in these kinds of -- in this kind of a case. The problem for us in this case was, from the very beginning, the fact that Mr. Wilson left ---

Q: Excuse me let me just -- let me just sort of get back to this other question. It seems to me when I'm reading the transcript and that the state's main witness testified as to what the position of the bodies were, I mean, my client and the victim right before the gun was discharged was from Nikki Rush.

Q: I don't dispute that. As I said, do I have a specific recollection of that, the answer is no. If you tell me that's what the transcript says, then I accept that.

Q: And I'm gonna tell you that the transcript says that they were -- that it was possibly some other kind of scuffling, but right before the gun was discharged that they were face-to-face; is that ---

A: I -- again, I can't -- you're asking me a very specific question about a set of facts that happened several years ago and I just don't remember verbatim. I do remember, as I said, that yes, there was varying testimony about how this happened. I do recall that. And there were varying witnesses who testified a little bit differently about what they saw or said that they saw. That is correct. Now, if you're asking me specifically about what one person said, without going to the transcript and seeing what they said, I can't sit here and say yes or no, that's what they said, I just don't remember.

Q: And the transcript will speak for itself or the record will. Do you recall what Dr. Batalis' testimony is as to --

as far as the flight of the projectile through the victim's body, just in general terms?

A: I do not. I do remember during the course of the trial, the pathologist testifying about the angle of the bullet and I remember doing that. But if you're asking me today to tell you exactly what the pathologist said and how the angle went, I do not remember. Now, whatever is in the transcript I stand by.

Q: Okay. So, and I'm gonna -- and again, I'm gonna suggest that pathologist said that the bullet entered right below her left armpit at about the third intercostal space.

A: Okay.

Q: And exited the body about the 12th space, which is -- as I understand is the last rib.

A: Okay.

Q: Okay. And going through on a downward angle. But that the bullet was coming through on this side and going out on that side. Does that -- now that I've -- does that help refresh your recollection?

A: No, sir, but -- but I don't dispute that. If you're telling me that's what the transcript says, then I accept that.

Q: Okay. Because during your cross examination of Mr. -- of Dr. Batalis, you certainly raise the point that Nikki -- I don't want to use her -- Nakira Rush's testimony, it really

was hard to reconcile with the proof because it's hard to say if you could be three inches away from somebody, even if you back up, how the shot is gonna come in to that person's side and out that way. You sort of recall that part of the testimony?

A: No, sir. And I apologize. I remember the trial in general. I do not remember -- when you ask me specific questions about -- specific questions I asked a particular witness, I don't want to sit here and tell you I remember it, because I do not. I just don't remember ever word that I ask every witness and there were a number of witnesses in that trial. It was all hearsay, it was all he said, she said about what somebody saw. There was all -- conflicts all over the place about what people saw and when they saw it, who did what first; that is true. That is true. And, but I can't unfortunately tell you from my memory what every witness said. I just don't know. And, but again, if I said it, it's gonna be in the transcript.

Q: So, is it fair to say you were trying to develop --, you were trying to raise some doubt in the expert's testimony; is that correct?

A: Yes. What we -- my angle as accident, that this was an accident, and we were trying to establish that as best we could with the testimony, and which is why I queried the pathologist the way I did to try to get something to help show

that it was an accident. And to be honest with you, I believe it was an accident. I don't think that for one second that James intended to kill anybody. I don't think that. The problem we had in this case was the fact that he came back there with that gun and that's -- he left and came back with a gun. And this was two women fighting, which is how it started out, of course other people got involved one way or the other, but when he came back in that taxi with that gun and came to that fight, you know, things went downhill, unfortunately.

MR. FALK: Your Honor, may I approach the witness and show him ---

THE COURT: Certainly.

BY MR. FALK:

Q: I'm just gonna show you part of this cross examination of Dr. Batalis, it's -- and maybe if you could read through there on that page and the next page just to kind of ---

A: You want me to read it aloud or you ---

Q: No, just refresh your recollection.

A: Okay. (Reviews document.)

Okay.

Q: So, at that point, is it fair to say that you sort of got the expert to admit that the story that they were face-to-face and three inches apart doesn't necessarily jive with the forensic evidence?

A: In general, that is correct. But, what he's saying is is

that it could've happened more than one way. And -- but the answer to your question is yes.
Q: Okay. Thank you. Let me grab that back from you.
A: Yes, sir.
Q: Just sort of as an explanation why I'm going here, in the closing argument -- do you recall the closing argument?
A: No, sir.
Q: Okay. I'm gonna show you part of the closing argument and maybe just if you could read to yourself.
A: This is mine?
Q: No, this is the state's.
A: Okay.
Q: Maybe Lines 9 through 18 or so.
A: Sure. Okay.
Q: Okay. May I have that back?
A: Sure.
Q: So, the -- we look at 395, Page 395, Lines maybe 12 through 17, in the closing argument, the state is now deducing an explanation here in the closing that the victim ducked; is that correct?
A: That is correct; yes, sir.
Q: Was there any evidence in the record to support that the victim had ducked?
A: No, no, there was no evidence in the record to support that. What the solicitor says in that document is, is that

suppose this happened this way, that's what he says. And you know, and that's very different than saying that the testimony shows this or the testimony shows that. There's nothing in there were if the solicitor says that the doctor said that or that that somebody in the facts said that. He said suppose this happened, then the shot could've been fired this way. And in the course of my understanding is -- solicitors, just like defense lawyers, we're entitled to use whatever facts are in the record to come up with our theory of the case which we think supports our theory of the case.

Q: Let me show you 402, Lines 7-11.

A: Okay. Line 4?

Q: Those ones that are sort of highlighted.

A: Okay. So, he's going a little bit beyond there and now he's sort of painting the picture that she's cowering down there in the defenseless position; is that fair to say?

A: Yes, sir. That's -- I think that's ---

Q: There's no testimony in the record of that?

A: There was no testimony in the record saying that she was in a defenseless position. Again, this, this occurred -- there were, as I said, the testimony is all over the place about how this happened and who was doing what, when, and where. The solicitor is simply taking those same facts that I tried to use to show that he did not intentionally do the shooting and he's trying to use those same facts as a basis to

show that he did. And do I -- if your question to me is do I find that statement objectionable, the answer is no, I don't. That's my opinion.

THE COURT: Mr. Falk, isn't the jury entitled to look at the evidence and the reasonable inferences that may be drawn there from and doesn't that give some latitude to the counsel in closing to comment on the evidence and present its theory of the case? I mean ---

MR. FALK: But I do think there's got to be some facts in the record to support the theory of the case and I -- my point is that ---

THE COURT: Well, I mean, simply that, it's a downward projectory and, I mean, the ---

MR. FALK: Because the testimony of the witnesses, the only -- the testifying witnesses did not give any testimony that supported that theory. You have two witnesses testify -- you had Trudy Cox testifying that she didn't see anything. Nobody testified that the victim had dropped down, ducked, or anything.

THE COURT: But isn't that a reasonable inference in considering the trajectory regardless of who shot her, wouldn't she've had to have been in that position for there to be that downward trajectory unless someone is up in a tree shooting at her. I mean, isn't that a reasonable inference that could be drawn by the jury?

MR. FALK: Your Honor, it'd be my position that there has to be some, there has to be some evidence to support the inference that she had in fact ducked and not that the trajectory of the bullet came from a completely different set of facts.

THE COURT: All right.

BY MR. FALK:

Q: Did you have any concerns that the closing argument, that the solicitor was sort of crossing the line as far as pitting the testimony of witnesses saying that your client was lying?

A: Did I have concerns? You asked me did I have concerns; yeah, I probably had concerns. If you ask me whether or not I found something that he did to be objectionable within the law, the answer is no. I mean, you never -- when you're a defense lawyer, you never want to hear the solicitor doing a closing argument because whatever he says or she says is going to be against your client. So, I mean, there's never a point when you're sitting there thinking, oh, wow, I like this. I mean, it's always difficult to hear the solicitor's side of the story when you're on the defense.

Q: But you would still accept that it's the jury's province to determine who is -- what version of the facts to accept?

A: Yes, sir; absolutely.

Q: And then when the solicitor is stepping in and saying this person is lying, that's crossing over that line. And the

solicitor is now giving the wrong opinion.
Q: Well, solicitors have a right just like the defense lawyer to present its case to the jury, and they have the right to do it and I -- listen, and I hate being up here trying to defend the solicitor, of all people, but, you know, the state is entitled to put on its case just like I'm entitled as a defense lawyer to defend my client. There is -- just like when I got up there, I mean, I was calling all of these other witnesses basically liars, saying hey look, no, that's not what happened and it's not what was said, and that's not what was done because that's what we do. It's an adversarial process and that's what we do in the adversarial process.
Q: On 296, the closing, Lines 3 through 7, the solicitor said if the arm is down the Defendant lied when he was on the stand. The story he never told the police about the tug-of-war. The story was that he just heard today. This is proven to be a lie by Dr. Batalis. Was there anything in Dr. Batalis' testimony that my client had lied?
A: No. Dr. Batalis simply said that there was more than one way that the shot could have occurred. And that's what the solicitor was going off of. If he had said that the only way that this could've happened was the way that my client said it happened then, yes, then it would've been objectionable in my mind. That's not what he said. What he said is that there --

it could've happened more than one way. And which way that was, I don't know and nobody else knows.
Q: But it's still the jury's province to determine the weight of the testimony. Only when the solicitor is telling is mischaracterizing their own witness' testimony because nothing in Dr. Batalis' testimony said that my client was lying.
Q: When the doctor says that there is more than one way that it could've occurred, then as a -- you know, as a lawyer, then I'm going to look for other ways that that could've occurred. And that's simply what the solicitor was doing in his behalf was he was trying to say, okay, well, but it may've -- it could've happened this way. I'm not saying it did happen that say, maybe it didn't happen that way, but he's certainly entitled to that inference that it could've happened that way, and that was what his suggestion was.
Q: Now we're going back to inferences, but Dr. Batalis never said that my client's version was incorrect.
A: No, he said that it was not the only version.
Q: Okay.
A: Not the only way it could've happened. It could've happened other ways as well.
Q: What's your recollection of the conversations after this trial regarding an appeal?
A: I met with him after the trial, I do recall that. And I

did tell him that if he wanted me to file an appeal that all he had to do was let me know, I would file the appeal. I never got a response from him about filing an appeal.

Q: What did you tell him about an appeal?

A: That he had 10 days to make up his mind if he wanted to file an appeal. And that if he wanted me to, I would file it for him, even if I didn't represent him, that I would file the notice of intent for him. And that that wouldn't cost him any more money for me to file the notice of intent.

Q: And what conversations did you have with his family?

A: I think his mom called me -- I got an email, let me hold up one second. I think the trial was over on June 29th and I got a call from his -- from Mr. McCoy on the 30th of June. And I have -- to call him back about it. And I recall talking to him, to Mr. McCoy and his wife about this after that. And I assume that that would've been shortly after the 30th. I don't know the exact date but I remember them coming to my office to talk to me about it, whether to do it or not to do it. And essentially what I told them was, was that I didn't think that there was any merit to an appeal and that -- but that I would do it if they wanted me to do it. But personally, I didn't think that there was any merit to it.

Q: But you had no other conversation with my client in the 10-day period?

A: Other than what I told you I had with him at the jail,

that's correct.
Q: And so you don't know what kind of communication took place between my client and his parents?
A: No, sir; I do not. But I do know that he did not tell me at the jail that I want you to file an appeal for me. That is -- I do know that.
Q: Was it made clear to his parents that they would not have to hire another lawyer for an appeal?
A: I don't know if -- I don't know the answer to that question whether it was clear to them. I remember telling them what I just told you I said.
Q: And just for my benefit, what exactly did you tell them?
A: What I told them was that I did not think that there was any merit to the appeal but, that if they wanted me to file it, I would.
Q: Okay. But as far as the conversation as to how much that would cost, whether or not they could -- he would get a public defender to represent him or somebody from appellate defense to represent him on his appeal, that conversation ---
A: I don't recall saying that to them, no.
Q: So, they might not have been fully apprised of his rights?
A: I can't answer for you what they -- I can tell you what I told them and I've done that. I mean, that's ---
Q: Okay. He had testified that he was not working prior to

the arrest.
A: That would be correct; he had been in jail for a substantial period of time.
Q: And just prior to the arrest, so he would probably qualify for indigent?
A: I would think; yes, sir.
Q: From the -- for the services from appellate defense?
A: Yes, sir; I would think so.
Q: And it's your testimony that you never told his parents that that option was available?
A: Did I ever tell them that they could contact appellate defense or that I would contact appellate defense, I don't remember ---
Q: Or that he would have the right to ---
A: I did not.
Q: Okay.
A: I did not -- I don't recall telling them I will call appellate defense or I will get an indigent application and try -- do I recall telling them that, no; I do not.
Q: Okay. And specifically with your conversation with him right after sentencing, do you recall telling him about that he'd be possibly eligible for appellate defense?
A: I don't recall using those words. I do recall telling him that, you know, if he wanted me to file the appeal that would do that, you know, and that wouldn't cost him anything.

I do recall that. Do I remember telling him that -- I'm talking about the notice of intent, not the appeal. But do I recall telling him that he could get appellate defense, I don't recall having that conversation, no, sir.

Q: Okay. One moment, please. Let me just go back the closing argument. And just to make sure I understand, it was your -- it's your testimony that there was nothing objectionable in the state's closing argument as far as the solicitor pitting witnesses or characterizing Dr. Batalis' testimony that your client had lied.

A: Well, that's your terminology pitting witnesses. I didn't use that term and I did not say that pitting witnesses was okay; that's not what I said.

Q: No, I'm just trying to tone it down a little bit. I'm just sort of -- you found noting objectionable in the state's -- nothing worth, nothing that would justify you standing up and objecting to the state's closing argument?

A: I did not; otherwise, I would've done it.

Q: That's all I was trying to get at.

A: Yes, sir.

Q: So, it's not trial strategy, you did not feel that there was anything that was worthy of an objection?

A: Well, when you say trial strategy, that encompasses a lot. Now, let me explain that since you brought it up. With trial strategy, yeah, sometimes when you don't object, if

something is not hurting you, there is no point to -- in objecting, because sometimes it alienates the jury or it pushes them further away from you. So, if you're just constantly standing up to object simply because you can object, then you're just asking for trouble with jurors because they think you're lying or you're hiding something. That's generally the impression they get when we object. And so because they think that's it's something that you don't want them to know. So, unless there's something that I find that is hurting me and that is prejudicial to my client, then no, I'm not just gonna get up and jump up and object. Now, if it's a violation of the rules and if I think that's it's prejudicial to my client, then absolutely.

Q: Because there's no way -- if in fact you're interpretation is wrong, there's no way to raise that issue on appeal if there's no objection in the courtroom?

A: That's correct. That's correct. If you don't preserve the record, then you can't appeal from it.

MR. FALK: Your Honor, I have no further questions.

THE COURT: All right.

Mr. James?

CROSS EXAMINATION OF RALPH J. WILSON, SR. BY MR. JAMES:

Q: Just to review, you told your client about his right to an appeal?

A: Yes, sir.

Q: And you told him that you would file a notice of appeal?
A: Yes, sir.
Q: And did you tell him that it wouldn't cost him anything?
A: Yes, sir.
Q: Okay. Do you normally tell your clients about the availability of the Office of the Appellate Defense if they're potentially indigent?
A: No, sir. I generally don't. But, if they ask me, you know, what they need to do then I will say, you know, then you can call the public defender's office or you can contact appellate defense and I'll give them the information. And when we filed -- generally, when we file an appeal, if the people have not retained us, then we will normally send it to appellate defense anyway.
Q: And your client did not ask you to file a notice of intent to appeal?
A: No, sir.
Q: And his parents did not do so on his behalf?
A: No, sir.
Q: All right. And you informed him of the potential conflict?
A: I did.
Q: All right. Did y'all have any meaningful personal relationship with the victim?
A: None, none. I didn't even know -- I mean, I knew she --

I didn't know that -- when I found out about this, I didn't know who the victim was until we were four or five months into the case, and then I learned -- I say four or five months, it may've been for less than that, but when I learned about it, I went to see him in February of 2016 and February 23rd, I apologize. Hold on and let me make sure. I can't read my own notes here. February 23rd, 2016, that's when I went out to see him to talk to him. Now, he and I had had a number of meetings prior to that going back to July of '15, and I don't know the exact date that I was hired, but it would've been sometimes after July of '15, yes, sometime after July of '15 that I was retained. And I went to see him on July the 13th of 2015; and again October 7th of '15; January 18 of '16; February 23rd of '16; March 21st of '16, we actually had an arraignment hearing; then again June 16th of '16; June 22nd of '16; and then the trial.

Q: All right. This late in the afternoon, unfortunately, my ability to do basic math is beginning to decline. About how many meetings was that with your client?

A: Seven or eight.

Q: And your client told you that he had no problem with the potential conflict?

A: That's what he told me; yes, sir.

Q: All right. And did your remote relation to the victim ever present to you any problems or challenges in the course

of your representation?
A: None whatsoever.
Q: Or at trial?
A: No, sir.
Q: All right. And isn't it true that the state's forensic expert testified that the bullet went down at an angle?
A: That is correct.
Q: All right. And isn't it true that among the possibilities that that expert offered was that the victim could've turned or moved?
A: Yes.
Q: All right. And you would agree that it's a reasonable inference that ducking could be among the possibilities of turning or moving if the forensic evidence that was introduced at trial?
A: It certainly was not an unreasonable inference.
Q: Okay.
Just one moment, Your Honor.
No further questions.
THE COURT: Redirect?

REDIRECT EXAMINATION OF RALPH J. WILSON, SR. BY MR. FALK:

Q: What did you tell him a notice to -- of intent to file appeal meant?
A: What did I tell him that it meant? That he had the right to appeal his case, his conviction.

Q: But you said that you had filed a notice of -- you said you'd file a notice; isn't that correct?
A: Right.
Q: Did you tell him that?
A: I don't -- go ahead.
Q: Did you explain to him what that meant?
A: No, I don't think I said that means I'll take some papers down to the courthouse and file them and it'll say that you did -- we're saying X, Y, and Z, that I said that, no. Did I tell him that would appeal his case? Having a legal conversation with a defendant about the niceties of what that includes is not something that is going to get you a whole bunch of fruit. What I generally tell them is that you've got a right to appeal. Everybody knows what an appeal is. You lose, then you can go to the Supreme Court or the Court of Appeals, that's what I usually tell them. And that the Supreme Court can then review what the judge did or what happened at trial and decide whether the judge was right or wrong. That's generally what I would do. But, now, with the notice of intent, what that is simply letting them know that I'm not handling their appeal. I am just filing the papers so that they can start the process because they only got 10 days.
Q: Did my client know that he would have an opportunity to get another lawyer to handle the appeal?
A: I don't know. I don't know if he knew that. I mean --

you mean -- I would assume that he knew it.
Q: Because he had a retained lawyer for the trial.
A: That's correct.
Q: Is it fair to assume that he might've thought he had to retain a lawyer for his appeal?
A: No.
MR. JAMES: Objection, calls for speculation.
THE COURT: I'll allow it.
A: No. My, my retainer was simply for the trial of the case. It was not for an appeal. That was always clear, that I only represented him up and through the trial.
BY MR. FALK:
Q: All right. You said he had no problem with the conflict; is that correct?
A: That is correct. That's what he said.
Q: Specifically, what did he mean by that?
A: My interpretation of what he meant or what he said?
Q: What did he say?
A: Well, he said to me, when I explained to him what -- that I was related to these people and -- but that I did not know them and that I have had very, very little, if any, contact with them over the years. In fact, I didn't know when I saw it in the newspaper who the person was. I didn't even know that at that point. I did learn later on that we were related. And I explained -- I think I went through that with

him and explained that to him and told him that if we wanted me off the case because I was related to them, all he needed to do was say the word and I would get off of the case and that he would be able to then get whoever he wanted to get.

Q: Did he tell you that he didn't think that your relationship with the victim would cause a problem?

A: For him, that's correct.

Q: He told you that?

A: Yes, sir, because that was the whole purpose of my telling him was to find out if he was concerned about my relationship with these folk, because if he was, then I didn't need to be on that case. If he had said to me, look, yeah, the fact that you're cousins with them, that's a problem for me, we need to stop. That would -- I thought that would've been a very reasonable request, which is why we have to tell or disclose to defendants the fact that we have a relationship that might potentially be a conflict, whether it is or is not. And for me, it was never a conflict, but it was a potential conflict for him if he was concerned about it. And because then that could undermine his confidence in me as his attorney if he thought that I was somehow buddying up to the other side. And so I wanted to make him aware of that so that if he had a problem with it he could say, look, no, I just think I need to go in a different direction and that would've been okay with me.

Q: Is there a difference if somebody says I have no problem with your relationship or if he's thinking I either have to accept that or I've got to go find another lawyer and he's got to pay for another lawyer?

A: I can't -- I can't determine what he's thinking other than what he tells me and I can't -- I don't know how to answer what you just asked me. I'm sorry.

Q: That's fair. Thank you.

No further questions.

THE COURT: Mr. James?

RECROSS EXAMINATION OF RALPH J. WILSON, SR. BY MR. JAMES:

Q: I just want to make one last thing as abundantly clear as possible, you and your son Ralph, Jr., y'all weren't working together at the time?

A: No, sir. We separated in May of '15, May of 2015.

Q: Did y'all share a building for your offices or separate offices?

A: No, sir. Totally separate buildings.

Q: Okay. Thank you very much.

THE COURT: All right, Mr. Falk?

MR. FALK: We would call his stepfather to the stand.

THE COURT: You may step down, Mr. Wilson.

SAMUEL ROBERT MCCOY, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: Please have a seat and state your name for the

Court, please.

MS. MCCOY: Samuel Robert McCoy.

DIRECT EXAMINATION OF SAMUEL ROBERT MCCOY BY MR. FALK:

Q: Mr. McCoy, do you recall a conversation with Mr. Wilson about an appeal in this case?

A: Say that again?

Q: Do you recall having a conversation with Mr. Wilson about filing an appeal in this case?

A: Yes, sir.

Q: And did he tell you that would be able -- and did you know that -- what did he tell you about the appeal?

A: It been so long, I can't remember.

Q: Okay. Do you recall him telling you that he would be able to get counsel appointed for him to represent him on the appeal?

A: No, sir.

Q: Did you think that ---

THE COURT: He said he doesn't remember the conversation, Mr. Falk. I mean ---

MR. FALK: Yes, Your Honor.

THE COURT: To say I don't remember the conversation and then ask him specific things in the context of what did he -- it sounds like you're saying did he say this. He says he doesn't remember a conversation, period.

MR. FALK: Withdraw the question, Your Honor.

THE COURT: Okay. All right.

BY MR. FALK:

Q: Do you recall having conversations -- I mean, you recall that there was a conversation took place?

A: At the end of the trial, we talked in the hall, me and Mr. Wilson and my wife, about a appeal, but I mean, I didn't know what it was.

Q: After the conversation did you think that you would have to hire a lawyer for his appeal?

A: I told my wife, I said, if we appeal it, we'd have to get us -- had to spend some more money that we did not have the money to spend.

Q: Okay. No further questions.

THE COURT: All right.

Mr. James?

MR. JAMES: No questions, Your Honor.

THE COURT: You may step down. Thank you.

MR. MCCOY: All right.

THE COURT: Mr. Falk?

MR. FALK: One moment, Your Honor.

We'd call my client, Your Honor.

THE COURT: All right.

DIRECT EXAMINATION OF JAMES A. WILSON BY MR. FALK:

Q: Mr. Wilson, you heard your attorney testify that he told you about the conflict and you said you had no problem with

it. That was his testimony.
A: Yes, sir.
Q: What were you thinking?
A: Well, when he told me that it was a conflict, he never told me anything about a conflict of interest. He just told me he was the victim's cousin. And he was like, well, do you want me to step off your case? And I was like, well, will my parents receive their money back, because they didn't have no -- I know they didn't have another $10,000 to pay anybody. So, he was like, no, but if you want me to step off your case, I will. So, I was like, well, since my parents hired you, you can go ahead and represent me.
Q: Thank you.
A: That's all I knew.
Q: Do you remember a conversation you had with him about him filing a notice of intent for appeal at the end of this?
A: Yes, sir. I did.
Q: What did you -- what was your understanding of that?
A: Well, after I -- after I was sentenced -- after I was sentenced to 27 years, he came in the back and he was like, well, you could appeal. And I was like, well, how would I go about appealing it? And he said, get with your parents and your parents will get with me. And I said, okay, and I walked -- and he walked off and I went my separate way.
Q: You don't recall him explaining that you could get

somebody appointed to represent you on the appeal?
A: He never explained to me anything about -- only thing he told me was I had 27 years and I would do 23 years off 27. And he told me that I could appeal. And I said, well, how would I go about appealing? He said, get with your parents ---
Q: Okay. So, when he said get with your parents and they'll get back with me, what was your -- what did you think he was telling you?
A: To get in touch with my parents and tell my parents to come talk with him and he would appeal for me.
Q: And they would hire him for your appeal?
A: No, I didn't know anything about if they had to hire him or not. All I knew was he told me to get with my parents and tell them to get with him about a appeal. I didn't know anything else. I'm not -- I don't know the law. He's a lawyer, he knows the law. He knew what he was doing.
Q: And that was the last conversation you had with him about it?
A: Yes, sir.
Q: How much ---
A: Well, no, it wasn't. I wrote -- after 10 days or whatever, I wrote the law library and I asked them how do I appeal, and they told me I had to get with my lawyer. So, when I got to a certain yard, I started doing -- I started

doing my research in the law and I wrote him and asked him why didn't appeal my case when I asked him because I was telling my mom to get in touch with him and she could never get in touch with him. She only got in touch with his secretary. And he was like, I didn't see any merits but before I went to trial, I'm going to trial because it -- I'm telling him it's a accident. So, I'm telling him now if I lose I want to appeal. You a paid lawyer.

Q: We had talked about the conflict of interest. We talked about the appeal issue. We talked about failing to object to the solicitor's closing arguments. Are there other issues that you want to raise?

A: Yes, I do. He actively represented conflict ---

MR. JAMES: To the extent that he might attempt to raise any allegations that have not heretofore been set forth in the original application, I would respectfully object, it's not properly pled.

THE COURT: All right.

A: He actively represent -- well, here it says I have my own notes, it says in the Sixth Amendment, the Sixth Amendment guarantees the right to effective assistance of counsel in criminal prosecutions to obtain a reversal a conviction -- to obtain a reversal of a conviction the defendant must prove that, one, counsel's performance failed below an objective standard of reasonableness; and two, counsel's deficit

performance prejudices the defendant resulting in an unreliable for fundamentally unfair outcome in the proceeding.

THE COURT: Well, I understand the law.

A: I understand, too.

THE COURT: Tell me about the specifics of what he did.

A: Well, prior to trial he did tell me that he was a victim -- he was the victim's cousin but he never told me anything about a conflict of interest, period. I didn't know what a conflict of interest was. I had no idea what a conflict of interest was. The only thing he told me was that he was the victim's ---

THE COURT: Well, didn't we talk about this already?

A: Yeah, but you told me to tell him what ---

THE COURT: He asked you if there was something that we haven't talked about.

A: Oh, yes, sir. Well, he did -- he didn't object to the closing arguments when the prosecutor inflamed the -- inflaming improper arguments when he was like ---

THE COURT: We've already talked about that.

A: Okay, that -- well ---

THE COURT: Okay. Now, what Mr. Falk wants you to tell me is he's basically giving you an opportunity in case he forgot something to tell me what he forgot to talk about, and that's what he's asking you. Now, improper closing arguments, conflict of interest, we talked about all that. Is there

something that we haven't talked about?

A: No, no, sir.

THE COURT: Mr. Falk is ---

A: No, sir, Your Honor.

THE COURT: Well, that's what he was asking.

All right, Mr. James.

MR. JAMES: I have no questions for this witness, Your Honor.

THE COURT: All right. Thank you. Step down.

Mr. Falk?

MR. FALK: Applicant rests.

THE COURT: Thank you, sir.

MR. JAMES: Your Honor, the state would very briefly like to recall trial counsel.

THE COURT: Yes, sir. Come around. And he's under oath.

DIRECT EXAMINATION OF RALPH J. WILSON, SR. BY MR. JAMES:

Q: Mr. Wilson, you have a secretary at your office, correct?

A: I do.

Q: All right. If somebody calls and asks your secretary for an appeal, what happens? What does she do?

A: She would give me the message first of all.

Q: Okay.

A: That's the first thing she would do. And normally, they would make a note of it because we understand that we only have a few days, 10 days, in order to perfect the appeal. So,

if someone called and left a message and said I want to file an appeal, whether I'm there or not, I would get the message. Just like the next day after, which was the 30th, when I got the call from Mr. McCoy, they record that and leave it on my desk so that I know that Mr. McCoy called.

MR. JAMES: No further questions, Your Honor.

MR. FALK: No redirect.

THE COURT: Thank you. You may step down.

All right. Mr. James?

ARGUMENT BY COUNSEL:

MR. JAMES: Your Honor, I've said it once and I'll say a thousand times, in a post-conviction relief action we are held to the standards set forth in *Strickland v. Washington* which ---

THE COURT: And *Cherry*.

MR. JAMES: And *Cherry*. There must be a showing of deficiency on the part of counsel and a showing of prejudice therefrom such that the applicant was denied his due process rights under the United States Constitution to the effective assistance of counsel under the prevailing professional norms. He has set forth three broad-stroke allegations as to how counsel was ineffective. The first one he indicates that he was denied his right to properly file a notice of appeal. Mr. Wilson testified that he explained to him that he could file an intent of notice to appeal, that he explained to him how to

communicate that to him, that he had a meeting with -- with his parents.

THE COURT: Let me tell you my -- the applicant acknowledges that he was informed. He says pursuant to that, if I understand the testimony, he contacted his parents, per instruction. Mr. McCoy says he met with Mr. Wilson and made the decision based upon cost, among other things, not to proceed. Wasn't that what -- isn't that was the testimony just showed?

MR. JAMES: Yes, Your Honor.

THE COURT: Isn't that what it just showed, Mr. Falk?

MR. FALK: Yes, Your Honor, but I'd want to respond to that.

THE COURT: I'm gonna let you, but, I mean ---

All right. Go on Mr. James.

MR. JAMES: But ultimately that decision was part of Applicant's -- and what counsel was looking for was a firm request, file a notice of appeal. There was some hemming and hawing over the extent to which he explained the minutiae of the appellate process to Applicant. Your Honor, my understanding under the law is that you merely have to inform them that they have a right to an appeal and that they have 10 days to do so, as that is typically what is informed about -- for example, during a guilty plea if they're informed of their rights at that time.

THE COURT: That's what I do.

MR. JAMES: It's usually one of the last things stated, you have 10 days to file your notice of appeal.

As to the other allegations, there was an allegation of a conflict of interest. There is a vague distant relationship that was communicated to the applicant. There is no evidence to show any actual conflict or any prejudice that could've arose out of the proposed conflict of interest that counsel communicated to the applicant and that Applicant said I don't have a problem with this.

Your Honor, as to the final allegation that counsel is ineffective for failing to object during closing arguments, the state respectfully would only restate the explanation provided by counsel on the stand that the state's closing argument was a situation drawn from reasonable inferences based on the evidence that was properly introduced during the course of trial, in particular, the forensic evidence. For all of these reasons, Your Honor, I respectfully request that the application for relief be denied.

THE COURT: Okay. Mr. Falk, let me hear from you.

MR. FALK: Your Honor, I think the best practice in this situation is to go ahead and file the notice of appeal and let -- advise your client, especially when you've got a retained client that might not be able to retain you on an appeal is to advise them that they don't have to hire another lawyer, that

they can get the public defender's office or Office of Appellate Defense to represent them. I think it's fair to assume from the testimony here that when the communication was giving to Mr. McCoy, Mr. McCoy thought he was in a situation that had to hire another lawyer. I don't think it was ever made clear that somebody else could pick this up for him. I do not doubt that at the sentencing he was advised that had had 10 days to file a notice of appeal, but I think there has to be some type of informed ---

THE COURT: Well, did the judge tell him that at the sentencing?

MR. FALK: And I do not dispute that. My point is under the facts in this case where he ---

THE COURT: So, the judge told him and Mr. Wilson?

MR. FALK: But nobody told him that he could get somebody to represent him on appeal. He was in a situation where he had a paid lawyer and I think certainly Mr. McCoy's testimony was we don't have the money to go forward with this appeal. So, he certainly -- Mr. McCoy certainly didn't have an understanding that somebody could do this. His testimony was we didn't have the money to go forward, that's why we didn't go forward. So, it's not necessarily -- his testimony wasn't necessarily that we didn't forward because we didn't think it was bona fide; it was, we didn't have the money. That shouldn't be the factor for making somebody's decision. I

think ultimately, this decision was my client's and not his parents' decision as to file an appeal. So, I do think that he should be entitled to relief under wanting to file a belated appeal in this case. I think my client was sure that he wanted to have an appeal and he did not realize that would be available to him. He thought he had to have -- he had no more money to keep going ---

BY THE COURT:

THE COURT: And Mr. Johnson [sic], tell me about that -- I mean, when I do pleas and I advise someone of their right to appeal, I always tell them that if they can't afford an appellate attorney, one will be appointed for them. And basically I tell them that so that they'll understand that I'm not -- while I tell them that it's their trial lawyer's obligation to file the notice of intent, that it's not his obligation to proceed unless he's contracted. But, you know, what do you think? Why effect does that have, the -- there's been no testimony that he was actually advised that he would be entitled to counsel, appellate counsel if he couldn't afford it. What do you think that means?

MR. JAMES: Well, Your Honor, this appears to me to be a single straightforward question that could've been resolved had anybody simply asked Mr. Wilson, hey, is this gonna cost me anything, and nobody ever did.

THE COURT: But does counsel have an obligation to tell

him that? That's the issue. What is -- there's a Supreme Court decision on advising someone of their right to counsel, but -- and I don't even think it's necessary in the -- I mean, in a plea situation, I don't think the trial judge has to do it, but counsel does. What does the case law say about that narrow issue of whether or not it has to include being advised that if they could not afford appellate counsel, appellate counsel would be provided for them at no cost?

MR. FALK: I'm not aware of the case.

MR. JAMES: Your Honor, the only language that I have available to me right now is that which I included in the state's return which very simply states: Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal. That's a direct quote from *Turner v. State*. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in *Anders v. California*.

THE COURT: Read that last sentence again.

MR. JAMES: In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in *Anders v. California*.

THE COURT: And that is the intelligent waiver of the right?

MR. JAMES: Yes.

THE COURT: Okay.

All right. Let's move on the next matter.

Yes, sir?

MR. FALK: On the conflict of interest -- I think this is a conflict of interest that if there's gonna be a waiver, this is the waiver that needed to be in writing so that it's clear that my client fully understand, appreciated what it meant for a conflict of interest in this case that the potential relationship there and ---

THE COURT: And I don't know that there was a conflict. I think Mr. Wilson advised him of the potential for a conflict and told him. That it essentially was no conflict because he didn't even know the person; was distantly related but didn't even know the person. And quite frankly, I've lived almost 70 years and I would not doubt that people I'm related have stood before me either in trial or in plea. I wouldn't doubt that one lick. In fact, I would almost bet that it has happened. I don't know them. I got enough kin people that I do know, but they're scattered all over the place. You know, you live in Horry County long enough that's gonna happen. If there was, I think he waived it. I mean, that's just my feeling on it.

Let's go to the next issue. That would be the improper comments on closing. What do you say about that, Mr. Falk? I mean, don't we see it every day where the solicitor and defense counsel take the facts, take what's been testified to,

bend them and fashion them to follow their theory of the case.

MR. FALK: Your Honor, it would be my position that there's a bright line between on one hand saying Person A said this happened -- Person A said the light was red, Person B said the light was green, you know. And you also heard the testimony of such-and-such, you know. It's up to you to make the decision. But when you start crossing a line and saying that the client is lying, and that the solicitor said on more than one occasion, and that crosses the line to an improper closing argument.

THE COURT: Well, you know, you look at the charge typically given. I haven't read Judge John's charge, but I'll almost bet you he gave a charge on direct and circumstantial evidence, and the charge that I always give and I think most judges do on circumstantial evidence is -- you know, circumstantial evidence is a chain of facts or requires deduction on your part. That is you take after -- it doesn't prove the main fact, but it proves other things or shows other things and you have to deduce whether the main fact is something that you can -- or that what has been proven. You know, I -- counsel says, yeah, there might be something that's a little edgy but jumping up and down objecting sometimes can hurt you. And I've seen it; I've done it. That doesn't give me a lot of heartache here. I am a little concerned about this issue of a belated appeal. I just know that. I'm gonna

let you each submit me an order within the next 30 days. I'll let you cite what case law you have and I'll rule on it at that time. Okay?

MR. FALK: On the belated appeal issue?

THE COURT: I'll let you submit an order on all of it if you would.

MR. FALK: Thank you, Your Honor.

THE COURT: I'm just telling you what my general feelings are right now. I haven't ruled on ---

MR. FALK: Thank you.

THE COURT: How I'm looking at it, I don't know. If you can show me some authority otherwise, I'm receptive to that.

MR. FALK: Thank you.

THE COURT: But that's just how I kind of look at it now and let's see what we got. Okay?

MR. FALK: Your Honor, I wasn't paying attention ---

THE COURT: Are you gonna put up a case? I may have just jumped the gun. Were you gonna put up any evidence, Mr. James?

MR. JAMES: The only evidence I put up was when I called Mr. Wilson back up there for, I think, one or two questions.

THE COURT: I mean, that was it, right? You were done?

MR. JAMES: I was done.

THE COURT: Okay. All right.

MR. FALK: You want us to send it to you?

THE COURT: I have just not -- I ---

MR. FALK: No, I just want to know ---

THE COURT: I'm not gonna rule -- I guess he made a motion for directed verdict or whatever you do at the close of a PCR, but I want you to submit it under order. Okay?

MR. FALK: I just wanted -- do you want Mr. James to see it first before I sent it to you or -- that was all I was trying to ---

MR. JAMES: I think since we're both submitting proposed orders, we can send them on to His Honor ---

MR. FALK: And copy you, okay.

THE COURT: Copy them to each other. I mean, that's just curtesy. All right?

MR. FALK: I just didn't know if you wanted it in advance.

THE COURT: And send it to Elizabeth. It will most assuredly get to me if it goes to Elizabeth first.

Okay.

MR. JAMES: May Mr. Wilson be excused?

THE COURT: Yes, certainly.

ADJOURNED - 4:50 P.M.

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of James A. Wilson v. State of South Carolina, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on May 21, 2018.

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

Kay H. Richardson
Official Court Reporter

October 11, 2018.

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
James A. Wilson, S.C.D.C. No. 339674,. Applicant, v. State of South Carolina, Respondent.	Case No.: 2017-CP-26-00597 **ORDER OF DISMISSAL; GRANT OF RELIEF PURSUANT TO WHITE V. STATE**

2018 JUL 20 PM 1:35
CHEE K. ELLIS
CLERK OF COURT
HORRY COUNTY, SC
HORRY COUNTY

This matter comes before the Court by way of an application for post-conviction relief filed by James A. Wilson ("Applicant") on February 1, 2017. Respondent made its return on or about December 13, 2017. The Court convened an evidentiary hearing into the matter on Monday, May 21, 2018, at the Horry County Courthouse in Conway, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Ralph J. Wilson, Sr., Esq. ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the September 2015 term of the Horry County Grand Jury for murder (2015-GS-26-04026), and possession of a

weapon during the commission of a violent crime (2015-GS-26-04027). Ralph J. Wilson, Sr., Esq. represented Applicant. George Debusk, Esq., and Seth Oskins, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On June 27, 2016, Applicant proceeded to trial before the Honorable Steven H. John and a jury. The jury found Applicant guilty of the lesser-included offense of voluntary manslaughter, and as indicted for the weapon charge on June 29, 2016. Judge John sentenced Applicant to imprisonment for concurrent terms of 27 years for voluntary manslaughter, and 5 years for the weapon charge. Applicant did not appeal his conviction or sentence.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Trial counsel provided ineffective assistance by failing to file a Notice of Appeal on behalf of Applicant where Applicant asked counsel to appeal and counsel should reasonably have known that Applicant would want to appeal."
    a. "During trial, Applicant told counsel that if the jury found him guilty, he was going to appeal all the way to the Supreme Court because the incident was an accident and he did not intentionally shoot the victim. Counsel however did not respond."
    b. "After trial, counsel spoke with Applicant and his parents about an appeal whereas he informed them that he did not see where there was anything to appeal. Applicant again stated he wanted an appeal, but counsel reiterated that there was nothing to appeal."
    c. "Counsel unreasonably failed to appeal and turn the case over to the Office of Appellate Defense after Applicant had shown a clear desire to appeal and where counsel either knew, or reasonably should have known, that Applicant wanted to appeal."
    d. "Applicant was prejudiced in that he was deprived of his vital interests in having the assistance of someone trained and experienced in appellate practice and procedure to ensure that Applicant had the opportunity to have a higher court review his unlawful conviction and sentence through the state appellate process."

2. "Trial counsel provided ineffective assistance in failing to adequately inform Applicant and the court of the existence of a potential or actual conflict of interest where counsel and his son, who is also a lawyer, are cousins to the victim and the son represented a state witness who testified against Applicant, prior to, and after the incident."
    a. "Prior to trial, counsel told Applicant that the victim who died as a result of the incident for which Applicant was standing trial, was a cousin of defense counsel and he asked Applicant if that bothered Applicant and if he still wanted counsel to represent him."
    b. "Applicant informed counsel that it did not bother him and that counsel could represent him since his parents had already hired him, however, Applicant did not understand the ramifications in that counsel did not explain anything as to why Applicant might not want counsel to represent him solely because the victim was his cousin and counsel failed to provide Applicant with all necessary information in which to make a reasoned and intelligent choice."
    c. "Counsel had a duty to inform Applicant and the court of the existence of a potential or actual conflict of interest in that counsel and his son were relatives of the victim and counsel's son (also a lawyer) had represented a person who was a witness against the Applicant prior to and after the incident."
    d. "Had counsel adequately explained to Applicant that there was a potential or actual conflict of interest at any time when counsel became aware of same, even during trial, Applicant would have asked counsel to take appropriate action to have counsel disqualified and moved for a replacement counsel or take other such action as necessary to ensure that Applicant was provided another attorney."
    e. "Applicant was prejudiced in that among other things, counsel failed to advocate for Applicant in a manner that might be expected of attorneys in criminal matters."
3. "Trial counsel provided ineffective assistance in failing to object to the Solicitor's closing argument and ask for a curative instruction, where the Solicitor acted as a witness by arguing alleged facts that was not in evidence, which tended to bolster the credibility and false testimony of State witnesses, and where his argument was contradicted by testimony and other evidence, to clear prejudice of the Applicant."
    a. "During closing arguments, the Solicitor improperly argued that the victim ducked so the bullet would miss her and that his why the bullet entered and existed the victim the way it did. This was improper because, among

other things, the State's witness testified that the victim never saw the gun and did not try to move out of the way of the bullet."

b. "The Solicitor also argued that the bullet's trajectory (where it entered and exited the victim) showed that Wilson had unlawfully shot the victim. This was improper in that the only expert to testify regarding the trajectory of the bullet testified that it was not possible for the shooting to have occurred at an angle that placed the victim and the Defendant at a face to face angle as asserted by a State's witness and he said nothing of the victim ducking to avoid the bullet."

c. "The bullet entered the victim's left breast area and exited through the right breast area, which is consistent with the testimony of Applicant, defense witnesses, and the expert witness. No testimony or other evidence was presented to insinuate or establish that the victim saw the gun and ducked to try to get out of the way of the bullet, or, that even if the victim did duck, that doing so could cause the bullet to enter and exit the victim the way it did and be consistent with an intentional shooting as opposed to an accidental shooting."

d. "The Solicitor's closing argument was also improper in that it made it appear that he was a witness, he was not qualified in the area of ballistics or the trajectory of a bullet, and his closing argument tended to confuse the jury, bolster the credibility and false testimony of the state's witnesses whom the Solicitor knew were testifying falsely, and led the jury to believe that the Solicitor had knowledge of facts and evidence other than that presented in court."

e. "Counsel unreasonably failed to object and ask for a curative instruction."

f. "Applicant was prejudiced in that his defense was that of 'accident,' and his guilt or innocence hinged on whether the jury believed the State or Defense witnesses, as well as whether an expert was able to explain the ramifications of the bullets trajectory to the jury in terms that the jury could understand. However, the Solicitor's argument acted to bolster the credibility of the State's witnesses despite the Solicitor and the jury knowing that the State's witnesses were testifying falsely, improperly urged the jury to consider the argument as facts and evidence, and improperly urged the jury to believe that the Solicitor was an expert in the trajectory of a projectile to the extent that the jury disregarded substantial evidence showing that the shooting was an accident."

g. "Applicant was also prejudiced in that but for counsel's failure to object to the Solicitor's improper argument and ask for a curative instruction, no reasonable juror would have voted to find Wilson guilty of voluntary manslaughter."

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at

689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Failure to File a Notice of Appeal

Applicant alleges Counsel was ineffective in failing to file a notice of appeal. "All defendants who have been found guilty of a crime have a right to be informed of the possibility of appeal and the method for taking an appeal." Frasier v. State, 306 S.C. 158, 161, 410 S.E.2d 572, 574 (1991) (citing Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989); White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974)). "In the absence of an intelligent waiver by the defendant,

counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967)." Simuel v. State, 390 S.C. 267, 270, 701 S.E.2d 738, 739 (2010) (quoting Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008)). Where an Applicant does not knowingly and voluntarily waive his right to an appeal, and where Counsel fails to either initiate that appeal or comply with Anders procedure, "White permits consideration of the full trial record on [an] issue in conjunction with appellate review of the PCR proceeding under an exception to the prohibition against appellate courts considering appeals in the absence of notice of direct appeal given and timely served." Smith v. State, 309 S.C. 413, 415, 424 S.E.2d 480, 481 (1992) (citing Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986)).

Respondent argued against Applicant's demand for White relief at the evidentiary hearing, but subsequent to the hearing indicated to this Court its intent to concede the White claim. This Court finds the concession well taken, and the Court finds there is sufficient evidence to show Applicant did not knowingly and intelligently waive his right to a direct appeal from his conviction. Accordingly, Applicant is directed to petition the Supreme Court of South Carolina for review pursuant to White v. State.

2. Conflict of Interest

Applicant alleges Counsel was ineffective for failing to adequately inform him and the trial court of the existence of a conflict of interest. "To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object a trial must show an *actual* conflict of interest adversely affected his attorney's performance." Jordan v. State, 406 S.C. 443, 449, 752 S.E.2d 538, 541 (2013) (quoting Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001)). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a

criminal conviction." Id. (quoting Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008)). An actual conflict of interest occurs:

> when a defense attorney places himself in a situation inherently conducive to divided loyalties. . . . If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client.

Lomax, 379 S.C. at 101, 665 S.E.2d at 168 (quoting Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984)). "[U]ntil a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance." Id. "However, a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice to obtain relief." Id. (quoting Staggs v. State, 372 S.C. 549, 551-52, 643 S.E.2d 690, 692 (2007)). Conflicts of interest may be waived so long as such waiver is done knowingly, intelligently, and voluntarily. Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).

At the evidentiary hearing, Applicant testified Counsel informed him of a potential conflict—namely that the victim was a cousin to Counsel. Applicant claimed he asked if his parents would get their money back if he relieved Counsel, to which Counsel reportedly said they would not get a refund. Applicant asserted Counsel never explained the concept of a conflict of interest to him, let alone its gravity, when Applicant waived the conflict. Applicant also testified Counsel's son, Ralph J. Wilson, Jr., Esq., represented Kenneth Green, a witness against Applicant at trial, which created a conflict for Counsel.

Counsel testified he talked to Applicant about the potential conflict on February 23, 2016, at which time Applicant waived the issue. Counsel explained the victim was either a second or third cousin, and that there was no close relationship. Counsel noted he did not know the victim

any more than anybody else. Counsel denied ever having a discussion about a refund with Applicant. As to his son's representation of Green, Counsel testified he and his son ceased joint practice in May 2015, and that he had not known his son represented Green.

The Court finds Applicant has not met his burden of showing Counsel was ineffective. First, it is uncontested Applicant was informed of and waived any potential conflict of interest presented by Counsel's remote relation to the victim. Applicant presented no evidence to this Court to show that Counsel withheld some aspect of the conflict or misadvised him that would have rendered his waiver unknowing or unintelligent, but only offered a vague assertion that he was not supplied all necessary information to make an informed choice. Second, there is no evidence before this Court of any actual conflict. To the contrary, Counsel's credible testimony made clear there was no meaningful relationship between himself and the victim, or even sufficient familiarity for him to identify the victim, let alone any representation or relationship sufficient to divide Counsel's loyalty. As to the representation of Green by Counsel's son, the only evidence before this Court is that Counsel and his son were not engaged in any joint practice during the course of Counsel's representation of Applicant, or even operating out of the same premises. Attorneys in the State of South Carolina are not obliged to keep tabs on who their practicing relatives represent. In any event, as was the case with the relationship to the victim, there is no evidence before this court to establish an actual conflict arising out of Ralph Jr.'s representation of Green. Accordingly, this Court finds Applicant has not met his burden of showing an actual conflict of interest, and his request for relief by way of this allegation is **DENIED.**

3. Failure to Object to Solicitor's Closing Argument

Applicant alleges Counsel was ineffective in failing to object to the State's closing argument that the victim must have ducked during the fatal confrontation. "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." Brown v. State, 383 S.C. 506, 515, 680 S.E.2d 909, 914 (2009) (quoting Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004)). "The argument must not be calculated to arouse the juror's passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom." Id. "On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002).

At trial, forensic pathologist Nicholas Batalis testified as an expert witness on behalf of the State. (Tr. 252-278). Dr. Batalis determined the bullet that killed the victim was fired from a distance between two to four feet away, entered through her left side near the armpit, traveled downwards between two ribs on her left side, then struck the aorta, pancreas, stomach, right kidney, right adrenal gland, passed through the right side of the diaphragm, and then exited the right posterior side of the chest. (Tr. 257-260). On cross-examination, Counsel repeatedly challenged Dr. Batalis on precisely which arrangement of persons was feasible given the

trajectory of the bullet. (Tr. 267-269). Dr. Batalis explained there were multiple ways in which the bullet's trajectory could have been effectuated:

> I can't testify to every possible scenario. I can say I know that the pathway that the gun – I know the relationship of the gun to the body when it was fired, and so, I mean, ***bodies could be in motion***, but given the circumstance where two people are directly facing each other, you know, one way would be like that. It is hard to imagine another way to have the left-to-right pathway if they are facing like this. A slight turn like that (indicates) would change everything.

(Tr. 269, ll. 3-12) (emphasis added). Counsel sought to clarify and Dr. Batalis again noted the possibility of the victim's movement:

> Q. I asked this once before, and I think you gave me an answer and I think I understand what you are saying, but I want to be clear. When we talk about the shooting and how it happened, I asked you specifically if the two people facing each other, three or four feet away from each other, they are facing each other and a gun is pulled out, the arm is lifted and the gun is fired, is there a way to have made that particular shot like that?
>
> A. Yes. Again, if the arm was out, not straight out, but if it was up at an angle, or ***if the decedent sees the gun presented and would turn***, that would be another way in which it could happen.

(Tr. 273, ll. 7-19) (emphasis added). In closing, Counsel argued that the trajectory determined by Dr. Batalis was mutually exclusive with the face-to-face confrontation and murder by Applicant claimed by the State's witnesses. (Tr. 384, ll. 3-22; Tr. 387, ll. 4-25). The State, in its own closing, argued its own theory of what occurred:

> You heard the pathologist testify that arm had to be against the chest for that stippling to be there. If that arm was raised like this, the stippling wouldn't have been (indicates), instead it was on the arm, because that is what Dr. Batalis testified. Her arm had to be down when she was shot. He also told you how it probably happened. Trajectory down around here (indicates), going across the body and slightly down. He didn't have to come across and shoot like this. ***When someone pulls a gun, what is the first reaction? You'll duck.*** If Nigeria McDonald ducked just a little bit, it goes right back to where the person standing pointing a gun at. It is not difficult. She sees the gun pointed. What is her first

> reaction? I'm in trouble, she ducks, and that's where she's hit. It lines up. With her arm down by her side, and she ducks, and that is where the stippling is. Arm is raised, it would be down here under her arm, not up here under the arm.

(Tr. 395, ll. 2-20) (emphasis added).

At the evidentiary hearing, Counsel testified he did not object because he believed the State was arguing reasonable inferences based on the evidence in the record. Counsel noted there was conflicting testimony "all over the place" from witnesses. Refreshed and confronted with the testimony of Dr. Batalis and the State's closing, Counsel reaffirmed that the pathologist indicated the shooting could have happened in more than one way, and that the State was entitled to use the facts in the record to develop and present its theory of the case.

The Court finds no deficiency on the part of counsel, nor prejudice therefrom. To the contrary, Counsel's judgment is entirely accurate, and based upon review of the testimony at trial, the Court finds the State's theory-in-closing that the victim instinctively moved upon seeing Applicant's gun is based upon reasonable inferences drawn from the testimony of Dr. Batalis. As such, there was no basis for Counsel to object. Accordingly, Applicant has failed to meet his burden, and his request for relief by way of this allegation is **DENIED**.

[*Conclusion and signature on following page*]

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice;

2. Applicant is directed to petition for writ of certiorari in the Supreme Court of South Carolina in order to effectuate relief pursuant to White v. State; and

3. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 17 **day of** July **, 2018.**

LARRY B. HYMAN, JR.
Presiding Judge
Fifteenth Judicial Circuit

Conway, South Carolina

528

WITNESSES

Greg Lent Horry County Police Department

ARREST WARRANT NUMBER

2015A2610201114
CDR: 0549 16-23-0490
DOA: 5/9/2015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: SEP 17 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-26- 04627

The State of South Carolina

County of Horry

George H. DeBusk, Jr
15H02047

COURT OF GENERAL SESSIONS

SEPTEMBER, 2015 TERM

THE STATE

vs.

James Abdula Wilson
B/ M
[redacted] **Oyster Ln**
North Myrtle Beach, SC 29582-6931
DOB: [redacted]
SSN: [redacted]

ATTORNEY: James Cullen Galmore

Indictment for

POSSESSION OF WEAPON DURING COMMISSION OF VIOLENT CRIME

Jimmy A. Richardson, II, Solicitor

ORIGINAL

FILED
HORRY COUNTY
2015 SEP 18 PM 1:13
MELANIE HUGGINS-WARD
CLERK OF COURT

DATE RECEIVED FROM
GRAND JURY

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on September 17, 2015, the Grand Jurors of Horry County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That James Abdula Wilson did in Horry County, on or about May 8, 2015, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. 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.

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

2016 JUN 29 AM 10:30

COURT DATE
PLED GUILTY/TRIAL

WITNESSES

Greg Lent Horry County Police Department

ARREST WARRANT NUMBER

2015A2610201113
CDR: 0116 16-03-0010, 0020
DOA: 5/9/2015

ACTION OF GRAND JURY TRUE BILL

Foreperson of Grand Jury
Date: SEP 17 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-26- 04026

The State of South Carolina

County of Horry

George H. DeBusk, Jr.
15H02047

COURT OF GENERAL SESSIONS

SEPTEMBER, 2015 TERM

THE STATE

vs.

James Abdula Wilson
B/M
[redacted] Oyster Ln
North Myrtle Beach, SC 29582-6931
DOB: [redacted]
SSN: [redacted]

ATTORNEY: James Cullen Galmore

Indictment for

MURDER

Jimmy A. Richardson, II, Solicitor

ORIGINAL

FILED
HORRY COUNTY
2015 SEP 18 PM 1:13
MELANIE ROLLAND-WARD
CLERK OF COURT

DATE RECEIVED FROM
GRAND JURY

530

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on September 17, 2015, the Grand Jurors of Horry County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That James Abdula Wilson did in Horry County, on or about May 8, 2015, willfully, feloniously, and intentionally kill the victim, Nigeria McDonald, with malice aforethought, either express or implied, by means of gunshot, and the victim did die as a proximate result thereof on or about May 8, 2015 in Horry County, in violation of Section 16-03-0010, S. C. 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.

JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

FILED
2016 JUN 29 AM 10:30
GLERK OF COURT

COURT DATE
PLED GUILTY/TRIAL