

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Kristi Harrington, Circuit Court Judge

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SC Court of Appeals

Case Nos.: 2010GS1008190 and 2010GS1008191
Appellate Case No.: 2012-213248

THE STATE OF SOUTH CAROLINA Respondent,

v.

DENORRIS HALL Appellant.

RECORD ON APPEAL – VOLUME I

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT

STATE'S EXHIBIT #1 (ADVISEMENT OF RIGHTS FORM)

STATE'S EXHIBIT #2 (STATEMENT OF DEFENDANT)

STATE'S EXHIBIT #3 (MAP)

STATE'S EXHIBIT #4 (MAP)

STATE'S EXHIBIT #5 (CD)

STATE'S EXHIBIT #6 (CD)

STATE'S EXHIBIT #7 (SHELL CASINGS)

STATE'S EXHIBITS 8-12 (PHOTOGRAPHS)

STATE'S EXHIBITS 24-43 (PHOTOGRAPHS)

FILED

THE STATE OF SOUTH CAROLINA

2012 OCT 22 PM 4: 26 IN THE COURT OF APPEALS

JULIE J. ARMSTRONG APPEAL FROM CHARLESTON COUNTY
CLERK OF COURT Court of General Sessions

BY _____ Kristi Harrington, Circuit Court Judge

INDICTMENT NOS.: 2010GS1008190 to 2010GS1008191
WARRANT NOS.: K404177 to K4041178

THE STATE, ... RESPONDENT,

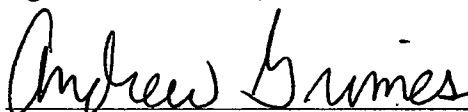
v.

DENORRIS HALL, ... APPELLANT.

NOTICE OF APPEAL

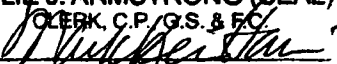
Denorris Hall appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Kristi Harrington on October 17, 2012.

October 22, 2012



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ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By 
DEPUTY CLERK

FILED THE STATE OF SOUTH CAROLINA

2012 OCT 22 PM 4:26 IN THE COURT OF APPEALS

JULIE J. ARMSTRONG
CLERK OF COURT APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

BY Kristi Harrington, Circuit Court Judge

INDICTMENT NOS.: 2010GS1008190 to 2010GS1008191

WARRANT NOS.: K404177 to K4041178

THE STATE, ... RESPONDENT,

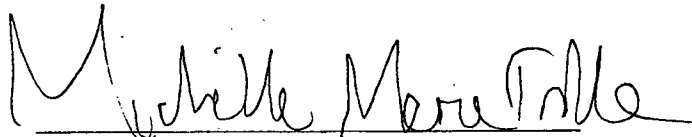
v.

DENORRIS HALL, ... APPELLANT.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Adam Young, Assistant Solicitor for Charleston County, by hand delivering a copy of it to the Charleston County Solicitor's Office at 101 Meeting Street, Charleston, South Carolina 29401, on October 22, 2012.

October 22, 2012



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ATTEST: A TRUE COPY
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By Mark Beatty
DEPUTY CLERK

The South Carolina Court of Appeals

The State, Respondent,

v.

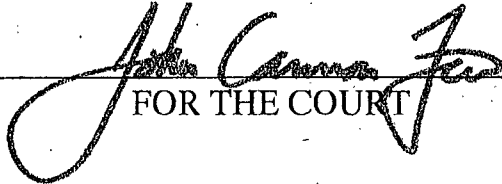
Denorris Hall, Appellant.

Appellate Case No. 2012-213248

ORDER

The motion of the Division of Appellate Defense to appoint Tiffany Freeman Hendricks as co-counsel for the purpose of preparing the briefs and record and arguing the case before this court in accordance with the conditions set forth in the motion and the terms of the 2013 Appellate Practice Project is granted. Ryan Lewis Beasley is hereby removed as counsel.

The due date for Appellant's initial brief is December 2, 2013. That deadline will not be extended except under extraordinary circumstances.


FOR THE COURT

Columbia, South Carolina

cc:

Robert Michael Dudek

Donald J. Zelenka

Ryan Lewis Beasley

Tiffany Freeman Hendricks

FILED
10/3/13


1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF CHARLESTON
4 2010-GS-10-8190, 8191

5
6 State of South Carolina
7 vs.
8 Denorris Hall

9
10
11 Charleston, South Carolina
12 October 15-17, 2012
13 Before the Honorable Kristi Harrington

14
15 APPEARANCES

16 For the State: Young, Whetmore
17 For the Defendant: Grimes, Ehrlick

18
19 Edited by: Michael C. Watkins
20 Official Court Reporter
21 Reported By: Sharon Vizer

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23
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MOTIONS

1 THE COURT: So now, Mr. Young?

2 MR. YOUNG: Good morning, Judge. We are prepared to
3 call the case of Denorris Hall. Mr. Young, how long will
4 this case take, Mr. Hall's case.?

5 MR. YOUNG: Two and a half to three days at the most,
6 be done by Wednesday.

7 THE COURT: Mr. Grimes, do you agree with that?

8 MR. GRIMES: Yes, ma'am.

9 THE COURT: All right. Any pretrial motions before
10 anything -- before we select a jury?

11 MR. YOUNG: There's a statement, Judge, a Jackson V.
12 Denno hearing I think is appropriate, I've got officers
13 waiting outside to do that.

14 THE COURT: But we can pick the jury then just move in.

15 MR. YOUNG: That will be fine as well.

16 THE COURT: Any issues before we select the jury?

17 MR. GRIMES: No, Your Honor.

18 THE COURT: And the strikes are five and ten; isn't
19 that correct.

20 MR. YOUNG: I think's right, Judge.

21 MR. GRIMES: Yes, ma'am.

22 THE COURT: All right. An your client wishes formal
23 arraignment; isn't that correct? You have a copy of that,
24 Mr. Grimes?

25 MR. GRIMES: Yes, Your Honor. May I approach to drop

MOTIONS

1 off our witness list?

2 THE COURT: You may.

3 MR. GRIMES: The State wants to sequester some
4 witnesses and that maybe could be heard.

5 MR. YOUNG: That's correct, Judge, a few witnesses on
6 his witness list, I think some family members and lay
7 witnesses, I would ask that be -- or character witness be
8 sequestered.

9 THE COURT: Any reason why I should not grant the
10 request for sequestration?

11 MR. GRIMES: Yes, Your Honor. First the State has
12 already -- under 615 has given no reason why the Court
13 should grant sequestration. And the case law just says the
14 opportunity to prepare testimony by itself is not enough,
15 these are not fact witnesses, and also his mother and
16 Godmother given his age at the time, he is now 20 years old,
17 it would be good for them to be here if he does decide to
18 testify. When he wants to make that decision he may want to
19 consult with his family and given the opportunity to see how
20 the trial is going will help him make that decision, too.
21 Thank you, Your Honor.

22 THE COURT: All right. I am going to sequester the
23 witnesses, grant the State's request. Then, of course, that
24 will apply to your witnesses, and your witnesses, Mr. Young.

25 MR. YOUNG: Judge, I would ask that the victim be

MOTIONS

1 allowed to stay in here.

2 THE COURT: Of course, and the lead detective.

3 MR. YOUNG: That's all, that's correct. One more
4 matter, Judge. After we pick the jury I would ask that we
5 don't swear the jury until that pretrial motion is heard if
6 that would be okay.

7 THE COURT: Any objection?

8 MR. GRIMES: No, Your Honor.

9 THE COURT: We'll just see how the timing goes, Mr.
10 Young.

11 MR. YOUNG: Yes, ma'am.

12 MR. GRIMES: And we would ask the lead detective be
13 sequestered.

14 THE COURT: During the hearing or during the entire --

15 MR. GRIMES: Trial and hearing.

16 THE COURT: All right. And is there -- what basis, Mr.
17 Grimes?

18 MR. GRIMES: Same reason as Mr. Young's basis for
19 sequestering Mr. Hall's family.

20 THE COURT: But doesn't case law allow that the lead
21 detective can be in the courtroom?

22 MR. GRIMES: In looking through the notes I don't think
23 I saw anything on the case detective.

24 THE COURT: Note your exception, he will be allowed to
25 remain. Thank you. All right. Anything before we bring in

MOTIONS

1 the jury in from the State?

2 MR. YOUNG: Nothing from the State, Judge.

3 MR. GRIMES: Nothing from the defense, Your Honor.

4 THE COURT: Do you want him to be formally arraigned
5 before the panel?

6 MR. GRIMES: We'd prefer that.

7 THE COURT: Going to take five minutes for them to get
8 here so I will just remain here and take care of any issues
9 that you need.

10 MR. YOUNG: Judge, the only issue I think is voir dire,
11 Mr. Grimes has a few I objected to, I don't know if you want
12 to address it now.

13 THE COURT: I have notes to which ones and most of them
14 not going to -- well, let's go ahead and put it on the
15 record. Mr. Grimes, you object to the some of the
16 State's --

17 MR. GRIMES: I believe it's number four, the phrase, a
18 bad experience with a police officer I think should just be
19 revised to any experience with a police officer.

20 THE COURT: I'm not inclined to ask that question, the
21 way it's worded anyway, Mr. Grimes. All right. Any other
22 objections?

23 MR. GRIMES: No, ma'am.

24 MR. YOUNG: Judge, on Mr. Grimes' voir dire I'd object
25 to I think it was number seven.

MOTIONS

1 THE COURT: An what was -- did the incident occur at
2 Three Dollar Lounge?

3 MR. YOUNG: It didn't, it was near the street at Three
4 Dollar Lounge.

5 THE COURT: What's the relevance of Three Dollar
6 Lounge?

7 MR. GRIMES: Mr. Hall gave a statement saying he was
8 going there on the night and probably a good reason,
9 probably raise the defense of mere presence.

10 THE COURT: Well, is there some significance to the
11 Three Dollar Lounge?

12 MR. GRIMES: Just a landmark in that area.

13 THE COURT: Well, is that close to the restaurant, to
14 Alluette's Restaurant?

15 MR. GRIMES: Not sure where Alluette's Restaurant is,
16 Your Honor, but I don't believe so.

17 MR. YOUNG: Judge, I don't think it's near there.

18 THE COURT: So what is the Three Dollar Lounge a
19 landmark to, Mr. Grimes?

20 MR. GRIMES: It's an area of North Charleston where
21 people go and hang out, that's where Mr. Hall was going that
22 night.

23 THE COURT: So what is the address?

24 MR. GRIMES: I think 7800 Rivers Avenue.

25 THE COURT: So that would be -- what's across street?

MOTIONS

1 MR. GRIMES: It's First Federal, right on Old Shipyard,
2 McMillan, I think Rivers.

3 THE COURT: 7800 Rivers? That's closer to North Woods
4 Mall.

5 MR. GRIMES: Well, I may have it mixed up, I know I
6 Googled it last night.

7 THE COURT: Well, I don't know how good a landmark it
8 is if you don't even know where it was. Any objection to me
9 finding the address for the Three Dollar Lounge?

10 MR. GRIMES: Ma'am?

11 THE COURT: Any objection to me finding the address and
12 pulling the address up?

13 MR. GRIMES: No, ma'am.

14 THE COURT: Again, was there any alleged events take
15 place at the Three Dollar Lounge?

16 MR. GRIMES: Well, after the victim was shot he went to
17 the Three Dollar Lounge and found someone to let him in and
18 I think he called 911 from there.

19 THE COURT: Mr. Young?

20 MR. YOUNG: Yes, Judge?

21 THE COURT: Your response?

22 MR. YOUNG: Again, the event didn't happen at Three
23 Dollar Lounge. The Three Dollar Lounge is at the corner of
24 McMillan and Spruill Avenue where the victim was shot.

25 THE COURT: So not even on Rivers.

MOTIONS

1 MR. YOUNG: Not even on Rivers. It's just a little
2 bar, it has nothing do with the case really, it's where he
3 called 911 from a cell phone over there. But certainly
4 that's not where the shooting happened, wasn't even in the
5 club or anything like that.

6 THE COURT: How about I rephrase your question to have
7 you or any members of you family familiar with the
8 intersection of -- or the area of McMillan and Spruill?

9 MR. GRIMES: That would be fine.

10 THE COURT: Because I think that's what really you're
11 trying to get, right?

12 MR. GRIMES: Yes, ma'am.

13 THE COURT: Or is it more about the lounge?

14 MR. GRIMES: It's more, I think, that area that stood
15 out to me. Thank you.

16 THE COURT: All right. And Mr. Young, any objection to
17 the Court changing it way?

18 MR. YOUNG: That is fine, Judge.

19 THE COURT: All right. Thank you.

20 MR. YOUNG: My further objections were eight and nine
21 as well.

22 THE COURT: And again, tell me about this restaurant.

23 MR. YOUNG: This restaurant is not the restaurant that
24 I understand he works at, I understand he works at Country
25 Cajun Kitchen Cafe where he worked at, it's now closed down,

MOTIONS

1 that's where he worked that night when he got off is where
2 he was working so I don't think this restaurant obviously
3 applies. Additionally, I think in that question it's
4 identifying by name the co-defendant as a shooter.

5 THE COURT: What is the significance of that
6 restaurant?

7 MR. GRIMES: It's my understanding where he worked at,
8 I had gone to a Facebook site and Twitter.

9 THE COURT: Well, who was the former chef in this case?

10 MR. GRIMES: The victim.

11 THE COURT: So the victim is the former chef?

12 MR. GRIMES: Yes, ma'am.

13 MR. YOUNG: Judge, I would just ask if anybody knows
14 the victim, I think that's appropriate instead of asking
15 about the restaurant, that would be my response, Judge.
16 Additionally I don't think naming Herman Smith, he's
17 certainly guilty of this crime as well, he has pled, I think
18 naming him in voir dire, Herman Smith, saying you know he
19 shot him, that's going to come out at trial. I think
20 certainly the question about did anyone know the name Herman
21 Smith.

22 THE COURT: Anything further regarding that, Mr.
23 Grimes?

24 MR. GRIMES: This helps put people in context. You've
25 had trials where juries in the middle of deliberations will

MOTIONS

1 come up and say, "Well, I remember an officer in this area,"
2 and have that at the end of trial, and we have all the
3 information we can at the beginning of the trial so we can
4 prepare the jury selection process.

5 THE COURT: All right. And you have an objection to
6 nine?

7 MR. YOUNG: I do, Judge.

8 THE COURT: And what is the basis of your objection?

9 MR. YOUNG: Judge, this question, I think, is talking
10 about convicted of a crime that carries less than a year,
11 prison -- jail time, he has indicated shoplifting, DUI's,
12 anything like that, I just don't think that's an appropriate
13 question to ask. I think the question has already been
14 stated if you are a victim of a crime, I think we have that
15 already in the voir dire, it's in the qualification
16 questions.

17 THE COURT: It's over one year.

18 MR. YOUNG: Over one year I've got.

19 THE COURT: This is under one year.

20 MR. YOUNG: That's what he has is number nine, that's
21 right. Judge, I think the question a year over has already
22 been asked in the qualification, I don't think there is a
23 reason to ask about the crime less than a year.

24 THE COURT: All right.

25 MR. YOUNG: That's why I object to that question.

MOTIONS

1 THE COURT: Okay. All right. Any additional
2 questions, Mr. Grimes?

3 MR. GRIMES: No, Your Honor.

4 THE COURT: Mr. Young?

5 MR. YOUNG: No, Your Honor, that's it.

6 THE COURT: Thank you. Dr. Eriksson works at MUSC?

7 MR. YOUNG: MUSC?

8 THE COURT: And Sergeant Hayward's first name?

9 MR. YOUNG: I think it is his witness, Your Honor.

10 MR. GRIMES: I believe Cavetta.

11 THE COURT: Okay. All right. Are we ready to select
12 the jury?

13 MR. YOUNG: The State is ready, Judge.

14 MR. GRIMES: Yes, Your Honor.

15 THE COURT: We'll begin with formal arraignment. Thank
16 you.

17 (The jury panel enters the courtroom.)

18 THE COURT: Are they all here?

19 THE BAILIFF: Yes, ma'am.

20 THE COURT: Thank you, again, ladies and gentlemen.

21 And we are going to select -- and I qualified you and just
22 asked you some very general qualifications about your
23 qualifications to serve as jurors. We are now going to pick
24 a specific case, and the case that we are about to begin is
25 the case of State of South Carolina vs. Denorris Hall. Your

VOIR DIRE

1 client wishes formal arrangement, is that correct, Mr.

2 Grimes?

3 MR. GRIMES: Yes, Your Honor.

4 THE COURT: Mr. Hall, if you will please stand.

5 THE CLERK: Case 2010-10-8190, 8191, excuse me,
6 indictment for attempted murder, the State vs. Denorris
7 Hall, if you answer to that name please raise your right
8 hand.

9 (The defendant put his hand up.)

10 THE COURT: You stand indicted by the name of Denorris
11 Hall. At court of general sessions convened on December 6,
12 2010, the grand jurors present upon their oath that in
13 Charleston County, South Carolina on or about September 13,
14 2010, the defendant, Denorris Hall, did with intent to kill
15 and malice aforethought attempt to kill Absalom Thomas.
16 This is in violation of 16-3-29 of the South Carolina Code
17 of Laws 1976 as amended. How say you, are you guilty or not
18 guilty?

19 THE DEFENDANT: Innocent.

20 THE CLERK: Thank you. Case 2010-GS-10-8190, the State
21 of South Carolina vs. Denorris Hall, indictment for
22 attempted armed robbery, you stand indicted by the name
23 Denorris Hall. At a court of general sessions convene on
24 December 6th, 2010 the grand jurors of Charleston County
25 present upon their oath that on or about September 13, 2010

VOIR DIRE

1 in Charleston County, South Carolina at Spruill Avenue,
2 North Charleston, South Carolina, the defendant, Denorris
3 Hall, by the use of force, threats or intimidation and while
4 armed with a deadly weapon, to wit, a pistol, did attempt to
5 take and carry away goods and/or moneys from the person or
6 immediate presence of Absalom Thomas with intent to
7 permanently deprive him of possession thereof in violation
8 of 16-11-330B of the South Carolina Code of Laws 1976 as
9 amended. How say you, are you guilty or not guilty?

10 THE DEFENDANT: Innocent.

11 THE CLERK: How will you be tried?

12 THE DEFENDANT: By God and my country.

13 THE CLERK: May they send you a true deliverance. Are
14 you ready for trial?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And Mr. Grimes, just to be quite technical,
17 your client is pleading not guilty to both of these
18 indictments; is that correct?

19 MR. GRIMES: Yes, Your Honor.

20 THE COURT: Thank you, you may have a seat. Ladies and
21 gentlemen, these are the two indictments that we are going
22 forward here on today. Ladies and gentlemen, an indictment
23 as you can see is simply a piece of paper, the formal
24 process by which this case is brought into court. Mr. Hall
25 has pled not guilty to each of these indictments and this is

VOIR DIRE

1 what brings us here today. Ladies and gentlemen, you have
2 heard the facts as alleged by the State as the clerk read
3 what is contained in the indictment. Is there any member of
4 the jury panel that knows anything about the case other than
5 what was just read to you? If so, please stand. Thank you,
6 there are none. And ladies and gentlemen, I will also give
7 you an opportunity to speak with me in private or be a
8 little more private this time, but as you can see my court
9 reporter has also made it upstairs and she will be writing
10 down again everything that I say as well as everything that
11 you say. At this time I'm going to introduce you to the
12 attorneys and the parties involved in this case. Mr.
13 Grimes, if you will stand, introduce yourself, your client,
14 and any persons that will be assisting you at the table or
15 that may be coming in and out. Thank you.

16 MR. GRIMES: Thank you, Your Honor. Good morning. My
17 name is Andrew Grimes, one of the public defenders here in
18 Charleston County. I have the pleasure to represent
19 Denorris Hall, his friends call him D. J. Assisting me
20 today is Megan Ehrlick, another attorney in our office, and
21 Tracy Vather, a third year law student, Charleston School of
22 Law. And my investigator, Lee Nguyen, may be in and out of
23 the courtroom. Thank you.

24 THE COURT: Is there any member of the jury panel
25 related by blood, marriage, close personal friend, ever have

VOIR DIRE

1 any business, personal or professional dealings with Mr.
2 Denorris Hall? If so, please stand. Thank you, there are
3 none. Any member of the jury panel related by blood,
4 marriage, close personal friend, ever have any business or
5 professional dealings or ever been represented by Mr. Grimes
6 or Ms. Ehrlick or anyone in the public defender's office in
7 Charleston or Berkeley Counties? If so, please stand. Yes,
8 sir, your jury number and name?

9 POTENTIAL JUROR: 196, Your Honor, David Santos.

10 THE COURT: Yes, sir, Mr. Santos.

11 POTENTIAL JUROR: I'm just a member of the bar of
12 Charleston County and I know Mr. Grimes from a basketball
13 league and other non-important things.

14 THE COURT: Is there anything about you knowing Mr.
15 Grimes that will affect your ability to be fair and
16 impartial in this case?

17 POTENTIAL JUROR: No, Your Honor.

18 THE COURT: And Mr. Santos, you practice criminal law
19 or something else.

20 POTENTIAL JUROR: Public service.

21 THE COURT: Other? All right. Thank you. And your
22 jury number before you sit down?

23 POTENTIAL JUROR: 196.

24 THE COURT: Thank you. Is there anyone else? Thank
25 you, there are none. Mr. Young, if you would please stand,

VOIR DIRE

1 introduce yourself, any persons who will be seated at your
2 table assisting you, maybe walking in and out to assist you
3 throughout the week as well as anything about your office.

4 MR. YOUNG: Thank You, Your Honor. Ladies and
5 gentlemen, I am Adam Young, I'm a state prosecutor under the
6 direction of Scarlet Wilson, she's your elected solicitor
7 prosecuting crimes. Assisting me is assistant solicitor
8 Burns Whetmore, a paralegal in our office, Shameka Smith,
9 and my investigator will be in and out of the courtroom as
10 well, her name is Sherry Nicklon.

11 THE COURT: Is there any member of the jury panel
12 relate by blood, marriage, close personal friend, ever have
13 any business or professional dealings or ever represented by
14 Mr. Young or Whetmore, or have any matters handled by the
15 solicitor's office in either Charleston or Berkeley County?
16 If so, please stand. And Mr. Santos?

17 POTENTIAL JUROR: Same reason, Your Honor, number 196.

18 THE COURT: And Mr. Santos, is there anything about you
19 playing basketball and being a member of the bar that would
20 affect your ability to be fair and impartial in this case?

21 POTENTIAL JUROR: No, Your Honor.

22 THE COURT: An you also know Mr. Young and Mr. Whetmore
23 in that fashion?

24 POTENTIAL JUROR: Mr. Young.

25 THE COURT: Thank you, Mr. Santos. Is there anyone

VOIR DIRE

1 else? Thank you, there are none. Ladies and gentlemen, I
2 am now going to call a list of potential witnesses who may
3 be called to testify in this case. Again, if you are
4 related by blood, marriage, close personal friend, ever have
5 any business, personal, professional dealings with any of
6 these individuals please stand when I call their name.
7 Absalom Thomas, Officer Darin Cobb of the North Charleston
8 Police Department. Detective Mark Evans, North Charleston
9 Police Department. Brett Cole, South Carolina Credit Union.
10 Detective Shaun Patrick, North Charleston Police Department.
11 Detective Patty Jourdan, North Charleston Police Department.
12 Andrew Coker, North Charleston Police Department. Sergeant
13 James Hill, North Charleston Police Department. Sergeant
14 Calvetta Hayward, North Charleston Police Department.
15 Herman Smith, Regina Lee, Denorris Hall, Sr., Lolita Brown,
16 Darin Cobb. I think I said Cod, it is actually Cobb,
17 C-o-b-b -- Officer Darin Cobb with the North Charleston
18 Police Department. Anyone related by blood or marriage or
19 are a close personal friend to any of those individuals?
20 Please stand. Yes?

21 POTENTIAL JUROR: Juror 31, Greg Bulanow. I work for
22 the City of the North Charleston as a fire chief and am
23 acquainted with some of those officers and members of the
24 police department and I have worked with them in various
25 capacities over the years.

VOIR DIRE

1 THE COURT: Is there anything about your relationship
2 with those officers from the North Charleston Police
3 Department that would affect your ability to be fair and
4 impartial in this case?

5 POTENTIAL JUROR: No, Your Honor.

6 THE COURT: Your juror number and name?

7 POTENTIAL JUROR: 31, Greg Bulanow.

8 THE COURT: Is there anyone else? Is there any member
9 of the jury panel that you yourself have ever been employed
10 or a family member or a close friend ever been employed with
11 the North Charleston Police Department, Charleston County
12 Sheriff's Office, South Carolina Credit Union or Medical
13 University of South Carolina? If so, please stand.

14 POTENTIAL JUROR: Juror 72, Carla Frichtel, and I'm
15 currently an employee at MUSC.

16 THE COURT: And what do you do at MUSC?

17 POTENTIAL JUROR: I work as a research development
18 coordinator for Hollins Cancer Center.

19 THE COURT: And do you know Dr. Eriksson?

20 POTENTIAL JUROR: No, I do not.

21 THE COURT: Is there anything about Dr. Eriksson
22 testifying and the fact that he works at MUSC that would
23 affect your ability to be fair and impartial in this case?

24 POTENTIAL JUROR: No, ma'am.

25 THE COURT: An your juror number and name before you

VOIR DIRE

1 sit down?

2 POTENTIAL JUROR: 72, Carla Frichtel.

3 THE COURT: Thank you.

4 POTENTIAL JUROR: My wife is a nurse in the medical
5 intensive care unit at MUSC.

6 THE COURT: And same question to you, does the fact
7 that a doctor from MUSC will maybe testify affect your
8 ability to be fair and impartial in this case?

9 POTENTIAL JUROR: No, Your Honor.

10 THE COURT: Thank you. Yes, sir, your juror number and
11 name?

12 POTENTIAL JUROR: 134, Brett Kryway. My wife works at
13 MUSC as well as a physician's assistant, I don't know the
14 doctor you are mentioning.

15 THE COURT: Is there anything about your wife's
16 employment with MUSC that will affect your ability to be
17 fair and impartial in this case?

18 POTENTIAL JUROR: No, Your Honor.

19 POTENTIAL JUROR: Lisa Newland, 168. My husband at one
20 time was employed at MUSC.

21 THE COURT: Is there anything about his employment that
22 will affect your ability to be fair and impartial in the
23 case?

24 POTENTIAL JUROR: No, ma'am.

25 THE COURT: Your juror number and name?

VOIR DIRE

1 POTENTIAL JUROR: 168, Lisa Newland.

2 POTENTIAL JUROR: May Knoble, juror 169. I used to
3 work at the Medical University and I don't know the doctor
4 that you're referring to.

5 THE COURT: Is there anything about your formal
6 employment that would affect your abilities to be fair and
7 impartial in this case?

8 POTENTIAL JUROR: No, Your Honor.

9 THE COURT: An your juror number before you sit down?

10 POTENTIAL JUROR: 169.

11 POTENTIAL JUROR: Juror 210, Karen Smallshorlback. I
12 was formerly employed at MUSC some years ago.

13 THE COURT: And the question to you, do you know Dr.
14 Eriksson?

15 POTENTIAL JUROR: No.

16 THE COURT: And is there anything about your employment
17 with MUSC that would affect your ability to be fair and
18 impartial in this case?

19 POTENTIAL JUROR: No, ma'am.

20 THE COURT: And your juror number before you sit down?

21 POTENTIAL JUROR: 210.

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

23 POTENTIAL JUROR: 81, Mary Jane Gaspar, former employee
24 at MUSC and I do not know the physician..

25 THE COURT: Anything about your former employment that

VOIR DIRE

1 would affect your ability to be fair and impartial in this
2 case?

3 POTENTIAL JUROR: No, Your Honor.

4 THE COURT: And your juror number before you sit down?

5 POTENTIAL JUROR: 81.

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

7 POTENTIAL JUROR: Juror 124, Debra Joseph. I'm a
8 former employee of the Medical University and I do not know
9 the doctor.

10 THE COURT: All right. Anything about your former
11 employment that would affect your ability to be fair and
12 impartial in this case?

13 POTENTIAL JUROR: No, ma'am.

14 THE COURT: All right, sir. Your juror number before
15 you sit down?

16 POTENTIAL JUROR: 124.

17 THE COURT: Thank you. Is there anyone else? Thank
18 you, there are none. Ladies and gentlemen, is there any
19 member of the jury panel that either works close to or lives
20 close to or attends church close to or for some reason you
21 frequent the area of McMillan and Spruill? If so, please
22 stand.

23 POTENTIAL JUROR: As fire chief that's within my
24 jurisdiction and I've responded there multiple times over
25 many years.

VOIR DIRE

1 THE COURT: Based upon that, sir, is there anything
2 about you being familiar with that area that would affect
3 your ability to be fair and impartial in this case?

4 POTENTIAL JUROR: No, Your Honor.

5 THE COURT: An your juror number?

6 POTENTIAL JUROR: 31.

7 THE COURT: Thank you. Anyone else? Thank you, there
8 are none. Is there any member of the jury that is
9 affiliated with any group that supports law enforcement such
10 as MADD, SADD, People Against Rape, Darkness to Light,
11 anything of that nature please stand. Yes, sir?

12 POTENTIAL JUROR: I serve as president of the board of
13 directors for the Coastal Crisis Chaplaincy which provides
14 pastoral care ministry to law enforcement as well and some
15 first responders.

16 THE COURT: Is there anything about that that would
17 affect your ability to be fair and impartial in this case?

18 POTENTIAL JUROR: No, Your Honor.

19 THE COURT: And your juror number and name before you
20 sit down?

21 POTENTIAL JUROR: 31, Gregory Bulanow.

22 THE COURT: Is there any member of the jury panel that
23 has served -- I'm sorry, yes, ma'am?

24 POTENTIAL JUROR: Juror, 188, Rita Roach. I have just
25 finished a term on the board of directors for My Sister's

VOIR DIRE

1 House, and was formerly also on the board of directors of
2 the South Carolina Coalition Against Domestic Violence and
3 Sexual Assault.

4 THE COURT: Is there anything about that involvement
5 that would affect your ability to be fair and impartial in
6 this case?

7 POTENTIAL JUROR: No, Your Honor.

8 THE COURT: And Ms. Roach, your juror number?

9 POTENTIAL JUROR: 188.

10 THE COURT: Is there any member of the jury panel
11 previously served in the armed forces and/or support the
12 National Rifle Association? If so, please stand. Yes, sir,
13 your juror number and name?

14 POTENTIAL JUROR: 19 Ryan Shane Bosse. Active duty
15 Navy for seven years, currently a reserve officer,
16 lieutenant commander in the Navy and I still deploy with
17 them.

18 THE COURT: And your juror number and name?

19 POTENTIAL JUROR: 19, Ryan Shane Bosse.

20 THE COURT: Thank you very much for your service.

21 POTENTIAL JUROR: Yes, Your Honor. Brett Kryway, 134
22 U. S. Army, I'm also Army civilian, no active duty and still
23 employed with the Army.

24 THE COURT: Your juror number and name?

25 POTENTIAL JUROR: 134.

VOIR DIRE

1 POTENTIAL JUROR: U. S. Army, juror 160.

2 THE COURT: All right. And your name?

3 POTENTIAL JUROR: Robert Mitchum.

4 THE COURT: Thank you, Mr. Mitchum, thank you for your
5 service.

6 POTENTIAL JUROR: Former member of the National Rifle
7 Association.

8 THE COURT: All right. And you are currently not a
9 member of the NRA?

10 POTENTIAL JUROR: That's correct..

11 THE COURT: And again just for the record, your juror
12 number and name?

13 POTENTIAL JUROR: 31, Gregory Bulanow.

14 THE COURT: Thank you.

15 POTENTIAL JUROR: Tim Winters, juror 246. I was in the
16 Navy for six years.

17 THE COURT: And thank you for your service. Your juror
18 number and name?

19 POTENTIAL JUROR: Tim Winters, 246.

20 POTENTIAL JUROR: 136, Paul Lankau. I was active duty
21 Navy for six years and reserves for 17, retired two years
22 ago.

23 THE COURT: Thank you for your service. Your juror
24 number and name before you sit down?

25 POTENTIAL JUROR: 136, Paul Lankau.

VOIR DIRE

1 THE COURT: Yes, sir, your juror number and name?

2 POTENTIAL JUROR: 171, Laurie Oquinn, 22 years Army
3 National Guard.

4 THE COURT: Thank you for your service. Your juror
5 number and name before you sit down?

6 POTENTIAL JUROR: 171, Laurie Oquinn.

7 THE COURT: Thank you. Is there anyone else? Thank
8 you, there are none. Ladies and gentlemen, is there any
9 member of the jury panel -- and this will be a question you
10 may well -- I'm going to have you come forward and answer in
11 private so please remember if you need to answer that
12 question if you have to come forward. Is there any member
13 of the jury panel that has been convicted of a crime that
14 carries less than one year in prison? If so I will need you
15 to come forward at the appropriate time. Ladies and
16 gentlemen, I also will need you to come forward if after
17 you've heard just what the State is alleging and that is
18 contained in the indictments if there's any reason based
19 upon the questions that have been asked here today or what
20 you've heard in the indictment or for any reason that you
21 feel that you will be unable to listen to the facts from the
22 witness stand, apply the law as the Court gives it and
23 render a verdict based only on those things free from any
24 moral, religious or political belief? If you feel that you
25 will be unable to be a fair and impartial juror I will need

VOIR DIRE

1 you to come forward at the appropriate time. Ladies and
2 gentlemen, the State and the defense have indicated that
3 this trial will take approximately three days, I anticipate
4 that we will get started with this in the afternoon today so
5 that hopefully we will be completed about Wednesday
6 afternoon. Now, sometimes we have forgotten certain things,
7 I've had members of the jury forget that they were getting
8 married later in the week and then all the sudden when I
9 said, "Okay, we're going to go until Wednesday or Thursday,"
10 the individual said, "Judge, this is not going to be the
11 week for me." So maybe perhaps you were sitting there and
12 you just realized what week it is and this is not going to
13 be a convenient week for you for whatever reason, so if you
14 need to answer those two previous questions that I just
15 posed to you or if you just need to speak with me concerning
16 any matter whatsoever, please move to the center and the
17 bailiffs will assist you.

18 THE BAILIFF: Juror 160.

19 POTENTIAL JUROR: I'm waiting on a call from an
20 employer in Texas for security clearance and I wasn't sure
21 whether I was going to get the call so I may be getting it
22 this week and am not sure when they will want me to go to
23 Texas, so just --

24 THE COURT: We will be done this week.

25 POTENTIAL JUROR: Okay.

VOIR DIRE

1 THE COURT: Your number and name?
2 POTENTIAL JUROR: 160.
3 THE COURT: Number 160 will remain. Thank you.
4 THE BAILIFF: I don't know his number.
5 POTENTIAL JUROR: Actually, Edward Royal.
6 THE COURT: Mr. Royal, come forward.
7 THE CLERK: 193.
8 POTENTIAL JUROR: I have been convicted of a minor
9 possession of alcohol, fake ID and open container.
10 THE COURT: And how long ago was that?
11 POTENTIAL JUROR: That was -- I'm 29 so I was 19, so
12 ten years ago.
13 THE COURT: An was that here in Charleston County?
14 POTENTIAL JUROR: No, it was actually in Richland
15 County.
16 THE COURT: Anything about that that you shared with us
17 that would affect your ability to be fair and impartial in
18 this case?
19 POTENTIAL JUROR: No, ma'am.
20 THE COURT: And your juror number?
21 POTENTIAL JUROR: 193.
22 THE COURT: 193 will remain. Thank you, sir.
23 THE BAILIFF: 230.
24 POTENTIAL JUROR: Denise Walker. I just recently had a
25 divorce in September 7th and I'm just emotionally messed up.

VOIR DIRE

1 THE COURT: You know, sometimes I find if you think
2 about other things it takes your mind off of that divorce.
3 All right. Is there any other reason? Is that going to
4 affect your ability to sit here and pay attention?

5 POTENTIAL JUROR: No.

6 THE COURT: No. All right. Your juror number?

7 POTENTIAL JUROR: 230.

8 THE COURT: 230 will remain. Thank you.

9 THE BAILIFF: 243.

10 POTENTIAL JUROR: I don't know whether this applies or
11 not but I was in trouble for shoplifting, it was about three
12 or four years ago.

13 THE COURT: Was that here in Charleston County?

14 POTENTIAL JUROR: Uh-huh.

15 THE COURT: And what happened to the charge?

16 POTENTIAL JUROR: I got charged with it.

17 THE COURT: Okay. Did you go to court?

18 POTENTIAL JUROR: Uh-huh.

19 THE COURT: And where did you go to court, do you
20 remember?

21 POTENTIAL JUROR: Downtown.

22 THE COURT: And what happened with the charge?

23 POTENTIAL JUROR: It was not dropped.

24 THE COURT: Did you pay a fine?

25 POTENTIAL JUROR: Yes, paid a fine.

VOIR DIRE

1 THE COURT: And was that the Charleston County
2 Sheriff's Office?

3 POTENTIAL JUROR: Charleston.

4 THE COURT: Or City of Charleston?

5 POTENTIAL JUROR: City of Charleston.

6 THE COURT: So anything about that experience that
7 would affect your ability to be fair and impartial in this
8 case?

9 POTENTIAL JUROR: No.

10 THE COURT: And your juror number?

11 POTENTIAL JUROR: 243.

12 THE COURT: 243 will remain. Thank you. Ladies and
13 gentlemen, if there's any member of the jury panel that has
14 ever been the victim of a robbery or a family member been
15 the victim of a robbery or if you have been involved in any
16 incident involving a gun where it was pointed at you please
17 come forward.

18 THE BAILIFF: Juror 33.

19 THE COURT: Yes, sir, please come forward.

20 POTENTIAL JUROR: Wayne Burdette, juror 33. I was held
21 hostage by an ex-employee along with my vice president for
22 about 45 minutes facing a .357 Magnum.

23 THE COURT: Was that here in Charleston or somewhere
24 else?

25 POTENTIAL JUROR: That was in Marion, South Carolina.

VOIR DIRE

1 THE COURT: And were charges brought?

2 POTENTIAL JUROR: Yes.

3 THE COURT: Did you have to go to court and testify?

4 POTENTIAL JUROR: Yes.

5 THE COURT: Is there anything about that that would
6 affect your ability to be fair and impartial in this case?

7 POTENTIAL JUROR: I don't believe so.

8 THE COURT: I do that very same thing, I don't believe
9 so or I think so. With the State and the defense deserving
10 a juror who can listen to the facts from the witness stand
11 and apply the law as the Court gets it and render a verdict
12 based only on those things, can you do that?

13 POTENTIAL JUROR: Yes.

14 THE COURT: You will remain. Thank you.

15 THE BAILIFF: Juror number 219.

16 THE COURT: Yes.

17 POTENTIAL JUROR: My freshman year in college my dorm
18 room was broken into.

19 THE COURT: Is there anything about that that would
20 affect your ability to be fair in the case?

21 POTENTIAL JUROR: No.

22 THE COURT: Was that here in Charleston or somewhere
23 else?

24 POTENTIAL JUROR: It was in California.

25 THE COURT: Okay. 219 will remain.

VOIR DIRE

1 THE BAILIFF: Juror number 94.

2 THE COURT: Yes, sir?

3 POTENTIAL JUROR: I had a gun pulled on me several
4 times actually, worked in a restaurant so when I was like
5 about 20, 21.

6 THE COURT: Here in Charleston?

7 POTENTIAL JUROR: No, somewhere else. It was in
8 Anderson, South Carolina.

9 THE COURT: Is there anything about what you just
10 shared with us, and you shared several different incidents,
11 that would affect your ability to be fair and impartial in
12 this case?

13 POTENTIAL JUROR: No.

14 THE COURT: And what do you do? You said you worked in
15 restaurants.

16 POTENTIAL JUROR: A district manager.

17 THE COURT: For a chain.

18 POTENTIAL JUROR: Yes, ma'am, Zaxby's.

19 THE COURT: An you work here in Charleston?

20 POTENTIAL JUROR: Yes, ma'am.

21 THE COURT: And tell me your juror number.

22 POTENTIAL JUROR: 94 .

23 THE COURT: Juror 94 will remain. Thank you.

24 THE BAILIFF: Juror 213.

25 POTENTIAL JUROR: Morning. Yes, my nephew was accused

VOIR DIRE

1 of murder.

2 THE COURT: You've got to speak up.

3 POTENTIAL JUROR: My nephew was accused of murder, we
4 were here for him, he's serving time.

5 THE COURT: That was here in Charleston?

6 POTENTIAL JUROR: Uh-huh.

7 THE COURT: And came to this courtroom?

8 POTENTIAL JUROR: Uh-huh.

9 THE COURT: Do you recognize any of these attorneys?

10 POTENTIAL JUROR: I don't remember them.

11 THE COURT: What was your nephew's name?

12 POTENTIAL JUROR: Alvante Spann (phonetically.)

13 THE COURT: Is there anything about that that would
14 affect your ability to be fair and impartial in this case?

15 POTENTIAL JUROR: I don't think so.

16 THE COURT: And I say that using the same phrase and I
17 need a yes or no, is there anything about that that would
18 affect your ability to be fair and impartial in this case?

19 POTENTIAL JUROR: No.

20 THE COURT: All right. I'll have you stay with us.
21 Your juror number?

22 POTENTIAL JUROR: 213.

23 THE COURT: 213 will remain. Thank you.

24 THE BAILIFF: Juror 32.

25 POTENTIAL JUROR: Hi. Just for the record our house

VOIR DIRE

1 has been burglarized.

2 THE COURT: Here in Charleston County?

3 POTENTIAL JUROR: Yes.

4 THE COURT: And were charges brought first for the
5 person that burglarized?

6 POTENTIAL JUROR: No.

7 THE COURT: Is there anything about that that would
8 hinder your ability to be fair and impartial?

9 POTENTIAL JUROR: No.

10 THE COURT: And your juror number?

11 POTENTIAL JUROR: 32.

12 THE COURT: 32 will remain. Thank you.

13 THE BAILIFF: 99.

14 THE COURT: Morning.

15 POTENTIAL JUROR: Good afternoon. Number 99, Mary
16 Hart. I was involved in a carjacking in New Hampshire.

17 THE COURT: About how long ago was that?

18 POTENTIAL JUROR: 20 years ago.

19 THE COURT: And were charges brought? Did you go to
20 court?

21 POTENTIAL JUROR: I drove off so it was an unsuccessful
22 carjacking.

23 THE COURT: So is there anything about that that would
24 affect your ability to be fair and impartial in this case?

25 POTENTIAL JUROR: No, ma'am.

VOIR DIRE

1 THE COURT: Thank you. Ms. Hart, your juror number?

2 POTENTIAL JUROR: 99.

3 THE COURT: Juror 99 will remain. Thank you.

4 THE BAILIFF: Juror 72.

5 POTENTIAL JUROR: 72. My parents' home was broken into
6 last year and my father's wallet was stolen so just thought
7 that should be disclosed, in Georgia.

8 THE COURT: Anything about those experiences that would
9 affect your ability be fair and impartial in this case?

10 POTENTIAL JUROR: No, Your Honor.

11 THE COURT: And juror 72?

12 POTENTIAL JUROR: Yes.

13 THE COURT: 72 will remain. Thank you.

14 THE BAILIFF: Juror 183.

15 POTENTIAL JUROR: Morning. My name is Catherine
16 Ramsey. Brother was convicted of armed robbery back -- been
17 over 20 years.

18 THE COURT: Here in Charleston County?

19 POTENTIAL JUROR: Here in Charleston County.

20 THE COURT: And is there anything about that that would
21 affect your ability to be fair and impartial in this case?

22 POTENTIAL JUROR: No, ma'am.

23 THE COURT: Your juror number?

24 POTENTIAL JUROR: 183.

25 THE COURT: 183 will remain. Thank you.

VOIR DIRE

1 THE BAILIFF: Juror 123.

2 THE COURT: Yes, ma'am?

3 POTENTIAL JUROR: I have a son that was convicted at
4 age 14 about 18 years ago.

5 THE COURT: And what was he convicted for?

6 POTENTIAL JUROR: Armed robbery and concealing a deadly
7 weapon.

8 THE COURT: Is there anything about that that would
9 affect your ability to be fair and impartial?

10 POTENTIAL JUROR: I --

11 THE COURT: -- I to need finish my sentence so she can
12 take it down. Anything about that that would affect your
13 ability to be fair and impartial in this case?

14 POTENTIAL JUROR: Probably. I have more pity than
15 anything.

16 THE COURT: Okay. I need a yes or no, you will able to
17 listen to the facts from the witness stand?

18 POTENTIAL JUROR: Yes.

19 THE COURT: Have you -- let me finish my sentence.
20 Will you be able to listen to the facts from the witness
21 stand, the law the Court giver and render a verdict based
22 only on those things?

23 POTENTIAL JUROR: Yes.

24 THE COURT: Going to have you stay with us. Your juror
25 number?

VOIR DIRE

1 POTENTIAL JUROR: 123.

2 THE COURT: 123 will remain. Thank you.

3 THE BAILIFF: Juror 172.

4 POTENTIAL JUROR: Ashley Parker, 172. My sister was
5 robbed in her home while she was sleeping approximately nine
6 years ago.

7 THE COURT: Here in Charleston?

8 POTENTIAL JUROR: Yes.

9 THE COURT: Were any charges brought?

10 POTENTIAL JUROR: Yes.

11 THE COURT: And do you recognize any of these
12 individuals?

13 POTENTIAL JUROR: No.

14 THE COURT: Is there anything about that experience
15 that would affect your ability to be fair and impartial in
16 this case?

17 POTENTIAL JUROR: No.

18 THE COURT: All right. Your juror number?

19 POTENTIAL JUROR: 172.

20 THE COURT: 172 will remain. Thank you. Juror 168?

21 POTENTIAL JUROR: Hi. I just had my car broken into
22 twice, purse stolen.

23 THE COURT: Here in Charleston County?

24 POTENTIAL JUROR: Colleton County and Columbia.

25 THE COURT: Anything about those two experiences that

VOIR DIRE

1 would affect your ability to be fair and impartial in this
2 case?

3 POTENTIAL JUROR: No.

4 THE COURT: Your juror number?

5 POTENTIAL JUROR: 168.

6 THE COURT: 168 will remain. Thank you. Is there
7 anyone else? Do you want to ask any other questions?

8 MR. GRIMES: No, Judge.

9 THE COURT: Any additional questions?

10 MR. YOUNG: No, Judge.

11 THE COURT: Any other matters?

12 THE DEFENDANT: No matters.

13 MR. YOUNG: No, Judge.

14 THE COURT: Five and ten, one alternate. Thank you.

15 THE CLERK: Ladies and gentlemen of the jury panel, if
16 I call your name if you will please gather your belongings,
17 walk up to this podium, turn and face the parties. I will
18 then ask the parties a question and I will either direct you
19 to have a seat back in the audience or have a seat in the
20 jury box. Thank you. Juror number 175, Shirley Polite.
21 What say you for the State?

22 MR. YOUNG: Please excuse this juror.

23 THE CLERK: Ms. Polite, please have a seat back in the
24 audience, you have been excused from the trial of this case.
25 Juror 199, Kenneth Scott. What say you for the State?

VOIR DIRE

1 MR. YOUNG: Please present this juror.

2 THE CLERK: What say you for the defendant?

3 MR. GRIMES: Please present the juror.

4 THE CLERK: Mr. Scott, please have a seat in the jury
5 box, you've been selected as a juror in this case. Juror
6 number 196, David Santos. What say you for the State?

7 MR. YOUNG: Present the juror.

8 THE CLERK: What say you for the defense?

9 MR. GRIMES: Present the juror.

10 THE COURT: Mr. Santos, have a seat in the jury box,
11 you have been selected as a juror in this case. Juror 19,
12 Ryan Bosse. What say you for the State?

13 MR. YOUNG: Present the juror.

14 THE CLERK: What say you for the defense?

15 MR. GRIMES: Please excuse Mr. Bosse.

16 THE CLERK: Mr. Bosse, please have a seat back in the
17 audience, you have been excused from the trial of this case.
18 Juror 16, Niles Block. What say you for the State?

19 MR. YOUNG: Please present this juror.

20 THE CLERK: What say you for the defendant?

21 MR. GRIMES: Present the juror.

22 THE CLERK: Please have a seat in the jury box, you
23 have been selected as a juror in this case. Juror 36,
24 Daniel Cecil. What say you for the State?

25 MR. YOUNG: Please present the juror.

VOIR DIRE

1 THE CLERK: What say you for the defendant?

2 MR. GRIMES: Please seat the juror.

3 THE CLERK: Mr. Cecil, please have a seat in the jury
4 box, you have been selected as a juror in this case. Juror
5 99, Mary Ellen Hart. What say you for the State?

6 MR. YOUNG: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MR. GRIMES: Please excuse the juror.

9 THE CLERK: Ms. Hart, have a seat back in the audience,
10 you have been excused from the trial of this case. Juror
11 number 217, Patricia Sullivan. What say you for the State?

12 MR. YOUNG: Please present this juror.

13 THE CLERK: What say you for the defendant?

14 MR. GRIMES: Please seat the juror.

15 THE CLERK: Ms. Sullivan, have a seat in the jury box,
16 you have been selected to serve on the jury in this case.
17 Juror 246, Timothy Winters. What say you for the State?

18 MR. YOUNG: Please present this juror.

19 THE CLERK: What say you for the defendant?

20 MR. GRIMES: Please excuse the juror.

21 THE CLERK: Mr. Winters, please have a seat back in the
22 audience, you have been excused from the trial of this case.
23 Juror 193, Edward Royall. What say you for the State?

24 MR. YOUNG: Please present the juror.

25 THE CLERK: What say you for the defendant?

VOIR DIRE

1 MR. GRIMES: One moment.

2 THE COURT: Take your time.

3 MR. GRIMES: Please excuse the juror.

4 THE CLERK: Mr. Royall, please have a seat back in the
5 audience, you have been excused from the trial of this case.
6 Juror 215, Thomas Stelling. What say you for the State?

7 MR. YOUNG: Please present this juror.

8 THE CLERK: What say you for the defendant?

9 MR. GRIMES: Please present the juror.

10 THE CLERK: Mr. Stelling, please have a seat in the
11 jury box, you have been selected as a juror in this case.
12 Juror 172, Ashley Parker. What say you for the State?

13 MR. YOUNG: Please present this juror.

14 THE CLERK: What say you for the defendant?

15 MR. GRIMES: Please excuse the juror.

16 THE CLERK: Ms. Parker, please have a seat back in the
17 audience, you have been excused from the trial of this case.
18 Juror 243, Brittney White. What say you for the State?

19 MR. YOUNG: Please excuse this juror.

20 THE CLERK: Ms. White, please have a seat back in the
21 audience, you've been excused from the trial of this case.
22 Juror number 150, Stacey Manigault. What say you for the
23 State?

24 MR. YOUNG: Please present this juror.

25 THE CLERK: What say you for the defendant?

VOIR DIRE

1 MR. GRIMES: Please excuse this juror.

2 THE CLERK: Mr. Manigault, please have a seat back in
3 the audience, you have been excused from the trial of this
4 case. Six strikes for the defendant. Juror 169, Mary
5 Noble. What say you for the State?

6 MR. YOUNG: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MR. GRIMES: Please present the juror.

9 THE CLERK: Ms. Noble, please have a seat in the jury
10 box, you have been selected as a juror in this case. Juror
11 183, Catherine Ramsey. What say you for the State?

12 MR. YOUNG: Please present this juror.

13 THE CLERK: What say you for the defendant?

14 MR. GRIMES: Please present the juror.

15 THE CLERK: Ms. Ramsey, please have a seat in the jury
16 box, you've been selected as a juror in this case. Juror
17 234, Jessie Waring. What say you for the State?

18 MR. YOUNG: Please excuse this juror.

19 THE CLERK: Ms. Waring, please have a seat back in the
20 audience, you've been excused from the trial of this case.
21 That is three strikes for the State. Juror number 160,
22 Robert Mitchum. What say you for the State?

23 MR. YOUNG: Please present this juror.

24 THE CLERK: What say you for the defendant?

25 MR. GRIMES: Please excuse the juror.

VOIR DIRE

1 THE CLERK: Mr. Mitchum, have a seat back in the
2 audience, you've been excused from the trial of this case.
3 Juror 72, Carla Frichtel. What say you for the State?

4 MR. YOUNG: Please present this juror.

5 THE CLERK: What say you for the defendant?

6 MR. GRIMES: Please present the juror.

7 THE CLERK: Ms. Frichtel, please have a seat in the
8 jury box, you've been selected as a juror in this case.
9 Juror 247, Jeffrey Wood. What say you for the State?

10 MR. YOUNG: Please present the juror.

11 THE CLERK: What say you for the defendant?

12 MR. GRIMES: Please present the juror.

13 THE CLERK: Mr. Wood, please have a seat in the jury
14 box, you've been selected in the trial of this case. Juror
15 number 81, Mary Jane Gaspar. What say you for the State?

16 MR. YOUNG: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 MR. GRIMES: Please present the juror.

19 THE CLERK: Ms. Gaspar, have a seat in the jury box,
20 you've been selected as a juror in this case. Juror 173,
21 Shaun Payne. What say you for the State?

22 MR. YOUNG: Please present this juror.

23 THE CLERK: What say you for the defendant?

24 MR. GRIMES: Please excuse the juror.

25 THE CLERK: Mr. Payne, please have a seat back in the

VOIR DIRE

1 audience, you've been excused from the trial of this case.

2 Juror number 209, Ervin Smalls. What say you for the State?

3 MR. YOUNG: Please present this juror.

4 THE CLERK: What say you for the defendant?

5 MR. GRIMES: Please excuse the juror.

6 THE CLERK: Mr. Smalls, please have a seat back in the
7 audience, you've been excused from the trial of this case.

8 That's nine strikes for the defendant. Juror 34, Ralph
9 Campbell. What say you for the State?

10 MR. YOUNG: Please present this juror.

11 THE CLERK: What say you for the defendant?

12 MR. GRIMES: Please seat the juror.

13 THE CLERK: Mr. Campbell, please have a seat in the
14 jury box, you've been selected as a juror in this case. Now
15 picking the alternate, strikes one and two. Juror 190,
16 Maurice Robinson. What say you for the State?

17 MR. YOUNG: Please present this juror.

18 THE CLERK: What say you for the defendant?

19 MR. GRIMES: Please present the juror. Mr. Robinson,
20 please have a seat in the jury box, you've been selected as
21 a juror in this case. Your Honor, the jury has been seated.

22 THE COURT: Any motions or matters pertaining to the
23 jury as selected?

24 MR. YOUNG: Not from the State, Judge.

25 MR. GRIMES: Yes, Your Honor.

VOIR DIRE

1 THE COURT: All right. Counsel approach.

2 (A bench conference was held.)

3 THE COURT: I think I know why you you're up here but
4 can you tell me anything?

5 MR. YOUNG: Juror Bailes on gender.

6 THE COURT: So having -- all right. Can we do it right
7 here on the record or wait until jurors go out?

8 MR. GRIMES: Able to do it here.

9 THE COURT: All right. Juror 175.

10 MR. YOUNG: Judge, I can tell you she has a conviction,
11 goes to truthfulness, I think it was a fraudulent check
12 conviction.

13 THE COURT: She's the one that was the shoplifting.

14 MR. YOUNG: I think fraudulent check conviction, she
15 was the first one called.

16 THE COURT: Okay. All right.

17 MR. WETMORE: Not only she has a conviction but she did
18 not come forward today when she was supposed to.

19 MR. GRIMES: I think --

20 MR. YOUNG: That voir dire question about the
21 conviction with a punishment of one year or less she didn't
22 come forward.

23 THE COURT: Then your next one?

24 MR. YOUNG: 243, that was also another that was a
25 shoplifting.

VOIR DIRE

1 THE COURT: Hold on.

2 MR. WETMORE: Two convictions for shoplifting.

3 THE COURT: Next challenge?

4 MR. GRIMES: 234.

5 MR. YOUNG: 243 is the next one we struck.

6 THE COURT: There is 234 and 243, which one?

7 MR. GRIMES: Both.

8 THE COURT: And you struck her?

9 MR. YOUNG: Judge, 243 struck. She has two separate

10 convictions for shoplifting, goes to truthfulness.

11 THE COURT: An next one?

12 MR. GRIMES: 234.

13 MR. YOUNG: She has -- 234 has two charges, an ABWIK

14 and ABHAN. He was late, he didn't know his jury number when

15 he got called, very -- just demeanor in the court not good.

16 THE COURT: All right.

17 MS. EHRLICK: Which one was that?

18 MR. YOUNG: 234.

19 THE COURT: Who else?

20 MR. YOUNG: That was it.

21 MR. GRIMES: I think that was it.

22 THE COURT: Okay. Challenge to three?

23 MR. GRIMES: Yes, ma'am.

24 THE COURT: All right. Anything you want to tell me?

25 MR. GRIMES: Yes, ma'am, I believe --

VOIR DIRE

1 THE COURT: And at least strike Mr. Scott, 199.

2 MR. GRIMES: Looking for juror's name, a juror who came
3 up, had a conviction for open container and possession of
4 alcohol, he was a white male, they did not strike him.

5 MS. EHRLICK: 193.

6 MR. YOUNG: It has nothing to do with truthfulness,
7 possession of beer by a minor. He also came forward when
8 that question was asked unlike the girls.

9 THE COURT: All right.

10 MR. GRIMES: Well, I think he misrepresented that he
11 had a record because I think 243 did come forward.

12 MR. YOUNG: 175 did not come forward, 243 did come
13 forward but we didn't even strike, you all did.

14 MR. GRIMES: I know, that's what I said. The reason is
15 plausible, you let him, a white male with a record on and
16 striking five women with a record.

17 MR. YOUNG: His record had nothing to do with
18 truthfulness at all.

19 MR. GRIMES: To protect the record, so his reason is
20 plausible?

21 THE COURT: They don't have to be plausible, just have
22 to be race neutral --

23 MR. GRIMES: And the burden to show --

24 THE COURT: -- so move on, let's go.

25 MR. GRIMES: I did.

VOIR DIRE

1 THE COURT: You did, let's go. What is you next one?

2 MR. GRIMES: 234. And I don't believe -- I don't
3 recall him coming in late, I don't recall anything about his
4 demeanor.

5 MR. YOUNG: Judge, I can tell you he was late, he
6 didn't know his juror number, he sat in the back of the jury
7 room, additionally got an ABWIK and an ABHAN, both charges..

8 THE COURT: So pending charges.

9 MR. YOUNG: No disposition on it.

10 MR. WETMORE: Same case. That's right, that's right.

11 MR. GRIMES: Well, I can't rebut that rap sheet
12 allegation because I don't have that.

13 THE COURT: Okay. Anything else?

14 MR. GRIMES: No.

15 THE COURT: Okay. Your requesting that -- you're
16 saying that 175 and 234 were racially motivated?

17 MR. GRIMES: Yes, ma'am.

18 THE COURT: Based upon the fact he left a white male
19 with previous charges on?

20 MR. GRIMES: Yes, ma'am.

21 THE COURT: All right. I agree with the State's
22 position that these were alcohol related offenses under the
23 age and that the two that he has struck had convictions for
24 truthfulness subject to the report, the jury remains. Note
25 your objection.

VOIR DIRE

1 (End of bench discussion.)

2 THE COURT: Other than what we discussed at the bench,
3 any other motions or matters pertaining to this jury?

4 MR. YOUNG: None from the State, Judge.

5 MR. GRIMES: No, Your Honor.

6 THE COURT: All right. And what time -- counsel, just
7 for scheduling I'm letting you all go to lunch so just want
8 to make sure you get your full lunch hour.

9 (A side bar was held about lunch off the
10 record.)

11 THE COURT: All right. Ladies and gentlemen, we are
12 going to go ahead an break for lunch. There's some other
13 matters that I must take up outside so we're going to be
14 working during our lunch hour but I'm going to go ahead and
15 let you go. Ladies and gentlemen, please while you are on
16 lunch break you may not discuss this case with anyone. You
17 haven't received the Court's instructions on the law. You
18 must not discuss this case with anyone and that means face
19 to face discussions, but it also means you may not text or
20 make any entry on Facebook or anything of that nature, no
21 emailing, blogging, all right, you may not do any
22 independent investigations regarding this matter. And
23 ladies and gentlemen, you have received some information
24 just factually pursuant to my questions, you cannot go to
25 any of the places that were discussed -- and this will be a

VOIR DIRE

1 continuing instruction, all of the information that you
2 receive to reach your verdict must come from this courtroom
3 only. Please understand I give these instructions as a part
4 of my responsibility to make sure that justice is done in
5 fairness before the matter is completed here today. Your
6 actions could jeopardize the outcome of this trial. Please
7 be -- the bailiff will escort you and show you where to
8 report, please be back in your jury room and ready to begin
9 at 2:15. You are excused until 2:15. Stay seated. Thank
10 you.

11 (The jury left the courtroom.)

12 THE COURT: All right. We are outside the presence of
13 the jury. Any motions or matters?

14 MR. YOUNG: None from the State, Judge.

15 MR. GRIMES: None, Your Honor.

16 THE COURT: All right. The court reporter has assured
17 me that the bench conference concerning the Batson motion is
18 on the record.

19 (The remaining panel was excused.)

20 THE COURT: We've got our Jackson v. Denno, I've got a
21 sentencing at 1:00 so we will go definitely until 1:00.
22 Okay.

23 MR. YOUNG: We're going to have the Jackson vs. Denno
24 now?

25 THE COURT: Going to start. Thank you.

JACKSON VS. DENNO HEARING

1 The witness, JAMES HILL, after having been duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. YOUNG:

5 THE CLERK: Have a seat and state your name for the
6 record and spell your last for the court reporter.

7 THE WITNESS: James Hill, H-i-l-l.

8 Q. Officer Hill, are you a detective with the NCPD?

9 A. Not anymore, I am back in uniformed patrol now.

10 Q. How long have you been with NCPD?

11 A. Started my law enforcement career in '92.

12 Q. And what kind of cases are you mainly involved with?

13 A. When I was in investigations I was the sergeant over
14 violent crime, now I'm back in uniform patrol on night
15 shift.

16 Q. Did you while you were working on violent crimes happen
17 to work on an attempted armed robbery and attempted murder
18 on September 13 of 2010?

19 A. Yes, sir, I did.

20 Q. And tell the Court about your involvement with that
21 case. Did you take a statement in that case, or did you
22 take the advisement of rights in that case?

23 A. Right. I was the supervisor in charge of the case and
24 I advised the defendant of his rights, yes, sir.

25 Q. Prior to interviewing the defendant, did you advise him

JACKSON VS. DENNO HEARING

1 the nature of your investigation?

2 A. Yes.

3 Q. And prior to any questioning did you advise him of his
4 rights?

5 A. I did.

6 Q. Detective Hill --

7 MR. YOUNG: If I may approach the witness, Judge?

8 THE COURT: You may.

9 Q. I'm going to show you what's been marked State's 1 and
10 ask if you recognize that?

11 A. Yes, sir, I do.

12 Q. What is that?

13 A. It's the North Charleston Police Department Advice and
14 Constitutional Rights Form.

15 Q. And whose the name on there? Who is the defendant?

16 A. Denorris Hall.

17 Q. Is that your signature next to the witness section?

18 A. Yes, sir. Down at the bottom, yes, sir.

19 Q. And up at the top there, tell me, does it have a
20 sentence with your name saying I'm taking the advisement?

21 A. Yes. It says, "I, Denorris Hall, have been advised by
22 Sergeant J. M. Hill" --

23 THE COURT: You need to slow down.

24 Q. The sentence at the top with your name on it?

25 A. It says, I, Denorris Hall, have been advised by

JACKSON VS. DENNO HEARING

1 Sergeant J. M. Hill, Jr. of the North Charleston Police
2 Department.

3 Q. Sergeant Hill, did you witness the defendant sign the
4 form?

5 A. I did, yes, sir.

6 Q. Did he also initial the form?

7 A. He did, yes, sir.

8 Q. Can you explain to the Court the process of showing the
9 form and how that process of getting him to sign and initial
10 would work?

11 A. I generally get the defendant to read one or two of the
12 rights to make sure that they actually can read and
13 comprehend, then as we go through the rights I make sure to
14 ask them at the end of each right if they understand or have
15 any question about the right?

16 Q. Any question in your mind that he comprehended his
17 rights?

18 A. No, he comprehended.

19 Q. And did you review the form with the defendant prior to
20 him signing it?

21 A. I'm not sure --

22 Q. Did you review that form with the defendant prior to
23 him signing it?

24 A. No, he would have been going over with me at the time.

25 Q. With you. And you were with him when he signed it?

JACKSON VS. DENNO HEARING

1 A. Yes, sir.

2 Q. Did you believe the defendant understood the form?

3 A. I did, yes, sir.

4 Q. Did he seem to be under the influence of alcohol or any
5 other drugs?

6 A. No, sir.

7 Q. Did he speak English?

8 A. Yes.

9 Q. So no translator?

10 A. No, sir.

11 MR. YOUNG: Judge, at this time I ask to admit State's
12 1 for purposes of this hearing in evidence.

13 THE COURT: All right.

14 MR. GRIMES: No objection for purposes of this hearing.

15 THE COURT: All right, sir. Let me see -- and do you
16 have it? Where is State's 1? State's 1 in evidence for
17 purposes of this hearing.

18 MR. YOUNG: Thank you, Judge.

19 Q. And Sergeant Hill, after you gave the defendant his
20 advisement of rights, what did you do at this point?

21 A. Detective Evans began to interview him and I left the
22 interview room.

23 Q. So you stepped out of the interview room at this point.

24 A. Yes, sir.

25 Q. So the advisement of rights, was that the end of your

JACKSON VS. DENNO HEARING

1 involvement in this case?

2 A. Yes, sir. Well --

3 Q. On --

4 A. -- with Mr. Hall's involvement.

5 Q. Mr. Hall's statement. Okay. And you advised you left
6 the room at that point?

7 A. Yes, sir.

8 MR. YOUNG: I have no further questions at this point,
9 Judge, for this witness.

10 THE COURT: All right, sir.

11 MR. GRIMES: May it please the Court?

12 THE COURT: Yes, sir.

13 CROSS EXAMINATION

14 BY MR. GRIMES:

15 Q. Good afternoon, Sergeant Hill.

16 A. How are you doing today?

17 Q. Pretty good. How are you doing?

18 A. Good.

19 Q. Do you know how Mr. Hall was taken into custody?

20 A. As far as --

21 Q. On the day you advised him of his rights?

22 A. Yeah, he was brought in on another matter.

23 Q. Do you know if there was a warrant for him being,
24 brought in on that matter or if he came in on his own accord
25 or if he was asked to come down by another officer?

JACKSON VS. DENNO HEARING

- 1 A. I don't think he had a warrant, not sure on that
2 though.
- 3 Q. And were you involved in that matter at all?
- 4 A. The --
- 5 Q. What initially brought him in?
- 6 A. Be more specific, I'm not sure what you're asking me.
- 7 Q. You sound like he was brought in on another matter.
- 8 A. Correct.
- 9 Q. Were you involved in that case at all?
- 10 A. No.
- 11 Q. Do you know how Mr. Hall became a suspect in this
12 matter, this shooting?
- 13 A. In the investigation that we're here for today?
- 14 Q. Yes, sir.
- 15 A. Co-defendant.
- 16 Q. Mr. Smith gave you probable cause; is that correct?
- 17 A. Probable cause for what, sir? Not sure --
- 18 Q. To bring him down, for him to be brought and be
19 questioned.
- 20 A. Detective Evans had advised me that he -- that Mr.
21 Hall -- he believed Mr. Hall was a defendant -- or a suspect
22 involved in this and he wanted to talk to him so Mr. Evans
23 got him to come in. I was just the supervisor in the case,
24 I didn't --
- 25 Q. I'm just trying to figure out what exactly you did, is

JACKSON VS. DENNO HEARING

1 it basically just read him his rights?

2 A. I was just the supervisor of the case, yes, sir. And I
3 did read him his rights on that but I didn't interview him
4 and, I mean, we spoke for a short time before the Miranda
5 and then he was Mirandized.

6 Q. Do you recall what you spoke to him about?

7 A. About the other matter.

8 Q. And when you were interviewing him on that other
9 matter, did anything about -- how did this incident come up?

10 A. As far as wanting to talk to him about this?

11 Q. Yes, sir.

12 A. We started -- Detective Evans and I started asking him
13 what he was doing recently and then we decided to Mirandize
14 him before we started questioning him about the incident.

15 Q. And do you recall what questions you asked him before
16 you -- about this incident before you Mirandized him on this
17 incident?

18 A. I didn't question him on this incident until after I
19 Mirandized him, that was -- Detective Evans did that.

20 Q. Do you recall what questions Detective Evans asked him?

21 A. I don't remember, no, sir, because I had left the
22 interview.

23 Q. Do you know if the interview was recorded?

24 A. No, sir, it wasn't. We didn't have the system at that
25 time.

JACKSON VS. DENNO HEARING

- 1 Q. Now, I believe you said when you advised him his rights
2 you kind of asked him a couple of rights to make sure he
3 could read.
- 4 A. Correct.
- 5 Q. And which ones did you ask him to read?
- 6 A. I believe I asked Mr. Hall to read the first one and
7 then I read the remaining.
- 8 Q. And how did he do on that, reading the first one?
- 9 A. How would he read it?
- 10 Q. How did he do on that?
- 11 A. He did fine.
- 12 Q. Did he have any questions about what these rights
13 meant?
- 14 A. No, sir.
- 15 Q. Did you know how old he was at the time?
- 16 A. I don't remember, no, sir.
- 17 Q. And when you questioned him, was he free to leave at
18 this time? When he was being questioned on the first matter
19 was he free to leave at that time?
- 20 A. Yes. He could have left if he would have asked.
- 21 Q. Do you know if anyone talked to him about what he might
22 be looking at if he gave a statement like if he cooperated?
- 23 A. I didn't so I don't know of anyone doing that, no, sir.
- 24 Q. Did you tell him the truth is always good for you or --
- 25 A. Say that again, sir.

JACKSON VS. DENNO HEARING

1 Q. You tell him anything like the truth will always help
2 you out?

3 A. I believe the truth always is a good thing to say
4 during interviews, yes, sir.

5 Q. But did you tell Mr. Hall that?

6 A. I don't remember if I did or didn't. It wouldn't be
7 out of character for me to tell someone that is being
8 interviewed that the truth is a good thing to say.

9 Q. Do you know how long he'd been in the interview room
10 before he signed off his Miranda rights?

11 A. No.

12 MR. GRIMES: Thank you, Your Honor. I have no further
13 questions.

14 MR. YOUNG: Briefly, Judge.

15 THE COURT: Take your time.

16 REDIRECT EXAMINATION

17 BY MR. YOUNG:

18 Q. Did you threaten or promise Denorris for that
19 statement?

20 A. No, sir.

21 Q. Or for signing of that advisement of rights?

22 A. No, sir.

23 Q. Were you the case agent on this case?

24 A. Detective Evans was, I believe.

25 Q. So you were merely the supervisory role?

JACKSON VS. DENNO HEARING

1 A. Yes, sir.

2 Q. And was the defendant handcuffed at the point when he
3 was given the advisement of rights?

4 A. I don't think he was, no, sir.

5 Q. So he was free to leave?

6 A. Yeah.

7 Q. Then after you gave the advisement of rights you left
8 the room?

9 A. Yes, sir.

10 MR. YOUNG: No further questions, Judge.

11 THE COURT: Recross?

12 MR. GRIMES: No questions, Your Honor.

13 THE COURT: You may step down, thank you. I'm going to
14 ask that you wait outside until you receive further
15 instructions because the rule has been invoked. Call your
16 next witness.

17 MR. YOUNG: The State calls Detective Mark Evans.

18 The witness, MARK EVANS, was first duly sworn
19 and testified as follows on:

20 DIRECT EXAMINATION

21 THE CLERK: Please state your name and spell your last
22 name for the record.

23 THE WITNESS: Mark Evans, E-v-a-n-s.

24 THE COURT: Mr. Young?

25 BY MR. YOUNG:

JACKSON VS. DENNO HEARING

1 Q. Detective Evans, are you a detective with the NCPD?

2 A. Yes, sir.

3 Q. And how long have you worked with North Charleston?

4 A. Four years in January.

5 Q. What kind of cases are you mainly involved with?

6 A. Currently assigned to the persons unit dealing with
7 violent crime.

8 Q. And did you work an attempted robbery and attempted
9 murder September 13, 2010?

10 A. Yes, sir.

11 Q. Would you please tell the Court about your involvement
12 in this case, specifically defendant Hall, defendant
13 Denorris Hall? Did you give him a -- take a statement from
14 him?

15 A. I did. Mr. Hall was brought into NCPD after we
16 obtained information about him. Mr. Hall was provided his
17 Miranda and provided a written statement.

18 Q. Okay. And prior to interviewing the defendant did you
19 advise him of the nature of your investigation? Prior to
20 giving -- strike that. Prior to giving the statement did
21 you advise him what you guys were doing here?

22 A. Yes, sir.

23 Q. And prior to any questioning or statement, was he given
24 his constitutional rights?

25 A. He was.

JACKSON VS. DENNO HEARING

1 Q. Okay. And did you do that or did Detective Hill do
2 that?

3 A. Sergeant Hill.

4 Q. Sergeant Hill did?

5 A. Yes, sir.

6 Q. At this point did Sergeant Hill leave the room after
7 the advisement of rights?

8 A. Yes, sir.

9 Q. So at this point who is in the room?

10 A. Myself and Mr. Hall.

11 Q. And did you take a statement from this defendant in the
12 case?

13 A. I did.

14 Q. Prior to the defendant giving his statement did you or
15 anyone else threaten or coerce the defendant in any way?

16 A. No.

17 Q. Did you or anyone else promise the defendant anything
18 in exchange for giving a statement?

19 A. No.

20 Q. And did anything about the defendant's conduct or the
21 defendant's answers to your questions indicate that the
22 defendant did not understand what was going on?

23 A. No.

24 Q. Did he seem to be under the influence of drugs or
25 alcohol?

JACKSON VS. DENNO HEARING

1 A. Did not.

2 Q. And to the best of your knowledge was the statement --
3 the defendant's statement freely and voluntarily given?

4 A. Yes.

5 Q. I'm going to show you what has been marked State's
6 Exhibit 1.

7 MR. YOUNG: May I approach the witness, Judge?

8 THE COURT: You may.

9 Q. And ask you to take a look at those four pages, do you
10 recognize that?

11 A. Yes, sir.

12 Q. What is that?

13 A. That is the statement that I wrote for Mr. Hall.

14 Q. Is there a question and answer section to that
15 statement?

16 A. There is.

17 Q. So tell us about the statement. Tell us about page by
18 page, what are we looking at? What's the first part? Is
19 that him telling you?

20 A. On page one it is -- Mr. Hall is describing the
21 incident, as he describes the incident I'm writing down word
22 for word what he's saying. At the bottom of page one begins
23 the section where it say this part of the statement will be
24 conducted in question and answer form with Detective M.
25 Evans asking the questions. Following that you'll see a Q

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1 which has the question that I asked Mr. Hall and then an A
2 which is the answer that Mr. Hall provided and that
3 continues on through the next four pages.

4 Q. Okay. And did you sign every page of that statement?

5 A. I did.

6 Q. Did the defendant sign every page of that statement?

7 A. He did.

8 Q. Is that the defendant's signature at the bottom of
9 those pages?

10 A. Yes.

11 Q. Okay. Is that a fair and accurate representation of
12 that statement given by you to the defendant on September
13 18th, 2010?

14 A. Yes.

15 MR. YOUNG: Judge, at this point I ask to move State's
16 1 in evidence.

17 THE COURT: State's 1 is in evidence.

18 MR. YOUNG: State 2.

19 THE COURT: For the purposes of this hearing, Mr.
20 Grimes, any objection?

21 MR. GRIMES: I might have an objection after I cross
22 Detective Evans, I believe it is premature at this point.

23 THE COURT: Okay.

24 MR. YOUNG: State 2 admitted, Judge?

25 THE COURT: No.

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1 (State's exhibit 2 marked for ID.)

2 Q. Detective Evans, you didn't threaten the defendant in
3 any way?

4 A. No.

5 Q. Didn't promise anything from the State?

6 A. No.

7 Q. And that's his statement we're looking at, State's 2?

8 A. Yes.

9 MR. YOUNG: Court's indulgence.

10 THE COURT: Take your time.

11 MR. YOUNG: No further questions at this point, Judge.

12 THE COURT: Mr. Grimes?

13 CROSS EXAMINATION

14 BY MR. GRIMES:

15 Q. Good afternoon, Detective Evans.

16 A. Good afternoon.

17 Q. You prepared a report in this case, correct?

18 A. I did a supplemental report, yes, sir.

19 Q. And would it be fair to say that report is a fair and
20 accurate copy of what happened during your investigation of
21 this case?

22 A. Yes, sir.

23 Q. And I believe on September 17th of 2010 you noted that
24 Detective Patrick picked up Hall and transported him to
25 North Charleston City Hall?

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1 A. Yes, sir.

2 Q. And that was based upon an anonymous tip that Mr. Hall
3 may have been involved in this incident?

4 A. Yes, sir.

5 Q. And no other evidence at this point.

6 A. No, sir.

7 Q. And once Mr. Hall was transported to city hall you and
8 Sergeant Hill interviewed him about another incident,
9 correct?

10 A. Yes, sir.

11 Q. And Sergeant Hill was asking questions in that case,
12 correct?

13 A. I don't understand your question.

14 Q. Was Sergeant Hill asking any questions or was he just
15 there observing?

16 A. For which incident?

17 Q. The first one.

18 A. For the original incident that he was brought up there
19 for?

20 Q. The one that North Charleston said he was brought up
21 there for.

22 A. Yes, sir. I asked Mr. Hall to provide me a written
23 statement, while he was providing that written statement
24 Sergeant Hill asked questions about the other incident.

25 Q. And at that point no one had advised Mr. Hall his

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- 1 Miranda rights, correct?
- 2 A. No, sir.
- 3 Q. Do you know what Mr. Hall said at that point?
- 4 A. He said that he was there, he was crossing the street,
- 5 I believe he was crossing the street going to Three Dollar,
- 6 and at that point the interview was stopped.
- 7 Q. And then at that point is when he was advised Miranda
- 8 rights?
- 9 A. Yes, sir.
- 10 Q. And then Sergeant Hill is the one that advised Miranda
- 11 rights?
- 12 A. Yes, sir.
- 13 Q. And according to your testimony Sergeant Hill left
- 14 after that?
- 15 A. Yes, sir.
- 16 Q. And North Charleston has video cameras in their
- 17 interview rooms, correct?
- 18 A. At this time there were cameras there but they were not
- 19 active.
- 20 Q. But cameras were in there, just not working.
- 21 A. Yes, sir.
- 22 Q. And North Charleston had tape recorders, I believe?
- 23 A. At that time we did not.
- 24 Q. No one in North Charleston Police Department had tape
- 25 recorders?

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- 1 A. They were not issued.
- 2 Q. And I believe you testified that nobody threatened Mr.
- 3 Hall with anything or promised him anything?
- 4 A. No, sir.
- 5 Q. Did you talk to him about what kind of sentence he
- 6 might receive if he cooperated?
- 7 A. I don't believe so.
- 8 Q. Do you do that with all people you interview?
- 9 A. Do I do what?
- 10 Q. Not --
- 11 MR. GRIMES: I'll withdraw that question, Your Honor.
- 12 Q. Do you recall Mr. Hall ever asking the interview to
- 13 stop?
- 14 A. No, sir.
- 15 Q. And was he cooperative with you?
- 16 A. Very.
- 17 Q. Very cooperative with you?
- 18 A. Yes..
- 19 Q. And you've reviewed his statement, correct?
- 20 A. The one that I was just handed? Yes, sir.
- 21 Q. Would you deem that a confession or more of a witness
- 22 statement?
- 23 A. A confession.
- 24 Q. And where does it say that he attempted to rob somebody
- 25 in there?

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1 A. The act of what they were -- what the intention would
2 be had they gotten the bag or been able to see what was in
3 the bag.

4 Q. Does Mr. Hall say he was trying to get the bag?

5 A. Mr. Hall does not state that, Mr. Smith -- he said that
6 Mr. Smith -- that he believed Mr. Smith.

7 Q. Was going to do that?

8 A. Yes, sir.

9 Q. And Mr. Hall never admitted to shooting Mr. Thomas,
10 correct?

11 A. No, sir. But I believe Mr. Hall advised that he
12 provided him with the gun, and I'd have to check the
13 statement.

14 Q. You want to double check the statement?

15 A. I do not have it with me. I apologize, that was
16 incorrect.

17 Q. And is there any part in that statement where he
18 confesses to a crime?

19 A. I believe so, yes.

20 Q. In what part of the statement is that you believe?

21 A. "We were talking about going to the Three Dollar
22 Lounge, Smitty was talking about he was going to rob him, a
23 guy had robbed him a couple of months ago." So they were
24 going out with the intention of looking for somebody, the
25 opening sentence of the statement.

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1 Q. And that's why you believe he's guilty of these
2 offenses?

3 A. I wouldn't say just that, but that was --

4 Q. From -- let me clarify, from Mr. Hall's statement
5 that's why you believe he confessed?

6 A. I believe he had knowledge of what was going to take
7 place. Mr. Hall actually was the first one to approach the
8 victim.

9 Q. And he went to approach him for a cigarette, correct?

10 A. According to him, yes.

11 MR. GRIMES: Thank you, Your Honor. I have no further
12 questions.

13 THE COURT: Mr. Young?

14 REDIRECT EXAMINATION

15 BY MR. YOUNG:

16 Q. So Detective Evans, I'm going to ask you, have you
17 looked at your report at all? You gave a supplemental
18 report Mr. Grimes was talking about.

19 A. Yes, sir, I have.

20 Q. While you're talking to Mr. Hall about the other matter
21 and it's brought up that he was in this area, do you know
22 what time that was at in the interview room?

23 A. We began the interview at approximately 11:00, at 11:07
24 we stopped the interview when Mr. Hall advised.

25 Q. And at this point what time is he giving the advisement

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1 of rights form and told to give a statement, do you remember
2 what time is on that?

3 A. I do not know.

4 Q. If I showed you your report, would that refresh your
5 memory?

6 A. Yes, sir.

7 MR. YOUNG: My I approach the witness, Judge?

8 THE COURT: You may.

9 Q. Ask you to turn your attention to the bottom of the
10 form.

11 A. 11:10.

12 Q. So 11:07 you hear about he's involved with this
13 attempted murder, attempted armed robbery, 11:10 you give
14 the advisement of rights and he gives a statement; isn't
15 that correct?

16 A. Yes, sir.

17 Q. And what time did you start that statement, do you
18 remember the time on that?

19 A. I don't.

20 Q. If you looked at the statement, or if you looked at the
21 statement would that refresh your memory?

22 A. This statement does not provide the time that the
23 incident that -- that the statement was obtained.

24 MR. YOUNG: If I may approach the witness, Judge?

25 THE COURT: You may.

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1 A. That's just the date and time of the incident, doesn't
2 have the time that the statement was obtained.

3 MR. YOUNG: Judge, if I may see State's 1? Thank you.

4 Q. I'm going to show you what's been marked as State's 1.
5 Can you tell me what the time is that you all took or did
6 the advisement of right and took the statement?

7 A. 11:10 a.m.

8 Q. So 11:07 he talked about the incident, 11:10 you give
9 him the advisement of rights, take a statement, then 11:13
10 is the actual statement.

11 A. No, sir, that's not it. At 11:07 we stopped after he
12 implicated himself as being in the area, 11:10 we go back
13 into the interview room, at 11:13 we complete the advisement
14 of rights form, and then you could safely say 11 maybe 14 or
15 11:13 that we would begin the statement.

16 Q. So that is all within 10 minutes there.

17 A. Yes.

18 MR. YOUNG: Judge, at this point I ask to move State's
19 Exhibit 2 into evidence.

20 MR. GRIMES: I guess for purposes of this hearing I
21 have no objection but we do have several arguments at the
22 end of the hearing.

23 THE COURT: Okay. Thank you.

24 (State's 2 was received into evidence.)

25 MR. YOUNG: Judge, we have nothing further.

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1 THE COURT: Recross, Mr. Grimes?

2 MR. GRIMES: No, your Honor.

3 THE COURT: You are going to have to wait outside
4 because the rule has been invoked, do not discuss your
5 testimony with anyone. Thank you. Call your next witness.

6 MR. YOUNG: Judge, that's all of the witnesses we have
7 for purposes of this hearing.

8 ~~THE COURT: Do you have any witnesses, Mr. Grimes?~~

9 MR. GRIMES: No, Your Honor.

10 THE COURT: All right. Do you have argument?

11 MR. GRIMES: Yes, Your Honor.

12 THE COURT: All right. Are prepared to do that now or
13 need a short moment?

14 MR. GRIMES: I think I'm fairly well prepared to do it
15 now, although there's some cases I may have at the office
16 that at some point during this hearing I could send that but
17 I think I could make the basis of my argument.

18 THE COURT: Are you ready, Mr. Young?

19 MR. YOUNG: We are ready, Judge.

20 THE COURT: All right, sir.

21 MR. GRIMES: Thank you, Your Honor. May it please the
22 Court? First we'd ask the Court to suppress the statement
23 based upon the United States Supreme Court's holding in
24 Missouri vs. Seibert. In that case Missouri authorities had
25 a policy of question first, then Mirandize somebody after

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1 they got statements from them. In this case Sergeant Hill
2 already -- well, the testimony in this case shows Detective
3 Patrick picked up Hall and transported him to the North
4 Charleston City Hall. They began to question him on an
5 unrelated incident and during that questioning process
6 Sergeant Hill started questioning him about his recent
7 activity and talking -- going into this incident, at no
8 point was Miranda rights read to him. And then after he
9 implicated himself by saying he was out there going to the
10 Three Dollar Lounge they Mirandize him and he gives a
11 statement. I believe they violate the Court's holding in
12 Missouri vs. Seibert, I also believe by using information
13 they learned while he was in custody and was given the basis
14 for this to question him further is fruit of the poisonous
15 tree and should be suppressed on that ground. Second, and
16 perhaps a stronger argument, the police established no
17 probable cause for Detective Patrick to pick up Mr. Hall and
18 transport him to North Charleston City Hall. So what we
19 essentially have is the illegal arrest and question session
20 at North Charleston City Hall.

21 THE COURT: Was he under arrest at that time, Mr.
22 Grimes?

23 MR. GRIMES: Not formal arrest but he was certainly in
24 custody as Detective Evans testified that Detective Patrick
25 picked him up and transported him.

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1 THE COURT: So every time somebody is in a police car
2 they're in custody?

3 MR. GRIMES: Against their will. There's been no
4 evidence Mr. Hall voluntarily went with Detective Patrick.
5 And it's the State's burden and they have not called
6 Detective Patrick for whatever reason for this hearing. And
7 I know this issue had been discussed with Mr. Young before
8 so he made a conscious decision not to call Detective
9 Patrick even though he raised this issue preliminarily in
10 the preceding weeks with him.

11 THE COURT: So Mr. Grimes, what is it you want the
12 Court to do?

13 MR. GRIMES: Suppress the statement.

14 THE COURT: Number 2, State's 2?

15 MR. GRIMES: Yes, Your Honor.

16 THE COURT: All right. Anything else?

17 MR. GRIMES: No, Your Honor.

18 THE COURT: All right. Mr. Young?

19 MR. YOUNG: Thank you, Judge. For purposes only of the
20 hearing, Jackson vs. Denno, you've got to look at the
21 totality of the circumstances whether the statement was
22 freely and voluntarily given. Certain factors of that --

23 THE COURT: How did he get to the police station, Mr.
24 Young?

25 MR. YOUNG: Judge, Mr. Hall was implicated, there was a

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1 CI who calls in and says, "I've heard the guy you're looking
2 for in the neighborhood in a shooting is this man." At this
3 point Patrick -- Detective Patrick goes out, he voluntarily
4 getting in the car with him and goes down to the police
5 station. This defendant is also at this point implicated in
6 another rape case so he was asked to give a statement about
7 that, he does that. As you've heard from the detective he
8 was very cooperative, he does not say he wanted to leave
9 though he was free to leave.

10 THE COURT: Maybe I didn't make myself clear. How did
11 he get to the police station?

12 MR. YOUNG: He rode in the vehicle with one of the
13 detectives, Judge.

14 THE COURT: And did they pick him up? What was his
15 custodial status at that time?

16 MR. YOUNG: Certainly free to leave after they wanted
17 to speak to him, just like in most investigations when there
18 is officers that want to speak to you they can come and talk
19 to you. He could certainly have said, "I don't want to talk
20 to you, I want my attorney."

21 THE COURT: I don't need a whole lot of grand standing.
22 He got in the car.

23 MR. YOUNG: Yes, ma'am.

24 THE COURT: And what was the purpose of him getting in
25 the car?

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1 MR. YOUNG: The cops were trying to find further
2 information about a shooting that had happened four days ,
3 prior to --

4 THE COURT: Was he under arrest?

5 MR. YOUNG: He was not under arrest as you heard from
6 testimony.

7 THE COURT: All right. Continue. Anything further?

8 MR. YOUNG: Yeah. As far as the Denno hearing looking
9 at again the totality of the circumstances like the case law
10 says, certain factors you have to look at is the capacity,
11 did the defendant know what he was doing when he gave the
12 statement? Testimony come out from the officer, Detective
13 Evans, that yeah, he knew what he was doing. He said he
14 wasn't on drugs, he wasn't drunk, he was very lucid.
15 Additionally the fact the way he was interrogated, they
16 didn't hold him in a cell, handcuffed, tied up, nothing like
17 that, he was free to leave. He was sitting in an interview
18 room and he gave a statement, so no coercion there.
19 Additionally you've got to look at the understanding of the
20 moment of the defendant as another factor, did he understand
21 what was going on. Testimony indicates that he did,
22 testimony revealed that he was very cooperative. And Judge,
23 if you look at the time, the reason that we brought that out
24 is again just to be clear at 11:07 the defendant says, "Yes,
25 I was in the area when the shooting happened." At this

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1 point they stopped talking to him, they give him Miranda,
2 advised him of his rights at 11:10, within three minutes.
3 He signs it, he understands it, by 11:13 he is giving a
4 statement freely and voluntarily about what he was doing
5 that night. Certainly it is self-serving in some ways but
6 still gives a statement about what happened. So, Judge for
7 all these factors, again the statement was freely and
8 voluntarily given, there was no promises made to him, no
9 threats, we would ask that you admit the statement, Judge,
10 and let it come in.

11 THE COURT: Anything further?

12 MR. GRIMES: Briefly, Your Honor, just in reply to some
13 of Mr. Young's assertions. First, I think there is not one
14 iota of evidence in the record before the Court as to how
15 Detective Patrick picked up Mr. Hall. I specifically read
16 from Sergeant Evans' report that said that Detective Hall
17 (sic) picked up and transported him to North Charleston City
18 Hall and that's the only evidence in the record. We've
19 heard for purposes of this so called rape investigation,
20 never seen a warrant, any type of incident report on that,
21 there has been no official document alleging that Mr. Hall
22 was involved in this rape and I think it was to just shed
23 light on his character. Second, there's no probable cause
24 for his arrest. The case law is clear under --

25 THE COURT: We're not here about his arrest, are we?

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1 We're here about the statement.

2 MR. GRIMES: Well, if he is illegally put in custody or
3 arrested then anything they learn after that is fruit of the
4 poisonous tree.

5 THE COURT: But was he arrested?

6 MR. GRIMES: No, he was not formally arrested.

7 THE COURT: Then don't say that it was an illegal
8 arrest if he wasn't formally arrested, Mr. Grimes, don't
9 confuse the issues.

10 MR. GRIMES: If he was illegally put in custody by
11 Detective Patrick -- under the case law you have to have
12 more than just an anonymous tip and that's exactly what
13 Detective Evans testified, there was an anonymous tip --

14 THE COURT: Is there any indication in the record here
15 today that he was taken to North Charleston against his
16 will?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And what is that?

19 MR. GRIMES: Detective Patrick picked him up and
20 transported him for purposes of this investigation.

21 THE COURT: And that is sufficient in your mind to say
22 he was taken against his will?

23 MR. GRIMES: Yes, ma'am, essentially when there's
24 nothing else in the record to rebut that.

25 THE COURT: Well, what in the record supports that, Mr.

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1 Grimes?

2 MR. GRIMES: That by itself. I mean, it's common
3 sense --

4 THE COURT: That what in and by itself, Mr. Grimes?
5 That what by itself?

6 MR. GRIMES: 18 year olds just don't go down with the
7 police down to the station.

8 THE COURT: You are making that assumption, correct?

9 MR. GRIMES: No.

10 THE COURT: What in the record with your client
11 indicates that he was taken to the North Charleston Police
12 Department against his will?

13 MR. GRIMES: How Detective Patrick picked him up. And
14 it's the State's burden of proof and not our burden of proof
15 to provide, it's the State's burden and they have not done
16 it.

17 THE COURT: But even if, Mr. Grimes, let's assume that
18 you piece together that theory, does that make his statement
19 freely and -- or involuntarily given if he was advised of
20 Miranda after he was arrested?

21 MR. GRIMES: No, it doesn't.

22 THE COURT: All right. Then why are we even discussing
23 something that you're assuming happened?

24 MR. GRIMES: Because it's a clear violation under the
25 Fourth Amendment.

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1 THE COURT: If it happened, Mr. Grimes, but I don't
2 know that it did.

3 MR. GRIMES: Well, you asked how --

4 THE COURT: All right. Let's move on.

5 MR. GRIMES: -- relevant to the Fourth Amendment
6 analysis --

7 THE COURT: Let's move on. Anything else I need to
8 know?

9 MR. GRIMES: And the CI. Mr. Young alleged is not a
10 CI, there is no information it was a CI, it was an anonymous
11 tip, that's the only basis for them to pick him up and
12 that's not probable cause to support taking him in custody.

13 THE COURT: But Mr. Grimes, even if they didn't pick
14 him up, was Miranda given to him?

15 MR. GRIMES: Yes, Your Honor. We're not arguing that
16 his statement was involuntarily, we're arguing it was the
17 product of an illegal stop and seizure and that's a totally
18 different analysis under -- it's Fourth Amendment, not the
19 Fifth or Sixth Amendment. The result is the same result and
20 it's suppression of the statement.

21 THE COURT: All right. Anything else? Anything else?

22 MR. GRIMES: No.

23 THE COURT: We're going to break for lunch, I have
24 another matter and you'll have my rulings, Mr. Grimes. If
25 you need to present me any case law please make sure you

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1 copy Mr. Young on it and please be back here at 2:10. Thank
2 you. We're at ease.

3 (A lunch recess was taken.) State VS. Hall.

4 THE COURT: All right. Mr. Young?

5 MR. YOUNG: Yes, ma'am.

6 THE COURT: Mr. Grimes. The State ready and defense
7 ready?

8 MR. YOUNG: We're ready, Your Honor.

9 MR. GRIMES: Your Honor, I think we have one matter, I
10 discussed this with Mr. Young over lunch. And I apologize,
11 I don't think I caught it or realized it during our jury
12 selection but I think one of the juror's knows Ms. Badger.
13 I talked to her at lunch, she said she remembered him from
14 elementary/middle school and she didn't come forward and say
15 anything, and she says they don't have a close personal
16 relationship, that's the first time she had seen him in a
17 number of years, but just in the abundance of caution I
18 wanted today bring that to the Court's attention.

19 MR. YOUNG: From what I understand did he waive that?
20 I would ask to bring him in, ask how they know each other,
21 how he knows her.

22 THE COURT: How did this come to your attention?

23 THE WITNESS: I told Mr. Grimes.

24 THE COURT: And then Mr. Grimes told Mr. Young.

25 THE WITNESS: Yes.

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1 THE COURT: So we called your name out, she stood up,
2 is there some reason she hadn't seen him in 20 years?

3 THE WITNESS: I haven't seen him in 10.

4 THE COURT: Did you have such an impactful middle
5 school relationship with him that it would affect his
6 ability?

7 THE WITNESS: I don't see how, I just wanted to be
8 careful.

9 THE COURT: Mr. Young, you want me to bring him in?
10 Where did go to school?

11 THE WITNESS: I went to Drayton Hall, Drayton Middle
12 School.

13 THE COURT: There's five or six hundred kids over ten
14 years ago, what do you want me to do?

15 MR. YOUNG: My only issue is he is waving to the jury,
16 I don't want him to be biased.

17 THE WITNESS: It was right as he came in and he just
18 recognized me and waived and so I looked away.

19 THE COURT: All right. What's his number? What's his
20 name?

21 THE WITNESS: Something Stelling, I don't know his
22 first name actually.

23 THE COURT: If that happens in the future how are you
24 going handle to this differently?

25 THE WITNESS: I'll try to let them know quicker.

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1 THE COURT: Correct, bring it to the court's attention.

2 MR. GRIMES: It may be my fault, he waived, I should
3 have picked up on that.

4 THE COURT: Well, you are in law school right, Ms.
5 Badger?

6 THE WITNESS: Yes.

7 THE COURT: And you plan to be in the driving seat,
8 it's going to be your responsibility.

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: Let's bring Mr. Stelling in, 215.

11 (Whereupon juror 215 was brought in the
12 courtroom.)

13 THE COURT: Hi, stop right there. Mr. Stelling, I just
14 have a few questions to ask you. And you were under your
15 initial oath as a juror to tell me the whole and complete
16 truth. Do you know Ms. Badger?

17 JUROR: Oh, yes, ma'am.

18 THE COURT: And I don't recall you standing in voir
19 dire to indicate that you know her.

20 JUROR: I know, I totally realized that I should have
21 done that. We went to high school together. I haven't seen
22 her in a while.

23 THE COURT: So I don't know and you just tell me, I'm
24 just trying to figure out sometimes too, maybe I need to
25 rephrase my questions, why didn't you stand up?

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1 JUROR: Well, I didn't realize it until I got right
2 here and I didn't know if -- I mean, originally thought the
3 question was for the actual lawyers but then I did realize I
4 probably should have said something, but I apologize, I
5 wasn't trying to be deceitful or anything.

6 THE COURT: And tell me, you went to high school
7 together?

8 JUROR: Yes, ma'am, West Ashley High.

9 THE COURT: So how long has it been since you've seen
10 Ms. Badger?

11 JUROR: I would say I saw her briefly at the beach, I
12 don't know if she saw me, we were at the bar restaurant.

13 THE COURT: Okay. But no communication?

14 JUROR: No.

15 THE COURT: When is the last time you had
16 communication?

17 JUROR: I couldn't tell you.

18 THE COURT: High school?

19 JUROR: It's probably been since high school.

20 THE COURT: Well, let me ask you this: Is there
21 anything about your relationship with Ms. Badger that would
22 affect your ability to be fair and impartial in this case?

23 JUROR: No, not at all.

24 THE COURT: And now that I've brought you out and kind
25 of strayed from the folds and asked you some very pointed

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1 questions, is there anything about my questioning you that
2 will affect your ability to be fair and impartial in this
3 case?

4 JUROR: No, ma'am.

5 THE COURT: All right, sir. Thank you.

6 JUROR: I apologize.

7 (The juror left the courtroom.)

8 THE COURT: Anything further? Mr. Young?

9 MR. YOUNG: No, I think we are fine, Judge.

10 THE COURT: Mr. Grimes?

11 MR. GRIMES: No, Your Honor.

12 THE COURT: Ms. Badger, y'all went to high school
13 together.

14 THE WITNESS: Middle school, high school, he was
15 younger than me as well.

16 THE COURT: All right. Anything else, Mr. Grimes?

17 MR. GRIMES: I don't know if the Court ruled on --

18 THE COURT: I'm getting ready to do it, but anything
19 before I rule on it.?

20 MR. GRIMES: No, Your Honor.

21 THE COURT: So just so I understand, your position is
22 that -- isn't that the Miranda wasn't given or that the
23 statement itself wasn't freely and voluntarily given, but
24 that the arrest was illegal and thus everything that flows
25 from the illegal arrest should be suppressed?

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1 MR. GRIMES: That's the second argument, Your Honor.

2 THE COURT: Okay.

3 MR. GRIMES: That's accurate.

4 THE COURT: The first argument is?

5 MR. GRIMES: Based upon Missouri vs. Seibert where they
6 started questioning first, get some answers that they can
7 use and then Mirandize -- and then if they say anything
8 different then they use the well you've told us this before,
9 kind of tactic and the supreme court said that was improper.
10 So to have basically, you know, un-Mirandized statements s
11 using them to impeach him after mirandizing him and
12 interrogation tactics.

13 THE COURT: Okay. Based upon -- and I just want to
14 make sure essentially and received some case law over the
15 lunch hour that you sent, did you have any response to that,
16 Mr. Young?

17 MR. YOUNG: Judge, just basically that the case law
18 indicated in Lanier that the defendant was under arrest,
19 obviously the detectives testified that that's not the case,
20 that's how this case was different from Lanier and therefore
21 does not apply.

22 THE COURT: Any response to that, Mr. Grimes?

23 MR. GRIMES: No, Your Honor.

24 THE COURT: And the relief that you're seeking is any
25 statements made to either Detective Hill or to Detective

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1 Evans; is that correct?

2 MR. GRIMES: Yes, Your Honor.

3 THE COURT: Based upon my review over the lunch hour, I
4 did review that case that you submitted, Mr. Grimes, as well
5 as the cases that you mentioned and the testimony of Hill
6 and Evans I am denying your request to suppress the
7 statements of the defendant at this time, note your
8 exception for the record. And I'm going hand the two -- I
9 have the two, State's 1 and 2. Anything further, Mr.
10 Grimes?

11 MR. GRIMES: No, Your Honor.

12 THE COURT: Anything further?

13 MR. YOUNG: No, Your Honor.

14 THE COURT: All right. I had requested prior to
15 bringing Mr. Stelling out for the jury to select their own
16 foreperson and they have chosen Mr. Stelling as their
17 foreperson. So with that, anything further before we bring
18 in the jury?

19 MR. YOUNG: No, Your Honor.

20 MR. GRIMES: No, Your Honor.

21 THE COURT: All right. Who is doing openings?

22 MR. YOUNG: I am, Your Honor.

23 MR. GRIMES: I will be, Your Honor.

24 THE COURT: Okay. And do I need to limit either one of
25 you?

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1 MR. YOUNG: Judge, mine is going to be --

2 THE COURT: And your first witness is ready to go?

3 MR. YOUNG: Ready to go.

4 THE COURT: All right. Thank you.

5 (The jury returned to the courtroom)

6 THE COURT: Thank you. Be seated. Good afternoon,
7 ladies and gentlemen. I hope you had a wonderful lunch.
8 Did every juror comply with my admonitions? If you were
9 unable to follow my instructions please stand. Thank you,
10 everyone complied. Mr. Stelling, you have been selected as
11 the jury spokesperson as the foreman here in court,
12 congratulations, and Mr. Robinson, behind the foreperson you
13 are the alternate, the two of you need to -- those are your
14 assigned seats, you will have to sit in those seats for the
15 remainder, the rest of you may choose to sit in the
16 remaining seats but those are assigned seats. You are the
17 jury spokesperson here in court as foreman so if at any time
18 you need any additional breaks or anything of that nature,
19 if you will please let your foreperson know and he will
20 alert the bailiff. You are also responsible for writing the
21 verdict but I'll give you further instructions as we
22 progress through the trial. You will be allowed to take
23 notes throughout the progress of this trial which is why you
24 have a note pad in your hand, please remember that some of
25 us were much better note takers in school than others, that

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1 note pad is for your own use, one juror's notes are no more
2 correct or accurate than another juror's notes. We will
3 collect those during the break and at night lock them up and
4 give them back to you in the morning. Ladies and gentlemen,
5 you may have noticed as you came in this time the
6 participants in the trial and members of the audience were
7 standing, this is out of respect for your new position as
8 judges of the facts. So please come in and have a seat
9 because they will remain standing until all 13 of you are
10 seated. Ladies and gentlemen, we are about to begin the
11 case and before we do that the Clerk of Court will
12 administer the oath.

13 (The jury was given sworn.)

14 THE COURT: Ladies and gentlemen, what I now say is
15 intended to serve as an introduction to the trial of this
16 case. These remarks are not a charge on the law, I will
17 instruct you on the law as we progress through the trial and
18 at the close of the case when you retire to consider your
19 verdict. This is simply an explanation really of the
20 procedure that we will follow so that you will be better
21 able to understand what is happening. As I've indicated to
22 you in our general qualifications, the defendant is charged
23 by an indictment filed in the court, he is charged in two
24 indictments with attempted armed robbery and attempted
25 murder. I will explain the elements of each of those

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1 indictments to you later. The indictment again is simply
2 the charge by which this case is brought into court, it is
3 not in any sense evidence of the allegations that it
4 contains. The defendant has pled not guilty to this
5 indictment and the State therefore has the burden of proving
6 each of the elements of the indictment beyond a reasonable
7 doubt. It will be your duty, ladies and gentlemen, to
8 decide whether the State has met that burden. Your purpose
9 as jurors is to find and determine the facts. You are the
10 sole judges of the facts in this case and if at any time I
11 make any comment regarding the facts you must disregard it.
12 You are to determine the facts from the testimony you hear
13 and any other evidence that is introduced in court. It is
14 up to you to properly determine the inferences which you
15 feel may be drawn from that evidence. It is important that
16 you perform your duty of determining the facts diligently
17 and conscientiously, because ordinarily there is no way to
18 correct an erroneous determination of the facts by a jury.
19 On the other hand and with equal emphasis the same law that
20 make you the judges of the facts make me the judge of the
21 law, the law as given by this Court is the only law you may
22 consider. You must accept it and follow it even though you
23 may disagree with it. I cannot tell you what I think facts
24 are and you cannot disagree with me about what the law is or
25 what the law should be. Your job is to take the law as I

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1 give it to you and apply it to the facts as you find them
2 from the testimony of other witnesses and any other evidence
3 that is introduced, after doing that you will render your
4 verdict, a true and just verdict under the solum oath that
5 you just took as jurors. Until I advise you to begin your
6 deliberations you must not discuss the case with anyone,
7 that includes your fellow jurors, your friends, family
8 members and anyone else. Again, as I indicated to you this
9 includes face to face discussions but it also includes any
10 electronic form of discussion as well. During the trial you
11 may not read, watch, listen to any news accounts regarding
12 this case should there be any and you may not do any
13 independent investigation. You must not consider anything
14 that you may have read or heard about this case outside of
15 the courtroom whether before or during the trial. It is
16 important that you keep an open mind and not decide any
17 issue in this case until all of the evidence has been
18 presented, the parties have made their closing arguments and
19 I have instructed you on the law applicable to this case.
20 It is your solum responsibility to determine the guilt or
21 innocence of the defendant and your verdict must be based
22 solely on the evidence as it is presented to you in this
23 trial and on the law as I instruct you during and at the
24 close of the trial. In just a moment the solicitor is going
25 to make what is called an opening statement, and that is

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1 where the solicitor will explain to you the issues in this
2 case or at least what he thinks the issues are in this case.
3 The attorney for the defendant may also make an opening
4 statement although he is not required to do so. Please
5 remember what the attorneys tell you in their opening
6 statement as well as in their closing arguments is not
7 evidence in this case, it is only their contention as to
8 what the issues are. The evidence in this case will be
9 presented to you by the testimony of the sworn witnesses
10 from the witness stand and the exhibits that may be
11 introduced into evidence. From time to time you may hear
12 one of the attorneys say, "Your Honor, we have a question of
13 law or may we approach," or I might find it necessary to
14 excuse you from the courtroom for a short while. If I have
15 the attorneys come here please do not try to overhear us or
16 read the attorney's lips while we're talking and please
17 don't think we are trying to hide anything from you. The
18 reason for this is as I have indicated to you, the law does
19 not allow me to have an opinion about the facts in this case
20 but sometimes it is necessary for me to comment on the facts
21 in order for me to issue my legal ruling, and in no way do I
22 wish to influence you by what I say or do considering the
23 facts, so that is why we have bench conferences or I will
24 excuse you. Ladies and gentlemen, in determining what the
25 true facts are you must decide whether or not the testimony

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1 of the witnesses is believable. It is my responsibility to
2 rule as a matter of law as to whether certain testimony is
3 admissible at all, but once the testimony is admitted
4 whether or not you believe it is solely for you to
5 determine. In deciding whether to believe a witness you
6 have the right to consider the interest of any witness, the
7 bias of the witness, the prejudice of the witness, the
8 opportunity for the witness to have seen the matters and
9 things about which the witness may testify as well as the
10 way the witness acts on the witness stand. You have a right
11 to consider anything that is in the record that will help
12 you evaluate the testimony of the witnesses. That means it
13 is your duty to pay close attention to these witnesses, to
14 observe the witnesses, to listen to the witnesses and to pay
15 close attention. Please do not let your thoughts wonder but
16 give strict attention to the testimony so at the end of
17 testimony after the arguments of counsel and the charge of
18 the law by the Court you will be in a position to determine
19 what the true facts are and apply the law to those facts
20 rendering a true and just verdict. Please give your strict
21 attention. Mr. Young?

22 MR. YOUNG: Thank you, Judge, Mr. Grimes. Ladies and
23 gentlemen of the jury, I want to thank you for being here
24 today. I'm going to start by telling you two stories of the
25 night, December 13th (sic) -- actually the 12th into the

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1 early hours of the 13th. These two stories are going to
2 collide at around 2:00 a.m. that morning, September 13th.
3 Now, the first story is a story of our victim, Absalom
4 Thomas, a story of a working man, a man who works in the
5 food and beverage industry. And as some of you who have
6 worked in that industry may or may not know that they keep
7 later hours than most, they go to work later, they stay up
8 later, that is just their schedule. So this night he gets
9 off at around midnight, he's working at the Cajun Country
10 Kitchen Cafe, a local restaurant, he's a chef there. He
11 gets off work around midnight, decides to go home, obviously
12 some people are in bed, his night is still pretty young.
13 Now, before bed he -- let's take a step back, he lives on
14 Verde Street in North Charleston, so it's about 1:00 in the
15 morning and before bed he says he want a beer. So he decide
16 to walk down to the local convenience store and you will see
17 a map later on, but we'll show you how Verde Street connect
18 to Spruill, he takes Spruill Avenue down to the convenience
19 store to get a beer, something he likes to do to let off
20 some steam before goes to sleep at night. Meanwhile another
21 story, this is a story of two young men being lazy, sitting
22 in a house, texting girls, really boredom is the best way to
23 describe it, doing nothing. They decide that on September
24 12th into September 13th their time is best spent roaming
25 the streets of North Charleston. These are men that decide

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1 to go out and rob somebody, that's the way they decide to
2 spend their time. Now, here is where our stories start to
3 come together. That night as Mr. Thomas is walking down
4 Spruill he gets his beer and he's walking back with the beer
5 in a bag, he's walking up Spruill and McMillan intersects
6 that and I'm going to show you a map so I don't use my hands
7 later on, but at the corner of Spruill and McMillan there is
8 a bank, it's a credit union, there's video cameras in there
9 and we're going to talk about that a little bit. But as
10 defendants Herman Smith and Denorris Hall, that is their
11 names, Hall and Smith, they're coming out of St. Charles
12 Place where they are just lounging around and decide to rob
13 somebody, look who is walking up Spruill, our victim,
14 Absalom Thomas. As predators eye their prey they see him
15 walking up Spruill, as he's coming up Spruill they see him,
16 as they see him they cut through the bank, and I'm going to
17 show you in that video footage of these guys here. That
18 night they cut through and meet up, they intersect at about
19 1:56 in the a.m. on September 13th. Defendant Hall asks
20 Absalom Thomas for a cigarette, this is nothing but a mere
21 ploy to get him to stop so they could rob him. At this
22 point both men attempt to rob Mr. Thomas, he pulls away,
23 they pull out their pistols and they fire. Mr. Thomas
24 scatters this way, the defendants run the other way, sure
25 enough, Mr. Thomas is hit not once but he's hit twice.

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1 These young men that try to rob him shot him, they go the
2 other way back towards the St. Charles Place and McMillan,
3 he stumbles into the Three Dollar Lounge, it's a little bar
4 right near the shooting, calls the police, and these are the
5 facts that bring us here today. Now, ladies and gentlemen,
6 one of those men as I told you is Denorris Hall, that's this
7 man right here. He's sitting in the courtroom today and
8 we're going to prove him guilty of attempted murder and
9 attempted armed robbery for our victim Absalom Thomas. Now,
10 some of you wonder what happened to Smith, Herman Smith. He
11 has pled guilty. Okay. Today is Denorris Hall's day in
12 court but I want you to know you are going to hear from
13 Smith, he's going to get on that stand and talk to you about
14 what happened, he's going to let you know the details.
15 These are all important keys in this case. A few of you
16 might be wondering what is attempted armed robbery, what is
17 that? Again, the Judge will instruct you on the law in the
18 case, but it basically is just the taking or carrying away
19 of another's personal property with the intent to
20 permanently deprive while using a weapon, or in this case
21 the attempt to try take it away, the victim got away before
22 they were able to get his wallet and beer. Some of you
23 might wonder what is attempted murder, again attempting to
24 kill another person with malice. You can think of malice as
25 an ill will or a wicked heart. Now, a few of you might be

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1 thinking how am I going to prove this case, "How is the
2 solicitor going to prove his case?" Who are we going to
3 hear from? Who are the witnesses? I'm going tell you who
4 the witnesses are in this case. Victim Absalom Thomas,
5 certainly an important witness, I want you to listen to him
6 when he gets on stand and talks to you about what he was
7 doing that night, how he was working, how he went to get a
8 beer just like I talked about. He's going to tell you the
9 details about how these two young men stopped him and what
10 happened when they did, they attempted to rob him, then they
11 shot him. You're going hear from the ER doctor about
12 Absalom being shot twice, getting rushed to the hospital,
13 the doctor is going to come in and tell you about his
14 injuries, the severity of them and life saving surgeries
15 they have to do to save Mr. Thomas's life. Furthermore
16 you're going to hear from a guy by the name of Brett Cole,
17 he's a security officer at the federal credit union.
18 Remember, I talked about that credit union, that bank right
19 there on that corner where they cut through. There's video
20 camera footage that shows these two guys cutting through at
21 the time of the shooing, it puts them right there. You are
22 going the hear from him, he's going to tell you about the
23 cameras, what they show, how those cameras show the outlying
24 areas beyond the bank as well which is right where the
25 shooting took place in the street so you'll hear from him.

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1 And you're also going to hear from Herman smith. Remember I
2 said Hall/Smith, Hall/Smith, that's Hall, Smith is going to
3 come up here and he's pled guilty to attempted murder and
4 attempted armed robbery. No promises were made to him.
5 Okay. He's going to get on that stand and testify. Listen
6 to him tell you about the details of this night about what
7 they were doing, how they saw and how they picked the prey,
8 how they picked Mr. Thomas, why they robbed him, why they
9 shot him. Those are the things that Smith is going talk to
10 you about, listen to what he says. You're also going hear
11 from a crime scene analyst in North Charleston, he's going
12 to tell you how shell casings were recovered at the scene,
13 going to show you photos of the area. Additionally you're
14 going to hear from detectives from the North Charleston
15 Police Department. They'll tell you how proper police work
16 was done, how leads were followed, which leads to the
17 eventual arrest and is going to lead to the eventual
18 conviction of Defendant Hall. Now, ladies and gentlemen, in
19 conclusion I ask you to pay attention to these witnesses and
20 look at the evidence we put in. That evidence coupled with
21 that testimony is going to match up. There's videos, the
22 testimony of the co-defendant, the testimony of the victim,
23 all that stuff is going to match up and at the end when it
24 matches up there is only one verdict you could find and
25 that's the verdict I'm going to ask you for and that is a

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1 verdict of guilty. Thank you.

2 THE COURT: Mr. Grimes?

3 MR. GRIMES: Thank you, Your Honor. May it please the
4 Court? Good afternoon. We're going to ask that you find
5 Denorris innocent of these charges because the evidence in
6 this case will show that Denorris was hanging out with the
7 wrong friends at the wrong time in the wrong place. Now,
8 you may have been in English class in elementary school or
9 junior high when you kind of learn about what reporters do,
10 how they look and find out what happened, or what kind of
11 questions people ask when they're trying to find out what
12 happened. One of those questions is who is involved. Well,
13 there is really no dispute who is involved in this case,
14 there are three key people. Mr. Thomas is undoubtedly a
15 victim of a very tragic event, Mr. Herman Smith, he's the
16 admitted shooter in this case. On September 27th he pled
17 guilty to attempted armed robbery and attempted murder, and
18 his sentencing has been deferred until after he testifies.
19 And the last person involved is Mr. Hall, and you'll hear
20 police in investigating this case followed some leads and
21 eventually brought Mr. Hall in for questioning and he was
22 very cooperative. He told them he had been out there but he
23 said he didn't do anything, he didn't know about this
24 shooting, he didn't know what Mr. Smith was going to do.
25 And who are these people? As Mr. Young stated Mr. Thomas is

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1 a chef, I think he's maybe in Baltimore now looking for
2 partners to open up his business with. Herman Smith is a
3 convicted felon and Mr. Hall was 18 years old at the time,
4 was working, eventually got his GED studying aircraft
5 maintenance hoping to get a good job. And the next thing
6 you may want to ask is what happened? We don't dispute Mr.
7 Thomas was shot and he was shot by Mr. Smith. What we do
8 dispute is the State's allegations that Denorris was
9 involved in that shooting and in that attempted robbery.
10 Next you ask when did it happen? Again, there is no dispute
11 it happened on September 13, 2010, over two years ago. And
12 where did it happen? It happened in Charleston County at
13 the intersection of McMillan and Spruill, in that area. Why
14 did it happen? I'm not sure if I have an answer to that.
15 But I hope I provided you some evidence that may provide you
16 some answers or insight into what happened. I believe when
17 Mr. Smith testifies on cross-examination you will hear how
18 he's talked to his family about what happened that night and
19 why he did what he did and I think from the beginning you
20 will hear him trying to manipulate the system. He's going
21 to talk about how officers promised him a YOA where he might
22 do ten months in jail because he didn't have a bad record.
23 Then you might hear how he was acting in self defense
24 because he thought Mr. Thomas was going to come at him.
25 Then you will hear how he thought that Denorris was setting

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1 him up. Well, he's going to shoot someone because he
2 thought Denorris was setting him up.

3 MR. YOUNG: Objection, Your Honor, argumentative.

4 THE COURT: Ladies and gentlemen, just as I indicated
5 to you, what is contained in opening statements is not to be
6 considered as evidence. Move on, Mr. Grimes.

7 MR. GRIMES: And you'll hear that he thought Denorris
8 was setting him up, and why would somebody be planning a
9 robbery with someone they don't even trust? And you'll hear
10 from Mr. Hall's statement when he called the police he was
11 going out to Three Dollar Lounge to meet some girls. As you
12 heard me state, Mr. Hall is 18 years old at the time and he
13 did have a certain fondness for women, likes meeting them,
14 going out with them. The State has made certain allegations
15 about them being in the house, texting all night, just ask
16 yourself, are they going to produce those text messages? Do
17 they have evidence of that? And another thing you may ask
18 about why it happened, talking about Mr. Smith you may also
19 hear he said his first instinct, first instinct was to shoot
20 somebody while the person was running away, then try to
21 argue self defense. And why is Mr. Smith saying all of
22 this? It's because he's looking at a lot of prison time for
23 these two crimes. And Mr. Young said he hasn't been
24 promised anything, but on cross-examination you'll hear he's
25 telling people he's got a deal for ten years because he

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1 cooperated and he's hoping to get time served. Well, the
2 only way he can get that is if he comes in here and helps
3 the State out by manipulating the State, the Judge and the
4 jury. Don't let him do that. Again, in conclusion we ask
5 that you find Denorris innocent of these charges. He was
6 simply hanging out with the wrong person, Mr. Smith, at the
7 wrong time in the wrong place. Thank you.

8 THE COURT: Call your first witness.

9 MR. YOUNG: Thank you, Judge. The State calls Absalom
10 Thomas.

11 The witness, ABSALOM THOMAS, was first duly
12 sworn and testified as follows, on:

13 THE CLERK: State your full name and spell your last
14 name for the record.

15 THE WITNESS: Sure, Absalom Thomas, T-h-o-m-a-s.

16 DIRECT EXAMINATION

17 BY MR. YOUNG:

18 Q. Good afternoon, Mr. Thomas.

19 A. Good afternoon.

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

21 A. I am 41 years old.

22 Q. Can you tell the jury where you live?

23 A. I live in Baltimore, Maryland.

24 Q. Did you go to high school?

25 A. Yes. I went to high school in Villa Park, California.

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- 1 Q. Did you graduate?
- 2 A. I did.
- 3 Q. Any college or postcollege education?
- 4 A. Johnson and Wells Culinary Arts.
- 5 Q. Are you currently employed?
- 6 A. I am.
- 7 Q. And where are you employed?
- 8 A. T-Vol Cafe and Lounge in Harbor East, Baltimore,
- 9 Maryland.
- 10 Q. And what do you do there?
- 11 A. I manage the restaurant there.
- 12 Q. How long you been working there?
- 13 A. Goodness, since -- I started there in March. I also
- 14 have my own private chef business.
- 15 Q. And, Mr. Thomas, did you have trouble getting down here
- 16 today?
- 17 A. I didn't have any real trouble, no. A long train ride,
- 18 that's about it.
- 19 Q. And you traveled down here to be here today from
- 20 Maryland?
- 21 A. That's correct.
- 22 Q. Let me take you back to September 13, 2010. Do you
- 23 remember this date?
- 24 A. I do.
- 25 Q. Where are you living.

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- 1 A. I was living in North Charleston on 3988 Verde.
- 2 Q. And --
- 3 MR. YOUNG: And, Your Honor, if I may approach the
- 4 witness?
- 5 THE COURT: You may.
- 6 Q. Mr. Thomas, I'm going to ask you to look at the map.
- 7 A. Can I stand up?
- 8 Q. You can stand up. Do you recognize where Verde Street
- 9 is I believe in the area to the left?
- 10 A. Yes, Verde is here.
- 11 Q. And what street is this right here?
- 12 A. This looks like Rivers Avenue.
- 13 Q. Would you believe me if I told you this is Spruill
- 14 Avenue?
- 15 A. Okay, Spruill Avenue.
- 16 Q. And what is this?
- 17 A. McMillan Avenue.
- 18 Q. So Verde Street is up here?
- 19 A. That's correct.
- 20 Q. And does this look like a fair and accurate
- 21 representation of how your house was in the area?
- 22 A. Yes.
- 23 MR. YOUNG: Judge, at this point I ask to admit State 1
- 24 in evidence -- or State's 3, I'm sorry.
- 25 MR. GRIMES: No objection.

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1 THE COURT: State's 3 into evidence without objection.

2 (The map was received as State's 3.)

3 MR. YOUNG: Permission to publish it to the jury,
4 Judge.

5 THE COURT: You may.

6 Q. Mr. Thomas, if you would point out for the jury where
7 are we looking at, where is Verde?

8 A. Verde is here.

9 Q. And Verde is the street you lived on?

10 A. That's correct.

11 Q. And tell me where Spruill Avenue is.

12 A. Spruill Avenue is here.

13 Q. And then tell me where McMillan is.

14 A. McMillan is here.

15 Q. And where did the incident on September 13, 2010
16 happen?

17 A. Just past the bank here right along this way.

18 Q. So right past McMillan on Spruill?

19 A. That's correct.

20 Q. Now, taking you to the date of September 13, 2010, what
21 were you doing that day, the date of September 12 leading up
22 to the 13th? Were you working that day?

23 A. Yes. I was working at the Cajun Country Kitchen Cafe
24 on Remount Avenue right across from the Bi-Lo and we closed
25 very late that night, and then I took the bus home. Well --

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1 Q. Let me stop you and ask you a question. Tell me about
2 the day at work. What were you doing that day? Was it just
3 a normal day at work?

4 A. Just a normal day at work, cleaning up afterwards
5 usually takes an hour, hour and a half after a busy day,
6 then we sit around and talk about the business day, the
7 orders, how many orders we got wrong or customer complaints
8 or what went wrong with the bathroom or why the kitchen
9 equipment needs cleaning and so forth and so on is what we
10 would talk about among other things.

11 Q. And what time did you leave work would you say?

12 A. Probably between 12:30 and 1:00.

13 Q. Is that a normal day for you?

14 A. Absolutely.

15 Q. Did you drive your car home, or how did you get home?

16 A. I took a bus, walked up Remount Avenue and then took
17 the bus to Verde.

18 Q. So at this point when you get home on September 13th in
19 the early hours, what time is it approximately, could you
20 say? Between 12:30 and 1:00?

21 A. 1:45, 1:30.

22 Q. Okay. Now, at this point once you get home what do you
23 decide do?

24 A. I watched an animated show called Animated Cartoon and
25 then I went to the refrigerator to get a beer and there was

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1 none there so I decided to go get one.

2 Q. Did you in fact go get a beer?

3 A. I did.

4 Q. Tell the jury about the route that you took to get that
5 beer.

6 A. I left Verde and made a left on to Spruill, walked up
7 to McMillan, made a right, then walked up to Rivers Avenue,
8 made a left and then walked to where the library is off
9 Rivers Avenue, made another right, crossed the railroad
10 tracks, went to the convenience store that's across from the
11 Clarion Hotel right near I-26.

12 Q. And you decided to walk this instead of drive; is that
13 right?

14 A. I don't own a car.

15 Q. So do you, in fact, reach the gas station?

16 A. I do.

17 Q. Do you get your beer?

18 A. Yes.

19 Q. Now, let's move on to when you were walking back from
20 the gas station. Were you drinking the beer at the time
21 while you were walking?

22 A. Absolutely not.

23 Q. Now, tell the jury when you were walking home from that
24 gas station. I want you to slowly tell the jury about what
25 happened when you crossed McMillan up Spruill.

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1 A. Okay. As I crossed McMillan, or as I turned onto
2 Spruill from McMillan past the South Carolina Federal -- I
3 think Union Bank there or the credit union rather, and then
4 just got maybe 20 feet past the bank right across from the
5 railroad tracks and the Three Dollar Lounge, this person
6 approached me and asked me for a cigarette. He was dressed
7 in black and I just didn't think anything of it and just
8 gave him a cigarette just so I could just be on my way
9 without giving regards to anything else.

10 Q. And what happened after --

11 A. After that the person grabbed my hand, twisted it
12 around my back, shoved it down my pocket, tried to fish for
13 something in my back pocket, I just realized right then I
14 was being robbed or mugged or whatever it is and I wrestled
15 off. As I wrestled myself away I see another guy and I make
16 it across the street but then they came after me and then
17 they shot me twice.

18 Q. Now, when you wrestled away are you able to see a gun?

19 A. I did see a gun.

20 Q. Tell us about that gun.

21 A. I didn't see the entire gun but it was silver and it
22 was just a quick glance after I had been shot and I saw a
23 glint of what looked like a gun to me, and at that point I
24 was bleeding from my belly and my stomach and I just
25 couldn't believe I had been shot and I just couldn't think

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1 of anything else but to call the police, which I did. I
2 went to -- I made it across the railroad tracks, got shot,
3 went to the Three Dollar Lounge, talked to the security
4 guard, convinced him to let me use his phone to call the
5 police.

6 Q. Okay. Now, taking a step back, when this man has your
7 arm behind your back, was he trying to take anything of
8 yours?

9 A. He appeared to me that he was trying to take something
10 of mine.

11 Q. Did he have his hand in your pocket?

12 A. Yes.

13 Q. Did he get anything?

14 A. No.

15 Q. And you described the gun as silver. Was it a large
16 gun, a small gun?

17 A. It didn't look like a large gun but it didn't look
18 small either. I don't come in contact with a lot of guns so
19 I don't know.

20 Q. So --

21 A. But it wasn't big, it wasn't a big gun.

22 Q. Wasn't a rifle?

23 A. Like a handgun to me.

24 Q. A handgun?

25 A. Uh-huh.

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1 Q. Now, the gun you saw, was the person who asked you for
2 a cigarette, was that the person with the gun?

3 A. That's correct.

4 Q. And not the second guy.

5 A. That's correct.

6 Q. So was there one person that was closer to you asking
7 you for the cigarette showing the gun, then you had the
8 second guy, is that correct, coming on as well?

9 A. That's correct.

10 Q. How long would you say it took for this whole event to
11 go down? Are we talking minutes or seconds here?

12 A. Maybe a minute and a half. I mean, I just -- you mean
13 to the point of where I go to the ambulance or being shot?

14 Q. No. To the point when he's taking the arm behind back
15 and you pull away and then start to run.

16 A. And then get shot?

17 Q. Yeah.

18 A. Probably a minute to two minutes, I wasn't really
19 timing it.

20 Q. Did anybody say anything to you? Did either one of
21 them say anything to you?

22 A. They made derogatory remarks.

23 Q. Can you tell me what was said?

24 A. I heard one person say, "I shot his bitch ass." Then I
25 heard another person say, "Shoot that bitch," or something

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1 like that. Excuse me.

2 Q. Which person could you tell saying shoot --

3 A. I couldn't tell who said what, I heard it from behind
4 me.

5 Q. And you're sure the guy who asked you for that
6 cigarette is one that pulled the gun?

7 A. I am, I am sure.

8 Q. Can you tell the jury where you got shot, what part of
9 your body?

10 A. The lower part of my torso area, one bullet went into
11 my liver and the other bullet went near my lung. I had a
12 collapsed lung as a result and then removed 30 percent of my
13 liver -- I'm sorry, ten percent of my liver as a result to
14 remove the bullet.

15 Q. Did one bullet go through your body, through and
16 through? Do you know?

17 A. Yes.

18 Q. And does the other bullet stay in you, do you know
19 where it is at?

20 A. I don't know, I didn't think to ask. I thought I would
21 think hospital surgeons/doctors would try to remove
22 whatever.

23 Q. Now, Mr. Thomas, after you got shot you said you ran
24 across the street to the Three Dollar Lounge.

25 MR. YOUNG: If I may approach the witness, Judge?

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1 THE COURT: You may.

2 Q. Show me on the map where the Three Dollar Lounge is,
3 please, and please show the jury as well.

4 MR. YOUNG: If I may, Judge, ask him to publish it.

5 A. It looks like it's right here.

6 Q. Would you believe me if I told you this was the Three
7 Dollar Lounge?

8 A. I can't really.

9 Q. So the shooting happened here.

10 A. Right. Actually that's Pete and Rita's, this is the
11 Three Dollar Lounge. Because I remember Pete and Rita's is
12 right there on the corner and the Three Dollar Lounge -- I
13 don't know if they are part of the same business but I
14 remember interviewing for a position and I remember it
15 having a patio. This is actually the Three Dollar Lounge.

16 Q. And so the shooting happened here.

17 A. Right. And I ran in this direction.

18 Q. You ran here.

19 A. Because I saw the security guard here.

20 Q. And when you were walking you took a left right here,
21 right? Is that how were walking initially?

22 A. Yeah, right here. I came up, made this left, I was
23 assaulted here.

24 Q. And where did this person approach you from, do you
25 know?

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- 1 A. From this direction.
- 2 Q. Did they come out of this parking lot?
- 3 A. Yes. Well, I was here and then they came from -- they
- 4 could have come from that parking lot, I don't know. But
- 5 they were behind me as I was walking --
- 6 Q. Okay.
- 7 A. -- that way up Spruill.
- 8 Q. And this is the credit union right here?
- 9 A. That's correct.
- 10 Q. Thank you.
- 11 A. You're welcome.
- 12 Q. Mr. Thomas, I'm going to show you another map, a little
- 13 bit closer angle. Mr. Thomas, this is another map. Do you
- 14 recognize this map?
- 15 A. I do.
- 16 Q. Okay. What are we looking at here?
- 17 A. This is the federal credit union here, this is Pete an
- 18 Rita's, that's the Three Dollar Lounge and this is Spruill
- 19 Avenue and it's up to Verde where I lived.
- 20 Q. And does it look like the way it did back in 2010 when
- 21 you were walking up there?
- 22 A. Yes.
- 23 Q. Okay.
- 24 MR. YOUNG: Judge, at this point I ask to admit State's
- 25 4 into evidence and publish it to the jury.

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1 THE COURT: Any objection?

2 MR. GRIMES: No, Your Honor.

3 THE COURT: State's 4 in evidence without objection and
4 you may publish.

5 (The map was received as State's 4.)

6 Q. So Mr. Thomas, show me on this map, please, where you
7 were walking and then where you ran to after you were shot.

8 A. I was walking in this general area here.

9 Q. Had you turned off McMillan?

10 A. Yes. I was walking here, I was assaulted right about
11 here and run across these railroad tracks here and ended
12 here at this door to the Three Dollar Lounge making the
13 phone call to the police.

14 Q. Okay. Thank you. Did the defendants follow you after
15 you were shot?

16 A. They followed me after I wrestled away. Did they
17 follow me after I got shot and after I made the call to
18 go -- to the police and then go home? I was concerned that
19 they would but I don't think they did, I didn't see them but
20 they --

21 Q. How did you make the call? How did you make the call
22 from the Three Dollar Lounge.

23 A. The security guard had a cell phone, I didn't have my
24 cell phone on me at the time and so I know I needed to find
25 somewhere to call the police so I saw him standing with a

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1 cell phone and I asked to use it.

2 Q. And --

3 A. As I'm bleeding.

4 Q. As you were bleeding approaching with two gunshot
5 wounds.

6 A. Right.

7 Q. Did you know if the wounds were bad? I mean, did you
8 know if you were going to die?

9 A. I knew that if the bullets enter you and -- or a bullet
10 enters you it has to be removed, it could be life
11 threatening, I knew that it could be life threatening. I
12 knew that internal bleeding wasn't good, so that being said
13 I knew wasn't just going to go home to the apartment and not
14 seek medical attention so I did have some concern for my
15 life. Well, I was -- yeah. Then I just kind of went into
16 shock and started sweating and sat on the curb and waited
17 for the ambulance.

18 Q. Did police eventually respond to you?

19 A. They did, pretty quickly.

20 Q. Did they send you to the hospital?

21 A. Yes, pretty quickly.

22 Q. Did you try to make your way back to your house after
23 you called the police? Did you try to walk back to your
24 house?

25 A. After I called the police I had to walk back to my

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1 house because no one would -- no one would offer me a ride
2 or anything or assistance so I had to make it to my house on
3 my own and I was concerned that those the people who did
4 this to me would try and finish me off somehow. So yeah, I
5 had no choice but to walk back to the house.

6 Q. So when the police responded they responded to your
7 house?

8 A. When they responded to me I was at my house on the curb
9 waiting.

10 Q. They didn't respond directly to the crime scene, they
11 responded to your house.

12 A. That's correct.

13 Q. Absalom, tell the jury, do you know why these guys
14 tried to rob and shoot you?

15 A. No, I don't.

16 Q. Any reason you can think of at all?

17 A. No, I can't.

18 Q. Did you in any way provoke an attack by the defendant?

19 A. No, I did not.

20 Q. Did you have any weapon on you of any kind?

21 A. No, I didn't.

22 Q. Absalom, were you ever shown a lineup in this case?

23 A. No, I was not.

24 Q. A six pack lineup? I'm sorry.

25 A. No, I was not.

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1 Q. I'm going to ask you a question, Absalom, or Mr. Thomas
2 rather, is the man who show you in the courtroom today?

3 A. Yes, he is.

4 Q. Do you recognize him?

5 A. Yes, I do.

6 MR. GRIMES: Objection, Your Honor. Matter of law.

7 THE COURT: I'm sorry?

8 MR. GRIMES: We have a matter of law.

9 THE COURT: All right. Counsel approach.

10 (Bench conference was held.)

11 MR. GRIMES: This is the first I've heard of any
12 identification.

13 MR. YOUNG: He was never --

14 MR. GRIMES: Mr. Thomas, I mean, he's obviously very
15 fearful, he's changing his story, he didn't know anybody.

16 MR. YOUNG: He didn't say that, he was never shown a
17 lineup. He had been at the hospital so he never got a
18 lineup so we could not make an identification of him, never
19 had the --

20 MR. GRIMES: This is this first we ever heard he could
21 identify anybody. We had a pretrial hearing to see if it
22 was discussed.

23 MR. YOUNG: I asked him just now if he had been shown a
24 lineup and he was never shown a six pack, so --

25 MR. GRIMES: This is more suggestive than in-court. He

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1 didn't see a lineup assuming basing it upon until day, so --

2 MR. YOUNG: I know, only person in the courtroom
3 suggested by himself.

4 THE COURT: What do you want to do, Mr. Grimes?

5 MR. GRIMES: I think it should be suppressed, it has
6 never been disclosed to us.

7 THE COURT: Ladies and gentlemen, there is a matter of
8 law that I must take up outside of your presence, do not
9 begin your deliberations, do not discuss the case among
10 yourselves. Please, Mr. Thomas, stay seated but please rise
11 for the jury. Thank you.

12 (The jury left the courtroom

13 THE COURT: Mr. Thomas, if you need to take a comfort
14 break you may step down, we have some pretrial -- well,
15 actually stay right there, I may need your testimony. Mr.
16 Grimes?

17 MR. GRIMES: I think initially we would like for Mr.
18 Thomas to be removed from the courtroom and maybe assess
19 this stuff related to his testimony and I don't think it
20 would be fair for him to hear it --

21 THE COURT: What is the issue, Mr. Grimes?

22 MR. GRIMES: I believe a Rule Five and/or Brady
23 violation. This is the first we have heard anything that
24 Mr. Thomas can identify Mr. Hall, this is basically a trial
25 by ambush and for the State to offer this kind of

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1 evidence about any kind of evidence about any type of
2 evidence. I believe it also violates the holding of
3 Biggers, the in-court identification where Mr. Hall is the
4 only one in court that would fit the description and going
5 to ask --

6 THE COURT: Mr. Hall, would you repeat that last
7 sentence?

8 MR. GRIMES: I said the only person in court who could
9 even fit the description of the alleged shooter is Mr. Hall,
10 and that's suggestive by itself and I think provided in
11 Biggers. There should be some type of hearing to determine
12 reliability of proposed testimony and given the late
13 disclosure after the jury had been sworn when the trial
14 started I think it should be suppressed altogether.

15 THE COURT: Mr. Young?

16 MR. YOUNG: Judge, this is the first time this victim
17 has seen the defendant since the shooting day. A lineup was
18 never shown, that's why we didn't have a Biggers hearing.

19 THE COURT: Well, first of all he hasn't identified him
20 whether or not he is so I don't know if the defendant -- if
21 he's even able to identify the defendant .

22 MR. YOUNG: Yes, Your Honor, certainly. And if he is I
23 think the remedy is Mr. Grimes can cross him on it. The
24 remedy is not suppression here, he can cross him on that.
25 It's not Brady because it is not exculpable. He hasn't seen

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1 him in two years and he can come in here and say, "Yes, the
2 guy shot me, he could do that and he can cross him."

3 MR. GRIMES: Thank you, Your Honor. Anything that
4 shows a witness has given inconsistent statement is Brady
5 material and --

6 THE COURT: Tell me again --

7 MR. GRIMES: I guess I need to know first.

8 THE COURT: Here is the thing, and I know it's
9 difficult for you all to remember this because you have been
10 living -- everybody at the table lives for these cases but
11 you expect me to know things that I haven't been told. So
12 what is inconsistent, Mr. Grimes?

13 MR. GRIMES: Nothing in Mr. Thomas's statement
14 indicates that he could identify Mr. Hall.

15 THE COURT: Then what makes it inconsistent?

16 MR. GRIMES: Well, if he could identify Mr. Hall now.

17 THE COURT: Does it say, "can you identify Mr. Hall,"
18 in the statement?

19 MR. GRIMES: No, it doesn't.

20 THE COURT: So tell me what's inconsistent, Mr. Grimes.

21 MR. GRIMES: Is that there's no description, there's
22 nothing about who the shooter is. And I think Officer --
23 Detective Evans' testimony today was the basis for bringing
24 Mr. Hall in.

25 THE COURT: That was the basis of -- we did a Jackson

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1 v. Denno, I'm not going to listen to that and this witness
2 is still on the stand so I'm not going to -- that wasn't the
3 purpose of that hearing.

4 MR. GRIMES: My reference to that was there was no
5 indication that the detectives had any indication from Mr.
6 Thomas that he could identify the potential shooters in the
7 case.

8 THE COURT: All right.

9 MR. GRIMES: And I don't know if he's been shown a
10 picture of Mr. Hall, I don't think Mr. Young would just ask
11 him that question without knowing the answer to it. And he
12 may have, you know, consulted the victim, he may have shown
13 him some pictures, that's stuff we would like to know.

14 THE COURT: Well, you can cross-examination him on that
15 issue, can you not?

16 MR. GRIMES: Not if I don't have all the proper
17 discovery and it's kind of being ambushed at trial, that's
18 not how we cross-examination goes, we need to know ahead of
19 time.

20 THE COURT: I think inconsistent, Mr. Grimes, would be
21 that this witness said something previously that there
22 wasn't -- that he was unable to identify him.

23 MR. GRIMES: He doesn't say sort of that bold language
24 but every indication is he couldn't identify him from the
25 discovery that we have.

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1 THE COURT: Well, I don't know that he can identify him
2 here today.

3 MR. GRIMES: Well, maybe we need to proffer that
4 testimony.

5 THE COURT: I think that's a greet idea. Mr. Young?

6 BY MR. YOUNG:

7 Q. Mr. Thomas, is the man who shot you September 13, 2010
8 and robbed you in this courtroom today?

9 A. Yes.

10 Q. Do you recognize him?

11 A. Yes.

12 Q. I would ask you to point him out for the Judge if you
13 would.

14 A. He's seated to the left of Mr. Grimes.

15 MR. YOUNG: Judge, I would ask the record reflect that
16 the victim has identified the defendant as the shooter.

17 THE COURT: I know you're going to object so, Mr.
18 Grimes, I will allow you if you wish to cross-examine him on
19 that issue.

20 BY MR. GRIMES:

21 Q. Good afternoon, Mr. Thomas. First I want to apologize
22 for what you had to go through. Have you been shown any
23 picture of Mr. Hall before?

24 A. I have not.

25 Q. Have you discussed what he looked liked with anybody

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- 1 before.
- 2 A. I have not?
- 3 Q. Were you able to give a description of Mr. Hall before?
- 4 A. I gave his description of two of the gentlemen who
- 5 tried to murder and rob me.
- 6 Q. And those were two black males --
- 7 A. One of which whom looks like Mr. Hall.
- 8 Q. When did you say that -- excuse me, what description
- 9 did you give that fits Mr. Hall's description?
- 10 A. Dark skinned gentleman, black man, short hair he had at
- 11 the time, and those are the descriptions I gave as I was
- 12 lying in the hospital.
- 13 Q. And did both of these people shoot you or just Mr.
- 14 Hall?
- 15 A. They both had guns.
- 16 Q. Do you remember who shot you?
- 17 A. Mr. Hall shot me.
- 18 Q. And he was the only one that shot you?
- 19 A. I can't tell whether or not he was the only one who
- 20 shot me, I was shot twice by those two individuals.
- 21 Q. And --
- 22 A. Mr. Hall and Mr. Smith.
- 23 Q. I want to ask you a few questions about your statement.
- 24 And in your statement you only talk about one gun, correct?
- 25 A. I talk about one gun, yes.

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1 Q. And today when you testify you only talked about one
2 gun.

3 A. I talked about one gun.

4 Q. And you said the person who came up to you first was
5 the person who had the gun.

6 A. That's correct.

7 Q. And you said that person was the shorter of the people?

8 A. That's correct.

9 Q. And do you know who is shorter, Mr. Hall or Mr. Smith?

10 A. Mr. Hall.

11 Q. So the short person is one who came up to you first?

12 A. That's correct.

13 Q. And he's the one -- according to your testimony today
14 he's the one that shot you.

15 A. That's correct.

16 Q. When you gave your statement to the police was that
17 fairly accurate?

18 A. As accurate as it could have been for the situation
19 that I was in. I was just coming out of -- I was just
20 coming too from surgery and trying to remember the details
21 as best I could by giving testimony to that -- or giving a
22 statement to that officer.

23 Q. Okay.

24 A. Or detective, I'm sorry.

25 Q. Have you ever gone back and revised your statement?

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1 A. I have not.

2 Q. Have you discussed your statement with Mr. Young and
3 said, "I may have been incorrect on some of this stuff?"

4 A. I have not.

5 Q. And you talked with him in preparing for Mr. Smith's
6 trial and for this trial?

7 A. That's correct.

8 Q. When you were preparing for Mr. Smith's trial who did
9 you say who the shooter was?

10 A. I wasn't asked.

11 MR. GRIMES: Can I have a moment, Your Honor?

12 (Break in proceedings.)

13 MR. GRIMES: Your Honor, I don't think I have anymore
14 questions for Mr. Thomas.

15 THE COURT: All right.

16 MR. GRIMES: I think in an abundance of caution given
17 the nature of this and sort of -- we would ask for a
18 continuance to be able to research to see if the State's
19 disclosure during the trial of the possible identification
20 or offering identification during trial without any pretrial
21 disclosure violates Mr. Hall's rights and a chance to
22 research it since this is a complete surprise to me.

23 THE COURT: Mr. Grimes, is there any reason we can't
24 just at least finish the witness preserving all your motions
25 and then we'll break after this?

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1 MR. GRIMES: We probably could do that.

2 THE COURT: I don't see -- are you prepared to go
3 forward with this witness?

4 MR. GRIMES: Well, I know there was some issue about
5 him having to go back to work but in case our research
6 reveals something I may want to recall him.

7 THE COURT: You had plans for him to be here until
8 tomorrow, correct?

9 MR. YOUNG: He will be here, that's correct.

10 THE COURT: Let's go ahead put him on the stand, the
11 record will indicate that -- and I'll give you time, we'll
12 break right after this witness but I would like to finish
13 this witness if we can.

14 MR. GRIMES: Yes, ma'am.

15 THE COURT: Are we clear?

16 MR. YOUNG: Yes, ma'am.

17 THE COURT: Clear, Mr. Grimes?

18 MR. GRIMES: Yes, ma'am.

19 THE COURT: So we will address the issue of the
20 identification -- we need the witness back in -- we'll
21 address the issue of identification in the morning. Okay?

22 MR. YOUNG: I can or cannot ask him about the ID?

23 THE COURT: He's already ID'd -- and you asked and this
24 is how we started, he's already ID'd in front of the jury
25 and you asked me to make a finding on the record, that's

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1 where we are. So right now did you have anymore questions
2 about the ID?

3 MR. GRIMES: I don't think he ID'd him in front of the
4 jury, he started to.

5 MR. YOUNG: I think I said can you recognize him and he
6 said yes.

7 THE COURT: And then you objected. Okay. Thank you.
8 Mr. Grimes?

9 MR. GRIMES: Yes, Your Honor.

10 THE COURT: He needs to ID him in front of the jury so
11 I will again -- but I will not indicate that the record
12 reflects it. If based upon what you're telling me I later
13 need to strike it in front of the jury I can do so later.

14 MR. GRIMES: I think once that happens I think the cat
15 is out of the bag and we probably will be moving for a
16 mistrial.

17 THE COURT: Well, that may not be the only grounds for
18 a mistrial so it may be a moot issue. So -- clear?

19 MR. YOUNG: So pick back up with the ID?

20 THE COURT: Pick back up where you were, Mr. Young.

21 MR. YOUNG: And do that in front of the jury, correct?

22 THE COURT: Yes. Mr. Thomas just remain seated. Mr.
23 Grimes, just so I understand your objection is not so much
24 to the ID but to the non-disclosure.

25 MR. GRIMES: And maybe other stuff. I mean, I think

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1 certainly nondisclosure and maybe a Biggers but I would want
2 to research that a little more.

3 THE COURT: But you didn't have any questions outside
4 the presence of the jury for this witness right now.

5 MR. GRIMES: No further questions outside the presence.

6 (The jury returned to the courtroom.)

7 THE COURT: Thank you, be seated. Mr. Young you may
8 continue.

9 BY MR. YOUNG:

10 Q. Mr. Thomas, I'm going to ask you if the man who shot
11 you is in the courtroom today?

12 A. Yes, he is.

13 Q. Do you recognize him?

14 A. Yes, I do.

15 Q. I would ask you to point him out for the jury.

16 A. He's seated -- it's the second person at the
17 defendant's table there from the left, from my left.

18 Q. Is he wearing a suit and tie?

19 A. He's wearing a suit tie, it's brown, his shirt is
20 white.

21 Q. And to be clear, your testimony, was this the first guy
22 or the second guy that you saw that night?

23 A. The first guy.

24 Q. Is this the man who asked you for a cigarette?

25 A. That is the person who asked me for a cigarette.

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- 1 Q. Is this the man you saw with the gun?
- 2 A. That is the person I saw with the gun.
- 3 Q. What color was that gun?
- 4 A. Silver.
- 5 Q. Okay. Were you ever given a six pack lineup about --
- 6 to identify this guy while you were in the hospital?
- 7 A. No.
- 8 Q. So the detective never asked you to do a show-up or a
- 9 lineup or anything like that?
- 10 A. Not at all.
- 11 Q. And you were in the hospital for quite some time.
- 12 A. Four weeks.
- 13 Q. Tell the jury so we're clear when -- and you said this
- 14 defendant is the one who asked you for a cigarette, correct?
- 15 A. Yes, that's correct.
- 16 Q. Is he the one that reached and grabbed you and tried to
- 17 grab in your pocket?
- 18 A. Yes, that's correct.
- 19 Q. Tell the jury how you pulled away and were able to run
- 20 away from that.
- 21 A. I was just able to push or just push or just kind of
- 22 wrestle away and I don't know how I did it but I did. Like
- 23 I said, it was just a natural instinct, this person was
- 24 trying to rob me and they had a gun on me so I just pushed
- 25 away and ran as fast as I could across the railroad tracks

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1 and then they followed me and shot me.

2 Q. And that's when you heard the shots ring out after you
3 pushed away and were running?

4 A. Right.

5 MR. YOUNG: Court's indulgence.

6 THE COURT: Take your time.

7 (Break in proceedings.)

8 Q. And Mr. Thomas, that night the person you ID'd as being
9 the person asking you for a cigarette is this defendant,
10 correct?

11 A. Correct, Mr. Hall.

12 Q. Since that night -- or first of all, how far would you
13 say away he was from you?

14 A. At what time? When he asked me for cigarette or just
15 the closest proximity?

16 Q. When he got to you, how close are we talking?

17 A. Right in my personal space, right next to my body.

18 Q. Okay. And since then have you seen this man?

19 A. I have not.

20 Q. Have officers tried to show you any photos of this man?

21 A. No, sir.

22 Q. Have I tried to show you any photos of this man?

23 A. No.

24 Q. So today is the first day you have seen this man since
25 that night and early morning September 13th?

TESTIMONY OF ABSALOM THOMAS

1 A. That's correct.

2 Q. The fact that he was up close to you --

3 A. It left a vivid picture in my mind of what he looked
4 like.

5 MR. YOUNG: Please answer any questions defense counsel
6 may have.

7 THE COURT: Mr. Grimes?

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

10 CROSS EXAMINATION

11 BY MR. GRIMES:

12 Q. Mr. Thomas, I want to make sure I understand your
13 testimony. Today your testimony is that Denorris shot you?

14 A. That's correct.

15 Q. And he was the first one who approached you?

16 A. That's correct.

17 Q. And you're sure about that?

18 A. That's correct.

19 Q. And you said -- I believe one of your last comments was
20 that it left a vivid picture in you mind.

21 A. That's correct, of Mr. Hall's face.

22 Q. Okay. Now, I believe on September 13, 2010 you were
23 interviewed by Detective Patrick at MUSC?

24 A. I gave a statement for the police, yes.

25 Q. Do you recall the statement that you gave?

TESTIMONY OF ABSALOM THOMAS

1 A. Yes.

2 Q. If you need a copy let me know, I have an extra copy in
3 case you need to refresh your memory. Now, in your
4 statement did you say that the shooter left a vivid picture
5 in your mind?

6 A. I don't recall saying that.

7 Q. Did you say what color eyes that the shooter had?

8 A. No.

9 Q. Did you say how tall the shooter was?

10 A. I didn't say how tall but I know I mentioned short, one
11 was shorter than the other.

12 Q. And the other person, do you know how tall he was?

13 A. He was taller than Mr. Hall.

14 Q. Would it be fair to say he was about six feet tall?

15 A. I don't know.

16 Q. Would you say he's about as tall as me or maybe a
17 little bit shorter than me, the other person?

18 A. A little bit shorter.

19 Q. Maybe about right here?

20 MR. YOUNG: Objection, asked and answered.

21 THE COURT: Overruled. You may answer.

22 A. Possibly.

23 Q. So the one person about this tall isn't Denorris, is
24 it?

25 A. That's correct.

TESTIMONY OF ABSALOM THOMAS

- 1 Q. And you're sure about that?
- 2 A. That's correct.
- 3 Q. And in your statement to the police you didn't say what
- 4 kind of hair the shooter had, did you?
- 5 A. I said short hair.
- 6 Q. Did you say anything else about the hair?
- 7 A. Not that I can recall.
- 8 Q. Now, in your statement you said that second guy came up
- 9 to you was shorter than the first guy, correct?
- 10 A. The second guy was shorter -- I'm sorry, could you say
- 11 that again?
- 12 Q. In your statement to Detective Patrick you stated that
- 13 the second guy who came up to you was shorter than the first
- 14 guy.
- 15 A. Yes. That's what I wrote -- or that's what the
- 16 detective wrote.
- 17 Q. And you had an opportunity to review that, correct?
- 18 A. I had an opportunity to review it when he asked me to
- 19 sign for it in the hospital bed.
- 20 Q. And you did sign for it, correct?
- 21 A. That's correct.
- 22 Q. And you said that second guy was agging the guy with
- 23 the gun to shoot you.
- 24 A. I did say that.
- 25 Q. Shoot his B ass; isn't that correct?

TESTIMONY OF ABSALOM THOMAS

1 A. That's correct.

2 Q. And I think you testified you heard -- I mean, your
3 statement was that you heard two gunshots?

4 A. I heard two gunshots and I had two wounds, two gunshot
5 wounds.

6 Q. In your statement you talk about the shooter, you just
7 talk about one person being the shooter, correct?

8 A. I didn't specify whether it was one or two, I just said
9 I got shot twice.

10 Q. May I approach the witness, Your Honor?

11 THE COURT: Yes, you may.

12 Q. I'm handing you a copy of what's been marked as
13 Defendant's Exhibit 1 for identification. Do you recognize
14 what that document is?

15 A. This is a witness statement for the North Charleston
16 Police Department.

17 Q. And whose statement is it?

18 A. It's mine.

19 Q. I want to direct your attention to the last sentence on
20 page two.

21 A. The guy who shot me said, "Oh, I shot his B ass before
22 running away."

23 Q. And there you're talking about guy, which I understand
24 singular is one person, correct?

25 A. Right. That was the person that statement made.

TESTIMONY OF ABSALOM THOMAS

- 1 Q. Now, this happened in September of 2010, correct?
- 2 A. That's correct.
- 3 Q. And obviously these are very serious charges?
- 4 A. That's correct.
- 5 Q. And you've been through a lot yourself, serious trauma,
- 6 loss of liver -- a significant part of the liver.
- 7 A. That's correct.
- 8 Q. And the police in September of 2010 after you gave a
- 9 statement never showed you a lineup.
- 10 A. They did not.
- 11 Q. In October 2010 they never show you a lineup.
- 12 A. No.
- 13 Q. For the rest of 2010 never showed you a lineup.
- 14 A. I was never shown a lineup.
- 15 Q. Never in two years -- over two years since this
- 16 happened you never been shown a lineup.
- 17 A. I have not.
- 18 Q. And according to your testimony today when you met Mr.
- 19 Young he's never even shown you one picture of the
- 20 defendant.
- 21 A. No.
- 22 Q. And he just kind of gambled and asked you out of the
- 23 blue to pick out Mr. Hall as the shooter.
- 24 A. I recognized him as one of the shooters.
- 25 Q. And when did you recognize him as one of the shooters?

TESTIMONY OF ABSALOM THOMAS

1 A. Today and the day that he shot me.

2 Q. And you said this is very vivid -- left a very vivid
3 picture in you mind?

4 A. Yeah.

5 Q. I guess maybe I may have missed it and see if you can
6 help me out here. According to your statement I remember
7 you saying about them wearing -- a black male running up to
8 you dressed in all black clothes and you said he had close
9 cropped hair?

10 A. Yes.

11 Q. Do you remember what kind of hair Mr. Smith had at the
12 time?

13 A. He had hair.

14 Q. Do you know if it was different than Mr. Hall's or
15 similar?

16 A. They both had similar hair.

17 Q. Okay. And no doubt that Mr. Smith is taller than
18 Mr. Hall.

19 A. From what I can remember about his height, like I said,
20 I can't tell you exactly how tall he is, it's just that he
21 was taller than the other -- taller than Mr. Hall.

22 Q. In your statement to Detective Patrick you said it was
23 the tall person who approached you first.

24 A. I did say that.

25 Q. In the two years since then you have never changed that

TESTIMONY OF ABSALOM THOMAS

1 statement.

2 A. I was never asked to.

3 Q. You never called up to change it.

4 A. No. I was never asked to make another statement. I
5 don't think I would have made this statement had they not,
6 you know, came to me in the hospital and -- I didn't know I
7 could make such a statement, so --

8 Q. And the police never contacted you to see if it was
9 correct --

10 A. Not at all.

11 Q. -- in getting ready for this trial?

12 A. Not at all.

13 Q. And Mr. Young never ask you if there was anything wrong
14 or incorrect in your statement?

15 A. He asked me if it was my statement and I said yes, it
16 was.

17 Q. And when was that?

18 A. You want the exact day?

19 Q. Range. Was it last week?

20 A. Within the last month.

21 Q. Okay. So within the last month you were telling Mr.
22 Young who is prosecuting the case that this is a correct
23 statement?

24 A. That's correct.

25 Q. And no reason it would have changed from last month to

TESTIMONY OF ABSALOM THOMAS

1 now, correct?

2 A. That's correct.

3 Q. And in the last line of the statement you talk about
4 one person being the shooter.

5 A. I talked about one person who I heard, who I saw a gun,
6 they could have both shot me.

7 Q. And you only saw one gun, correct?

8 A. I saw one gun but I heard two different guns, two
9 different sounds. Like I said, after I saw the silver gun
10 being flashed at me I ran away, so if I -- if there were --
11 if there was another gun I wouldn't have had the opportunity
12 to see it because I ran away quickly for fear of being shot
13 again.

14 Q. And obviously when running away I guess your back is
15 turned?

16 A. That's correct.

17 Q. And when you are running away are you able to see who
18 shot you?

19 A. Well, I was shot before I ran away, I was shot and then
20 I -- as I wrestled away to get from being robbed further and
21 ran across the railroad tracks, I turned back around, I'm
22 getting shot and I'm looking at them, the person who shoot
23 me, Mr. Hall, then I turned back around to run to report it
24 to the police.

25 Q. I'm sorry because all of this stuff is new to me. So

TESTIMONY OF ABSALOM THOMAS

1 as you're I guess initially running you turn around and
2 according to your story today Mr. Hall shoots you?

3 A. That's correct.

4 Q. And then you run to the Three Dollar Lounge to get
5 help?

6 A. That's correct, so I wouldn't get shot again.

7 Q. And as you run to the Three Dollar Lounge you get shot
8 again?

9 A. No. I get shot twice as I'm facing forward to the
10 shooters, Mr. Hall and Mr. Smith, and then I turn around, as
11 I'm realizing I've been shot I go to the Three Dollar Lounge
12 to make the phone call to the police.

13 Q. Okay. And where was Mr. Hall standing when he shot
14 you?

15 A. In the street in front of me.

16 Q. Okay. And where was Mr. Smith at at this time?

17 A. Next to him.

18 Q. Both in the street?

19 A. Or on the asphalt, which is street -- the asphalt
20 that's -- the paved area or the asphalt in front of the
21 club, it's not really a street but it is asphalt.

22 Q. I'm just trying to get I guess a better picture. Was
23 he in front of the club or by the bank when the shooting --
24 where they were when they shot you, or when Mr. Smith shot
25 you?

TESTIMONY OF ABSALOM THOMAS

1 A. It was -- see, the railroad tracks are here, the Three
2 Dollar Lounge is here, so over here, it's this Three Dollar
3 Lounge so --

4 Q. And the bank is that way here.

5 A. This is this bank, this is where they came from. I
6 walked down here, they tried to rob me here and I make it
7 across here. They run after me, we're on this pavement now.
8 I drop my bag, I turn around, they shoot me because I was
9 trying to see if I had gotten away but -- I did get away and
10 they shot me, then I run over here to the Three Dollar
11 Lounge to get help.

12 Q. So they were about right here when they shot you?

13 A. On this part right there from what I know -- either
14 here or here.

15 Q. And just for the record to reflect, I guess that would
16 be -- if you're looking at the picture on the bottom of the
17 railroad tracks as oppose to near --

18 A. I'm sorry?

19 Q. If this is Spruill Avenue it would be on the grassy --
20 I guess gravel area, not on Spruill Avenue itself?

21 A. Right. This is pavement actually here and some
22 pavement here or asphalt, so I'm here when I'm being shot.

23 Q. Okay. And they're pretty close to you?

24 A. Yes. They try to rob me, then they ran -- after I got
25 away I ran across the railroad tracks and then they shot me.

TESTIMONY OF ABSALOM THOMAS

1 Q. And maybe this is clear, was anyone in the bank area
2 when they were shooting?

3 A. I really couldn't -- I was focused on trying to get
4 help, I didn't look at the bank area.

5 Q. I'm sorry, I erred on my question. Was either Mr.
6 Smith or Mr. Hall in the bank area when they shot you?

7 A. They were in this area, I was in this area when I was
8 getting shot.

9 Q. Okay. And you're sure about that?

10 A. They were in this area.

11 Q. I think as you told Mr. Young this all happened about a
12 minute to two minutes?

13 A. About.

14 Q. And obviously you have been very scared when someone is
15 trying to rob you and pointing a gun at you and guns are
16 going off.

17 A. Pretty much.

18 Q. Again, I'm sorry for your injuries and what you had to
19 go through, I hope everything has gone well for you.

20 A. Thank you.

21 Q. You are welcome.

22 MR. GRIMES: May I have one moment, Your Honor?

23 THE COURT: Take all the time you need.

24 (Break in proceedings.)

25 MR. GRIMES: I apologize, Your Honor. I think I

TESTIMONY OF ABSALOM THOMAS

1 overlooked one or two things.

2 Q. Again, I apologize, Mr. Thomas. Just going back to
3 your statement, I want to ask just a couple of other
4 questions about that. You testified you saw the shooters.

5 A. Yes.

6 Q. In your statement to Detective Patrick you said that
7 you heard the gunshots.

8 A. Yes.

9 Q. And you didn't testify about seeing anyone shoot you.

10 A. No.

11 Q. And after you'd been shot you wanted to do everything
12 you could to help out the police to find the people who shot
13 you, correct?

14 A. I was in the hospital bed, I had just gotten out of my,
15 I guess, three day comma or intensive care unit so whatever
16 I could recall at that time I gave to the officer as best as
17 I could.

18 Q. I understand that. I understand you probably weren't a
19 hundred percent on all of the details, but anything you
20 could that would be helpful in catching the person you
21 wanted to tell the police.

22 A. In the current state that I was in I tried to do my
23 best.

24 Q. And that would also apply to when you were better,
25 anything you could do to help the police catch --

TESTIMONY OF ABSALOM THOMAS

1 A. That's correct.

2 Q. Thank you.

3 A. Thank you.

4 THE COURT: Mr. Young?

5 MR. YOUNG: Yes, Judge.

6 REDIRECT EXAMINATION

7 BY MR. YOUNG:

8 Q. Mr. Thomas, is this the first guy that came to you?

9 A. Yes. He is the first person that came up to me.

10 Q. On the night of September 13th he is the first person
11 that came up to you on the street?

12 A. Yes, he is.

13 Q. Did he ask you for a cigarette?

14 A. Yes, he did.

15 Q. Did he twist your arm.

16 A. Yes, he did.

17 Q. Did he put his hand in your pocket?

18 A. Yes, he did.

19 Q. Did he try to rob you?

20 A. Yes, he did.

21 Q. Did you then run?

22 A. Yes, I did.

23 Q. Did you then get shot?

24 A. Yes, I did.

25 MR. GRIMES: Objection.

TESTIMONY OF ABSALOM THOMAS

1 THE COURT: Watch the leading questions. Thank you.

2 Q. That night is it fair to say -- I'm sorry. Did things
3 happen quickly that night or was it really slow?

4 A. Pretty quickly.

5 Q. Was it a stressful situation getting robbed?

6 A. Extremely.

7 Q. Now, Mr. Grimes has questioned your ability to judge
8 height while you're getting robbed and shot at.

9 A. That's correct.

10 Q. Are you concerned about the height of these men?

11 A. I am not.

12 Q. So is it fair to say you could be mistaken about who is
13 taller and who was shorter?

14 A. That's correct, I was concerned about getting away.

15 Q. And to this day you haven't had any suggestion from the
16 cops about picking this man out, have you?

17 A. No, I have not.

18 Q. And you never saw a lineup?

19 A. No, I haven't.

20 Q. And is this you picking him out today as the man who
21 approached you, robbed you and shot you?

22 A. That's correct.

23 Q. Mr. Thomas, you stated you saw a gun that night; is
24 that right?

25 A. That's correct.

TESTIMONY OF BRETT COLE

1 Q. What color was that gun?

2 A. It appeared to be silver, it gleamed -- it kind of
3 glinted in the night, the lamp posts around there.

4 Q. So that silver gun, who was holding that?

5 A. Mr. Hall.

6 MR. YOUNG: No further questions, Judge.

7 THE COURT: Recross.

8 MR. GRIMES: No questions, Your Honor.

9 THE COURT: You may step down. Thank you. Counsel
10 approach just for scheduling.

11 (Whereupon a bench conference was had.)

12 The witness, BRETT COLE was first duly sworn
13 and testified as follows, on:

14 THE CLERK: Speak into this microphone and state your
15 name and then spell your last name for the record.

16 THE WITNESS: Brett Ryan Cole, C-o-l-e.

17 Q. Mr. Cole, thank you for being here today. Do you live
18 in Charleston?

19 A. I do.

20 Q. And where at?

21 A. West Ashley.

22 Q. Okay. Can you tell the jury how old you are?

23 A. 37.

24 Q. Can you tell the jury about your education and
25 background including high school, college degrees and stuff

TESTIMONY OF BRETT COLE

1 like that?

2 A. I graduated from high school and The College of
3 Charleston.

4 Q. So you're a life-long resident?

5 A. Since I was four, pretty much.

6 Q. And where do you work?

7 A. South Carolina Federal Credit Union.

8 Q. Does the credit union have multiple branches in
9 Charleston?

10 A. Yes.

11 Q. What is your job title?

12 A. I'm the physical security officer for the credit union.

13 Q. And how did you get that job?

14 A. Applied for it.

15 Q. Have you had any training besides just what a layperson
16 would go through to get that job?

17 A. Yes. I've had on-line courses and had to take the
18 training I took in Baltimore, some conferences that I've
19 attended to maintain with current practices.

20 Q. How long have you worked there?

21 A. At the credit union a little over nine years.

22 Q. Have you been a security officer there the whole time?

23 A. For five years.

24 Q. And can you tell the jury what your duties are within
25 that job, what does that job entail?

TESTIMONY OF BRETT COLE .

1 A. Maintain a safe work environment for our employees
2 first and foremost, and then second, make sure all security
3 procedures are in place, then video cameras are always
4 recording and any exterior cameras I may have at certain
5 locations are working operational 24/7. And I have some
6 other duties, insurance, stuff like that.

7 Q. Okay. Tell us a little bit more about the video
8 monitoring part of the job and what does this entail.

9 A. Every morning I come in, I run a couple of programs to
10 verify that everything is up and running from the time that
11 I left the day before, and then if there are any issues at
12 any of the locations I would therefore -- and then I would
13 go ahead and make a service call to our security vendor to
14 get them out there to correct it and make sure we have
15 picture quality.

16 Q. So are you visioning a screen, do you have a screen?

17 A. I have two screens through a monitor that I can pull up
18 any branch at any given site. I don't just sit there and
19 watch them all day, a lot of people think I do.

20 Q. And these are just video cameras that are at these
21 branches?

22 A. At the branches, yes, and ATM machines.

23 Q. What are they recording?

24 A. Parking lot -- exterior cameras record the parking lot,
25 they are panning the parking lot 24/7 and inside the branch

TESTIMONY OF BRETT COLE

1 they're recording certain areas for security purposes.

2 Q. Do you check to see if these cameras are in operating
3 order?

4 A. Yes.

5 Q. And tell me how you do that again, please.

6 A. I have a program that tells me if I have any -- I run
7 it every morning and it tells me if there are any cameras
8 that have a fault in them, and if I do then I go to that
9 actual site, I'll log into it and verify that camera two or
10 whatever maybe out and if it was I'll make a service call
11 and get it corrected.

12 Q. Who is the parent company of the security cameras?

13 A. Diebold.

14 Q. And do you remember the date of September 13, 2010?

15 A. Yes.

16 Q. Did you check to see if all cameras were in working
17 order that day?

18 A. Yes, I did.

19 Q. And from the best you can remember if they weren't in
20 working order what would you have done?

21 A. Made a service call to Diebold.

22 Q. Did you do that that day?

23 A. I did not.

24 Q. Did an officer at some point come to you in reference
25 to a shooting that occurred possibly in the vicinity of

TESTIMONY OF BRETT COLE

1 those cameras?

2 A. Yes, he did?

3 Q. And that was on September 13, 2010?

4 A. That's correct.

5 Q. Did they ask you to retrieve some video footage?

6 A. They did.

7 Q. From what branch?

8 A. That was our shipyard branch at 1900 McMillan Avenue.

9 Q. Is that at the corner of McMillan and Spruill?

10 A. Yes.

11 MR. YOUNG: If I may approach the witness, Judge?

12 THE COURT: You may.

13 Q. I'm going to show you what's been marked and admitted
14 as State's 4. If you can describe for the jury -- actually
15 I'm going to have you step down here. Tell the jury, where
16 is the federal credit union in this photo.

17 A. This is our South Carolina Federal Branch --

18 THE COURT: Mr. Young, I appreciate what you're doing
19 but we can't hear -- she can't hear the witness, so --

20 MR. YOUNG: I'm sorry, Judge.

21 Q. I'm going to have you speak up, Mr. Cole. And please
22 explain if you can what we're looking at here.

23 A. This is the branch of South Carolina Federal. This is
24 the parking lot, all the black pavement. This is the
25 drive-thru lane and the ATM is here in the last isle.

TESTIMONY OF BRETT COLE

1 Q. What road is this right here?

2 A. That would be McMillan Avenue and this is Spruill.

3 Q. And do you know the location of the cameras in spots in
4 the credit union? If so, can you please point them out?

5 A. Yes. I have a camera on this corner here in the
6 parking lot, one here, right here is another light pole with
7 a camera, and then one on the backside as well.

8 Q. I'm going to ask you to place a pin please on the
9 points in which cameras --

10 A. (The witness complied.)

11 Q. Tell me a little bit about these cameras. Do they stay
12 stagnant and just look straight down or how do they work?

13 A. Actually panning the parking at a 180 back and forth.
14 This one here for instance, it will go from the entrance
15 here to the Spruill Street -- yeah, Spruill and it pans back
16 around and gets this part of the parking lot. This one here
17 goes left to right not going past the building, and this one
18 here goes from this fence line over to McMillan Avenue, and
19 this one here goes from the branch corner here all the way
20 back around. So there are constant video recording of all
21 times, the whole parking lot is covered at all times.

22 Q. Are there some areas that are covered outside the
23 parking lot?

24 A. Yes. Some of the roadways, McMillan for example, is
25 covered and so is Spruill.

TESTIMONY OF BRETT COLE

1 Q. So if somebody was say walking along the sidewalk,
2 would they be able to be seen if the camera is in the right
3 spot at the right time?

4 A. Yes, they would.

5 MR. YOUNG: You can have a seat, Mr. Cole. Thank you.

6 Q. Mr. Cole, when you pulled this video footage from the
7 13th, did you then burn a copy for the detectives?

8 A. Yes, I did.

9 Q. Did you then give that copy to detectives?

10 A. Yes.

11 Q. What detective, who was that? Do you remember?

12 A. Detective Ryder.

13 Q. Detective Evans, also?

14 A. Evans, yeah, too.

15 Q. Mr. Cole, I'm going to ask you to take a look at what
16 is premarked State's 5 and 6. Do you recognize these disks?

17 A. Yes. These are the ones I gave the detective.

18 Q. And tell me, what is BRC on each disk?

19 A. My initials?

20 Q. Did you initial these?

21 A. Yes.

22 Q. Did you and I watch these together?

23 A. Yes.

24 Q. Did we verify this is date September 13, 2010?

25 A. That is correct.

TESTIMONY OF BRETT COLE

1 MR. YOUNG: Judge, at this point I ask to move State's
2 5 and 6 into evidence.

3 THE COURT: Any objection?

4 MR. GRIMES: No, Your Honor.

5 THE COURT: State's 5 and 6 into evidence without
6 objection. Do you wish to publish at this time?

7 MR. YOUNG: I do, Your Honor.

8 THE COURT: You may publish.

9 (The two disks were received as State's 5 and
10 6.)

11 BY MR. YOUNG:

12 Q. Mr. Cole, do you recall -- prior to publishing, do you
13 recall the timeframe as what time the event happened that
14 night, do you remember that at all? If I told you
15 approximately 2:00 a.m. would you believe me?

16 A. Yes.

17 Q. Before we start here, Mr. Cole, tell me what video
18 camera we're looking at. Can you tell on the map?

19 A. Yes. That would be this one right here.

20 Q. So the first video we're looking at is the one right
21 here, and that is McMillan and this is Spruill?

22 A. Correct. I'm sorry, no.

23 Q. Is that wrong?

24 A. Yes, I'm turned around. It is this one.

25 Q. That one right there?

TESTIMONY OF BRETT COLE

- 1 A. That's the back of the ATM machine so this one.
- 2 Q. And what area is this camera covering?
- 3 A. The front drive-thru lane area and panning back around
- 4 toward the front.
- 5 Q. So it's this area right here?
- 6 A. Yes.
- 7 Q. Mr. Cole, at the top left there, what are these
- 8 numbers?
- 9 A. That would be the date and a time stamp.
- 10 Q. What date does it say? Can you see?
- 11 A. September 13th, 2010.
- 12 Q. At what time?
- 13 A. 1:56.
- 14 Q. Is it running forward now?
- 15 A. Yes.
- 16 Q. Mr. Cole, is this HD quality video?
- 17 A. Yes.
- 18 Q. This is HD?
- 19 A. It looks good. No, this isn't a HD camera, no.
- 20 Q. So it is not HD cameras?
- 21 A. No. It's colored though.
- 22 Q. Mr. Cole, from this camera are we looking at Spruill
- 23 straight to the left there?
- 24 A. Yes.
- 25 Q. Okay. Then McMillan would be to the right?

TESTIMONY OF BRETT COLE

- 1 A. Correct.
- 2 Q. I know you don't know the identity, what is that? Is
- 3 that a person, a thing? What is that?
- 4 A. That would be looks to me like a person.
- 5 Q. Is this somebody walking around the bank area?
- 6 A. Cutting through the parking lot, yes.
- 7 Q. Does that happen a lot at some of these branches that
- 8 are on corners?
- 9 A. Yes.
- 10 Q. So you see that, people cutting through?
- 11 A. All the time.
- 12 Q. Can you tell me what that is?
- 13 A. A second person.
- 14 Q. Walking through the same --
- 15 A. Same area.
- 16 Q. Same area. Is this -- what road is that out there?
- 17 A. Spruill.
- 18 Q. Okay. Are those cameras motion sensitive at all?
- 19 A. No...
- 20 Q. So if it catches it, it catches it.
- 21 A. Correct.
- 22 Q. Is every clip frame a second; is that correct?
- 23 A. Right.
- 24 Q. What does that look like to you?
- 25 A. Two people running through the parking lot.

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1 Q. Are they running back towards the way they would have
2 come in?

3 A. They are running from Spruill towards McMillan Avenue.

4 MR. YOUNG: Please start the next video now, please.

5 Q. Mr. Cole, can you tell us what camera that is? Can you
6 tell?

7 A. This one right here.

8 Q. So that's --

9 A. On the side of the building from Spruill.

10 Q. So does that camera reach into Spruill some?

11 A. Yes, it does.

12 Q. And then back to the parking lot as well?

13 A. Right.

14 Q. Why is one black and white and one color?

15 A. Well, at that time had something to do with lighting of
16 the actual parking lot, since it's not motion it doesn't
17 pick up motion but it does pick up the brightness of the
18 parking lot if that makes any sense. It's brighter in the
19 front of the building versus the side. I think it's more
20 good actually from the front of the building, you have the
21 lights from the signs coming so therefore it triggers the
22 camera to say it is at nighttime versus right now. There is
23 not enough light on this side so it still thinks it is
24 daytime.

25 Q. So it would be brighter?

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1 A. Right.

2 Q. Mr. Cole, can you tell me the date on the top of the
3 video?

4 A. September 13, 2010.

5 Q. What time was that?

6 A. 1:55.

7 Q. Does the camera sometimes pan back to certain times,
8 just a random rotation?

9 A. Due to when it was installed the programmer, when he
10 set the panning motion up that's just the way he set it,
11 it's done by a mouse.

12 Q. Okay. Can you tell me what that looks like?

13 A. A person walking through the parking lot.

14 Q. Is that approximately the same time as the other video?

15 A. Yes, sir.

16 Q. What is the road we're looking at across the way there?

17 A. McMillan Avenue.

18 Q. So that's McMillan and this thing is panning around
19 hitting Spruill.

20 A. Yes, that's correct.

21 Q. Can you see what road we're looking at there?

22 A. Spruill Avenue, or Spruill.

23 Q. What does that look like out in the road?

24 A. Three people.

25 Q. What does that look like to you?

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- 1 A. It looks like a person shooting at another person.
- 2 Q. Does that look like two men right there to you?
- 3 A. Yes.
- 4 Q. Tell the jury what the day is on that.
- 5 A. September 13, 2010.
- 6 Q. And the time, please?
- 7 A. 1:55.
- 8 Q. Is it moving forward in frames?
- 9 A. Yes.
- 10 Q. Which camera are we looking at right here?
- 11 A. This one here in the corner.
- 12 Q. So is that panning back in towards the credit union; is
- 13 that correct?
- 14 A. That's correct.
- 15 Q. Are we looking at ATM trader?
- 16 A. Yes.
- 17 Q. Now, is this person -- what is to the right of this, is
- 18 this a person?
- 19 A. Yes, that's a person.
- 20 Q. What's to the right?
- 21 A. McMillan Avenue.
- 22 Q. And is he walking towards Spruill?
- 23 A. Yes, sir.
- 24 Q. What does it look like to you?
- 25 A. A second person.

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1 Q. Walking toward the same area?

2 A. Yes.

3 Q. About the left corner there, can you see what that
4 looks like?

5 A. Yes. That looks like a person.

6 Q. Are they running back towards McMillan?

7 A. Yes, that's correct.

8 MR. YOUNG: Thank you, Mr. Cole. Please answer any
9 questions defense counsel might have.

10 THE COURT: Mr. Grimes?

11 MR. GRIMES: We have no questions.

12 THE COURT: All right. Thank you. Is this witness
13 excused?

14 MR. YOUNG: Yes, Your Honor.

15 THE COURT: Any objection?

16 MR. GRIMES: No, your Honor.

17 THE COURT: You may step down. Thank you. Ladies and
18 gentlemen, I try to break as close to 5:00 as possible and
19 it's apparent to the Court for us to start a new witness we
20 would go well after 5:00 p.m. today so I'm going to go ahead
21 and break for the afternoon. Please remember all of my
22 admonitions. Please do not discuss this case with anyone,
23 do not do any independent research and do not read, watch or
24 listen to any news accounts regarding this case should there
25 be any. Ladies and gentlemen, at the conclusion of this

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1 case I will give you further instructions when you can and
2 cannot discuss this case, so just go home, have a restful
3 evening and please be back in your jury room at 9:30 in the
4 morning, 9:30. Please rise for the jury.

5 (The jury left the courtroom.)

6 THE COURT: Thank you, be seated. Anything before we
7 break for the evening from the State?

8 MR. YOUNG: Nothing from the State, Judge.

9 THE COURT: Mr. Grimes, you're going to research that
10 issue and will address the identification in the morning;
11 isn't that correct?

12 MR. GRIMES: Yes, ma'am.

13 THE COURT: All right. Thank you. Have a wonderful
14 evening.

15 (Court adjourned for the evening and resumed at
16 9:30 a.m., on October 16, 2012.)

17 THE COURT: Mr. Grimes, I received a flurry of emails,
18 is there anything you wish to place on the record?

19 MR. GRIMES: Yes, ma'am. We would again renew our
20 motion for a mistrial.

21 THE COURT: And had you made a motion for a mistrial
22 before? I'm sorry, Mr. Grimes, I don't recall that you had.

23 MR. GRIMES: I thought I had but we would at this time
24 move for a mistrial.

25 THE COURT: And the basis of your request for a

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1 mistrial?

2 MR. GRIMES: Violation of Mr. Hall's right to due
3 process by the State calling Mr. Absalom (sic) and offering
4 his testimony that he could ID Mr. Hall as the shooter
5 without any prior warning to us, any exposure to us. And I
6 think affects the -- basically it's structural error in this
7 case. That lack of information deprived Mr. Hall of any
8 opportunity to make a meaningful decision on plea offers we
9 had with Mr. Young for a plea offer and had to testify
10 against Mr. Butler's client in case he had went to trial.

11 THE COURT: Now, is it Mr. Butler's client that is the
12 co-defendant that has pled?

13 MR. YOUNG: He's pled, Judge.

14 THE COURT: All right. Thank you.

15 MR. GRIMES: In evaluating I guess never really a plea
16 offer, but in discussing pleas and that, you know, part of
17 our evaluation process was that Mr. Absalom (sic) couldn't
18 identify Mr. Hall as the shooter, obviously two young black
19 males --

20 THE COURT: Again, Mr. Grimes, was there anything in
21 the discovery that indicated that he could not identify your
22 client?

23 MR. GRIMES: Yes. His description was basically two
24 young black males, close hair wearing shorts. 911 tape it
25 said two young black males and there was someone else in the

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1 911 tape telling what the black males looked like. And, you
2 know, there's nothing in any police report saying he was
3 identified and in absence of any discussion with Mr. Young
4 -- he could identify him, one person, he says the shooter
5 was a taller person.

6 THE COURT: But Mr. Grimes, you would agree with me
7 that it would be different if on the 911 or at any point the
8 victim had said it was a white female.

9 MR. GRIMES: Yes, ma'am. Yes, I would agree.

10 THE COURT: All right.

11 MR. GRIMES: But if all he can say is two young black
12 males in North Charleston that's a lot of people, and
13 without any significant description of the people it's just
14 our conclusion that he could not identify anybody and Mr.
15 Young never said he could.

16 THE COURT: All right. Mr. Young? So Mr. Grimes, just
17 so procedurally you are requesting a mistrial?

18 MR. GRIMES: Yes, ma'am.

19 THE COURT: Based upon the fact that you have not had
20 sufficient opportunity because you believed that the State
21 has provided you discovery that is inconsistent with your --
22 with the ID of your -- of the shooter as a young black male?

23 MR. GRIMES: I wouldn't say inconsistent, obviously Mr.
24 Hall --

25 THE COURT: I'm sorry, I thought that's what you said.

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1 Because clearly your client is a black male.

2 MR. GRIMES: Yes, ma'am. And all it was was basically
3 two black males, one was taller than the other person
4 wearing dark clothes. No one could identify them from the
5 video tapes, the video surveillance, there was no
6 statements. There was an anonymous tip, no corroboration of
7 that, nothing showing that Mr. Hall was the shooter, I mean,
8 all the evidence offered at this point he wasn't the
9 shooter, Mr. Smith admitted to being the shooter. And, you
10 know, for him to come out and identify Mr. Hall by itself is
11 not, you know -- I wouldn't make much of it myself because
12 we are arguing mere presence and we could see that maybe an
13 ID being there but identifying him as the shooter was a
14 complete ambush and a total surprise. Perhaps I should have
15 foreseen it coming perhaps and if I didn't then, you know,
16 those are appropriate issues for a later date. But, you
17 know, any indication -- without any indication at all of
18 that my intended cross of Mr. Thomas just could be a very
19 soft -- he was obviously a very sympathetic victim, you
20 know, he comes across very credible. We weren't disputing
21 the shooting or anything of that nature, we're just
22 disputing Mr. Hall's role and that was our theme from the
23 beginning and you bring out all this basically in the middle
24 of the trial I think deprives Mr. Hall of a complete right
25 to a fair trial and due process. Thank you.

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1 THE COURT: Mr. Young?

2 MR. YOUNG: Thank you, Judge. Just kind of reiterate
3 what we talked about yesterday, the Victim was never given a
4 six pack ID, never seen a lineup so the ID wasn't tainted.
5 In fact, what we have here is actually the most pure form of
6 identification we could have, just straight from the crime
7 scene to the courtroom and usually that's in the middle like
8 a lineup or a show-up which could cause a mis-ID, but here
9 the most pure form possible and that's why certainly the ID
10 is fine. And the opportunity that Mr. Grimes had was to
11 cross-examine him and he did that, he can talk about length
12 of time it's been, the lighting, all those things and he's
13 done that effectively. So to say Mr. Thomas cannot come in
14 here and ID the shooter even though he was never provided a
15 lineup by the cops, say that was bad police work, say
16 whatever you want to say, but we have the most pure form of
17 identification right here and I ask you to deny the motion
18 for a mistrial. And certainly one gun or one shooter, he
19 can make that argument to the jury, but as far as a mistrial
20 there's nothing here for a mistrial. And Judge, we talked
21 about it at lunch yesterday, the victim lives in Maryland so
22 it's not like we're talking to him every week sitting down
23 here. The cops, they can't speak to him every week, he's in
24 another state, he's working hard working up there and he's
25 here for this trial. I ask you to deny the motion for a

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1 mistrial.

2 THE COURT: Mr. Young, inconvenience does not justify
3 infringing upon someone's constitutional rights.

4 MR. YOUNG: Yes, ma'am.

5 THE COURT: Thank you.

6 MR. GRIMES: The only thing I would say in reply is a
7 show-up identification in court is certainly not the most
8 pure form, he's the only black male in here, the only person
9 that could be a suspect.

10 THE COURT: No, he's not the only black male in here.

11 MR. GRIMES: Only one that could be a suspect. The
12 only other black male I believe is Mr. Thomas and he's not
13 young and obviously there is an indication he was the
14 shooter. So the only person who he could have picked out
15 was Mr. Hall and --

16 THE COURT: Or he could have picked no one Mr. Grimes,
17 correct?

18 MR. GRIMES: I mean, I don't know what was said to him.

19 THE COURT: I'm sorry?

20 MR. GRIMES: I think he wants closure in the case and
21 he wants to believe Mr. Hall is the shooter and so he's
22 going to pick him.

23 THE COURT: The United States Supreme Court and the
24 South Carolina Supreme Court have both indicated that the
25 Neil v. Biggers does not apply to a first time in-court

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1 identification because I am present, the Court is present
2 and I can address any relevant problems. Additionally the
3 jury is able to see and hear the witness testify as to the
4 identification. There has been no indication that there was
5 any pretrial identification procedures thus there was no
6 need to have a Biggers hearing and the Supreme Court has
7 indicated that the remedy for in-court identifications is
8 cross-examination and argument. I am denying your request
9 for a mistrial and I will allow the identification of the
10 victim of your client as in-court to stand. I note your
11 exception and objection to the identification and to my
12 ruling on the mistrial. Anything before we bring in the
13 jury?

14 MR. GRIMES: Yes, ma'am, two matters.

15 THE COURT: Yes, sir?

16 MR. GRIMES: The first matter is we would request a
17 continuance to be able to hire an expert witness on
18 identification to address Mr. Young's claims and to show
19 identification is the most pure form of identification. And
20 given that they just learned about it at lunch yesterday, we
21 learned about it after lunch and during the testimony at
22 trial, we certainly didn't have a chance to get it before
23 and I think we need that to present to impeach Mr. Thomas
24 and to present a defense under the 6th Amendment for Mr.
25 Hall. Thank you, Your Honor.

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1 THE COURT: All right. How much time do you need?

2 MR. GRIMES: I would say probably 30 days.

3 THE COURT: I'm sorry?

4 MR. GRIMES: Say probably 30 days.

5 THE COURT: And why do you need that much time, Mr.
6 Grimes?

7 MR. GRIMES: We have to find an expert. A lot of the
8 people we use lives in Australia, get her materials to be
9 able to -- him or her materials to review, the transcript to
10 review, talk to them and I think just the practical
11 distances involved, potential obvious eyewitness experts
12 would take time. I don't know of anyone -- if we had an
13 expert to call in Charleston on standby but we don't so I
14 think a reasonable request would be 30 days.

15 THE COURT: Mr. Young, your response to a request for a
16 continuance?

17 MR. YOUNG: I would ask you to deny that motion.
18 There's been no ambush here of the situation as Mr. Grimes
19 is alleging. The victim got here, he had an opportunity to
20 cross-examine him, just to continue this trial is just
21 delaying justice. This thing is over two years old and the
22 remedy was him cross-examining him and he did that and
23 that's why I think you should deny that motion for
24 continuance.

25 THE COURT: Anything further, Mr. Grimes?

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1 MR. GRIMES: Well, if there's any delay it's because
2 the solicitor's office who has control of the docket under
3 the statute and waited over two years to call the case to
4 trial, and another 30 days to insure that justice is done is
5 not undue delay and hopefully we can get it done faster, 30
6 days at the most. Thank you, Your Honor.

7 THE COURT: I deny your motion for a continuance at
8 this time. Thank you, Mr. Grimes. You had an additional
9 matter?

10 MR. GRIMES: Yes, Your Honor. Talking to Mr. Young, he
11 had I think Detective Patrick on a witness list under
12 subpoena, he tells me he is under bedrest for a hip
13 replacement surgery.

14 THE COURT: Detective Patrick?

15 MR. GRIMES: Yes, Your Honor. Mr. Young indicated that
16 they were not planning to call him and after Mr. Thomas'
17 testimony yesterday we would like to call him and I asked
18 Mr. Young if he could just have him available this
19 afternoon. The State may rest early this afternoon and I
20 didn't know -- just wanted the Court's guidance on whether
21 we needed to issue a subpoena or still be under the State's
22 subpoena.

23 MR. YOUNG: I'll have him here this afternoon. Is 3:00
24 okay?

25 THE COURT: Are you planning on calling him?

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1 MR. YOUNG: We're not planning on calling him, Your
2 Honor.

3 THE COURT: An do you think you'll have rested by 3:00?

4 MR. YOUNG: It's tough to say how long that the
5 co-defendant is going to take, but I would hope by 3:00, if
6 not by 4:00. I'll have him here by 3:00. I think we can
7 get him in today if they want, I don't know the order they
8 want to call him in.

9 THE COURT: All right. Mr. Grimes?

10 MR. GRIMES: We would like to call him and we could
11 call him as a first witness in the case so he could get in
12 and out?

13 THE COURT: Did I hear you correctly, he's recovering
14 from hip surgery?

15 MR. YOUNG: That's correct. I think he's on medical
16 leave right now and on bed rest. I talked to him and he
17 said he could be here, he just needed to know so he could
18 get the crutches and start making his way down here so he
19 can be here, just wanted to let him know what time, maybe
20 3:00 would be appropriate.

21 THE COURT: Let's see how we're progressing. It sounds
22 like you don't need to subpoena him, he's going to be here
23 and he will need to be here. Why don't we kind of look
24 towards having him first thing in the morning, Mr. Grimes,
25 and we could even break early so if you had a telephone

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1 conference with him if you need to speak with him. I think
2 if he's on crutches and all of those things it may just be
3 easier since we are at a time that we can either break early
4 so he knows he'll be the first one so he doesn't have to sit
5 around. Is that amenable to you, Mr. Grimes?

6 MR. GRIMES: Yes, Your Honor.

7 MR. YOUNG: That's fine, Judge.

8 THE COURT: I know you're not calling him so it really
9 doesn't matter.

10 MR. YOUNG: That's okay.

11 THE COURT: I'm just concerned.

12 MR. YOUNG: Yes, ma'am.

13 THE COURT: How long ago was the surgery?

14 MR. YOUNG: A couple weeks ago maybe.

15 THE COURT: Check with him if you would or have your
16 victim advocate make sure that he can do that, it may be
17 better for him than the other considering his pain level and
18 all of that so we'll leave that up to him.

19 MR. YOUNG: Yes, ma'am.

20 MR. GRIMES: That's fine.

21 THE COURT: All right. Thank you. Anything before we
22 bring in the jury from the State?

23 MR. YOUNG: No, Your Honor.

24 THE COURT: Who is your first witness?

25 MR. YOUNG: Dr. Edward Eriksson, he's the ER doctor.

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1 THE COURT: If you could have the doctor in just
2 sitting in the courtroom. Anything before we bring in the
3 jury, Mr Grimes?

4 MR. GRIMES: No, Your Honor.

5 THE COURT: All right, sir.. Thank you. Let's bring in
6 the jury.

7 (The jury returned to the courtroom.)

8 THE COURT: Thank you, please be seated. Good morning,
9 ladies and gentlemen. Did every member of the jury panel
10 comply with my instructions? If you did not comply with my
11 instructions please stand. Please let the record reflect
12 that all 13 jurors have complied with my instructions.
13 Ladies and gentlemen, I apologize that you have been
14 waiting, there were some matters that I had to attend to
15 unrelated to this case and it took a little bit longer than
16 I anticipate so I do apologize for making you wait. Ladies
17 and gentlemen, please give your attention, call your next
18 witness.

19 MR. YOUNG: Thank you, Judge. The State calls Doctor
20 Edward Eriksson.

21 The witness, EDWARD ERIKSSON, M.D., was first
22 duly sworn and testified as follows, on:

23 THE CLERK: If you'll please speak into this microphone
24 and state your full name for the record.

25 THE WITNESS: Edward Eriksson, E-r-i-k-s-s-o-n.

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1 BY MR. YOUNG:

2 Q. Morning, Dr. Eriksson.

3 A. Morning.

4 Q. Can you tell the jury where you work?

5 A. Yes. I'm a surgeon at the Medical University of South
6 Carolina here in Charleston.

7 Q. And how long you worked there?

8 A. A little over three years.

9 Q. Can you tell the jury what your job title is?

10 A. Yeah. I am a general surgeon at the medical university
11 and we primarily deal with emergency surgery and trauma.

12 Q. Are you a duly licensed physician?

13 A. I'm duly licensed in the State of South Carolina and in
14 the State of Michigan.

15 Q. And are you presently engaged in the practice of
16 medicine?

17 A. Yes, sir.

18 Q. Where did you receive your training at?

19 A. I graduated medical school at the University of
20 Colorado. I did my general surgery training at Michigan
21 State in Grand Rapids, Michigan as well as surgical and
22 critical care training at Michigan State in Grand Rapids,
23 Michigan.

24 Q. At what point did you come down to South Carolina?

25 A. After completing my surgical/critical care fellowship I

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1 took a job at the medical university a couple months after
2 completing that.

3 Q. And how long have you approximately been down here?

4 A. About three years.

5 Q. Can you explain to the jury what your duties are?

6 A. Sure. On a regular day I take care of any patients who
7 come into the emergency room who need emergency general
8 surgery or trauma surgery. I also take care of our patients
9 that are admitted in the intensive care unit and on the
10 floor, and I also have a small elective practice as well.

11 Q. So you work in the emergency room?

12 A. Yes, sir.

13 Q. And do you have a specialty as far as medicine? What
14 would you say is your specialty?

15 A. I am boarded in general surgery and surgical critical
16 care. I'm part of the division of general surgery which we
17 primarily do emergency surgery and trauma.

18 MR. YOUNG: Your Honor, at this time the State would
19 move Dr. Eriksson to be declared an expert in the field of
20 general surgery and surgical critical care.

21 THE COURT: And surgical critical care?

22 MR. YOUNG: Yes, ma'am.

23 THE COURT: Mr. Grimes?

24 MR. GRIMES: No objection, Your Honor.

25 THE COURT: Ladies and gentlemen, normally a person

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1 cannot give opinion testimony. Typically when a person
2 testifies they must testify as to either what they saw or
3 heard or sensed by smell or something of that nature. There
4 is an exception when someone is qualified because of their
5 education and experience they will be allowed to give their
6 opinion in certain areas. This witness will be qualified in
7 the area of general surgery and surgical critical care to
8 give opinion testimony in that area. That does not mean
9 that you must accept the opinion, it is evidence for you to
10 use in any way that you see fit. Mr. Young, thank you.

11 Q. Dr. Eriksson, I'm speaking to you about a case on
12 September 13, 2010. Would you be able to remember that off
13 the top of your head or do you need to look at your report?

14 A. I remember a good deal of the case from my review of
15 the reports, there may be specific instances I need to
16 review the report.

17 Q. If I show you your report, would that help you refresh
18 your memory?

19 A. Sure.

20 MR. YOUNG: May I approach the witness, Judge?

21 THE COURT: You may.

22 Q. Dr. Eriksson, can you tell me the date of that report
23 that you have there?

24 A. Yeah, September 13, 2010.

25 Q. And what is a medical report, and do you make this in

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1 all medical cases, and why?

2 A. Yes. This report, the first page is a trauma
3 resuscitation flow sheet. This is a documentation that we
4 create in the emergency room any time that EMS alerts us
5 that they have a high priority patient that likely will need
6 rapid intervention. We have criteria where trauma alerts
7 are sent out via pager and this patient who came in on this
8 date did meet criteria for a trauma alert. When trauma
9 alerts are called nursing generates documentation as well as
10 the physician staff there about what happens during the
11 acute resuscitation periods.

12 Q. And on September 13th, did you perform an examination
13 on an Absalom Thomas?

14 A. I did. He came in in the early morning hours around
15 2:30 in the morning. By report he had been shot, and upon
16 evaluating him it appeared he did have a penetrating trauma
17 to his back and abdomen. We ultra sounded him and found
18 what was likely blood in his belly and at that time decided
19 to take him to the operating room to deal with whatever had
20 been injured.

21 Q. Okay. Were you the attending physician?

22 A. Yes.

23 Q. And what does that mean? Could you explain that?

24 A. Being the attending physician or attending surgeon
25 means I am in charge of the resuscitation as well as the

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1 treatment of the patient with the traumatic injuries. I
2 would be the person to operate on them and/or stabilize them
3 or direct their care.

4 Q. An what was the chief complaint of the victim in this
5 case?

6 A. He reported that he had been shot and I noted two holes
7 in him and he had mild abdominal pain.

8 Q. And so you just know -- so how many holes was there?

9 A. Per my operative report I found two holes, one in right
10 back and one in his right front.

11 Q. I know you're not an expert in forensics, could you
12 tell, was that from one shot or two shots, do you know?

13 A. I do not know.

14 Q. But two bullet holes?

15 A. There were two holes.

16 Q. Two holes. Okay. Did it appear to be a gunshot?

17 A. I can't tell.

18 Q. Okay.

19 A. I don't have any training in forensics. I know there
20 were two holes, what caused it I cannot say.

21 Q. Okay. And tell the jury where those holes were located
22 please.

23 A. He had one on the right kind of posterior back and one
24 in the right kind of upper quadrant just below the ribs.

25 Q. Were you able to recover a bullet out of this man?

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1 A. I do not recall removing a bullet from this man and my
2 operative note does not dictate that I did remove something.

3 Q. Okay. Did the wound, was there any organs that were
4 affected?

5 A. Yes. After exploring his abdomen I found that he had
6 an injury to his liver, two separate locations were injured
7 on the liver as well as a hole through his diaphragm, which
8 is the muscle that separates the abdomen from his chest.

9 Q. Was there significant blood loss in this case?

10 A. Yes.

11 Q. So in layman's terms can you tell the jury when he
12 comes in here and you see this, is this something you
13 know -- what's your first step when he comes in there?

14 A. Sure. When he presented and we found by ultrasound
15 there was a lot of fluid within his abdomen a high concern
16 for life threatening bleeding. After taking him to the
17 operating room, finding the injury to the liver that
18 resulted in considerable blood loss I believe, almost two
19 and a half liters, that is a very life threatening injury
20 and needs surgical intervention. The injury to the
21 diaphragm also indicates that there is injury to both the
22 chest and the abdomen.

23 Q. Was he put in the trauma intensive care unit?

24 A. He was.

25 Q. I note -- or I read the report that talked about two

TESTIMONY OF EDWARD ERIKSON, M.D.

1 surgeries.

2 A. Yes, sir.

3 Q. Is that normal and can you explain that, please?

4 A. It can be normal. In doing his first operation we
5 noted the injury to the liver, in order to better evaluate
6 it I opened up the tract through the liver in order to
7 better visualize where the bleeding was coming from. I was
8 able to control a majority of the bleeding, however there
9 was still some oozing and what we call surgical bleeding, if
10 I had closed it would have caused to reoperate again. By
11 that time he had become cold and his blood was not clotting
12 appropriately, which is common after trauma, so I elected to
13 pack his liver which is basically holding pressure on the
14 liver without my hand having to hold the pressure,
15 temporarily close his abdomen and take him back to the
16 intensive care unit to resuscitate him. This is what's been
17 deemed a damage control laparotomy and is a very standard
18 operating procedure in my specialty. After resuscitating
19 him and getting him back to a much more normal physiologic
20 condition, my partner, Dr. Leon, took him back to the
21 operating room where those packs that I had placed were
22 removed, he reevaluated the liver, found part of the
23 liver --

24 MR. GRIMES: Objection.

25 THE COURT: Okay. Hold on one second.

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1 MR. GRIMES: Calls for hearsay.

2 THE COURT: Overruled, you may continue. Thank you.

3 A. The packing was removed from the liver. This portion
4 of the liver did not appear viable, it was removed, we did
5 have adequate hemostasis at that time and the abdomen was
6 closed. So he did require two operations to deal with the
7 injuries that he had sustained.

8 Q. Is it dangerous to have two operations versus one? Is
9 it more dangerous to have two versus one?

10 A. Yes and no. It would have been more dangerous for me
11 to do the entire operation that he needed to receive at the
12 first time, so stopping where I did and then taking him back
13 is safer for him. Is there more stress with two operations
14 than one operation in general? Yes.

15 Q. What would have happened to the victim if you wouldn't
16 have operated on him?

17 A. Likely he would not have survived this type of injury.

18 Q. So you're saying he would have died?

19 A. I suspect he would have died, yes, without surgical
20 intervention, yes.

21 Q. How long was he in the hospital for, do you know?

22 A. I believe 11 days, let me refresh me memory real quick.
23 Yes, admitted the 13th, discharged 24th.

24 Q. And you said you've work in the ER approximately how
25 many years?

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1 A. Three years post-training?

2 Q. Would you characterize this patient as being a very
3 serious case or routine case?

4 A. Very serious.

5 MR. YOUNG: Court's indulgence, please.

6 THE COURT: Take your time.

7 (Break in proceedings.)

8 MR. YOUNG: Please answer any questions defense counsel
9 has.

10 THE COURT: Mr. Grimes?

11 MR. GRIMES: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. GRIMES:

14 Q. Morning.

15 A. Morning.

16 Q. I think we can all agree, two holes in the body and
17 damage to the liver and diaphragm is a very serious matter.

18 A. Yes, sir.

19 Q. Now, I'm going to ask you a few questions, I guess,
20 about what happened after the surgery.

21 A. Okay.

22 Q. Do recall what kind of progress Mr. Thomas made after
23 the second surgery?

24 A. Yes. He was slowly weaned from the ventilator, was
25 excavated from the ventilator and taken off of life support,

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1 slowly progressed on to eating a regular diet and then was
2 discharged on the 24th.

3 Q. Okay. And while he was at MUSC was he going through
4 physical therapy?

5 A. That I do not recall and I did not review that from the
6 chart.

7 Q. Would it be in the discharge, I think, form from
8 September 24, 2010?

9 A. Yes. The discharge summary does state physical therapy
10 worked with the patient through hospital course, at this
11 time he has no needs at discharge.

12 Q. Okay. And by September 17th had his condition
13 stabilized?

14 A. September 17th. Yes. Based on the transfer summary
15 where he was sent from the intensive care unit to the floor
16 on October 17th he would have been stabilized from the
17 intensive care point of view.

18 Q. Okay. Now, Mr. Young and you discussed two surgeries.
19 If I recall correctly, was there a third surgery on
20 September 22nd?

21 A. If you are referring to -- yes. Dr. Leon in a third
22 operative note noted that the patient had a persistent right
23 sided pneumothorax, which means collapse of the right lung
24 where air is outside of the lung requiring the placement of
25 an additional chest tube on that right side and that surgery

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1 is required to get that lung to re-expand. It's a bedside
2 procedure so we don't necessarily take people to the
3 operating room for this type of procedure, we do this in the
4 emergency room or on a regular floor bed.

5 Q. Under local anesthesia?

6 A. Usually, yes.

7 Q. And if I recall Dr. Leon explained to Mr. Thomas the
8 details of the surgery and why it needed to be done?

9 A. I would presume that he did discuss that with him.

10 Q. And it's actually in Dr. Leon's notes from the 22nd,
11 the risk and benefits of this procedure?

12 A. Yes.

13 Q. And it was discussed in great detail.

14 A. Yes. Dr. Leon's notes --

15 THE COURT: Could you repeat what you just said and
16 slow down just a little bit? Thank you.

17 A. Per Doctor Leon's note from the procedure he did on
18 9/22 it says that the risks and benefit of the procedure
19 were discussed with Mr. Thomas in great and an operative
20 consent was obtained.

21 Q. And that was on September 22nd?

22 A. Yes.

23 Q. Do you know if Mr. Thomas had any problems on September
24 21st?

25 A. Review the discharge summary to see if anything was

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1 noted on the 21st. I don't have that date in the front of
2 me. I don't see anything in the discharge summary, I would
3 have to review his notes from the 21st.

4 Q. You don't recall anything about Mr. Thomas being in a
5 coma, or sort of a comma like condition?

6 A. He was in a drug induced comma for multiple days while
7 he was in the intensive care on the ventilator, that's
8 necessary in order for patients to tolerate ventilation and
9 incubation.

10 Q. And once he moved to the regular unit and stabilized on
11 the 17th he would have been out of that?

12 A. Correct.

13 Q. And gone to physical therapy?

14 A. Correct.

15 Q. And that would have been with informed consent?

16 A. Yes.

17 Q. And are you aware that Detective Patrick interviewed
18 him September 21st?

19 A. No.

20 Q. But at that time he wasn't under any -- on September
21 21st he wasn't under any type of drug induced comma or
22 condition like that, was he?

23 A. No. If he was on the floor he would not have been in a
24 drug induced comma, that would not be safe.

25 Q. He may have had some regular pain medications, I

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1 believe.

2 A. Right. He may have had pain medicine, he may have had
3 sedative medicine for anxiety, I don't have his pharmacy
4 records to see what was dispensed to him on that day.

5 Q. Okay. And I guess the last couple questions I want to
6 ask you are about some of the lab work that was done from I
7 think maybe the 13th.

8 A. Okay.

9 Q. Do you have that information up there?

10 A. I don't have all laboratory reports, but I can --

11 Q. Do you recall his blood alcohol was a .02 at that time?

12 A. I don't recall what his blood alcohol was.

13 Q. Would that have been tested or would it matter?

14 A. I do not know if it was tested or not. I do not
15 remember if that was routine laboratory work when he came in
16 or not.

17 MR. GRIMES: May I have one moment, Your Honor.

18 THE COURT: Take your time.

19 (Break in proceedings.)

20 MR. GRIMES: May I approach the witness, Your Honor?

21 THE COURT: You may.

22 Q. I want to show you some documents. Do you recognize
23 what these document are?

24 A. This is a printout of the laboratory results for
25 patient Thomas drawn on 9/13 at MUSC.

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1 Q. I want to refer you to page 10, maybe the last page
2 there.

3 A. Yes.

4 Q. Does that refresh your memory to see whether there was
5 any testing done for blood alcohol content?

6 MR. YOUNG: Objection, Judge.

7 THE COURT: What's the basis?

8 MR. YOUNG: Hearsay.

9 THE COURT: Rephrase your question.

10 Q. Does that refresh your memory as to whether he was
11 tested for blood alcohol content?

12 MR. YOUNG: Objection, Judge. I don't think he can
13 testify to that before, he didn't make that --

14 THE COURT: Rephrase your question, Mr. Grimes.

15 Q. These records were made on September 13th, 2010?

16 A. That is the date of service noted on the record, yes.

17 Q. At MUSC?

18 A. Yes.

19 Q. And would that be done for purposes of medical
20 diagnosis and treatment?

21 A. Yes, sir.

22 Q. And that would have been made by someone with
23 information and kept in the course of regularly conducted
24 business activity?

25 A. We do routinely get labs on all patients who come in

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1 with traumas.

2 Q. And that's part of the regular practice at MUSC
3 surgeries to make up those type of reports?

4 A. Yes.

5 Q. Again, I will ask you now that you've had a chance to
6 review that, does that refresh your memory as to whether he
7 was tested for blood alcohol content?

8 A. Based on the result that's here it appears he was
9 tested for blood alcohol.

10 Q. And that result was approximately .02?

11 A. The result was 20 micrograms per deciliter.

12 MR. GRIMES: Thank you, Your Honor. I have no further
13 questions.

14 THE COURT: All right. Redirect?

15 MR. YOUNG: Thank you, Judge.

16 REDIRECT EXAMINATION

17 BY MR. YOUNG:

18 Q. Dr. Eriksson, in that report you have in your hand, did
19 you say .2 deciliters, did I understand that correctly?

20 A. 20 milligrams per deciliter.

21 Q. So is that .02?

22 A. Yes.

23 Q. What's the legal limit, do you know?

24 A. I do not know, I believe it's .08, but --

25 Q. So .02 would be below that?

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1 A. Yes, sir.

2 Q. Was there any indication in your reports when he came
3 in that he was intoxicated?

4 A. No.

5 Q. Can you tell the jury about a difference between
6 critical care as you stated? When he came in was he
7 critical? Is that fair to say?

8 A. Yes.

9 Q. The recovery process of being in the hospital coming to
10 the point of being stable, he's not doing jumping jacks and
11 pushups on September 21st.

12 A. No, he would not be doing that. After a large
13 abdominal operation such as this it normally takes anywhere
14 from a week to two weeks to recover to where people are
15 feeling back to normal and off of narcotics to full
16 recovery. It takes many weeks to months to overcome an
17 abdominal surgery of this type. He was severely, critically
18 ill in our intensive care unit for part of his hospital
19 stay, during that time he was in a comma, on a ventilator
20 being assisted with life sustaining treatments. Those were
21 able to be taken away eventually to where he was stable to
22 be transferred out to the floor. Floor patients are what
23 you'd expect if you go visit someone in the hospital after a
24 routine surgery, they have some pain, they're on some
25 medications to assist with that. Physical therapy sometimes

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1 works with them and sometimes does not and they are
2 recovering to where they can go home and take care of
3 themselves on an outpatient basis.

4 Q. So would it be fair to say that this victim wasn't able
5 to take care of himself until September 24th?

6 A. Correct.

7 MR. YOUNG: That's all the questions I have, Your
8 Honor.

9 MR. GRIMES: Just a few, two or three questions.

10 RECROSS EXAMINATION

11 BY MR. GRIMES:

12 Q. I think we can all agree that Mr. Absalom, or Thomas
13 wasn't doing jumping jacks after this, but that wouldn't
14 affect someone's ability to remember what happened and give
15 a statement.

16 MR. YOUNG: Objection, speculation.

17 THE COURT: Finish your question, Mr. Grimes.

18 Q. His lack of ability to be doing jumping jacks would not
19 affect his mental capacity, would it?

20 MR. YOUNG: Objection.

21 THE COURT: Basis?

22 MR. YOUNG: Speculation.

23 THE COURT: If he knows he can answer.

24 A. Can you repeat the question? I'm a little confused
25 about what you're asking me.

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1 Q. I apologize. I believe you testified on September 22nd
2 he was able to give informed consent to understand what Dr.
3 Leon -- the procedure Dr. Leon wanted to perform, correct?

4 A. Yes.

5 Q. And at that time he couldn't do jumping jacks, correct?

6 A. I don't remember what he was doing on that day, I would
7 suspect not be doing jumping jacks, that's true.

8 Q. And he was interviewed by Detective Patrick on
9 September 21st, correct?

10 A. I don't know.

11 MR. GRIMES: Thank you.

12 THE COURT: Is this witness excused?

13 MR. YOUNG: Yes.

14 THE COURT: Any objection?

15 MR. GRIMES: No, Your Honor.

16 THE COURT: You are excused, you're free to leave the
17 courthouse but you may remain with us. Thank you.

18 MR. YOUNG: Judge, may we approach?

19 THE COURT: You may.

20 (A bench conference was had.)

21 THE COURT: Call your next witness.

22 MR. YOUNG: Thank you, Judge. The State calls Herman
23 Smith.

24 The witness, HERMAN SMITH, was first duly sworn
25 and testified as follows, on:

TESTIMONY OF HERMAN SMITH

1 DIRECT EXAMINATION

2 THE CLERK: State your name and spell your last name
3 for the record.

4 THE WITNESS: Herman Smith, S-m-i-t-h.

5 DIRECT EXAMINATION

6 Q. Morning, Mr. Smith.

7 A. Morning.

8 Q. Mr. Smith, you're obviously dressed a certain way and
9 in handcuffs. Tell the jury why.

10 A. I'm incarcerated.

11 Q. Why are you incarcerated?

12 A. I have an attempted murder charge and an attempted
13 armed robbery.

14 Q. What's going on with those charges?

15 A. I'm here today to state the truth of what happened.

16 Q. I'm sorry. Can you speak up and speak to that jury?

17 A. I'm here to state the truth of what happened that day.

18 Q. With your charges in particular, what's happened with
19 your charges? Have you pled guilty?

20 A. Yes, sir.

21 Q. You pled guilty to attempted armed robbery and
22 attempted murder?

23 A. Yes, sir..

24 Q. What's going on with your sentence? Have you been
25 sentenced yet?

TESTIMONY OF HERMAN SMITH

- 1 A. No, sir.
- 2 Q. Is that pending?
- 3 A. Yes, sir.
- 4 Q. Now, am I the solicitor that is handling your case?
- 5 A. Sir?
- 6 Q. Am I the solicitor handling your case?
- 7 A. Yes, sir.
- 8 Q. Have I recommended or promised you anything as far as
- 9 your sentence?
- 10 A. No, sir.
- 11 Q. Have I said you're going get time served or a Youthful
- 12 Offender Act?
- 13 A. No, sir.
- 14 Q. And do you have any kind of promises from me
- 15 whatsoever?
- 16 A. No, sir.
- 17 Q. So right now you're sitting there waiting on
- 18 sentencing; is that correct?
- 19 A. Yes, sir.
- 20 Q. And then why are you here today?
- 21 A. To state the truth of what happened.
- 22 Q. Do you think that after this case you're just going to
- 23 walk out of here?
- 24 A. No, sir.
- 25 Q. Now, Mr. Smith, I'm going to ask you to tell the jury a

TESTIMONY OF HERMAN SMITH

1 little bit about your relationship with Denorris Hall. Do
2 you know him?

3 A. Yes, sir.

4 Q. Is he in the courtroom today?

5 A. Yes, sir.

6 Q. Where is he sitting?

7 A. Right there.

8 Q. This table behind me?

9 A. Yes, sir.

10 Q. Tell me about how you guys met.

11 A. Met through some home boys.

12 Q. You're going to have to specify what is met through
13 some home boys. What does that mean? Tell this jury.

14 A. Met through a couple of my friends, his friends and
15 ever since things just been cool.

16 Q. How long ago did you meet him?

17 A. Probably about four to five years ago.

18 Q. Where did you all meet?

19 A. At a club.

20 Q. Do you know what club it was?

21 A. Red Zone on Chester Road.

22 Q. Did you say Red Zone?

23 A. Yes, sir.

24 Q. Did you go there a lot?

25 A. Yes, sir.

TESTIMONY OF HERMAN SMITH

- 1 Q. Did go there a lot?
- 2 A. Yes, sir.
- 3 Q. Where do you live in Charleston? I know you are
- 4 currently incarcerated, where do you live in Charleston?
- 5 A. In West Ashley.
- 6 Q. Okay. Where does he live?
- 7 A. I'm not familiar, I don't know.
- 8 Q. Do you know where Saint Charles Place is in North
- 9 Charleston?
- 10 A. Yes, sir.
- 11 Q. Have you been there?
- 12 A. Yes, sir.
- 13 Q. Who lives there?
- 14 A. One of his cousins.
- 15 Q. His cousin does?
- 16 A. Yes, sir.
- 17 Q. Do you ever go to that house?
- 18 A. Yes, sir.
- 19 Q. Does he go to the house?
- 20 A. Yes, sir.
- 21 Q. Mr. Smith, I'm going to show you --
- 22 MR. YOUNG: If I may approach the witness, Judge?
- 23 THE COURT: You may.
- 24 Q. A map State's 3, it's been marked and admitted. Do you
- 25 see this map here?

TESTIMONY OF HERMAN SMITH

- 1 A. Yes, sir.
- 2 Q. Do you see McMillan Avenue right here?
- 3 A. Yes, sir.
- 4 Q. Is this Spruill right here? Can you tell? If I show
- 5 you a bigger map would that help?
- 6 A. That's Spruill.
- 7 Q. This is Spruill? Is that the credit union right there?
- 8 A. Yes, sir.
- 9 Q. Where is Saint Charles Place?
- 10 A. Right there.
- 11 Q. Point it out for the jury.
- 12 A. (Witness complies.)
- 13 Q. Right here?
- 14 A. Yes, sir.
- 15 Q. Is this an apartment complex?
- 16 A. Yes, sir.
- 17 Q. So here is Saint Charles. Is this the credit union?
- 18 A. Yes, sir.
- 19 Q. And this is McMillan and this is Spruill?
- 20 A. Yes, sir.
- 21 Q. So is it fair to say that Saint Charles Place is near
- 22 the credit union and McMillan and Spruill?
- 23 A. Yes, sir.
- 24 Q. Mr. Smith, I'm going take you to September 13, 2010.
- 25 What were you doing that night?

TESTIMONY OF HERMAN SMITH

- 1 A. Chilling at his cousin's house.
- 2 Q. Where does his cousin live?
- 3 A. Saint Charles Place.
- 4 Q. Was his cousin there?
- 5 A. No.
- 6 Q. So who was there?
- 7 A. Just me and him.
- 8 Q. You and him?
- 9 A. Yes, sir.
- 10 Q. Did you all hang out a lot together?
- 11 A. Yes, sir.
- 12 Q. Would you classify your relationship with Mr. Hall as a
- 13 close friend?
- 14 A. Yeah. I used to call him my little brother.
- 15 Q. You used to call him your little brother?
- 16 A. Yes, sir.
- 17 Q. Would you say you guys were best friends?
- 18 A. You could say something like that.
- 19 Q. Now, when you're hanging out at Saint Charles Place
- 20 what are you guys doing?
- 21 A. Just be chilling?
- 22 Q. What does that mean?
- 23 A. Just in the house cooling, kicking it.
- 24 Q. You all watching TV?
- 25 A. No. Just be in the house politicking, talking about

TESTIMONY OF HERMAN SMITH

- 1 really nothing.
- 2 Q. Were you all texting anybody?
- 3 A. Yeah. I was texting some girls to see what was going
- 4 on or whatever.
- 5 Q. What was he doing?
- 6 A. Same thing, playing with his phone.
- 7 Q. How long had you all been sitting there?
- 8 A. To be honest I can't tell you how long, I don't even
- 9 know.
- 10 Q. Would you say you guys were bored?
- 11 A. Yeah.
- 12 Q. Now, at some point in the night did you all decide to
- 13 do something, go somewhere?
- 14 A. Yeah.
- 15 THE COURT: Is that a yes?
- 16 A. Yes, ma'am.
- 17 THE COURT: Thank you.
- 18 Q. Tell us about that.
- 19 A. Picked up and like, "Let's go." I got up and we left,
- 20 grabbed a gun and, "Let's go."
- 21 Q. You said you grabbed a gun?
- 22 A. Yeah.
- 23 Q. Where did you get a gun at?
- 24 A. From the house.
- 25 Q. Where was it at?

TESTIMONY OF HERMAN SMITH

- 1 A. On the dresser.
- 2 Q. What kind of gun was it?
- 3 A. A .38.
- 4 Q. .38?
- 5 A. Yeah.
- 6 Q. What color was it?
- 7 A. Black.
- 8 Q. A black gun?
- 9 A. Yes, sir.
- 10 Q. Was it your gun?
- 11 A. Yes, sir.
- 12 Q. And it was sitting in the house?
- 13 A. (Inaudible.)
- 14 THE COURT: I'm sorry?
- 15 Q. You need to say yes or no.
- 16 A. Yes, sir.
- 17 Q. How did you all decide to leave the house? Whose idea
- 18 was it to leave the house?
- 19 A. Mr. Hall.
- 20 Q. I mean, how did that come about? You need to tell the
- 21 jury that.
- 22 A. He just like, "let's go," I followed him out the house,
- 23 he told me to grab the gun so I grabbed it.
- 24 Q. Who told you to grab the gun?
- 25 A. He did.

TESTIMONY OF HERMAN SMITH

1 Q. He did?

2 A. Yes, sir.

3 Q. And then you grabbed it?

4 A. (Nods head yes.)

5 Q. Why do you think he would tell you that?

6 A. I guess it's just mine. He told me, "let's go," I
7 followed a friend.

8 Q. So when you decide to go out where are you guys going?

9 A. Going to the Three Dollar Lounge on Spruill.

10 Q. Is that right there near the credit union?

11 A. Right across the street.

12 Q. What were you going to do there?

13 A. Just go in there and chill out.

14 Q. Is it a bar?

15 A. Yeah, something like a little bar or whatever.

16 Q. So you guys -- you know what time this was
17 approximately?

18 A. No, sir.

19 Q. Was it past midnight?

20 A. Yes, sir.

21 Q. So the purpose when you left the house was to go to the
22 club. Do you always bring your gun to the club?

23 A. No, sir.

24 Q. So why would you have gotten a gun?

25 A. He just told me to do it.

TESTIMONY OF HERMAN SMITH

1 Q. He told you to do it?

2 A. (Inaudible.)

3 THE COURT: You are going to have to say yes or no, she
4 has got to write down what you are saying and she can't
5 write down you shaking your head. Do you understand?

6 THE WITNESS: All right.

7 Q. And you can speak in that microphone, maybe pull it a
8 little closer if you like. So when you're walking to the
9 apartment -- may I approach the witness, Judge?

10 THE COURT: You may.

11 Q. Going to show you a bigger map. Now, do you recognize
12 what road that was right there?

13 A. Yes, sir.

14 Q. What is this road? Is this the credit union right
15 here?

16 A. Spruill.

17 Q. This is Spruill. Is this McMillan right here?

18 A. Yes, sir.

19 Q. Is that the credit union?

20 A. Yes, sir.

21 Q. Where is Saint Charles Place, or where would it be
22 approximately? Is it back to the left, would you agree with
23 that.

24 A. Yes, sir, this way.

25 Q. So when you guys were coming out of Saint Charles

TESTIMONY OF HERMAN SMITH

- 1 Place, what was the direction you were coming?
- 2 A. Going toward the credit union.
- 3 Q. Is that walking down McMillan?
- 4 A. Yes, sir.
- 5 Q. And is this where the Three Dollar Lounge is, over
- 6 here?
- 7 A. Yes, sir.
- 8 Q. Did you guys cut through the credit union?
- 9 A. Yes, sir.
- 10 Q. Let's take a step back for a second. When you were
- 11 walking, what are you guys talking about?
- 12 A. We wasn't really talking about nothing.
- 13 Q. Well, what's going on? Y'all are just walking?
- 14 A. Yes, sir.
- 15 Q. And as you're walking, did anything happen?
- 16 A. Yes, sir.
- 17 Q. Can you tell us about that?
- 18 A. We spot a man.
- 19 Q. You say you spotted a man, what does that mean?
- 20 A. Saw somebody. I don't know who the man was, saw
- 21 somebody and he wanted to go get him.
- 22 Q. Who said that?
- 23 A. D. J.
- 24 Q. Was that his words?
- 25 A. Yes, sir.

TESTIMONY OF HERMAN SMITH

- 1 Q. You call him D. J.?
- 2 A. (Nods yes.)
- 3 Q. And there's --
- 4 THE COURT: Is that a yes?
- 5 A. Yes, sir.
- 6 Q. So he spotted a man, and tell me what he said.
- 7 A. "Let's go get him."
- 8 Q. What did you take that to mean?
- 9 A. I already knew what that meant, that meant to rob him.
- 10 Q. Did you say, "Well, here's my gun, you can go rob him?"
- 11 A. Oh, yes, sir. He be like, "I'm straight," he had his
- 12 gun.
- 13 Q. So you offered to give him your gun?
- 14 A. Yes, sir.
- 15 Q. And he said, "I'm straight?"
- 16 A. Yes, sir.
- 17 Q. At this point what do you think that meant?
- 18 A. That he already had something, he was straight.
- 19 Q. Did you know he had something?
- 20 A. He showed me a little gun.
- 21 Q. When you asked him that?
- 22 A. Yes, sir. Well, during the process I start --
- 23 Q. Go ahead.
- 24 A. Later on in the process I saw the little handgun.
- 25 Q. What kind of gun did he have?

TESTIMONY OF HERMAN SMITH

- 1 A. A little chrome gun.
- 2 Q. When you say chrome, what color is that?
- 3 A. Silver.
- 4 Q. Do you know what caliber it was?
- 5 A. A little .25.
- 6 Q. Is that a unique caliber?
- 7 A. Yeah.
- 8 Q. Did it have any distinctive mark on it at all?
- 9 A. A little pink handle.
- 10 Q. A pink handle?
- 11 A. Yes, sir.
- 12 Q. So you have a black gun, he has a silver gun.
- 13 A. Yes, sir.
- 14 Q. So whose idea was it to rob this man?
- 15 A. D. J.
- 16 Q. Did you say D. J.?
- 17 A. Yes, sir.
- 18 Q. You need to say Denorris Hall if it's him.
- 19 A. Denorris Hall.
- 20 Q. So, at this point you see the victim walking on Spruill
- 21 or McMillan, do you remember?
- 22 A. Spruill.
- 23 Q. And where was he walking, north?
- 24 A. He was walking up.
- 25 Q. Walking up? At this point when you stated D. J. said,

TESTIMONY OF HERMAN SMITH

- 1 "let's go," did he say that?
- 2 A. Yes, sir.
- 3 Q. "Let's get him."
- 4 A. "Let's get him."
- 5 Q. I think that's what you said. Did you guys continue to
- 6 walk together? Tell me how that played out?
- 7 A. He took up ahead of me, I came up after him.
- 8 Q. When you say he took up ahead of you, you need to
- 9 explain that.
- 10 A. He hurriedly walked up ahead of me.
- 11 Q. He got up in front of you?
- 12 A. Yeah. He was walking at the same pace, then he took up
- 13 in front of me.
- 14 Q. At this point are you cutting through the credit union?
- 15 A. Yes, sir.
- 16 Q. Tell me about what happens next.
- 17 A. We walked on to Spruill, he approached a man --
- 18 Q. Was he in front of you?
- 19 A. He approached the man. I don't know what they been
- 20 talking about or what was going on, he was crossing the
- 21 street and he tried to snatch out a bag that the man had and
- 22 the man jerked away, when he jerked away that's when I saw
- 23 the gun come out.
- 24 Q. Who pulled a gun out?
- 25 A. Denorris.

TESTIMONY OF HERMAN SMITH

- 1 Q. Was it the silver gun?
- 2 A. Yes, sir.
- 3 Q. What was he doing with it?
- 4 A. He fired it.
- 5 Q. Did he point it at the man?
- 6 A. Yes, sir.
- 7 Q. What did you do?
- 8 A. I ran across the street. He said, "shoot him" and I
- 9 shot my gun.
- 10 Q. Did he shoot his gun?
- 11 A. Yes, sir.
- 12 Q. So we're clear, D. J. had a silver gun and pointed it
- 13 at the man --
- 14 A. Yes, sir.
- 15 Q. -- after he tried to get his bag.
- 16 A. Yes, sir.
- 17 Q. And what did you think is going down right now? Do you
- 18 understand what is going on?
- 19 A. Yes, sir.
- 20 Q. What's going on?
- 21 A. A robbery and attempted murder.
- 22 Q. Was D. J. closer to him than you?
- 23 A. Yes, sir.
- 24 Q. Was he the first person to go up to him?
- 25 A. Yes, sir.

TESTIMONY OF HERMAN SMITH

- 1 Q. What did you say to D. J.?
- 2 A. When?
- 3 Q. When D. J. has the gun pointed down on him, what do you
- 4 say?
- 5 A. "Shoot his ass."
- 6 Q. Is that the exact words you said?
- 7 A. Yes, sir.
- 8 Q. You said, "shoot his ass."
- 9 A. Running across the street.
- 10 Q. I'm sorry, say that again.
- 11 A. Running across the street.
- 12 Q. You're running across the street saying that.
- 13 A. (Nods yes.)
- 14 Q. Can you explain to the jury why you would say that?
- 15 A. I have no reason, just said it.
- 16 Q. You don't have an explanation for that?
- 17 A. No, sir.
- 18 Q. When Denorris has his gun and you say, "shoot his ass,"
- 19 do you pull out a gun?
- 20 A. Yes, sir.
- 21 Q. What color is your gun?
- 22 A. Black.
- 23 Q. What do you do?
- 24 A. I shoot.
- 25 Q. Did you fire?

TESTIMONY OF HERMAN SMITH

- 1 A. Yes, sir.
- 2 Q. Did you fire before or after D. J.?
- 3 A. After.
- 4 Q. So he fired, then you started pulling out your gun and
- 5 firing too?
- 6 A. Yes, sir.
- 7 Q. And why -- explain that to the jury, why would you do
- 8 that?
- 9 A. I don't know what he had, he could have been doing
- 10 anything.
- 11 Q. Did you see him doing anything?
- 12 A. No, sir. Better safe than sorry.
- 13 Q. Better safe than sorry.
- 14 A. (Nodded yes.)
- 15 Q. And you said you guys were good friends, right?
- 16 A. Yes, sir.
- 17 Q. You were just backing him up.
- 18 A. Yes, sir.
- 19 Q. Did you ever see the victim with a gun?
- 20 A. No, sir.
- 21 Q. Did he run away?
- 22 A. Yes, sir.
- 23 Q. What did y'all do?
- 24 A. Ran back to Saint Charles Place.
- 25 Q. Do you know who shot him, who actually hit him?

TESTIMONY OF HERMAN SMITH

- 1 A. No, sir.
- 2 Q. But D. J. was closer?
- 3 A. Yes, sir.
- 4 Q. How many rounds did you fire?
- 5 A. Probably about three or four.
- 6 Q. How many did D. J. fire?
- 7 A. Couldn't tell you, probably like two, three.
- 8 Q. Where did you guys run to? Did you run back the way
- 9 you came?
- 10 A. Yes, sir.
- 11 Q. Is that back through the credit union?
- 12 A. Yes, sir.
- 13 Q. What did you do with the guns?
- 14 A. I got rid of mine.
- 15 Q. How did you do that?
- 16 A. I threw mines in the river.
- 17 Q. Explain that.
- 18 A. Around West Ashley and downtown bridge, I tossed the
- 19 gun over the bridge.
- 20 Q. You tossed the gun over the bridge?
- 21 A. Yes, sir.
- 22 Q. So it's just in the river now?
- 23 A. Yes, sir.
- 24 Q. In your statement did you say something different?
- 25 A. Yes, sir.

TESTIMONY OF HERMAN SMITH

- 1 Q. What did you say in the statement?
- 2 A. I said I threw it by the daycare.
- 3 Q. Why would you lie?
- 4 A. Because I wanted to protect a friend.
- 5 Q. So why does the gun matter?
- 6 A. I wanted to throw them off.
- 7 Q. I'm sorry, say that again.
- 8 A. I wanted to throw the police officers off and the
- 9 detectives.
- 10 Q. Now, did the police officers come and speak to you a
- 11 few days after this happened?
- 12 A. About a week or two.
- 13 Q. About a week after?
- 14 A. Yes, sir.
- 15 Q. So right after the shooting you didn't see any cops or
- 16 didn't talk to any cops?
- 17 A. No, sir.
- 18 MR. GRIMES: Objection, leading.
- 19 THE COURT: Overruled.
- 20 Q. About a week after when you spoke to the police, did
- 21 you give a statement?
- 22 A. Yes, sir.
- 23 Q. Did you admit what happened?
- 24 A. Yes, sir -- no, I lied.
- 25 Q. You lied?

TESTIMONY OF HERMAN SMITH

1 A. Yes, sir.

2 Q. Why did you lie?

3 A. I wanted to protect a friend.

4 Q. In your statement when you lied at some point did you
5 tell the truth?

6 A. Yes, sir, in certain parts. In certain parts I lie, in
7 certain parts I tell the truth.

8 Q. So why are you here today?

9 A. To state the truth.

10 Q. To tell the truth.

11 A. Yes, sir.

12 Q. You need tell the jury why you and Denorris did this.

13 What's the reason?

14 A. No explanation. Two knuckleheads causing trouble.

15 Q. Mr. Smith, I'm going to show you what's been marked and
16 admitted as evidence State's I believe 5 and 6 of the bank
17 video, the bank that you guys cut through. I want you to
18 tell me what we're looking at here.

19 A. That's the federal credit union.

20 Q. Is this the credit union you guys cut through?

21 A. Yes, sir.

22 Q. Can you tell who that is?

23 A. Denorris.

24 Q. That's Denorris?

25 A. Yes, sir.

TESTIMONY OF HERMAN SMITH

- 1 Q. Is this where he's ahead of you and sped up?
- 2 A. Yes, sir.
- 3 Q. Who is that?
- 4 A. That's me.
- 5 Q. Did you have your head shaved?
- 6 A. Yes, sir.
- 7 Q. So Denorris is ahead of you going through the credit
- 8 union?
- 9 A. Yes, sir.
- 10 Q. And why is that?
- 11 A. Just took off ahead of me, he was going after the man.
- 12 Q. So he saw the man and he took off ahead of you?
- 13 A. Yes, sir.
- 14 Q. Can you tell who that is?
- 15 A. Yes, sir.
- 16 Q. Who is that?
- 17 A. I in the front, Denorris in the back.
- 18 Q. That's you in the front, is that what you said?
- 19 A. Yes, sir.
- 20 Q. So the whole time is Denorris the first person to go to
- 21 the victim, then when you all are running away he's behind
- 22 you?
- 23 MR. GRIMES: Objection, leading.
- 24 THE COURT: Overruled.
- 25 A. Yes, sir.

TESTIMONY OF HERMAN SMITH

- 1 Q. Can you tell who that is?
- 2 A. No, sir.
- 3 Q. Can you tell me, Mr. Smith, can you see over there in
- 4 the back right corner of the video?
- 5 A. Yes, sir.
- 6 Q. Can you tell what's going on there?
- 7 A. That's me in black, the other body is Denorris.
- 8 Q. Are you all walking back down Spruill?
- 9 A. Yeah, we walking across the street.
- 10 Q. Can you tell if that's you right there?
- 11 A. Yes, sir.
- 12 Q. That is you you think?
- 13 A. Yes, sir.
- 14 Q. Who is that right there?
- 15 A. That's me.
- 16 Q. What are you doing?
- 17 A. Shooting.
- 18 Q. Is that your arm pointing?
- 19 A. Yes, sir.
- 20 Q. You got a gun?
- 21 A. Yes, sir.
- 22 Q. Is that a black gun?
- 23 A. Yes, sir.
- 24 Q. When you're running away, who is in front and who is
- 25 behind you?

TESTIMONY OF HERMAN SMITH

- 1 A. Nobody in front of me, D. J. behind me.
- 2 Q. Who is that right there behind you?
- 3 A. Denorris.
- 4 Q. So he was closer to that victim?
- 5 A. Yes, sir.
- 6 Q. Who is that?
- 7 A. It's me.
- 8 Q. Who is that?
- 9 A. Oh, that's Denorris.
- 10 Q. How can you tell?
- 11 A. By the fade.
- 12 Q. When you say fade, what you mean?
- 13 A. Hair on top, not on the side.
- 14 Q. So he had hair on top?
- 15 A. Yes, sir.
- 16 Q. At that time did you?
- 17 A. No, sir.
- 18 Q. Who is that?
- 19 A. That's me.
- 20 Q. And you don't have any hair?
- 21 A. No, sir.
- 22 Q. And you are following D. J.?
- 23 A. Yes, sir.
- 24 Q. I want to talk about these guns some more. Do you know
- 25 what Denorris did with his gun?

TESTIMONY OF HERMAN SMITH

1 A. No, sir.

2 Q. Did you see him toss it anywhere when you all were
3 running?

4 A. No, sir.

5 Q. Was your gun automatic or a revolver?

6 A. Revolver.

7 Q. Do you say something different in your statement?

8 A. Yes, sir.

9 Q. Why would you tell them it's an automatic when it's a
10 revolver?

11 A. Wanted to throw the police and the detectives off.

12 Q. So as a revolver when you fired where are the shell
13 casings going?

14 A. Stay in the gun.

15 Q. They stay in the gun.

16 A. Yes, sir.

17 Q. Was D. J.'s an automatic or revolver?

18 A. An automatic.

19 Q. And what caliber was it?

20 A. A .25.

21 Q. So when he fired were those shell casings getting
22 ejected?

23 A. Yes, sir.

24 Q. So they should be on the street then, shouldn't they?

25 A. Yes, sir.

TESTIMONY OF HERMAN SMITH

- 1 MR. YOUNG: Court's indulgence, please.
- 2 THE COURT: Take your time.
- 3 (Break in proceedings.
- 4 Q. May I approach the witness, Judge?
- 5 THE COURT: You may.
- 6 Q. Mr. Smith, I'm going to show you what's been marked
- 7 State's 8, 9, 10, 11 and 12. Tell me if you recognize those
- 8 photos.
- 9 A. Yes, sir.
- 10 Q. Do you recognize those photos?
- 11 A. Yes, sir.
- 12 Q. Whatever those photos were, tell me what -- go through
- 13 each one of them. And tell me what's on 8.
- 14 A. Me running through the bank.
- 15 Q. What's 9 of?
- 16 A. Same thing.
- 17 Q. What's number 10 of?
- 18 A. Me shooting.
- 19 Q. What's number 11 of?
- 20 A. Denorris in the bank.
- 21 Q. What's 12?
- 22 A. Denorris in the bank parking lot.
- 23 Q. Are those a fair and accurate representations of how
- 24 those photos appear on that video --
- 25 A. Sir?

TESTIMONY OF HERMAN SMITH

1 Q. -- that night?

2 A. Sir?

3 Q. Are those a fair and accurate representations of how it
4 appeared that night?

5 A. Yes, sir.

6 MR. YOUNG: Judge, ask to admit 8, 9, 10, 11, 12, 13,
7 14 in evidence.

8 MR. GRIMES: No objection, Your Honor.

9 THE COURT: State's 8, 9, 10 11, 12 in evidence without
10 objection. You may publish.

11 MR. YOUNG: Thank you, Judge.

12 (The photographs were received as State's
13 8-12.)

14 Q. Mr. Smith, I'm going to get you look at the ELMO. Mr.
15 Smith, can tell me what we're looking at here?

16 A. Me coming across in the bank parking lot.

17 Q. What's this writing up here?

18 A. Me identifying the photo.

19 Q. When did you do that?

20 A. The day I was -- the day I turned myself in.

21 Q. When you did that with the detectives?

22 A. Yes, sir.

23 Q. I show you what's marked and admitted as State's 9.
24 What are we're looking at here?

25 A. Same picture as the last one.

TESTIMONY OF HERMAN SMITH

- 1 Q. Is that you walking through the bank?
- 2 A. Yes, sir.
- 3 Q. What's this writing?
- 4 A. Me identifying the photo.
- 5 Q. So you cooperated with the police and identified
- 6 yourself?
- 7 A. Yes, sir.
- 8 Q. Number 10. Tell me what we're looking at here.
- 9 A. A photo, of me standing in the bank parking lot shooting
- 10 across the street.
- 11 Q. So you identified yourself shooting in this photo?
- 12 A. Yes, sir.
- 13 Q. I show you what's marked and admitted as State's 11.
- 14 Can you see this?
- 15 A. Yes, sir.
- 16 Q. Who is that?
- 17 A. Denorris in the bank parking lot.
- 18 Q. Did you tell the detectives that as well?
- 19 A. Yes, sir.
- 20 Q. I show you what's been marked and admitted as State's
- 21 12. Who is that?
- 22 A. Denorris in the bank parking lot again.
- 23 Q. Mr. Smith, you need to tell the jury, did you have any
- 24 knowledge of who that victim was?
- 25 A. No, I didn't.

TESTIMONY OF HERMAN SMITH

- 1 Q. You didn't know who he was?
- 2 A. No, sir.
- 3 Q. Now, in your statement did you say something different?
- 4 Let me strike that question. Did this the guy rob you
- 5 before?
- 6 A. No, sir.
- 7 Q. Whose idea was it to rob this man?
- 8 A. Denorris'.
- 9 Q. Is that why he sped up?
- 10 A. Yes, sir.
- 11 Q. Now, let's talk about the actual attempted robbery.
- 12 What did you see Denorris do?
- 13 A. Reach out of the bag.
- 14 Q. You need to explain what that means.
- 15 A. Took his hand and tried to reach for a bag the victim
- 16 had.
- 17 Q. And what did the victim do?
- 18 A. Snatch away.
- 19 Q. And then what did Denorris do?
- 20 A. The victim walked across the street and that's when
- 21 Denorris came up behind him, when he tried to snatch the bag
- 22 the victim turned around, he pulled out the gun --
- 23 Q. Who pulled out the gun?
- 24 A. Denorris.
- 25 Q. So after he snatched away Denorris pulled out the gun?

TESTIMONY OF HERMAN SMITH

- 1 A. Yes, sir.
- 2 Q. Did he get anything from the victim?
- 3 A. No, sir.
- 4 Q. Did the victim take off after the gun was pulled?
- 5 A. After the shot was fired he was running away.
- 6 Q. So who fired first?
- 7 A. Denorris.
- 8 Q. Did he fire when the victim started running?
- 9 A. No, sir.
- 10 Q. Explain that. How did that happen?
- 11 A. As soon as he snatched the bag and whipped out the gun
- 12 I was running across -- I was about to get ready to run
- 13 across the street and told him to shoot him. Before that he
- 14 fired and I fired too.
- 15 Q. So Denorris fired first?
- 16 A. Yes, sir.
- 17 Q. Have you been in contact with Denorris since this case
- 18 has been going on?
- 19 A. No, sir. He wrote me.
- 20 Q. He's written you?
- 21 A. Yes, sir.
- 22 Q. What did he do? Tell us about that.
- 23 A. Really wasn't nothing big, he just wrote me --
- 24 Q. It was something big if he's contacting you?
- 25 A. He just wrote me and said -- he just apologized for the

TESTIMONY OF HERMAN SMITH

1 situation or whatever, wasn't really nothing too big in the
2 letter, nothing really dealing with the case or nothing.

3 Q. What did he apologize for?

4 A. I guess for the statement that he wrote.

5 Q. What was the first statement?

6 A. When he gave out all my information --

7 MR. GRIMES: Objection, calls for hearsay, lack of
8 personal knowledge.

9 MR. YOUNG: I'll strike the question, Judge.

10 THE COURT: Thank you.

11 Q. Now, Mr. Smith, I promise -- have I promised you
12 anything for your charges?

13 A. No, sir.

14 Q. Have I threatened you in any way to get you to testify
15 here?

16 A. No, sir.

17 Q. And you pled guilty to your charges?

18 A. Yes, sir.

19 Q. Where did you get -- is there a number you think that
20 you are getting as far as sentence wise?

21 A. No, sir. I talked -- when I talked to my lawyer he
22 said he was trying to get me something in between the 10 to
23 15.

24 Q. 10 to 15 years?

25 A. Yes, sir.

TESTIMONY OF HERMAN SMITH

- 1 Q. That's what he said.
- 2 A. That's what he said.
- 3 Q. That's not what I said.
- 4 A. No, sir.
- 5 Q. Because I haven't promised you anything, have I?
- 6 A. No, sir.
- 7 Q. Mr. Smith, do you hope to improve your situation by
- 8 being here?
- 9 A. Yes, sir.
- 10 Q. And you haven't been promised anything.
- 11 A. I haven't been promised anything.
- 12 MR. YOUNG: Please answer any questions defense counsel
- 13 may have.
- 14 THE COURT: Mr. Grimes?
- 15 MR. BUTLER: Judge, may we approach?
- 16 THE COURT: Mr. Foreman, does the jury need a break?
- 17 JUROR: No, Your Honor.
- 18 MR. YOUNG: Ladies and gentlemen, we're going to take a
- 19 short break, everyone other than you all needs to take a
- 20 short break so you just take a short break. Do not begin
- 21 your deliberations, do not discuss this case amongst
- 22 yourselves. Please rise for the jury.
- 23 (The jury left the courtroom.)
- 24 THE COURT: Please be seated and we'll take about five
- 25 minutes.

TESTIMONY OF HERMAN SMITH

1 (A break was taken.)

2 THE COURT: Anything before we bring in the jury, Mr.
3 Grimes?

4 MR. GRIMES: No, ma'am.

5 MR. YOUNG: If he's going to try to admit the statement
6 I'm going to have an objection to that, if he wants to ID
7 it, that's fine.

8 THE COURT: Well, let's see what happens. Thank you.

9 MR. YOUNG: Thank you.

10 (The jury returned to the courtroom.)

11 THE COURT: Thank you, be seated. Mr. Grimes, your
12 witness.

13 CROSS EXAMINATION

14 BY MR. GRIMES:

15 Q. Mr. Smith, are you an honest man?

16 A. Yes, sir.

17 Q. And an honest man is someone who tells the police the
18 truth, correct?

19 A. Yes, sir.

20 Q. And an honest man is someone who tells his mother the
21 truth, correct?

22 A. Yes, sir.

23 Q. And his girlfriend?

24 A. Yes, sir.

25 Q. And his grandfather?

TESTIMONY OF HERMAN SMITH

- 1 A. Yes, sir.
- 2 Q. And an honest man is not someone who commits crimes,
- 3 correct?
- 4 A. Yes, sir.
- 5 Q. And they follow rules.
- 6 A. Yes, sir.
- 7 Q. Follow rules at school.
- 8 A. Yes, sir.
- 9 Q. Rules at work.
- 10 A. Yes, sir.
- 11 Q. Rules laid down by the judge.
- 12 A. Yes, sir.
- 13 Q. Do what their mother tells them.
- 14 A. Yes, sir.
- 15 Q. Honest persons don't rob people, do they?
- 16 A. Yes, sir.
- 17 Q. They do?
- 18 A. I --
- 19 Q. I'm sorry. Do honest people rob --
- 20 A. No, sir.
- 21 Q. -- people? Do honest people try to kill people?
- 22 A. No, sir.
- 23 Q. Do they go around shooting at them for no reason?
- 24 A. No, sir.
- 25 Q. Do they try to manipulate the system?

TESTIMONY OF HERMAN SMITH

- 1 A. No, sir.
- 2 Q. Do honest people lie in court?
- 3 A. No, sir.
- 4 Q. Do honest people try to make a deal for themselves?
- 5 A. No, sir.
- 6 Q. Now, you say you're an honest person.
- 7 A. Yes, sir.
- 8 Q. But you are a convicted felon though, aren't you?
- 9 A. No, sir.
- 10 Q. Your testimony under oath today is that you are not a
- 11 convicted felon?
- 12 A. Yes, sir.
- 13 Q. All right. I want to show you what's been marked
- 14 Defendant's Exhibits 3 and 4. Do you recognize what those
- 15 documents are?
- 16 A. Yes, sir.
- 17 Q. That's part of what they call sentencing sheets, isn't
- 18 it?
- 19 A. Yes, sir.
- 20 Q. And one of those is for attempted murder, correct?
- 21 A. Yes, sir.
- 22 Q. And one of those is for attempted armed robbery,
- 23 correct?
- 24 A. Yes, sir.
- 25 Q. And those are felons, correct?

TESTIMONY OF HERMAN SMITH

- 1 A. Yes, sir.
- 2 Q. And you signed those, correct?
- 3 A. Yes, sir.
- 4 Q. And you signed indicating you were going to plead
5 guilty to those, correct?
- 6 A. Yes, sir.
- 7 (Defendant's 5 was marked for identification.)
- 8 Q. I want to show you what's been marked Defendant's
9 Exhibit 5 for identification. And that's a transcript of
10 your guilty plea from September 27th, isn't it?
- 11 A. Yes, sir.
- 12 Q. Where you agreed to plead guilty in front of Judge
13 Young for attempted murder, correct?
- 14 A. Yes, sir.
- 15 Q. For when you tried to shoot and kill Mr. Thomas,
16 correct?
- 17 A. Yes, sir.
- 18 Q. And to attempted armed robbery.
- 19 A. Yes, sir.
- 20 Q. For when you tried to steal something from Mr. Thomas.
- 21 A. Yes, sir.
- 22 Q. So you are a convicted felon, aren't you?
- 23 A. I guess so.
- 24 Q. And this is your handwriting on these sentencing
25 sheets.

TESTIMONY OF HERMAN SMITH

1 A. Yes, sir.

2 Q. And is that transcript a fair and accurate copy of your
3 guilty plea?

4 A. Yes, sir.

5 MR. GRIMES: Your Honor, at this time I move to
6 introduce Defendant's Exhibits 3 and 4 into evidence.

7 THE COURT: Any objection.

8 MR. YOUNG: Judge, I object to the transcript.

9 MR. GRIMES: I didn't offer the transcript.

10 THE COURT: Counsel, bring 3 and 4.

11 (WHEREUPON, a bench conference was had.)

12 THE COURT: Defendant's 3 and 4 in evidence without
13 objection. Thank you.

14 (The sentencing sheets were received as
15 Defendant's 3 and 4.)

16 Q. And do you recall your bond hearing?

17 A. Sir?

18 Q. Do you recall after you were arrested you were taken in
19 front of Judge Lumbard, I believe, for a bond hearing?

20 A. Yes, sir.

21 Q. And you had a bond set at \$270,000?

22 A. Yes, sir.

23 Q. And you went later on before Judge Gosnell for a bond
24 reduction?

25 A. Yes, sir.

TESTIMONY OF HERMAN SMITH

- 1 Q. And your bond was reduced to \$100,000?
- 2 A. Yes, sir.
- 3 Q. And as a condition of your bond you were placed on
- 4 house arrest?
- 5 A. No, sir.
- 6 Q. What was your answer?
- 7 A. No, sir.
- 8 Q. You were not placed on house arrest?
- 9 A. No, sir.
- 10 Q. Again, you're testifying under oath today that you were
- 11 not on house arrest?
- 12 A. No, sir.
- 13 Q. I want to show you a copy marked Defendant's Exhibit 6
- 14 for identification. Do you recall what that document is?
- 15 A. My bond.
- 16 Q. Sir?
- 17 A. My bond.
- 18 Q. And what are the conditions of your bond? Does that
- 19 refresh your memory as to whether you were on house arrest?
- 20 A. I wasn't.
- 21 Q. You wasn't?
- 22 A. No, sir.
- 23 Q. Is this a fair and accurate copy of your bond order?
- 24 A. Yes, sir.
- 25 Q. And filed in the clerk of court's office?

TESTIMONY OF HERMAN SMITH

1 A. Yes, sir.

2 MR. GRIMES: Your Honor, at this time I would move to
3 introduce Defendant's Exhibit 6 for identification into
4 evidence.

5 MR. YOUNG: No objection, Judge.

6 THE COURT: Defendant's 6 in evidence without
7 objection. d

8 (The bond paper was received as Defendant's 6.)

9 MR. GRIMES: May I publish it to the jury at this time?

10 THE COURT: You may.

11 Q. The other conditions say \$100,000 surety, 24 hour house
12 arrest other than work, medical, attorney visits, court
13 appearances, correct?

14 A. Yes, sir.

15 Q. And you violated your conditions of house arrest,
16 didn't you?

17 A. Yes, sir.

18 Q. And you got arrested for simple possession of
19 marijuana?

20 A. Yes, sir.

21 Q. And assault and battery third degree?

22 A. I'm not too sure with assault and battery third degree.

23 Q. You don't remember being arrested for that?

24 A. No, sir.

25 Q. You don't remember being arrested in Dorchester County

TESTIMONY OF HERMAN SMITH

1 May 10, 2012 for the charge of assault and battery third
2 degree on warrant M472972?

3 A. Yes, but I never went to court for that.

4 Q. Because there's a hold on you now for that, right?

5 A. I'm not sure.

6 Q. And you said -- you told Mr. Young you lived in West
7 Ashley?

8 A. I do.

9 Q. That's not Dorchester County, is it?

10 A. No, sir.

11 Q. So you were violating house arrest, weren't you?

12 A. I was never told I supposed to be on house arrest, my
13 bondsman never put that on me.

14 Q. The Court put it on you.

15 A. Yes, I suppose.

16 Q. An honest man follows the court rules, correct?

17 A. Yes, sir.

18 Q. And you didn't follow those rules, did you?

19 A. No, sir.

20 Q. But rather than revoking your bond Mr. Young let you
21 stay out on bond, didn't he?

22 A. Sir.

23 Q. Rather than revoking your bond for violating your
24 condition of house arrest Mr. Young let you stay out on bond
25 until you went to court in September 2012, correct?

TESTIMONY OF HERMAN SMITH

- 1 A. I suppose.
- 2 Q. He didn't revoke your bond, did he?
- 3 A. No, sir.
- 4 Q. You didn't go back to jail until September of 2012,
- 5 correct?
- 6 A. Yes, sir.
- 7 Q. And I believe you testified an honest man doesn't lie
- 8 to the police.
- 9 A. Yes.
- 10 Q. Do you recall giving a statement to Detective Jourdan?
- 11 A. Who.
- 12 Q. Detective Jourdan, Patricia Jourdan.
- 13 A. I really don't know the officer's name.
- 14 Q. It was a female officer, wasn't it?
- 15 A. A female and a male.
- 16 Q. And the male officer was Sergeant Hill, correct?
- 17 A. I couldn't tell you.
- 18 Q. But two officers you testified about your giving a
- 19 statement after you said you turned yourself in, correct?
- 20 A. Yes, sir.
- 21 Q. Now, in your statement to Detective Jourdan she asked
- 22 you if you and Denorris had a gun, correct?
- 23 A. Yes, sir.
- 24 Q. And you told her, "I didn't have a gun, to my knowledge
- 25 Denorris didn't have a gun."

TESTIMONY OF HERMAN SMITH

1 A. Yes, sir.

2 Q. And she asked you later if you saw a person get shot
3 and you told her no, correct?

4 A. Yes, sir.

5 Q. Then later on Sergeant Hill came in, the male officer,
6 correct?

7 A. Yes, sir.

8 Q. And he showed you some pictures, didn't he?

9 A. Yes, sir.

10 Q. And then you realized you had been caught, correct?

11 A. Yes, sir.

12 Q. And then you changed your story from not knowing
13 anything about a gun or shooting, didn't you?

14 A. Yes, sir.

15 Q. Your first story to the police was a lie, wasn't it?

16 A. Yes, sir.

17 Q. And you told the police you lied because you were
18 scared because you had never done anything like this before.

19 A. Yes, sir.

20 Q. And you testified this is you right here shooting the
21 gun, correct?

22 A. Yes, sir.

23 Q. And you told the police that you didn't know the make
24 or model of that gun, didn't you?

25 A. Yes, sir.

TESTIMONY OF HERMAN SMITH

- 1 Q. And you told the police that the gun was an automatic.
- 2 A. Yes, sir.
- 3 Q. And you told the police that you shot the man.
- 4 A. Yes, sir.
- 5 Q. That you fired the gun three times.
- 6 A. Yes, sir.
- 7 Q. And that you tossed the gun by a daycare.
- 8 A. Yes, sir.
- 9 Q. And you told the police you approached a man on Spruill
- 10 because, as you said, D. J. was talking to him.
- 11 A. Yes, sir.
- 12 Q. When he asked you did you and D. J. plan to rob the man
- 13 you said no.
- 14 A. Yes, sir.
- 15 Q. And you told the police the man had a beer and a bag,
- 16 correct?
- 17 A. Yes, sir.
- 18 Q. And he asked you if D. J. was arguing with the man and
- 19 you said no.
- 20 A. Yes, sir.
- 21 Q. And then you kind of explain and you said the man was
- 22 getting close to you and made you feel uneasy.
- 23 A. Yes, sir.
- 24 Q. And then you said that you started thinking "D. J. was
- 25 setting me up to be robbed."

TESTIMONY OF HERMAN SMITH

- 1 A. Yes, sir.
- 2 Q. Or the man was going to do something to me and D. J.
- 3 A. Yes, sir.
- 4 Q. So you thought as you testified that your little
- 5 brother was going to set you up.
- 6 A. I didn't know what had happened, that whole statement I
- 7 lied.
- 8 Q. The whole statement was a lie?
- 9 A. Not the whole statement. Parts were the truth, sir,
- 10 and parts were lies.
- 11 Q. Because you said you wanted to protect a friend.
- 12 A. Yes, sir.
- 13 Q. You have a girlfriend named Kierra, right?
- 14 A. No, sir.
- 15 Q. Are you guys broke up?
- 16 A. I don't know who Kierra is.
- 17 Q. You realize, Mr. Smith, that you are under oath?
- 18 A. I do not know who Kierra is.
- 19 Q. And you have already purged yourself at least two times
- 20 today?
- 21 A. My girlfriend's name is Tierra, not Kierra.
- 22 Q. Okay. I apologize then, I may have misunderstood. So
- 23 Tierra is your girlfriend.
- 24 A. Yes, sir.
- 25 Q. And the police were investigating her to see if she had

TESTIMONY OF HERMAN SMITH

1 anything to do with this, weren't they?

2 A. Yes, sir.

3 Q. Potentially an accessory after the fact for helping you
4 get away?

5 A. Yes, sir.

6 Q. Helping you hide the gun?

7 A. No. Are you asking me did she do those thing or are
8 you telling me?

9 Q. I'm asking you whether the police were investigating
10 her for that.

11 A. I really don't know. All I know is they went to her
12 house and searched her house and that was it.

13 Q. And you told her they were looking for that gun, didn't
14 you?

15 A. Sir?

16 Q. When you talked to her you told her they were looking
17 for the gun.

18 A. No, sir, I never talked to her. Because before when I
19 turned myself in I told them to search my car, after that
20 they just asked me who my girlfriend was and then they
21 searched her house. I never told her that they were looking
22 for the gun.

23 Q. Well, let's be clear, you never talked to her after
24 this event?

25 A. No. I haven't talked to her until I got in booking.

TESTIMONY OF HERMAN SMITH

- 1 Q. What's that?
- 2 A. I didn't talk to her until I got out of booking.
- 3 Q. You talked to her while in were in jail, correct?
- 4 A. Yeah.
- 5 Q. And in jail she called -- well, you can call out to
- 6 her, right?
- 7 A. Yes, sir.
- 8 Q. And she accepted your calls.
- 9 A. Yes, sir.
- 10 Q. And she told you about the police searching her
- 11 apartment.
- 12 A. Yes, sir.
- 13 Q. Or her dad's apartment.
- 14 A. (Nodded.)
- 15 Q. And you told her the police were looking for the gun.
- 16 A. Yes, sir.
- 17 Q. And she was scared, wasn't she?
- 18 A. Yes, sir.
- 19 Q. She was upset.
- 20 A. Yes, sir.
- 21 Q. She didn't want the police going through her place,
- 22 correct?
- 23 A. Correct.
- 24 Q. And you don't want her to get locked up.
- 25 A. Correct.

TESTIMONY OF HERMAN SMITH

1 Q. That would be someone you'd try to protect?

2 A. Sir?

3 Q. And you would want to protect her, wouldn't you?

4 A. Yes, sir.

5 MR. GRIMES: Your Honor, I move to introduce
6 Defendant's Number 2.

7 THE COURT: Any objection?

8 MR. YOUNG: What was 2? I do have an objection to
9 that, Judge. Can we approach for a side bar?

10 (A bench conference was held.)

11 THE COURT: What is it?

12 MR. YOUNG: My objection is under the rules of evidence
13 613, okay, the defendant admits the inconsistencies so you
14 cannot admit that statement. If he denied that he made them
15 then you can admit extrinsic evidence, but however he
16 admitted on the stand he had been lying so he can't put the
17 statement in.

18 MR. GRIMES: I think under the case we handed up from
19 the Supreme Court --

20 THE COURT: That's continued, there's no need. We can
21 have this outside the presence of the jury. All right.

22 (The side bar concluded.)

23 BY MR. GRIMES:

24 Q. Now today you've kind of told a different story,
25 haven't you?

TESTIMONY OF HERMAN SMITH

1 A. Yes, sir.

2 Q. And today you're awaiting sentencing on the charge of
3 attempted armed robbery and attempted murder, correct?

4 A. Yes, sir.

5 MR. GRIMES: May we briefly approach in an abundance of
6 caution?

7 (Bench conference held.)

8 MR. GRIMES: I was going ask him if he realized he's
9 looking at 50 years in prison, I think under Brown it goes
10 to bias, I think I'm allowed to ask him that.

11 MR. YOUNG: I don't think we talked about the time. I
12 mean, you got the point across, he pled guilty to the
13 charges he's facing.

14 MR. GRIMES: I think under the Jefferson case we had a
15 Jefferson type armed robbery, me and McCoy -- I think it's
16 fairly like --

17 THE COURT: Did I let it in?

18 MR. GRIMES: Yeah. Judge Young has let it in.

19 THE COURT: I'm inclined to let it in.

20 MR. YOUNG: Yes, ma'am.

21 THE COURT: And then in my charge I give an instruction
22 that do not concern yourself with sentencing, you may have
23 heard testimony about sentencing but that is within the
24 Court's discretion.

25 MR. YOUNG: I object to it but that's your ruling.

TESTIMONY OF HERMAN SMITH

1 THE COURT: All right. Thank you. Good.

2 (End of side bar.)

3 THE COURT: Note your objection, Mr. Young.

4 BY MR. GRIMES:

5 Q. And you're looking at 20 years on the charge of
6 attempted armed robbery, correct?

7 A. Yes, sir.

8 Q. A charge of 30 years -- up to 30 years on the charge of
9 attempted murder, correct?

10 A. Yes, sir.

11 Q. And you can face a total of 50 years in prison,
12 correct?

13 A. Basically.

14 Q. And you need to do 85 percent of that sentence.

15 A. Yes, sir.

16 Q. There is no two for one. For example, if you spend two
17 days in the county you don't get a day of credit at SCDC.
18 You understand that?

19 A. Yes, sir.

20 Q. And you don't want to go to prison for 50 years, do
21 you?

22 A. No, sir.

23 Q. I'm sorry, I mispronounced your girlfriend's name, is
24 it Tierra?

25 A. Yes, sir.

TESTIMONY OF HERMAN SMITH

- 1 Q. Tierra is not going to be there in 50 years for you, is
2 she?
- 3 A. Who knows.
- 4 Q. And I believe your son is three years old?
- 5 A. Yes, sir.
- 6 Q. He'll be a grown man by the time you get out.
- 7 A. Yes, sir.
- 8 Q. And you don't want to miss all of his birthdays, do
9 you?
- 10 A. No, sir.
- 11 Q. And I know you have a pretty close relationship with
12 your mother and your other family, correct?
- 13 A. Yes, sir.
- 14 Q. And you don't want to miss them and go to prison, do
15 you?
- 16 A. No, sir.
- 17 Q. So if you can help yourself out you would do that,
18 wouldn't you?
- 19 A. Of course, anybody would.
- 20 Q. Now, while -- this case happened over two years ago,
21 correct?
- 22 A. Correct.
- 23 Q. I believe your attorney is up here in the front row.
- 24 A. Yes, sir.
- 25 Q. And you even had a chance to meet with him.

TESTIMONY OF HERMAN SMITH

1 A. Yes, sir.

2 Q. And be able to be go over all the sort of Rule 5 and
3 discovery materials.

4 A. Yes, sir.

5 Q. Kind of get your story straight, correct?

6 A. Yes, sir.

7 Q. But you weren't in here for Mr. Thomas's testimony,
8 were you?

9 A. No, sir.

10 Q. So if he testified something different in his statement
11 you wouldn't know that, would you?

12 A. No, sir.

13 Q. So if he testified differently about how the shooting
14 occurred you just got it wrong, right?

15 A. Sir?

16 Q. Then you might have testified differently than him
17 about how the shooting occurred.

18 MR. YOUNG: Objection, Judge.

19 THE COURT: What's the basis?

20 MR. YOUNG: Pitting witnesses.

21 THE COURT: Sustained.

22 Q. Again, you don't know how he testified, do you?

23 A. No, sir.

24 Q. Today is the first time you've said anything about D.
25 J. shooting somebody, correct?

TESTIMONY OF HERMAN SMITH

- 1 A. No, sir.
- 2 Q. When is the first time you told anybody?
- 3 A. When I was talking to my lawyer.
- 4 Q. Now, is that right after you talked to the police?
- 5 A. Sir?
- 6 Q. I'll withdraw that. After you got arrested you talked
- 7 to your family about this matter, correct?
- 8 A. Yes, sir.
- 9 Q. And I think when you were taking to I believe your
- 10 grandfather he told you be careful what you say on jail
- 11 calls because all of it is recorded, correct?
- 12 MR. YOUNG: Objection.
- 13 THE COURT: Hold on, don't answer. What's the basis?
- 14 MR. YOUNG: Hearsay.
- 15 THE COURT: Any exception?
- 16 MR. GRIMES: Offering to show what was said.
- 17 THE COURT: The truth of the matter?
- 18 MR. GRIMES: To show what he was --
- 19 THE COURT: Sustained. Thank you.
- 20 Q. You made a lot of jail calls, correct?
- 21 A. Yes, sir.
- 22 Q. And there's a recorder on the jail calls showing that
- 23 those calls are recorded.
- 24 A. Yes, sir.
- 25 Q. And it comes on every so often.

TESTIMONY OF HERMAN SMITH

1 A. Yes, sir, every day.

2 Q. I want to go back to September 18th, 2010 about 11:30,
3 11:36. Do you recall, I think, calling Kierra?

4 A. What time?

5 Q. About 11:36 on the day you got booked in the county
6 jail.

7 A. Okay.

8 Q. Do you recall telling her that you had come clean and
9 that you had the gun?

10 A. Yes, sir.

11 Q. And that she wanted to bond you out as quickly as she
12 could before the feds came after you?

13 A. If that's what she said.

14 Q. Would you disagree with that?

15 A. With what, her wanting to come get me?

16 Q. Her wanting to bond you out as quickly as she could
17 before the feds come after you.

18 A. Her wanting to come get me, I don't know about the feds
19 situation.

20 Q. But she said that to you, correct?

21 A. I can't recall, this happened two years ago.

22 Q. Okay. If we play the jail tape, would that refresh
23 your memory?

24 A. Sure.

25 MR. GRIMES: Your Honor, we would like permission to

TESTIMONY OF HERMAN SMITH

- 1 play a portion of the jail tape.
- 2 THE COURT: All right. Counsel approach.
- 3 (A bench conference was held.)
- 4 THE COURT: Mr. Young, you're objecting --
- 5 MR. YOUNG: I am objecting.
- 6 THE COURT: -- just for the record. And sustained.
- 7 Thank you. Mr. Grimes?
- 8 MR. GRIMES: Thank you, Your Honor.
- 9 BY MR. GRIMES:
- 10 Q. Now, later on you in that conversation I think told
- 11 Tierra that your cousin had booked you in.
- 12 A. Yes, sir.
- 13 Q. And about later on you were talking about what you
- 14 might be facing and you were telling her you might get a YOA
- 15 sentence, correct?
- 16 A. Yes, sir.
- 17 Q. And YOA is for nonviolent offenders, correct?
- 18 A. I'm not sure.
- 19 MR. YOUNG: Objection, Judge.
- 20 THE COURT: What's your basis?
- 21 MR. YOUNG: Personal knowledge.
- 22 THE COURT: If he knows.
- 23 Q. And you talked about could be just ten months up the
- 24 road.
- 25 A. I -- yes, sir.

TESTIMONY OF HERMAN SMITH

1 Q. For shooting -- that would be basically five months for
2 each hole you put in Mr. Thomas.

3 A. Sir?

4 Q. That would be five months for each hole you put in
5 Mr. Thomas. You thought that was fair?

6 A. Am I supposed to say?

7 Q. And a little bit later that evening I think you were
8 still talking to Tierra and you told her -- you told her
9 what you had known.

10 A. Yes, sir.

11 Q. And that you weren't looking at anything too bad?

12 A. Yes, sir.

13 Q. And then later on you said that you shot him in self
14 defense.

15 A. Yes, sir.

16 Q. Because he kept trying to approach you.

17 A. Yes, sir.

18 Q. And then you got paranoid.

19 A. Yes, sir.

20 Q. And later in that conversation you said you might get
21 probation.

22 A. Yes, sir.

23 Q. And then later in that conversation you said again that
24 you were acting in self defense.

25 A. Yes, sir.

TESTIMONY OF HERMAN SMITH

- 1 Q. And that Denorris was trying to set you up.
- 2 A. Yes, sir.
- 3 Q. Let me ask you a question. What is a ratchet?
- 4 A. A what?
- 5 Q. What is a ratchet?
- 6 A. It's a dance.
- 7 Q. A dance?
- 8 A. Yes, sir.
- 9 Q. It's not another word for a gun?
- 10 A. I don't use it nowhere for a gun.
- 11 Q. On September 20th, 2010 about 10:00 you were talking
- 12 with Tierra and you said the ratchet was gone.
- 13 A. I don't recall.
- 14 Q. And then later on in that conversation you again talked
- 15 about you were acting in self defense.
- 16 A. Yes, sir.
- 17 Q. And you were protecting yourself?
- 18 A. Yes, sir.
- 19 Q. And you're running away and you're shooting somebody
- 20 and you shoot somebody in the back and you shoot them in the
- 21 stomach, that's self defense?
- 22 A. No, sir.
- 23 Q. And that's what you were telling your girlfriend?
- 24 A. Yes.
- 25 Q. You said you weren't sure if you shot him.

TESTIMONY OF HERMAN SMITH

1 A. Right.

2 Q. Because you were shooting with your eyes closed.

3 A. Right.

4 Q. Apparently there had been another shooting out there
5 that night, correct? You talked about that, didn't you?

6 A. Sir?

7 Q. You talked about that, didn't you?

8 A. When?

9 Q. On the night of this incident.

10 A. Did I talk about that to the police?

11 Q. No, with your family and Kierra -- I mean Tierra.

12 A. Did I tell her that? I said you're asking did I tell
13 her that?

14 Q. Yes, sir.

15 A. Yes.

16 Q. And then you said that how Mr. Thomas reported this
17 incident about five hours later.

18 A. Yes, sir.

19 Q. And that he might have been shot in this other
20 shooting.

21 A. Yes, sir.

22 Q. Now, again on September 20th, 2010 about 10:15 --
23 basically you got 15 minutes of calls, right?

24 A. Yes.

25 Q. And then you have the -- it hangs up and you have to

TESTIMONY OF HERMAN SMITH

1 call back again.

2 A. Yes.

3 Q. So on the followup call, the one we were just talking
4 about at about a minute 40 in the conversation you were
5 telling Tierra how thinking it was your safety first.

6 A. Yes, sir.

7 Q. And your first instinct was to shoot.

8 A. Yes, sir.

9 Q. And that you had told the police the whole thing.

10 A. Yes, sir.

11 Q. That you might get probation for two years or you might
12 get a YOA.

13 A. Yes, sir.

14 Q. And later on you said that you weren't robbing him.

15 A. Right.

16 Q. And you were talking to D. J. and he tried to get him.

17 A. Right.

18 Q. And then talking about D. J. You said you didn't trust
19 the boy.

20 A. Right.

21 Q. And that's why I did it.

22 A. Right.

23 Q. I believe on your direct testimony you said you've had
24 no contact with Denorris except for a letter.

25 A. Right.

TESTIMONY OF HERMAN SMITH

1 Q. And on September 20th, 2010 about 10:30 didn't you tell
2 Tierra that you and Denorris about got in it, you were about
3 to get it on with him?

4 A. Yeah.

5 Q. And that you got sent to another unit?

6 A. As soon as I was booked in -- I was booked in his unit
7 downstairs with him, as soon as I got booked in not even 30
8 minutes up there in the unit for about five, ten minutes, I
9 was out, me and him said a couple of words, exchanged a
10 couple words and I was out of the unit and that was it.

11 Q. And again, I think maybe you were talking with your
12 friend Soldier, Steven White, correct?

13 A. Right.

14 Q. Kind of bragging to him about how you were about to get
15 it on.

16 A. Right.

17 Q. And then later on you're talking about the ratchet, you
18 said its extinct.

19 A. I don't recall.

20 Q. Okay. Or did Soldier tell you that it was extinct?

21 A. I don't recall.

22 Q. Then later on that night about next discussion at 22 --
23 or 10:46 you were talking about how Denorris flipped the
24 script.

25 A. Yes.

TESTIMONY OF HERMAN SMITH

1 Q. And it upset you that he gave the police your name.

2 A. Yes, sir.

3 Q. And I think you girlfriend told -- you were a three-way
4 with Tierra and Soldier, correct?

5 A. Possibly.

6 Q. And Soldier is asking you, "Well, when is he going to
7 get out," talking about Denorris.

8 A. Right.

9 Q. And your girlfriend told you guys to stop talking like
10 that.

11 MR. YOUNG: Objection, Your Honor it's all hearsay.

12 THE COURT: Is there an exception?

13 MR. GRIMES: Business record exception.

14 THE COURT: Sustained. Move on. Thank you.

15 Q. Now, I want to move to a conversation you had September
16 27th, 2011 after you were -- you were arrested on simple
17 possession of marijuana. Do you recall being arrested for
18 that?

19 A. Yes, sir.

20 Q. And there you were telling Tierra that the police would
21 let you go and you gave them a name?

22 A. Right.

23 Q. You told them this Johnny Rogers.

24 A. Right.

25 Q. And then after you got out of jail that next time I

TESTIMONY OF HERMAN SMITH

1 believe you were in jail is after you pled guilty, correct?

2 A. Sir.

3 Q. After you pled guilty to your charges.

4 A. To this right here?

5 Q. Yes, sir.

6 A. Yes, sir.

7 Q. You were put in custody, correct?

8 A. Yes, sir.

9 Q. And on September 27th, 2012 about 4:15 you were telling
10 Tierra that you got 10 years.

11 A. Yes, sir.

12 Q. And you got that because you cooperated.

13 A. Yes, sir.

14 Q. And later on that evening about 6:48 again you said --
15 you were telling someone that you got 10 years.

16 A. Yes, sir.

17 Q. You'd rather do ten than do 20 or 30?

18 A. Yes, sir.

19 Q. And you started taking about how two days is one day up
20 the road.

21 A. Yes, sir. That's what someone told me so I was
22 referring to what someone told me.

23 Q. And that you might get time served.

24 A. No. I don't know about the time served situation.

25 Q. You don't recall that or --

TESTIMONY OF HERMAN SMITH

- 1 A. I don't recall.
- 2 Q. But you would like to get time served, wouldn't you?
- 3 A. Who wouldn't?
- 4 Q. And then on September 19, 2012 about 7:01 in the
- 5 evening you were complaining about your lawyer, weren't you?
- 6 A. 7:01 in the evening September what?
- 7 Q. 17th, 2012.
- 8 A. This was the day I was booked in, right?
- 9 Q. Yes, sir. Or it may have been 27th at 7:00.
- 10 A. I don't recall.
- 11 Q. Do you recall saying you can't fight the PD?
- 12 MR. YOUNG: Objection, relevance.
- 13 THE COURT: Mr. Grimes?
- 14 MR. GRIMES: I think it goes to show what he may be
- 15 facing if I could finish the rest of my question.
- 16 THE COURT: Move on, thank you. Sustained.
- 17 Q. And I think you were basically talking that if you went
- 18 to trial with him you might have got jail for life?
- 19 A. Possibly.
- 20 Q. And he didn't even try for you.
- 21 A. Sir?
- 22 Q. You said he didn't even try for you?
- 23 A. I don't recall that because I didn't go to trial.
- 24 Q. Then again talking about what you were facing you said
- 25 it's going to be 10.

TESTIMONY OF HERMAN SMITH

1 A. Did I say 10 or 10 to 15? Because that's what I
2 assumed I told my girlfriend.

3 Q. No. This one is going to be 10, 4:50 -- at 7:00 about
4 4-50 into the conversation you said it is going to be 10.

5 A. Okay.

6 Q. And you don't want to go up the road, do you?

7 A. No, sir.

8 Q. Complaining people have long blades up there.

9 A. Yes, sir.

10 Q. And have blocks in their socks.

11 A. Yes, sir.

12 Q. Take away your phone?

13 A. Yes, sir.

14 Q. Take food from you?

15 A. Yes, sir.

16 Q. And you would do anything you could to avoid going to
17 prison, wouldn't you?

18 A. If I got to do it I got to do it. You got to do -- I did the
19 crime so I got to pay, I wouldn't have no problem with it.

20 Q. No problem with doing 50 years for this?

21 A. No, sir, I did the crime.

22 Q. So basically because you did the crime you're going to
23 man up and do your time?

24 A. Yes, sir.

25 Q. Not looking for any breaks?

TESTIMONY OF HERMAN SMITH

- 1 A. No, sir.
- 2 Q. But yet you waited two years before you went to court?
- 3 A. It wasn't on me.
- 4 Q. I'm a little curious about you said you did the crime.
- 5 Per your testimony today you said you saw D. J. walk up and
- 6 kind of grab the bag from Mr. Thomas.
- 7 A. He tried to grab the bag.
- 8 Q. And then once Mr. Thomas broke away he started shooting
- 9 at him.
- 10 A. Yes, sir.
- 11 Q. Where were you at? Where were you standing at during
- 12 the time?
- 13 A. Right by him.
- 14 Q. Right by him?
- 15 A. Well, not directly by him but a couple feet away from
- 16 him.
- 17 Q. Were you helping him try to rob Mr. Thomas?
- 18 A. No, sir.
- 19 Q. Just watching?
- 20 A. Yes, sir.
- 21 Q. So you didn't do a robbery or anything?
- 22 A. No, sir.
- 23 Q. You didn't try to rob him?
- 24 A. No, sir.
- 25 Q. But you told Judge Young you were guilty of that?

TESTIMONY OF HERMAN SMITH

1 A. Yes, sir.

2 MR. GRIMES: Can I have one moment, Your Honor, to
3 double check something?

4 THE COURT: Yes.

5 (Break in proceedings.)

6 Q. Now, I want to -- I want to ask you just a couple more
7 questions about the shooting. No doubt you were in the
8 parking lot --

9 A. Yes, sir.

10 Q. -- when you shot the gun.

11 A. Yes, sir.

12 Q. And where was Mr. Thomas at? Was he in sort of Spruill
13 Avenue or was he across the railroad tracks?

14 A. Saw him on Spruill and right by the railroad tracks,
15 like right in the middle.

16 Q. Was he on the pavement or in the grassy area?

17 A. On the curb, more closely by the curb.

18 Q. And that night you guys, you and Denorris, planned to
19 go to the Three Dollar Lounge.

20 A. Yes, sir.

21 Q. To meet some girls.

22 A. Just chill out.

23 Q. And I guess it gets out sort of close to little bit
24 around two, a little after two?

25 A. A little bit after two.

TESTIMONY OF HERMAN SMITH

1 Q. Okay.

2 MR. GRIMES: May I have one moment, Your Honor?

3 THE COURT: Yes, sir.

4 (Break in proceedings.)

5 Q. If I can just ask you a few more questions. We can
6 agree that you've told Tierra, your mother and your family
7 that you did this.

8 A. Yes, sir.

9 Q. That you had the gun.

10 A. Yes, sir.

11 Q. That you shot the man.

12 A. Yes, sir..

13 Q. You thought D. J. was setting you up.

14 A. Yes, sir.

15 Q. And you didn't trust him.

16 A. Yes, sir.

17 Q. In explaining when you gave your statement is because
18 they have pictures of you and because Denorris had given a
19 statement.

20 A. You asked me why I gave a statement to my parents or
21 the police?

22 Q. To the police..

23 A. Why I gave that statement to the police?

24 Q. Yes, sir.

25 A. The statement wasn't all true.

TESTIMONY OF HERMAN SMITH

1 Q. And after this trial is over you go back before Judge
2 Young for sentencing, correct?

3 A. Yes, sir.

4 Q. And I think you testified that your lawyers told you
5 you might get between 10 and 15 years?

6 A. I said he was going to try that but looking at 50.

7 Q. Did he tell you that he, the judge and Mr. Young all
8 had a conference?

9 A. No, sir.

10 Q. And you understand when the State makes a
11 recommendation or tells the Court about cooperation that can
12 carry a lot of weight, correct?

13 A. Yes, sir.

14 Q. So you want to be on Mr. Young's good side when you
15 come back for sentencing, correct?

16 A. I suppose.

17 MR. GRIMES: Thank you. Your Honor, no further
18 questions.

19 THE COURT: Redirect?

20 MR. YOUNG: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. YOUNG:

23 Q. Mr. Smith, let's talk about your bond. The comment Mr.
24 Grimes asked about the house arrest.

25 A. Yes, sir.

TESTIMONY OF HERMAN SMITH

- 1 Q. Did you know you were on house arrest?
- 2 A. No, sir.
- 3 Q. Did you attend a bond hearing when Gosnell
- 4 (phonetically) ordered your house arrest on bond?
- 5 A. No, sir.
- 6 Q. So you know about it today?
- 7 A. Yes, sir.
- 8 Q. And you were obviously on house arrest.
- 9 A. Yes, sir.
- 10 Q. But you weren't at the hearing.
- 11 A. I was not represented at that hearing.
- 12 Q. You weren't at that bond reduction hearing.
- 13 A. Yes, sir.
- 14 Q. Let's talk about your plea.
- 15 MR. YOUNG: May I approach the witness?
- 16 THE COURT: Yes.
- 17 Q. Mr. Smith, I'm going to show you what's marked and
- 18 admitted Defendant's Exhibits 3 and 4. Ask you to take a
- 19 look at that sentencing sheet on the ELMO. Can you see
- 20 that?
- 21 A. Yes, sir.
- 22 Q. What is that sentencing sheet for?
- 23 A. Attempted armed robbery.
- 24 Q. Okay. Tell me what the box where recommendation is
- 25 where my finger is, is this box checked right here?

TESTIMONY OF HERMAN SMITH

- 1 A. No, sir.
- 2 Q. Recommendation by the State?
- 3 A. No, sir.
- 4 Q. How about negotiation by the State?
- 5 A. No, sir.
- 6 Q. How about without recommendation or negotiations?
- 7 A. Yes, sir.
- 8 Q. Is that box checked?
- 9 A. Yes, sir.
- 10 Q. This is your signature right here?
- 11 A. Yes, sir.
- 12 Q. And this is my signature?
- 13 A. Yes, sir.
- 14 Q. And this is when you pled.
- 15 A. Yes, sir.
- 16 Q. I'm going to show you what's been marked State's 4.
- 17 What is this a plea to?
- 18 A. Attempted murder, murder?
- 19 Q. Tell me about these boxes. Is negotiation checked?
- 20 A. No, sir.
- 21 Q. Is recommendation checked?
- 22 A. No, sir.
- 23 Q. Is without negotiation or recommendations checked?
- 24 A. Yes, sir.
- 25 Q. Whose signature is that?

TESTIMONY OF HERMAN SMITH

- 1 A. Yours.
- 2 Q. Whose is that?
- 3 A. Mine.
- 4 Q. Whose is that?
- 5 A. My lawyer.
- 6 Q. Mr. Butler?
- 7 A. Yes, sir.
- 8 Q. Now, Mr. Smith, it's fair to say you're hoping to get a
9 better sentence for coming in here and telling the truth,
10 right?
- 11 A. Yes, sir.
- 12 Q. And that's no secret. But have I promised you
13 anything; YOA, time served, probation, two years, 10 years
14 50 years, zero years?
- 15 A. No, sir.
- 16 Q. And you admit -- let's talk about your statement. You
17 admit that in your statement there are some lies.
- 18 A. Yes, sir.
- 19 Q. And there's also some truth.
- 20 A. Yes, sir.
- 21 Q. And tell the jury why you lied in that statement.
- 22 A. I didn't want to befriend a friend.
- 23 Q. What does that mean?
- 24 A. I didn't want to tell on him.
- 25 Q. Didn't want to tell on him?

TESTIMONY OF HERMAN SMITH

1 A. No, sir.

2 Q. Were you scared at all?

3 A. I wasn't scared. Well, for the police part I was, I
4 really never been in no situation like that before, but
5 other than that I just don't want to tell on him.

6 Q. Mr. Grimes asked you about this planning to rob him.
7 In your statement you talked about that you didn't plan to
8 rob him.

9 A. Yes, sir.

10 Q. What do you -- when I say plan to rob, what do you
11 think that means? Does that mean you're sitting around for
12 a couple days thinking about it?

13 A. Yes, sir.

14 Q. Did you sit around for a couple of days thinking about
15 this?

16 A. No, sir.

17 Q. Did this mean it just kind of happened when you were
18 walking?

19 A. Yes, sir.

20 Q. Whose idea was it?

21 A. Denorris.

22 Q. And you talked about the pleading to attempted armed
23 robbery.

24 A. Yes, sir.

25 Q. And you said that Denorris was the one that tried to

TESTIMONY OF HERMAN SMITH

- 1 rob him.
- 2 A. Yes, sir.
- 3 Q. Are you familiar with the hand of one, hand of all law?
- 4 A. Yes, sir.
- 5 Q. What does that mean?
- 6 A. That means --
- 7 MR. GRIMES: Objection, Your Honor.
- 8 THE COURT: Basis?
- 9 MR. GRIMES: It's lack of personal -- asking for a
- 10 legal basis.
- 11 THE COURT: If he knows he may answer.
- 12 Q. Tell me what you think that means.
- 13 A. If I was with him and he shot somebody I'm accountable
- 14 for that too, just as if he robbed somebody and I was right
- 15 there I'm accountable for that too.
- 16 Q. Okay. Is that the law of this state?
- 17 A. Yes, sir.
- 18 Q. Now, you admittedly lied to some people --
- 19 A. Yes, sir.
- 20 Q. -- the police, and sounds like to some of your family
- 21 members about how much time you are getting.
- 22 A. Yes, sir.
- 23 Q. But today why are you here?
- 24 A. To tell the truth and set the record straight.
- 25 Q. Do you want to be here today? Is this fun for you?

TESTIMONY OF HERMAN SMITH

- 1 A. No, sir.
- 2 Q. But you want to tell the truth?
- 3 A. Yes, sir.
- 4 Q. And you could get zero years and you can get 50 years,
- 5 couldn't you?
- 6 A. Yes, sir.
- 7 Q. And I haven't promised you a thing, have I?
- 8 A. Not a thing.
- 9 Q. Have you had discussions with your attorney, Mr. Smith,
- 10 about possible sentences?
- 11 A. Yes, sir.
- 12 Q. And you guys have talked about that?
- 13 A. Yes, sir.
- 14 Q. And so is that where you are getting some of these
- 15 number from?
- 16 A. Yes, sir, the numbers. Yeah, the 10 -- like 10 to 15,
- 17 but other numbers I was just throwing them at my girlfriend
- 18 just trying to not make her worry a lot.
- 19 Q. And you're hoping to get obviously a good sentence on
- 20 your charges?
- 21 A. Yes, sir.
- 22 MR. YOUNG: Nothing further of this witness, Judge.
- 23 THE COURT: Mr. Grimes?
- 24 MR. GRIMES: Thank you, Your Honor.
- 25 RECROSS EXAMINATION

TESTIMONY OF HERMAN SMITH

1 BY MR. GRIMES:

2 Q. You testified a little about that you know what the
3 hand of one, hand of all is.

4 A. Yes, sir.

5 Q. You know what mere presence is?

6 A. No, sir.

7 Q. And just ask you a little bit about the issue about
8 promises. Your sentence has been deferred, correct?

9 A. Yes, sir.

10 Q. If you were an honest man and willing to set the truth
11 straight you could have been sentenced that day, correct?

12 A. Yes, sir.

13 Q. The only reason to defer your sentence is to see how
14 well you do today, isn't it?

15 A. I don't know.

16 Q. To make sure that you do cooperate with the State,
17 that's why they deferred your sentence; isn't that true?

18 A. I don't know.

19 Q. Your attorney didn't tell you that?

20 A. No, sir.

21 Q. If you've pled guilty and you have 50 years hanging
22 over your head you'll do whatever you have to do, wouldn't
23 you?

24 A. Sir?

25 Q. If you've pled guilty and you have 50 years hanging

TESTIMONY OF HERMAN SMITH

1 over your head and Mr. Young says, "Come on and do this for
2 me and maybe" -- then your attorney says, "Maybe you'll get
3 10, 15 years for doing this," you're going to do it,
4 correct?

5 A. Yes, sir.

6 MR. GRIMES: Thank you.

7 THE COURT: Okay. Ladies and gentlemen, this is an
8 appropriate time for us to break for lunch. Do not begin
9 your deliberations, do not discuss this case amongst
10 yourselves, please be back in jury room at 1:30. Please
11 rise for the jury.

12 (The jury left the courtroom.)

13 THE COURT: Thank you, be seated. Mr. Smith, you are
14 excused. Thank you.

15 THE WITNESS: Can I talk to my lawyer?

16 THE COURT: That's between Court security, you are
17 excused from the courtroom. Thank you. With the issue of
18 Defendant's Exhibit 2, based upon my review of the case law
19 and the rule the defendant -- excuse me, Mr. Smith admitted
20 to making it and pursuant to the rule I am not admitting
21 Defendant's 2. Defendant's 2 will not be admitted into
22 evidence. Note your exception for the record. Thank you.

23 MR. GRIMES: Thank you, Your Honor.

24 (A lunch break was taken.)

25 THE COURT: Just for the record we have been waiting on

TESTIMONY OF HERMAN SMITH

1 the alternate, the alternate just arrived and we will begin
2 with the trial. Anything before we bring in the jury?

3 MR. YOUNG: No, Your Honor.

4 MR. GRIMES: Yes, Your Honor. We'd like to place the
5 bench conference that we had before the lunch break onto the
6 record.

7 THE COURT: And what would you like to place on the
8 record, Mr. Grimes? Was that on the record? It's already
9 on the record.

10 MR. GRIMES: It was already on the record?

11 THE COURT: Yes, sir. Thank you, preserved for
12 appellate purposes, Mr. Grimes. Thank you.

13 (The jury returned to the courtroom.)

14 The witness, JAMES HILL, was first duly sworn
15 and testified as follows on:

16 DIRECT EXAMINATION

17 THE CLERK: Please state your full name and spell your
18 last.

19 THE WITNESS: James Michael Hill, Jr., H-i-l-l.

20 BY MR. WHETMORE:

21 Q. Officer Hill, tell us how long you've been with law
22 enforcement.

23 A. I started my law enforcement career in 1992.

24 Q. And have you been with North Charleston this whole
25 time?

TESTIMONY OF JAMES HILL

1 A. No, sir.

2 Q. Where else did you serve?

3 A. I started out in Charleston County Detention Center,
4 and from there I went to the Calhoun County Sheriff's
5 Department, and from Calhoun County Sheriff's Department I
6 came to the North Charleston Police Department.

7 Q. So how long have you been with North Charleston?

8 A. Around 2000.

9 Q. Tell me, did they help you to receive some training or
10 any kind of experience to help you do your job?

11 A. Yes, sir.

12 Q. Can you give us a very brief rundown about this
13 training or experiences?

14 A. I've attended numerous homicide conferences,
15 investigator conferences, interview interrogation classes,
16 radar. Most of my training has been surrounded around
17 investigations.

18 Q. And back in September of 2010 what were your duties and
19 responsibilities with North Charleston?

20 A. I was a sergeant over violent crime and investigations.

21 Q. So you actually were the overseer of the violent crimes
22 part of the investigations division.

23 A. Yes, sir.

24 Q. In that role I would imagine that you probably were
25 involved in several armed robberies, several shootings,

TESTIMONY OF JAMES HILL

1 things like that?

2 A. Yes, sir. I handled murders, robberies, assaults, you
3 know, usually assaults involving firearms, knives, where
4 there was great bodily injury, or potentially could be great
5 bodily injury.

6 Q. So in your role as a supervisor of the violent crimes
7 unit is it fair to say that you took part in most incidents
8 of violent crime?

9 MR. GRIMES: Objection, leading.

10 THE COURT: Rephrase your question, Mr. Whetmore.

11 Q. Did you as a supervisor of the violent crimes unit, did
12 you take part in some role in most violent crimes in North
13 Charleston?

14 A. Yes, sir.

15 Q. Now, I want to focus on the event that we're here for.
16 Did you ever respond to the scene of this attempted armed
17 robbery, this shooting?

18 A. I believe I responded hours after it happened.

19 Q. So into the next -- that same day but earlier --

20 A. Correct.

21 Q. -- later in the day, in the daylight part of the day?

22 A. Correct.

23 Q. Can you tell us what you saw when you went to the
24 scene?

25 A. Myself and Lieutenant Perry went back to the bank and

TESTIMONY OF JAMES HILL

1 Spruill Avenue area in front of what used to be called the
2 Three Dollar Lounge where the victim said he crossed the
3 street and we were looking for any other evidence, and we
4 located some shell casings.

5 Q. Tell us about that. Where did you find those shell
6 casings?

7 A. I believe it was where Spruill and McMillan meet. If
8 you come west of McMillan back towards Park Circle a little
9 ways down -- in between the bank and the Three Dollar Lounge
10 on Spruill Avenue.

11 Q. And you said you found some shell casings.

12 A. Correct.

13 Q. And tell me, if you know, how do shell casings play
14 into the firing of firearms?

15 A. Can you rephrase that?

16 Q. When a gun is fired what happens to the shell casings?

17 A. If it's a semiautomatic it expels, it gets ejected from
18 the firearm.

19 Q. So a handgun is fired and the shell casings are
20 ejected?

21 A. Yes, sir. Semiautomatic revolvers do not eject shell
22 casings.

23 Q. Okay. So semiautomatics they are ejected, revolvers
24 stay in the barrel?

25 A. Right. Revolvers --

TESTIMONY OF JAMES HILL

1 Q. -- or the chamber?

2 A. -- are a wheel gun, if you're not familiar --

3 Q. Now, the shell casings in this case that you found,
4 what caliber were they?

5 A. .25.

6 Q. .25 caliber?

7 A. Yes, sir.

8 Q. Is that a fairly common round to see at shootings and
9 things like that?

10 A. No, sir.

11 Q. Are you aware that the co-defendant, Smith, testified
12 earlier that this defendant shot a .25?

13 MR. GRIMES: Objection, calls for hearsay, lack of
14 personal knowledge.

15 THE COURT: Sustained.

16 Q. Now, talking about the co-defendant, Mr. Smith, he
17 testified before that he had not been truthful with you when
18 you took his statement initially. It's my understanding
19 that you did talk with this co-defendant, Mr. Smith?

20 A. Yes, sir, I interviewed him.

21 Q. So he advised he was not initially truthful with you.
22 Can you --

23 MR. GRIMES: Objection, Your Honor, he's leading still.

24 THE COURT: Overruled.

25 Q. Can you describe your impression of that conversation

TESTIMONY OF JAMES HILL

1 with Mr. Smith?

2 A. During Mr. Smith's interview he was not admitting to
3 being involved in the incident, and during the interview I
4 brought in some photographs that were taken from the footage
5 of the cameras at the bank and showed him pictures of
6 himself, and at that point I guess he made up in his mind
7 that, you know, we had him and he started telling us what
8 occurred.

9 Q. So you agree with Mr. Smith's characterization at first
10 he was untruthful and then became truthful.

11 A. Yes, sir.

12 Q. But he only did that when you guys confronted him.

13 A. Correct.

14 Q. So you did confront him with photographs. Did you make
15 him any kind of promises?

16 A. No, sir.

17 Q. Any kind of threats?

18 A. No, sir.

19 Q. He just felt it was time to come clean?

20 A. Yes, sir.

21 Q. That was Defendant Smith and he's obviously not on
22 trial, Mr. Hall is on trial here. Did you at any point meet
23 with Mr. Hall?

24 A. For Miranda, yes, sir.

25 Q. And as a part of that statement -- his statement you

TESTIMONY OF JAMES HILL

1 gave him his Miranda rights.

2 A. Yes, sir.

3 Q. Describe how that process took place.

4 A. Mr. Hall was brought in, we sat in interview and spoke
5 for a short time and then I advised him of his rights, and
6 if you show me the form North Charleston Police Department
7 Advisement of Rights, I go over the form with them and make
8 sure they understand and acknowledge each of their rights
9 individually and then they sign off on it, and then at the
10 bottom there's an admonition saying that they waived their
11 rights and that they're willing to talk to us freely and
12 voluntarily.

13 Q. And that is the process that you went through with Mr.
14 Hall.

15 A. Yes, sir.

16 MR. WHETMORE: If I may approach, Your Honor?

17 THE COURT: You may.

18 Q. I'm going to show you what has previously been marked
19 as State's Exhibit 1. Can you take a look at that and see
20 if you can identify that.

21 A. Yes, sir. This is the North Charleston Police
22 Department Advice of Constitutional Rights that I read Mr.
23 Hall.

24 Q. So that's a copy of the very form that you read Mr.
25 Hall.

TESTIMONY OF JAMES HILL

1 A. Yes, sir.

2 Q. If you would, just share with the jury what warnings or
3 what protections you read to him.

4 A. You want me to go through each -- the whole form?

5 Q. Yes, sir.

6 A. Basically on the top of the form it has our case number
7 and then the full name of the subject being Mirandized which
8 is Denorris Hall, his date of birth, his age, the highest
9 grade he completed at school and whether he has a GED or a
10 diploma. And then first is, "I, Denorris Hall, have been
11 advised by Sergeant J. M. Hill, Jr. of the North Charleston
12 Police Department that "-- and generally I'll get -- to
13 insure that the individual that I'm reading Miranda to can
14 read and write and comprehend I get them to read a right or
15 two just to make sure that they're reading it clearly. I
16 believe in this case he read his first right and then I read
17 each right thereafter. Do you want me to read the right?

18 Q. Sure, please.

19 A. The first one is, "I have the absolute right to remain
20 silent and do not have to answer any questions or give a
21 statement, and this fact cannot be used against me." At
22 that point I'll ask him, "Do you understand it or have any
23 questions?" If they have questions I'll answer them, if
24 they acknowledge "I understand it" I'll get them to initial
25 beside the line saying they understand it. Next right, "If

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

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MAY 28 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

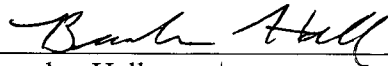
DENORRIS HALL,

APPELLANT

APPELLATE CASE NO. 2012-213248

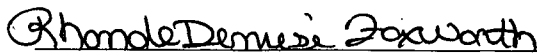
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 28th day of May, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 28th day of May, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021