

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM MARLBORO COUNTY
Court of General Sessions

Edward B. Cottingham, *Circuit Judge*

Appeal No. 2012-213461

STATE OF SOUTH CAROLINA,

Respondent,

vs.

TYRONE J. KING,

Appellant.

Record on Appeal

Howard W. Anderson III
LAW OFFICE OF
HOWARD W. ANDERSON III, LLC
PO Box 851
Clemson, SC 29633-0851
(864) 643-5790
*Appointed Pursuant to the Appellate
Practice Project*

Hon. Alan Wilson
Attorney General

John W. McIntosh
Chief Deputy Attorney General

Donald J. Zelenka
Assistant Deputy Attorney General

-and-

Alphonso Simon Jr.
Assistant Attorney General

Robert M. Dudek
DIVISION OF APPELLATE DEFENSE
PO Box 11433
Columbia, SC 29211-1433
(803) 734-1343

South Carolina Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6307

Attorneys for Appellant.

Attorneys for Respondent.

RECEIVED

JUN 18 2014

SC Court of Appeals

INDEX TO THE RECORD

Orders:

Order denying Defendant's Motion for New Trial	1

Judgments:

Sentencing sheet (2012-GS-34-0024)	2
Sentencing sheet (2012-GS-34-0026)	3
Sentencing sheet (2012-GS-34-0028).....	4

Pleadings:

Indictment (2012-GS-34-0024).....	5
Indictment (2012-GS-34-0026).....	7
Indictment (2012-GS-34-0028).....	9

Transcript:

Transcript begins for proceedings of August 6, 2012.....	11
a. Colloquy.....	12
Transcript begins for proceedings of September 10-13, 2012, Vol I.	14
a. Pretrial motions.....	15
Transcript begins for proceedings of September 10-13, 2012, Vol. II.	67
b. Colloquy.....	68
c. Opening Statements:	
1. The State.....	79
2. The Defense.....	85
d. Testimony of Karen Galloway	
1. Direct.....	91
2. Cross.....	98

e. Testimony of Reggie Cousar:	
1. Direct.....	102
2. Cross.....	107
f. Testimony of Devonte M.	
1. Direct.....	110
2. Cross.....	117
g. Testimony of Timothy Shaw	
1. Direct.....	190
h. Testimony of Ricardo Prince	
1. Direct.....	130
i. Testimony of Shawn Feldner	
1. Direct.....	158
2. Cross.....	170
3. Redirect.....	172
j. Colloquy.....	173
k. Testimony of Aloysius McLaughlin	
1. Direct.....	178
2. Cross.....	180
l. Testimony of Melissa Graham	
1. Direct.....	183
2. Cross.....	188
m. Colloquy.....	189

Transcript begins for proceedings of September 10-13, 2012, Vol. III.....	192
a. Testimony of Jamie Seales	
a. Direct.....	193
b. Cross.....	203
c. Redirect.....	204
b. Testimony of Nicholas Batalis	
a. Direct.....	207
c. Testimony of John Roberts	
a. Direct.....	219
b. Cross.....	228
d. Testimony of Michelle Eichenmiller	
a. Direct.....	229
e. Proceedings on motion for directed verdict.....	237
Transcript begins for proceedings of September 10-13, 2012, Vol. IV.....	245
a. Closing Arguments	
1. The State.....	246
2. The Defense.....	269
b. Jury questions.....	289
c. Jury verdict.....	290
Transcript begins for proceedings of October 10, 2012.....	296
a. Colloquy.....	298

Charges:

Charge of the Court.....	309

Exhibits:

1. Court's Exhibits:

a. Court's Ex. 1 (email from Tristan Shaffer).....	330
b. Court's Ex. 3 (jury note).....	331
c. Court's Ex. 4 (jury note).....	332

2. Trial Exhibits:

a. Ex. 4 (DVD – 11/16/11).....	Separately filed
b. Ex. 5 (DVD – 11/11/11)	Separately filed
c. Ex. 8 (Autopsy Report).....	333
d. Ex. 40 (DVD – 911 call).....	Separately filed

Other:

Notice of appeal.....	344
Defendant's Motion for New Trial.....	346
Certificate of Service and Filing for Defendant's Motion for New Trial.....	359

Certificates of Counsel:

Attorney Certificate.....	360
Certificate of Service.....	361

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

IN THE COURT OF GENERAL SESSIONS
FOR THE FOURTH JUDICIAL CIRCUIT

2012-GS-34-0024;0028;0029;0026

STATE OF SOUTH CAROLINA,

VS.

ORDER DENYING DEFENDANT'S
MOTION FOR A NEW TRIAL

TYRONE KING,

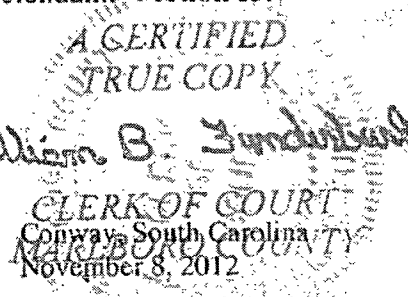
DEFENDANT.

On Wednesday, October 10th, 2012, the Court heard Defendant Tyrone King's Motion for a New Trial that was filed in the above-styled and numbered cause. Upon consideration of the motion, evidence on file, response, the record and arguments of counsel, the Court finds that the Motion for a New Trial is DENIED on the following grounds:

- Juror Natasha Covington denies being related to the Defendant's Girlfriend, Shakera Liles, also referred to as Defendant's Common Law Wife. Furthermore, Juror Covington denies having any type of relationship with Ms. Liles.
- Both parties were given an opportunity to redact the videos and/or agree to the redacted times when played before the court, following pre-trial motions on August 27th, 2012. The Court then ruled upon admissibility of the video statements on September 10th, before the trial began.
- The Defendant did not object during the trial to the alleged statement given by the State during the closing argument regarding the definition of 'Beyond a Reasonable Doubt.' Furthermore, this Court /Judge provided the charge to the jury upon charging the jury and again when the jury had a question on another matter, the Jury was given the entire Jury Instruction a second time.

It is therefore ORDERED, ADJUDGED and DECREED that Defendants' Motion for New Trial is DENIED.


The Honorable Edward B. Cottingham
Fourth Judicial Circuit


A CERTIFIED
TRUE COPY
William B. Zundin
CLERK OF COURT
Conway, South Carolina
November 8, 2012

2012 NOV 21 PM 2 15
FILED

COUNTY OF
STATE

Marlboro

VS.

Tyrone J King

AKA:

Race: Black Sex: M Age: 26

DOB: 986 SS#:

Address:

C State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: MURDER

INDICTMENT/CASE#: 2012-GS-34-0024

A/W#: M730971

Date of Offense: 11/11/2011

S.C. Code § 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: David, Mia SC Bar# 77112 Defendant 77505 Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred: ☐ Def. Waives Hearing: ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (DUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

A CERTIFIED
TRUE COPY☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk of Court during probation.

Presiding Judge

Judge Code:

Sentence Date:

Record Page 2 of 361

STATE OF SOUTH CAROLINA

COUNTY OF Marlboro
STATE VS.
Tyrone J King

AKA:

Race: Black Sex: M Age: 26DOB: 1986 SS#:

Address:

City, State, Zip:

DI#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was,
TO: Poss. weapon during violent crime, if not also sentenced to life without parole or death.in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations/for Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST Mia David 7/1/12 Defendant 7751/S Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2012-GS-34-24
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP Total: \$ plus 20% fee: \$ ayment Terms: ☐ Set by SCDPPPSRecipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforc. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL:	\$

Clerk of Court/Deputy Clerk

Court Reporter: Hattie Gordon

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-34-0026A/W#: M730973Date of Offense: 11/11/2011S.C. Code § 16-23-0490CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations/for Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST Mia David 7/1/12 Defendant 7751/S Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2012-GS-34-24
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP Total: \$ plus 20% fee: \$ ayment Terms: ☐ Set by SCDPPPSRecipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforc. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL:	\$

Presiding Judge

Judge Code: 2011Sentence Date: 9-13-12

Record Page 3 of 361

S E OF: UTH CAROLINA

COUNTY OF
STATE

Marlboro

VS.

Tyrone J King

AKA:

Race: Black Sex: M Age: 26

DOB: 1986 SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: ASSAULT AND BATTERY

in violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code #

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

David, Mia

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$, plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. time served☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ REST ITION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

Record Page 4 of 361

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-34-0028

A/W#: M730974

Date of Offense: 11/11/2011

S.C. Code § 16-03-0600(B)(1)

CDR Code #: 3411

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

CDR Code # 3414

☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

(defendant's initials)

Recommendation by the State.

77565

Attorney for Defendant

SC Bar#

☐ County Detention Center,

years and/or to pay a fine of \$

days/months/years and/or payment

probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. time served☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ REST ITION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (DUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO)

INDICTMENT FOR

Murder

§16-03-0010; 16-03-0020

At a Court of General Sessions, convened on January 31, 2012, the Grand Jurors of Marlboro County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Tyrone J King did in Marlboro County, on or about November 11, 2011, willfully, feloniously, and intentionally kill the victim, James Galloway, with malice aforethought, either express or implied, by means of shooting the victim, and the victim did die as a proximate result thereof on or about November 11, 2011 in Marlboro County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and serenity of the State, and contrary to the statute in such case made and provided.

A CERTIFIED
TRUE COPY
William B. Rogers, Jr.
CLERK OF COURT
MARLBORO COUNTY


WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

James Campbell

Marlboro County Sheriff

Law Enforcement Case #: 2011-7239

James Campbell S

347

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
M730971

ARRESTED ON: 2011-11-14

ACTION OF GRAND JURY

True Bill
Danille Turner

Grand Jury Foreperson

1-31-12

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2012-GS-34-0024

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
January 2012

THE STATE

vs.

Tyrone J King

INDICTMENT FOR

Murder

§16-03-0010; 16-03-0020

CDR Code: 0116

WILLIAM B. ROGERS, JR.
CLERK OF COURT
MARLBORO COUNTY, S.C.

William B. Rogers, Jr., Solicitor

FILED

§16-23-0490

CDR: 0549 16-23-0490

That Tyrone J King did in Marlboro County, on or about November 11, 2011, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission of a violent crime, to wit: murder, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided


WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

James Campbell

Marlboro County Sheriff

Law Enforcement Case #: 2011-7239

 347

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

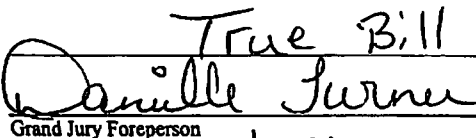
I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
M730973

ARRESTED ON: 2011-11-14

ACTION OF GRAND JURY

True Bill


Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2012-GS-34-0026

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
January 2012

THE STATE

vs.

Tyrone J King

INDICTMENT FOR

Poss. Weapon During the Commission of a
Violent Crime

§16-23-0490

CDR Code: 0549

William B. Rogers, Jr., Solicitor

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARLBORO) Assault & Battery of a High and Aggravated Nature

§16-03-0600(B)(1)

At a Court of General Sessions, convened on January 31, 2012, the Grand Jurors of Marlboro County present upon their oath:

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

CDR: 3411, 16-3-600(B)

That Tyrone J King did in Marlboro, on or about November 11, 2011, unlawfully injure Karen Galloway, the act was accomplished by means likely to produce death or great bodily injury, to wit: did hit the victim about the head area with a gun causing it to discharge while threatening the victims life, in violation of Section 16-3-600(B) of S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

James Campbell

Marlboro County Sheriff

Law Enforcement Case #: 2011-7239

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
M730974

ARRESTED ON: 2011-11-14

ACTION OF GRAND JURY

True Bill
Danielle Turner
Grand Jury Foreperson

Date 1-31-12

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2012-GS-34-0028

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:
January 2012

THE STATE

vs.

Tyrone J King

INDICTMENT FOR

Assault & Battery of a High and Aggravated
Nature

§16-03-0600(B)(1)

CDR Code: 3411

WILLIAM B. ROGERS, JR.
CLERK OF COURT
MARLBORO COUNTY, S.C.
2012 FEB 1 PM 2 02

FILED William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF MARLBORO) 2012-GS-34-0024
) 2012-GS-34-0026
) 2012-GS-34-2028

STATE OF SOUTH CAROLINA)
) PLAINTIFF
) vs.) TRANSCRIPT OF RECORD
))
TYRONE J. KING)
) DEFENDANT)

August 6, 2012
Bennetttsville, South Carolina

B E F O R E:

THE HONORABLE EDWARD B. COTTINGHAM, JUDGE.

A P P E A R A N C E S:

MIA B. DAVID, ASSISTANT SOLICITOR
Attorney for the State

TRISTAN M. SHAFFER, ESQUIRE
Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

COLLOQUY

1
2 MR. SHAFFER: Your Honor, I'm here on behalf of Mr.
3 King. We're asking for a continuance. This is set for
4 trial in the week of the 10th, I believe, of today, and
5 we're asking that it be continued for an extra term so
6 that I can be better prepared for the case.

7 THE COURT: Where is the Solicitor ---

8 MS. DAVID: Right here.

9 THE COURT: --- to give me the factual basis for the
10 trial and can you be ready September the 10th?

11 MS. DAVID: Oh, absolutely, Your Honor.

12 THE COURT: What is your position with reference to
13 his motion for continuance?

14 MS. DAVID: I think his motion for continuance should
15 be denied. They have had sufficient notice that this case
16 was to be tried. In April the Judge ordered that the case
17 be tried within six months, and I told the judge at that
18 time that I would try the case within six months and I set
19 it for September. So this date has been set for certain
20 since April, so.

21 THE COURT: Counsel, I'm not going to defy the
22 Judge's order if he ordered the trial. And you've got 30
23 days to get ready, and you've been on the case for how
24 long?

25 MR. SHAFFER: About ten months, Your Honor. Ten

1 months. Since December.

2 THE COURT: I know that you are scheduled that week
3 for two hearings before the Appellate Court, but I'm going
4 to make arrangements to get those transferred and so that
5 you can get ready. And give me the factual basis for the
6 plea -- I mean the trial.

7 MS. DAVID: This case before us, it is a murder where
8 the defendant entered his neighbor's home and allegedly
9 shot the victim, and that is the case that is to be set
10 for trial. We also made the defendant an offer to run the
11 murder and the armed robbery concurrent for 25 years for
12 which he has rejected.

13 THE COURT: Well, what's the facts about the armed
14 robbery?

15 MS. DAVID: Your Honor, I am -- Mary Thomas is
16 working that case. I believe it happened within the
17 jurisdiction of McColl, but I can check with her.

18 THE COURT: The jurisdiction of what?

19 MS. DAVID: Of McColl.

20 THE COURT: And were there any other allegations
21 against him? Is this the case where he ...

22 MS. DAVID: Yes. I think there is also an assault
23 and battery of a high and aggravated nature against the
24 victim's wife where he pistol whipped her.

25 THE COURT: Did she receive -- go to the hospital and

1 your next motion, Mr. Shaffer?

2 MR. SHAFFER: Your Honor, I will be moving to exclude
3 any evidence of the pending armed robbery charge.

4 THE COURT: The what?

5 MR. SHAFFER: The pending armed robbery charge which
6 I believe goes into their Lyle Motion. There is a pending
7 armed robbery charge.

8 THE COURT: No. I'm not going to let that in.

9 MS. DAVID: Your Honor, the pending armed robbery is
10 a part of our 404(B) motion this afternoon to allow the
11 prior bad act in as part of either intent, motive, or the
12 common plan or scheme to show that there is a lack of
13 mistake in the defendant going into this home.

14 THE COURT: Who was the armed robbery against?

15 MS. DAVID: Aloysius McLaughlin and Melissa Graham.
16 The same two individuals that he says were with him when
17 he committed this murder. The same guy that he robbed two
18 weeks prior, he says was the one that actually shot the
19 victim.

20 THE COURT: I'm not likely to let that in.

21 MS. DAVID: Well, will you allow us to present our
22 404(B) motion first?

23 THE COURT: I will.

24 MS. DAVID: Thank you, Your Honor.

25 THE COURT: We'll do that, but I'm not likely to let

1 that in. What you know you've got to balance probative
2 value against prejudicial affect, and in this case you've
3 got eye witnesses as I recall from prior hearings. I'll
4 ~~listen to it, but I'll have some further concern about it,~~
5 okay. What else you got?

6 MR. SHAFFER: Your Honor, should the defendant
7 testify, we talked about this in the bench, I believe that
8 the ---

9 THE COURT: Should what?

10 MR. SHAFFER: Should the defendant testify the State
11 has said that they're not going to try to introduce the
12 juvenile adjudications.

13 THE COURT: No, I agree with that. I will not permit
14 that. He was not convicted under the juvenile procedure.

15 MR. SHAFFER: And then ---

16 THE COURT: Just simply dismiss that without
17 prejudice.

18 MR. SHAFFER: And I believe that there is also two
19 other charges, the grand larceny and the strong armed
20 robbery. I believe that if he testifies those would
21 likely, under the law, come in. I would ask that they be
22 limited to questioning him as to whether or not he was
23 ever the victim of a felony.

24 THE COURT: He's not charged with grand larceny.

25 MR. SHAFFER: This is under a previous charge, Your

1 Honor. To impeach his credibility, Your Honor. If he
2 decides to testify we would ask that the Court limit it to
3 the questioning of whether or not it was a felony
4 conviction versus whether or not it was armed robbery. I
5 mean strong armed robbery or the ---

6 THE COURT: He's not charged with robbery in these
7 proceedings, is he?

8 MR. SHAFFER: Yes, Your Honor. I would just ask that
9 the Court limit it because I believe what they're going to
10 try to establish, and during their 404(B) ---

11 THE COURT: I thought we've already agreed that those
12 are coming in?

13 MR. SHAFFER: Yes, Your Honor. I would just like the
14 phrasing of them to be felonies versus strong arm.

15 THE COURT: No, sir. I'm not going to. If he was
16 charged with armed robbery and had a prior armed robbery I
17 would do that. In this case he's not charged with
18 robbery, and if he's convicted for prior armed robbery I'm
19 going to let it in.

20 MR. SHAFFER: Your Honor, the State is going to
21 attempt to use to establish his basically 404(B)
22 information. His propensity, Your Honor. The State is
23 going to attempt to use as propensity in order to show
24 some sort of motive which I imagine is substantive later
25 on.

1 MS. DAVID: I didn't have any intention of using his
2 prior ---

3 THE COURT: That answers that.

4 MS. DAVID: --- strong armed robbery conviction in my
5 404(B).

6 THE COURT: What do you with this case and you
7 continue to do instead of dealing with this case you're
8 dealing with some appellant issues in cases not involved
9 with this. She's not even going to use that..

10 MR. SHAFFER: Your Honor, I believe that she's going
11 to end up arguing that based off of my understanding of
12 what their 404(B) issue is.

13 THE COURT: I just heard her say that. I'll deal
14 with it as it comes up, and if it does you object to it
15 and I'll rule on it.

16 MR. SHAFFER: Thank you. That's all I have right
17 now.

18 THE COURT: She said that she's not going to do that.
19 But you can't keep them from presenting their case which
20 is what you're trying to do here. And I understand as a
21 lawyer, but you can't do that. The State of South
22 Carolina is entitled to present their case, and that's
23 what they're going to do. I would have some questions about
24 the Lyle issue. I want to hear testimony otherwise before
25 we get into that.

1 MS. DAVID: Yes, Your Honor.

2 THE COURT: You are saying, as I understand it,
3 that -- are you going to try to prove that he attempted to
4 rob this individual?

5 MS. DAVID: Yes, Your Honor.

6 THE COURT: Attempted to rob him?

7 MS. DAVID: There is an attempted robbery on Aloysius
8 McLaughlin from November of 2011, and there are two
9 attempted robberies on Anthony Smith and Anthony Campbell.

10 THE COURT: Well, before we get started at 2:30, I
11 mean this afternoon I want to discuss that with you in
12 chambers. The Lyle issue.

13 MS. DAVID: Yes, Your Honor. We will be ready.

14 THE COURT: And see what we can do. I thought I
15 heard you say that you weren't going into robbery in the
16 case?

17 MS. DAVID: I have no intention of using his 2005
18 conviction on strong armed robbery for which Tristan was
19 talking about where he had a prior record. And these
20 cases he has not been convicted.

21 MR. SHAFFER: Your Honor, we can actually have the
22 people here if you would like, and obviously, that's the
23 State intention. I think we can save everyone some time
24 if they just say -- if Mia just proffers the evidence,
25 more or less, and tells us how she believe it fills any

1. Lyle.

2. THE COURT: This afternoon let's go in chambers and
3. both of you conflicting each other. Get in chambers here.
4. ~~Let he realize what's going on directly, and we'll get out~~
5. here and put it on the record.

6. MS. DAVID: Thank you, Your Honor.

7. THE COURT: But I have some concerns with a Lyle
8. issue unless you are saying that you've got proof that he
9. tried to rob this identical individual several weeks
10. earlier. But I didn't hear you say they. You said some
11. group of people, didn't you?

12. MS. DAVID: Yes, Your Honor. I would appreciate it
13. if you would allow us the opportunity to speak with you in
14. chambers and then fully present our motion after lunch.

15. THE COURT: I want to get that straight, and then
16. we'll get on the record with it. All right. What else's
17. we have?

18. MR. SHAFER: Your Honor, that's all.

19. THE COURT: Now, have you concluded your motions?

20. MR. SHAFER: Yes, Your Honor, at this time I have.
21. I don't have any other ones planned, Your Honor.

22. THE COURT: Now, this afternoon.

23. MS. DAVID: This afternoon we have two videos with
24. Jackson v. Denno. The first video is 48 minutes. And the
25. second video is 28 minutes, and then we have the 404(B)

1 motion. I also have one other motion regarding witnesses
2 ---

3 THE COURT: How about the eight year old child.
4 Should I not find out if he's qualified prior to trial?

5 MS. DAVID: Your Honor, since then it's been
6 determined that the child is 11 years-old, but if you
7 would like to qualify the child this afternoon we can have
8 him here to do that.

9 THE COURT: I just want to understand if he knows
10 right and wrong. I would prefer to do that now rather
11 than have to stop tomorrow at trial. How about it,
12 Tristan?

13 MR. SHAFFER: Yes, Your Honor, I believe that's ---

14 MS. DAVID: We will have him here.

15 THE COURT: Just get that done, too, okay?

16 MS. DAVID: Okay.

17 THE COURT: Okay. Let's break for lunch and be back
18 at 2:30.

19 (WHEREUPON, Court was in recess at 12:55 p.m. and
20 reconvened at 3:24 p.m.)

21 (WHEREUPON, State's Exhibit Nos. ONE THROUGH FIVE
22 were marked for identification for purposes of
23 Jackson v. Denno Hearing only.)

24 THE COURT: All right. What matter are we going to
25 deal with first? We talking about the child? Tristan,

1 Q. Young man, tomorrow we're going to call you back and
2 ask that you just tell us the truth. Just tell us what
3 happened up under oath. Are you willing to do that?

4 A. Yes.

5 Q. Okay. Well, you may come down now. We'll see you
6 tomorrow, but thank you so much for coming, okay?

7 A. Okay.

8 Q. I look forward to seeing you in the morning. Escort
9 him down, please. Bye, bye.

10 COLLOQUY

11 THE COURT: All right. What's the next thing you
12 want to deal with?

13 MS. DAVID: Your Honor, the State would like to
14 proceed with our Jackson v. Denno, and our first witness
15 would be Shawn Feldner.

16 THE COURT: Okay.

17 SHAWN FELDNER, after being duly sworn, testified
18 as follows:

19 THE COURT: All right. Proceed.

20 DIRECT EXAMINATION

21 BY MS. DAVID:

22 Q. Would you please state your full name for the record?

23 A. Shawn, S-H-A-W-N. Michael, M-I-C-H-A-E-L. Feldner,
24 F-E-L-D-N-E-R.

25 Q. What's your occupation?

1 A. I'm an investigator with the Marlboro County
2 Sheriff's Office.

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

4 A. For the last five years.

5 Q. And what are your duties?

6 A. Do typical investigative.

7 Q. So it's one of your duties to assist in
8 investigations?

9 A. All of them.

10 Q. Were you employed in your present capacity on
11 November 11th of 2011?

12 A. Yes, I was.

13 Q. And how did you become or did you become involved in
14 the case with Tyrone King?

15 A. I did.

16 Q. How did you become involved in that case?

17 A. I was called out to come and help assist in the
18 investigation with the on-call investigators.

19 Q. Did you have the opportunity to advise the suspect of
20 his Miranda rights?

21 A. Yes, ma'am, I did.

22 Q. At what point was that?

23 A. My initial arrival was at the scene, and I was
24 briefed by Captain Cheek. I assisted in a few other
25 things there at the scene, and then immediately went to

1 the Sheriff's Office where Mr. King was in an interview
2 room and been brought there by Deputy Johnson with the
3 Marlboro County Sheriff's Office. It was at that time
4 that I was introduced to Mr. King.

5 Q. Okay. And at what point did you Mirandise him?

6 A. If I can just look at the Miranda form. There is a
7 time and a date. Place: Marlboro County Sheriff's
8 Office. Date was November 11th of 2011, and the time was
9 0454 hours military time which is 4:54 a.m.

10 Q. Okay. And who was ---

11 THE COURT: That's in the morning?

12 THE WITNESS: Yes, sir, that is correct.

13 THE COURT: All right, sir.

14 BY MS. DAVID:

15 Q. Who was present with you?

16 A. Investigator Brittany and Sargent English.

17 Q. And did you ask the defendant any questions?

18 A. I did. There are five questions on our Miranda --
19 standard Miranda form. I read all five questions to him.

20 THE COURT: Let's me. Did anybody interrogate him
21 before you started?

22 THE WITNESS: No, sir.

23 THE COURT: You said somebody was in the room with
24 him.

25 THE WITNESS: He was actually taken to the Sheriff's

1 Office by Deputy Johnson. Prior to Deputy Johnson Deputy
2 Tim Shaw Mirandized him in his patrol car at the scene.
3 It was a verbal Mirandise. It was done at the scene, and
4 then I simply put it on the form, Your Honor. But no one
5 interrogated him. No one questioned him.

6 THE COURT: No one interrogated from Deputy Shaw's
7 time until you talked to him?

8 THE WITNESS: That's correct.

9 THE COURT: All right. Go ahead.

10 BY MS. DAVID:

11 Q. You said Brittany English was present with you at
12 that time?

13 A. Yes, he is a witness on the Miranda form.

14 Q. Okay?

15 A. Signature.

16 Q. And did you ask the defendant any questions?

17 A. At this time?

18 Q. Yes.

19 A. Just asked him if he understood his rights. I then
20 read him the waiver of rights. Which is another paragraph
21 where he waives his rights. And then give him the Miranda
22 statement to sign, and at that time he actually read it
23 himself and then signed it.

24 Q. Did the defendant appear to be under the influence of
25 alcohol or drugs?

1 A. No. Just agitated.

2 Q. Did he appear to be physically or mentally impaired
3 in any way?

4 A. No.

5 Q. How long was the defendant questioned? Were any
6 breaks taken?

7 A. After -- once the interrogation started, no, there
8 were no breaks.

9 Q. Was he denied access to food? To bathroom? To drink
10 of water?

11 A. No. He had access. Matter of fact he had a bottle
12 of water that someone had given to him.

13 Q. Was the defendant under arrest at the time the
14 statement began?

15 A. No. Never formally arrested. Not by me.

16 Q. Not by you?

17 THE COURT: Well, that's not the question. Not by
18 you. How about anyone?

19 MR. REDMOND: No, sir, not that I'm aware of.

20 THE COURT: Well, okay. Go ahead.

21 BY MS. DAVID:

22 Q. Was his presence compelled in any way?

23 A. Ma'am?

24 Q. Was his forced to be there?

25 A. No, ma'am.

1 MS. DAVID: Beg the Court's indulgence for one
2 moment.

3 BY MS. DAVID:

4 Q. I show you what has previously been marked as State's
5 Exhibit Number Two. Do you recognize that document?

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

7 Q. What's is it?

8 A. This is the original Miranda filled out on that
9 morning.

10 Q. And what did you do with that form?

11 A. It was placed in the case file.

12 Q. Did you present that to the defendant?

13 A. Yes, we did. We read Items One through Five and
14 waiver. Then read the paragraph which is the waiver of
15 rights. Explained them to him, and then he -- he then in
16 turn read it and signed it.

17 Q. Will you read each one, One through Five, what was
18 given to the defendant for me?

19 A. "These are your rights. Before answering any
20 questions you must understand your rights. You have the
21 right to remain silent. That's Number One. Anything you
22 say can and will be used against you in Court. Number
23 Three: You have the right to talk to a lawyer for any
24 advise before we ask you any questions and to have him
25 with you during questioning. Number Four: If you cannot

1 afford an lawyer the Court will appoint one for you before
2 any questions if you wish. Number Five: If you decide to
3 answer any questions now without a lawyer present you will
4 still have the right to stop answering at any time until
5 you talk to a lawyer."

6 Q. Did he sign it?

7 A. Yes, he did.

8 Q. Is that form in the same condition as it was on
9 November 11th?

10 A. Yes, it is.

11 Q. Has it been changed or altered in any way?

12 A. No.

13 MS. DAVID: At this time the State would move to have
14 Exhibit Number Two admitted into evidence for purposes of
15 Jackson v. Denno.

16 MR. SHAFFER: Your Honor.

17 THE COURT: Sir?

18 MR. SHAFFER: I think it probably should be a Court's
19 exhibit.

20 THE COURT: Come forward. The acoustics in this
21 place are terrible.

22 MR. SHAFFER: Your Honor, I believe -- I apologize.
23 I believe it's properly, not necessarily in evidence, I
24 think she's trying to make it a Court's exhibit.

25 THE COURT: No, not at this time.

1 MR. SHAFFER: Okay.

2 THE COURT: You will use that in the trial of the
3 case.

4 MS. DAVID: Yes, Your Honor.

5 MR. SHAFFER: Okay. Is that the Court's exhibit that
6 she's trying ---

7 THE COURT: No. No. I'm not -- It's go into evidence
8 if I conclude it's proper.

9 MR. SHAFFER: Okay. Thank you, Your Honor.

10 THE COURT: No, I don't want it as Court's exhibit.

11 MR. SHAFFER: All right. I just didn't want it
12 marked in any way.

13 THE COURT: Have you concluded your examination?

14 MS. DAVID: Yes, Your Honor, on the form, but we need
15 to have examination for the D.V.D. and play the statement.

16 THE COURT: Have you gone through the form?

17 MS. DAVID: Yes, Your Honor.

18 THE COURT: Okay. Go through everything involving
19 his statement.

20 MS. DAVID: Would you like him to read the form
21 again?

22 THE COURT: No, if he's read it, but does this cover
23 his entire statement?

24 MS. DAVID: Yes, Your Honor.

25 THE COURT: You want to exam on this?

1 MR. SHAFFER: Yes, Your Honor.

2 THE COURT: All right.

3 CROSS-EXAMINATION

4 BY MR. SHAFFER:

5 Q. Investigator, tell us a little bit about the
6 condition in the room. Was his handcuffed?

7 A. Yes, he was handcuffed. He was handcuffed in the
8 front. The room is approximately 10 by 10. There is a
9 single table that sits against the left wall as you enter
10 into the room.

11 Whoever we're questions always sits on the back side
12 of the table. The two or one or however many people are
13 doing the questioning sits in front of him with their back
14 turned to the door. There is a microphone. It sits above
15 the interrogators/investigators and the defendant. And
16 then there is a camera right above the door in the corner
17 that views the whole room.

18 MS. JOHNSON LEE: Your Honor, beg the Court's
19 indulgence. I believe there was some confusion.
20 Miss Davis had completed her questioning as to the Miranda
21 Form, but she has not conducted the questioning as to the
22 videotape so that it could be played for the Court.

23 THE COURT: Let her -- I thought she said she had
24 completed.

25 MS. JOHNSON LEE: She had completed as to the Miranda

1 form. There was some confusion, Judge. I apologize.

2 THE COURT: I'm sorry.

3 CONTINUED DIRECT EXAMINATION

4 BY MS. DAVID:

5 Q. If we could go back and pick up with questioning that
6 would have taken place right after I questioned you about
7 the form. How did the defendant respond as to whether or
8 not he wanted an attorney?

9 A. He did not want an attorney. Never inquired about an
10 attorney. Never wanted an attorney. Never asked anyone
11 about an attorney. He mentioned two attorneys prior to
12 Miranda just a like we were shooting the breeze on the
13 street corner.

14 Q. Did he ever change his mind and ask to stop
15 questioning because he wanted an attorney?

16 A. No, ma'am.

17 Q. To the best of your knowledge was the defendant's
18 statement freely and voluntarily given?

19 A. Yes, it was.

20 Q. I show you what has been -- what is the D.V.D. and
21 its been marked today as Number Five. Is this the
22 original D.V.D?

23 A. I don't have it.

24 Q. This is the ---

25 THE COURT: Was that C.D.V. [sic] played immediately

1 after he signed the Miranda warning?

2 THE WITNESS: Actually no, sir. We started to record
3 immediately when myself and Investigator English walked
4 into the room and I advised him that it was being recorded
5 also. We did an investigative technique prior to
6 questioning of the actual case, Your Honor.

7 THE COURT: So you are not playing the C.D. that you
8 originally took?

9 THE WITNESS: Yes, sir, this is the original C.D.
10 that we recorded as soon as Investigator English and
11 myself entered the room with Mr. King.

12 THE COURT: I got you. Go ahead. Proceed.

13 BY MS. DAVID:

14 Q. Have you had an opportunity to review the tape in its
15 entirety?

16 A. Yes.

17 Q. Was it in the same condition as it was when it was
18 first taken?

19 A. Yes, it is.

20 Q. Has it been altered in any way?

21 A. No, ma'am.

22 Q. Does it truly and accurately reflect the statement
23 provided by the defendant?

24 A. Yes, it does.

25 MS. DAVID: At this time the State would move to

1 publish this D.V.D, the video of the defendant's first
2 statement to the Court.

3 THE COURT: Let me ask one or two more questions. In
4 talking to him did he ever exhibit any type of reluctance
5 to talk to you?

6 THE WITNESS: No, sir.

7 THE COURT: Did he ever indicate in any way that he
8 wanted to stop that conversation?

9 THE WITNESS: No, sir.

10 THE COURT: Did he ever indicate in any way that he
11 wanted an attorney?

12 THE WITNESS: No, sir. Actually, I'll go back to the
13 last question you just asked me. I actually asked him two
14 different times and maybe more to please not talk about --
15 he was so willing and wanted to talk about the case prior
16 to Miranda that I had to asked him to stop until he was
17 Mirandised.

18 THE COURT: In your opinion then his statement was
19 freely and voluntarily given by him?

20 THE WITNESS: Yes, sir..

21 THE COURT: You didn't coerce him in any way?

22 THE WITNESS: No, sir.

23 THE COURT: Was any promises made to him.

24 THE WITNESS: There were no promises.

25 THE COURT: Any hope of reward?

1 THE WITNESS: No, sir.

2 THE COURT: Okay. Yes, sir.

3 MR. SHAFFER: Your Honor, before we actually begin
4 publishing this video ---

5 THE COURT: If you will come forward where we can
6 hear you. We just can't hear you.

7 MR. SHAFFER: Your Honor, before we begin publishing
8 I would actually like to cross-examine him. I think there
9 were -- better than playing a 45 minute videotape and then
10 me cross-examining him.

11 THE COURT: Go ahead. You want to cross-examine him
12 at this time?

13 MR. SHAFFER: Yes, Your Honor.

14 MS. JOHNSON LEE: Your Honor, before he begins that
15 we want to make a motion and put it in evidence first.

16 MS. DAVID: Your Honor, at this time the State moves
17 to introduce the; the D.V.D. marked as Exhibit Number Five
18 into evidence for purposes of Jackson v. Denno.

19 THE COURT: I accept it for purposes of Jackson v.
20 Denno. Yes.

21 (WHEREUPON, State's Exhibit No. 5/JvD was admitted
22 into evidence.)

23 CROSS-EXAMINATION

24 BY MR. SHAFFER:

25 Q. Investigator, you told Miss David that you were

1 not -- that the defendant was in no way compelled to be in
2 the room; is that correct?

3 A. He was not forced or compelled. When I'm saying
4 'forced' or 'compelled' we're fighting or tussling or
5 something to that extent. He was in the room. He was
6 handcuffed in the front. There were no promises or
7 threats made to him.

8 Q. Okay. What would have happened if he did not want to
9 be in the room?

10 A. He would have to have been in the room or we would
11 have taken him to the Detention Center.

12 Q. Could he have gotten up and walked away?

13 A. No, sir.

14 Q. Did he go in there on his own free will. Did he say,
15 "I want to go in this room?"

16 A. No, he was taken by Deputy Johnson, Marlboro County
17 Sheriff's Office.

18 Q. In handcuffs? How is that not being compelled?

19 A. When you say, 'compel' that's why I asked you. There
20 was no -- we didn't have to fight with him to get him in
21 the room or anything. He was there on his, you know,
22 taken voluntarily there, Sheriff's Office, by Deputy
23 Johnson. Very talkative. He was quite -- I guess you say
24 agitated a little bit while we were doing another
25 investigative techniques. But he was in and he was going

1 to be there in handcuffs.

2 Q. Okay. Now, you also said that you did not believe
3 that he was intoxicated?

4 A. No.

5 Q. You don't believe he had been drinking?

6 A. Well, I could tell he was drinking. I could smell
7 the alcohol, but I don't think he was intoxicated.

8 Q. Did you do a Breathalyzer test on him?

9 A. No, I never done a Breathalyzer.

10 Q. Did you do any sort of tests to determine his blood
11 alcohol level?

12 A. Not. Sure didn't.

13 Q. Did you ask him how much he had to drink?

14 A. I think he said a quart or half a point.

15 Q. When did you ask him that?

16 A. He told me.

17 Q. What did you mean by you said you were doing an
18 investigative technique? Explain that for me.

19 A. We were doing a G.S.R. Kit.

20 Q. Okay.

21 A. Gunshot residue kit.

22 Q. But it had nothing to do with questioning?

23 A. No. No questions.

24 Q. Okay. Were you present when Deputy Shaw Mirandised
25 him?

1 A. I was not.

2 Q. How do you know it occurred?

3 A. Deputy Shaw immediately told Lieutenant Seales, and
4 it was relayed to me.

5 Q. Okay. So Deputy Shaw told Seales who told you?

6 A. That is correct.

7 Q. Okay. Do you have any other basis for knowing that
8 he was Mirandised?

9 A. Other than Deputy Shaw's word which I stand behind.

10 Q. But did he tell you personally?

11 A. Later he did, but I'm telling you that at the scene
12 it was relayed to me by Lieutenant Seales.

13 Q. Why did you tell the defendant not to testify or not
14 to answer questions or not to talk?

15 A. He wasn't Mirandised.

16 Q. But you said Deputy Shaw Mirandised him?

17 A. That is correct. See, you have to understand.

18 Deputy Shaw Mirandised him in the vehicle. He's taken

19 from that vehicle to Deputy Johnson into the Sheriff's

20 Office. I get to the scene and there are other things I

21 do at the scene. After I leave the scene I come and I

22 start -- we start doing the G.S.R. kit and so on and so

23 forth. Lieutenant Seales sends a text and let's us know

24 that he's been Mirandised by Deputy Shaw. You know it was

25 somewhere into the interrogation that we had already

1. started.

2. Q. Okay?

3. THE COURT: Wait a minute. You said a while ago that
4. nobody asked him any questions under Shaw's statement?

5. THE WITNESS: That is correct.

6. THE COURT: So you Mirandised him. That's not what
7. you're saying, now.

8. THE WITNESS: No, sir. Shaw never questioned him no
9. one ever questioned him except for me and Investigator
10. English.

11. THE COURT: Did you Mirandise him before he was
12. questioned by anybody?

13. THE WITNESS: Yes, sir. He was never questioned by
14. anybody except me and Investigator English. He was
15. Mirandised by Deputy Shaw at the scene and in Deputy
16. Shaw's police car.

17. THE COURT: Then you Mirandised him again before he
18. made a statement?

19. THE WITNESS: Yes, that is correct.

20. THE COURT: Well, go ahead.

21. BY MR. SHAFFER:

22. Q. But you also told him not to answer questions before
23. you Mirandised him the second time?

24. A. That is right.

25. Q. Why did you tell him that?

1 A. Because I wanted to put him on Mirandise. This is
2 our standard form that we use in the Sheriff's Office.
3 There is a folder in the interrogation room that has
4 nothing but Mirandised forms. Before we start questioning
5 anybody this is what we do.

6 Now, it was after I did this that I was informed
7 Deputy Shaw had already Mirandised him in the car.
8 Regardless of if I knew that before or after I still would
9 have done this on paper with his signature.

10 MR. SHAFFER: No further questions.

11 THE COURT: Sir?

12 MR. SHAFFER: No further questions, Your Honor.

13 THE COURT: Any further direct?

14 MS. DAVID: Your Honor, at this time we would like to
15 play the video.

16 THE COURT: At this time do what?

17 MS. DAVID: We would like to play the video of the
18 Defendant, Tyrone King's, first statement.

19 THE COURT: You may come down and do so. Thank you.
20 Stay here in case we need to call you back.

21 THE WITNESS: Yes, sir.

22 (WHEREUPON, State's Exhibit Five was played in open
23 Court.)

24 MR. SHAFFER: Your Honor, at this point I move to ---

25 THE COURT: Stop a minute.

1 MR. SHAFFER: Your Honor, I'm actually moving to
2 suppress the profanity when he's calling ---

3 THE COURT: No, sir. Not going to do that.

4 MR. SHAFFER: Yes, sir, Your Honor. I just wanted to
5 make it clear for the record.

6 THE COURT: I'm going to let that stay. He chose to
7 use the word. Go ahead.

8 (WHEREUPON, the video continued to be played in open
9 Court.)

10 MR. SHAFFER: Your Honor, may I say just ---

11 THE COURT: Wait a minute. What?

12 MR. SHAFFER: Just for the record, because I know
13 this isn't being transcribed off the tape, for the record
14 I'm moving to exclude or to the redact the video where
15 he's calling them motherfuckers.

16 THE COURT: Cannot do that because we don't have the
17 capability. If you redact that word you've got to redact
18 whatever he said. Isn't that true?

19 MS. JOHNSON LEE: Yes, Your Honor.

20 THE COURT: I'm not going to do that. Go ahead.

21 MR. SHAFFER: Your Honor, it's also not relevant.

22 THE COURT: We just can't redact one word that he
23 chose to use so that we can't even use the video. Not
24 going to do that. Go ahead.

25 MR. SHAFFER: Your Honor, I also ---

1 THE COURT: You're on the record. I told you that.
2 What else you want?

3 MR. SHAFFER: 401, I don't believe it's relevant in
4 this conversation he's having about ---

5 THE COURT: It's his term. He chose to use it. I'm
6 going to let it in. Go ahead.

7 (WHEREUPON, the video continued to be played in open
8 Court.)

9 MR. SHAFFER: At this point he's talking about his
10 previous murder charge. It's 4:28 on the video. 4:28:58.

11 THE COURT: I want that redacted; that part. Can you
12 do that without destroying the whole video?

13 MS. WHITE: We would have to fast forward it through
14 that part.

15 THE COURT: Pardon me.

16 MS. WHITE: We will have to fast forward through it,
17 your Honor.

18 THE COURT: Well, make sure you do it in the right
19 place, but back up a little bit and then fast forward. I
20 don't want to hear anything about that. To the extent
21 possible get to where he talks about allegedly this
22 incident. Go ahead. Let's see where we're going. Go
23 ahead. You be sure that's redacted.

24 (WHEREUPON, the video continued to be played in open
25 Court.)

1 MR. SHAFFER: Your Honor, at this point I'm going to
2 move to redact the fact that he had shot a gun and he
3 carries a gun which is about to come up. I don't believe,
4 ~~A, it's relevant, or B, I think it's prior bad act under~~
5 404(B).

6 THE COURT: He said he carried a gun, didn't he?

7 MR. SHAFFER: Yes, sir, Your Honor. Prior bad act as
8 he has been convicted of other crimes.

9 THE COURT: Well, there is evidence of carrying a gun
10 in this case. I'm going to let that stay in.

11 MR. SHAFFER: I also -- the third objection is a 403
12 objection to that, Your Honor.

13 THE COURT: No, sir. There is evidence of the gun
14 was used, and it was evidence as I understand it for the
15 jury's consideration. It was his gun. He mentioned his
16 gun. It's appropriate that it stays and will. Go ahead.
17 Your objection is noted for the record.

18 MR. SHAFFER: Thank you, Your Honor.

19 (WHEREUPON, the video continued to be played in open
20 Court.)

21 MR. SHAFFER: Your Honor, objection. He's talking
22 about he had a lawyer on his old charge. He's going to be
23 getting into the old charge that he had the lawyer
24 represented by.

25 THE COURT: Does he get into the old charge at this

1 time? Ma'am, y'all have seen it. I haven't.

2 MS. JOHNSON LEE: I don't recall how much he got into
3 it.

4 THE COURT: I'll let that part in. Let's see where
5 he goes.

6 MR. SHAFFER: For clarification that's 404(B)
7 objection, Your Honor.

8 THE COURT: Okay. We can't redact every kind of word
9 that he decided to use, but I redacted anything that he
10 gets into significantly old charges. Let's go see where
11 it is. Go ahead.

12 (WHEREUPON, the video continued to be played in open
13 Court.)

14 MR. SHAFFER: Objection, Your Honor. He's talking
15 about the previous murder. This investigator just asked
16 him what were you charged with in that murder.

17 THE COURT: Counsel, so that you will know I'll set
18 up a time in the morning for you to get together and
19 review the redacted.

20 MR. SHAFFER: Thank you, Your Honor.

21 THE COURT: I want to redact any reference to any
22 prior conduct.

23 MS. JOHNSON LEE: Yes, sir.

24 (WHEREUPON, the video continued to be played in open
25 Court.)

1 MR. SHAFFER: Objection, Your Honor. He's getting
2 into the McColl charges that are pending?

3 THE COURT: Yes. I want that redacted.

4 MS. DAVID: Your Honor, can the defense attorney wait
5 until after we have heard the video to actually make an
6 objection because he's saying, 'objection', Your Honor,
7 and you haven't heard anything he said yet.

8 THE COURT: Well, I'm picking it up, but if we wait
9 until the end we'll have to go back and redo it again.
10 I'd rather do it as we go. Clearly, he's getting ready to
11 get into it. I don't want to do it later.

12 (WHEREUPON, the video continued to be played in open
13 Court.)

14 MR. SHAFFER: Objection, Your Honor. He's actually
15 going into a different charge where he got stabbed. He
16 had gotten stabbed during an alleged armed robbery.

17 THE COURT: Is this one of the times we discussed in
18 chambers?

19 MS. DAVID: Yes, Your Honor.

20 THE COURT: I'm leaving that because the individual
21 is coming in, and he's saying he was stabbed 20 times in
22 self-defense. There is a witness coming in saying that's
23 not true; isn't that true?

24 MR. SHAFFER: Your Honor, I am just preserving my
25 objection for the record.

1 THE COURT: No, sir. I'm letting that in based on
2 the totality of the evidence that's here.

3 MR. SHAFFER: Your Honor, briefly before we begin
4 again do you mind if I put it on the record so I don't
5 forget.

6 THE COURT: Go ahead.

7 MR. SHAFFER: The objection I want to make are 401,
8 403 and 404(B) and the fact that it's a collateral issue
9 that is not relevant to this case.

10 THE COURT: Well, it's not declaratory or secondary
11 issue or simply because the -- state your objection as you
12 did in chambers, Mia.

13 MS. DAVID: Your Honor, we objected because or we
14 thought that this part was relevant because the defendant
15 is saying in this case that he carried a gun because he
16 was stabbed 20 times whereas we know that the guy that
17 stabbed him said that he did so because the defendant was
18 trying to rob him.

19 THE COURT: And that's exactly why I'm going to let
20 it in.

21 MR. SHAFFER: Briefly, Your Honor, for the record to
22 respond to the Solicitor.

23 THE COURT: Counsel, I told you I'm not going to let
24 the jury hear solely that he was stabbed 22 [sic] times
25 without the truth coming out as to why he was stabbed.

1 MR. SHAFFER: Your Honor, I'm happy to redact that.
2 I believe that it's not really relevant that he was
3 stabbed in the first place.

4 THE COURT: Well, he's the one that said it. I'm
5 going to leave it in. You're on the record as to your
6 objection.

7 MR. SHAFFER: Thank you, Your Honor.

8 THE COURT: But it would be unfair to let the jury
9 hear him without hearing why.

10 MR. SHAFFER: Your Honor, that's why I'm actually
11 saying it's not really relevant why he carried a gun.

12 THE COURT: Well, he thought it was so I'm going to
13 leave it in. Go ahead.

14 (WHEREUPON, the video continued to be played in open
15 Court.)

16 MR. SHAFFER: That particular line that he just said
17 I'd like to reiterate to why the fact that he carried a
18 gun for self-defense is not relevant. He then admits at
19 least two other times in the video that he carries a gun
20 without saying why he carried it. I don't believe why he
21 carried the gun is relevant. Therefore, I don't believe
22 their witness regarding the fact ---

23 THE COURT: I'm going to let it in. His possession
24 of the gun is a critical part of the State's case, and I'm
25 going to let it in. Go ahead. Your objection is noted

1 for the record.

2 MR. SHAFFER: Thank you, Your Honor.

3 (WHEREUPON, the video continued to be played in open
4 Court.)

5 MR. SHAFFER: Your Honor, for the last about 30
6 seconds he's been discussing familiarities with the
7 Marlboro County Sheriff's Office.

8 THE COURT: He's been discussing what?

9 MR. SHAFFER: He been discussing different members of
10 the Marlboro County Sheriff's Department and the Marlboro
11 County Jail with some familiarity. I'm moving to suppress
12 that under 404. I mean 404(B).

13 THE COURT: Why?

14 MR. SHAFFER: And 401. And it gives the impression
15 that he's familiar with the a jail and the people.

16 THE COURT: No, I'm not going to do that.

17 MR. SHAFFER: Thank you, Your Honor.

18 THE COURT: Not going to do it. You've got to
19 realize that we want -- we don't have the capabilities to
20 stop and start every phrase, and I conclude that's proper.
21 Let's go. I want to redact everything that we can that's
22 proper. We can't start redacting every word cause you
23 don't like it. Go ahead.

24 (WHEREUPON, the video continued to be played in open
25 Court.)

1 MR. SHAFFER: Your Honor, at this point, again, he
2 goes into whether or not or there McColl charge.

3 THE COURT: Does what?

4 MR. SHAFFER: ~~The McColl Charge. The pending armed~~
5 robbery. He's asking why are you charging me with robbing
6 a drug dealer.

7 THE COURT: Are you familiar with that portion?

8 MS. DAVID: That is what he just said. He said, "How
9 you going to charge me with robbing a drug dealer."

10 THE COURT: Can't we redact that part?

11 MS. DAVID: We can try it. We can fast forward past
12 that moment.

13 THE COURT: Do that. And then tomorrow.

14 (WHEREUPON, the video continued to be played in open
15 Court.)

16 THE COURT: One moment. Hold on. What's that?

17 MR. SHAFFER: Your Honor, the defendant mentioned
18 this is my life. It's over with. This is my life, and
19 I'm objecting to that because of the fact that it actually
20 bring sentencing into the ---

21 THE COURT: I disagree with that. Overruled it. I
22 note your objection.

23 MR. SHAFFER: Thank you, Your Honor.

24 THE COURT: Go ahead.

25 (WHEREUPON, the video continued to be played in open

1 Court.)

2 MR. SHAFFER: Objection.

3 THE COURT: What's your objection?

4 MR. SHAFFER: He just stated at 4:46:14 on the video
5 he just stated that -- he said, "Don't take this
6 offensively, but fuck the police."

7 THE COURT: What?

8 MR. SHAFFER: He said, "Fuck the police," Your Honor.
9 Which I believe is -- the basis for my objection is 403
10 and 401. I think it's inflammatory.

11 THE COURT: No, sir. I disagree. Go ahead. So that
12 you will understand I ruled that anything about his prior
13 conduct that we can redact sufficiently we're going to
14 redact. But there is no way for them to redact
15 efficiently one sentence or one word out of a sentence.
16 They just don't have that capability in Marlboro County.

17 Now, to the extent that he's talking about prior
18 record I agree with you that's inflammatory and we can
19 redact that. But we can't start redacting one word out of
20 one sentence. Proceed.

21 (WHEREUPON, the video continued to be played in open
22 Court.)

23 MR. SHAFFER: Your Honor, if you would back that up
24 if I remember correctly there is something about might
25 have missed at that point. This is right before he goes

1 out to take a smoke break. I remember him saying, "I'm a
2 criminal" at some point during that, and I'd like that
3 redacted. Same objection, 404(B), 403.

4 THE COURT: No, I'm not going to. This is his
5 characterization of himself. I'm not going to redact
6 that. Go ahead.

7 (WHEREUPON, the video continued to be played in open
8 Court.)

9 MR. SHAFFER: Your Honor, to preserve my objection I
10 would -- that was at 4:46, probably 56 is whenever he
11 said, "I'm a criminal".

12 THE COURT: Well, you understand that some of his
13 prior record is coming in any way. Based on that alone is
14 sufficient.

15 MR. SHAFFER: Your Honor, I actually don't believe,
16 unless he testifies right now, none of his prior record is
17 coming in.

18 THE COURT: I'm going to leave it in. Go ahead.

19 MR. SHAFFER: Thank you.

20 (WHEREUPON, the video continued to be played in open
21 Court.)

22 THE COURT: Stop it.

23 MR. SHAFFER: Your Honor, at this point he's getting
24 Mirandised. I guess sufficiently the one where, you know,
25 where he signed is 4:55:20 on the time, and I'm moving --

1 later on I'll move to exclude under Jackson v. Denno the
2 prior conversation, but for right now I'm actually moving
3 to exclude. Under 401 it's not relevant.

4 THE COURT: What's not relevant?

5 MR. SHAFFER: What he talked about up until this
6 point is not relevant to what happened.

7 THE COURT: What's not relevant?

8 MR. SHAFFER: Basically, everything that has occurred
9 prior to the second Mirandise, and they're going to get in
10 relevant portion ---

11 THE COURT: You mean prior to this time?

12 MR. SHAFFER: Yes, Your Honor.

13 THE COURT: Well, I'm sitting here -- I'll hold that
14 in abeyance. Seems like to me that maybe we can start it
15 from the point on and, but I'll rule on that later. You
16 want to exclude everything up to this point?

17 MR. SHAFFER: Yes, Your Honor.

18 THE COURT: Well, we'll talk about it later. Go
19 ahead.

20 (WHEREUPON, the video continued to be played in open
21 Court.)

22 MR. SHAFFER: Your Honor, at this point he just
23 mentioned the McColl charge again. I will move to redact
24 that part.

25 MS. DAVID: Your Honor, he only mentioned the McColl

1 charge because the defendant is saying Aloysius McLaughlin
2 is the one murdered James Galloway. He's saying, "You
3 mean the same guy you just robbed two weeks ago."

4 ~~THE COURT: I'm going to leave -- let that stand.~~

5 MR. SHAFFER: Your Honor, for the record my objection
6 was 404(B).

7 THE COURT: I understand.

8 MR. SHAFFER: 403 and 401, Your Honor.

9 THE COURT: I think it's appropriate based on the
10 totality of what he's saying. Go ahead.

11 (WHEREUPON, the video continued to be played in open
12 Court.)

13 MR. SHAFFER: Your Honor, at approximately 4:08 -- I
14 mean 5:08:25 he said he already had murders on his record,
15 and I move to redact that, 404(B).

16 THE COURT: What was the specific remark?

17 MR. SHAFFER: He said, "I've already got murders on
18 my record."

19 MS. DAVID: Your Honor, he does not have a conviction
20 for murder on his record.

21 MR. SHAFFER: And he's been charged with murder, Your
22 Honor.

23 THE COURT: He said -- I'm going to leave it where it
24 is. Go ahead.

25 (WHEREUPON, the video continued to be played in open

1 Court.)

2 MR. SHAFFER: Objection. At that point he's talking
3 about the time he got stabbed. Once again I don't think
4 his stabbing is relevant to this case.

5 THE COURT: Well, the one who stabbed him he says is
6 the one who did the shooting, did he not?

7 MR. SHAFFER: No, Your Honor. No, Your Honor. That
8 is someone else.

9 THE COURT: What you say about that?

10 MS. DAVID: Your Honor, what's going on right here is
11 Investigator Shawn Feldner has asked the defendant why
12 would he take another man's life. Why would he shoot
13 anybody. He says he pulls up his shirt and said, "You see
14 this because I been stabbed." I think it is relevant to
15 show the defendant's state of mind at the time of him
16 carrying that gun into the house.

17 MR. SHAFFER: Your Honor, the fact that he got
18 stabbed ---

19 THE COURT: Strike that.

20 MR. SHAFFER: Thank you, Your Honor.

21 THE COURT: Strike that.

22 (WHEREUPON, the video continued to be played in open
23 Court.)

24 THE COURT: Okay.

25 MR. SHAFFER: Your Honor, can we take five minutes so

1 he can go to the bathroom?

2 THE COURT: Yes, sir, go ahead. We can take a five
3 minute break.

4 (WHEREUPON, a short break was taken.)

5 MR. SHAFFER: I want to know what the current plea
6 offer is so that he will be aware of whether there is a
7 current plea offer or not. It sort of got confused since
8 we talked.

9 THE COURT: I wasn't going into that. I wasn't going
10 into that unless some officer of -- I wouldn't discuss
11 that.

12 MS. DAVID: Your Honor, we had a previous offer of --

13 MS. JOHNSON LEE: There is no offer on the table at
14 this time.

15 MR. SHAFFER: There is no offer. I just wanted to
16 make sure of that. I've been bouncing back and forth
17 asking for something. I almost forgot what.

18 THE COURT: Well, any proposal like that would come
19 from you. Not them.

20 MR. SHAFFER: Would the offer for 25 still be there?

21 MS. DAVID: No.

22 THE COURT: I wouldn't put it that way. Is he back
23 yet? Are we ready to resume?

24 MS. JOHNSON LEE: Still waiting on the defendant to
25 come back from the restroom.

1 THE COURT: Are we ready to proceed?

2 MR. SHAFFER: Yes, Your Honor.

3 MS. JOHNSON LEE: Your Honor, we have a problem
4 because due -- Stuart is standing there. Is there a
5 problem? He's been staring at the family.

6 THE COURT: I can't tell the defendant where he can
7 sit. Leave that alone.

8 MS. DAVID: Okay.

9 THE COURT: All right. Can we proceed?

10 MS. DAVID: Yes, Your Honor. At this time the State
11 would like to call Jamie Seales to the stand for our
12 second statement done on November the 16th 2011.

13 JAMIE SEALES, after being duly sworn, testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MS. DAVID:

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

18 A. Jamie Lynn Seales.

19 Q. And what's your occupation?

20 A. I'm an investigator with the Marlboro County
21 Sheriff's Office.

22 Q. And how long have you been employed with the
23 Sheriff's Office?

24 A. Since October of 2007.

25 Q. What's your previous law enforcement experience?

1 A. I worked the Probation and Parole from 1997 to 2005,
2 and also I was employed with the Marlboro County Sheriff's
3 Office from 2005 to 2006 and I worked for the State Law
4 Enforcement Division almost two years until I came back in
5 October 2007.

6 Q. Now, will you tell me what are your duties with the
7 Marlboro County Sheriff's Office?

8 A. I am lieutenant over investigations.

9 Q. Okay. And were you employed in your present capacity
10 on November 11th of 2011?

11 A. I was.

12 Q. And did you become involved in this investigation of
13 the Defendant, Tyrone King?

14 A. I did.

15 Q. How did you become involved in this case?

16 A. I was called by Central Dispatch and by a couple of
17 the deputies. I don't recall which deputy called to tell
18 me what was going on. Met with Sheriff Knight and other
19 investigators to come out to come to the scene.

20 Q. Did you ever get the opportunity to speak with the
21 defendant?

22 A. I did. It wasn't the day of the incident, a week
23 later.

24 Q. Did he request to speak to you voluntarily?

25 A. He did.

1 Q. And that was a special request?

2 A. It was.

3 Q. Do you recall how that request was made?

4 A. It was in the form of a written request from the
5 Marlboro County Detention Center.

6 Q. Okay. I show you what has been marked as Exhibit
7 Number Three for purposes of identification. Do you
8 recognize it?

9 A. I do.

10 Q. What is it?

11 A. It's an Inmate Request Form from the Marlboro County
12 Detention Center.

13 Q. How did that first come into your possession?

14 A. It came into -- appears to have come into the
15 Sheriff's Office via fax, and I don't remember how it got
16 in my hands. But, typically, they come in a variety of
17 different ways. They may go in the Sheriff's door or in
18 one of the investigator's door.

19 Q. Is it still in the same form now as it was when you
20 first saw it?

21 A. It appears so.

22 Q. Has it been altered or changed in any way?

23 A. It does not appear, no.

24 Q. Will you read it to us? Will you share with us what
25 it says on that form?

1 A. Yes. At the top it has the fax cover head showing
2 11/15/2011 at 1445 from (803) 479-5629, Marlboro County
3 Detention Center. It has Marlboro County Sheriff's Office
4 Detention Facility Inmate Request Form. Has a section for
5 name and that name in handwritten script is Tyrone King.

6 And date in handwritten script is 11/14/11. In
7 handwritten he has the room number, A-5 and it says,
8 "Arresting Agency County." It has a section that says,
9 "General Reason for Request." And there are four choices.
10 None of the choices which are marked, "Inmate Account,
11 Plea, Release, Date of Warrant," and it also says,
12 "Specific information concerning the item checked."

13 In that section in handwritten script it says, "I
14 need to speak with Jamie Seales about my case. This is
15 very important." Then down further in the paper it says,
16 "Staff Response." It has a line and in handwritten script
17 it says, "Fax." At the bottom below that is a section
18 that says, "Refer to." Of course, nothing is in. Also
19 has a date which nothing is in. And to the right of that
20 it has, "Staff Signature," which appears to be the
21 signature of Earl Hood who is the warden of the Marlboro
22 County Detention Center. Also has printed name. With
23 that section has date, "11/15/11." At the top right hand
24 corner it also has an initial which appears to be E.L.H.
25 which I assume to be Earl Hood with 11/14/11 date beside

1 It.

2 Q. And, again, this form hasn't been altered or changed
3 in any way?

4 A. No, it hasn't.

5 MS. DAVID: At this time the State would like to
6 introduce into evidence for purposes of Jackson v. Denno
7 what has been marked as Exhibit Number Three?

8 THE COURT: I will accept it and permit you to
9 introduce it in the trial of the case.

10 MS. DAVID: Yes, Your Honor.

11 (WHEREUPON, State's Exhibit No. 3/JvD was admitted
12 into evidence.)

13 BY MS. DAVID:

14 Q. Now, Mr. Seales, how did you respond to this inmate
15 request form?

16 A. Contacted the Marlboro County Detention Center and
17 asked them to bring Mr. King over.

18 Q. Are you familiar with Miranda warnings, and did you
19 have the opportunity to advise the suspect of his Miranda
20 rights?

21 A. I did.

22 Q. How did you advise him?

23 A. When he came in I came into the interview room, and
24 first off, showed him this form. And I said, "Mr. King,
25 did you write this form?" And he agreed and said that he

1 did. And I told him that the reason that I was asking was
2 because other inmates in the past have tried to play games
3 with other inmates and send requests for different cases.
4 And he assured me that he wrote this.

5 And I said, "Well, you've been Mirandised prior to
6 this, but I'm going to give you your Miranda warnings
7 again." And I gave him the Miranda Form and I asked him
8 to read over it. And I asked him, I said, "When you get
9 through if you have any questions let me know." He read
10 over it, signed it, and I told him a couple more times,
11 from what I recall, that he didn't have to talk to us at
12 any time. If he wanted to stop he could.

13 Q. At this time I show you what has been marked for
14 purposes of Jackson v. Denno as State's Exhibit Number
15 One. Do you recognize it?

16 A. Yes, I do.

17 Q. What is it?

18 A. It is our basic Miranda Form we use at the Sheriff's
19 Office.

20 Q. That's the form that you presented to the defendant?

21 A. It is.

22 Q. Did he place his initials on that form?

23 A. He placed his initials beside each number, One
24 through Five, and he signed the Waiver of Rights.

25 Q. And will you tell us what Numbers One through Five

1 say?

2 A. Number One says, "You have the right to remain
3 silent. Number Two, Anything you say can and will be used
4 against you in Court. Number Three, You have the right to
5 talk to a lawyer for advice before we ask you any
6 questions and have him with you during questioning.
7 Number Four, if you can't afford a lawyer the Court will
8 appoint one for you before any questions if you wish.
9 Number Five, if you decide to answer any questions without
10 a lawyer present you will still have the right to stop at
11 any time until you talk to a lawyer."

12 Next is the Waiver of Rights. This says, "I have
13 read this statement of my rights, and understand what my
14 rights are. I am willing to make a statement and answer
15 questions. I do not want a lawyer at this time. I
16 understand and know what I'm doing. No promises or
17 threats have been made to me and no pressure or coercion
18 of any kind used against me by anyone.

19 Q. And the defendant signed this statement?

20 A. He did.

21 MS. DAVID: At this time the State would like to
22 introduce Exhibit Number One into evidence for purposes of
23 Jackson v. Denno.

24 THE COURT: I permit it, and it will be introduced
25 during the trial.

1 (WHEREUPON, State's Exhibit No. 1/JvD was admitted
2 into evidence.)

3 BY MS. DAVID:

4 Q. Now, while you were speaking with the defendant did
5 he appear to understand his rights? Did he have any
6 trouble understanding what was going on?

7 A. He didn't seem to.

8 Q. Did he understand English?

9 A. Appeared so.

10 Q. Did he appear to be affected by drugs or alcohol in
11 any way?

12 A. No.

13 Q. Did he appear to be answering questions rationally?
14 Was he responsive to you?

15 A. He was.

16 Q. Did you or anyone in your presence threaten or
17 coerce the defendant in any way?

18 A. Absolutely not.

19 Q. Did he ever ask to stop questioning following the
20 Miranda rights?

21 A. No, he didn't.

22 Q. To the best of your knowledge was the defendant's
23 statement freely and voluntarily given?

24 A. Yes, it was.

25 Q. Was the statement recorded?

1 A. Yes, it was.

2 Q. At this time I'm going to show you what has been
3 marked as the State's Exhibit Number Four for purposes of
4 Jackson v. Denno. Do you recognize it?

5 A. Yes, I do.

6 Q. Can you tell me what it is?

7 A. It is a D.V.R. disk with my handwriting on the
8 outside. It says, "11/16/11 Second Interview Tyrone
9 King." Also has "Seales/Alderman" on the side of it, and
10 the disk actually has my -- the name of the interview,
11 Tyrone King Interview, with my handwriting.

12 Q. Have you had an opportunity to review this video in
13 its entirety?

14 A. Yes, I have.

15 Q. Was it in the same condition as it was when you first
16 saw it or first took it?

17 A. Yes, it is.

18 Q. Has it been altered in any way?

19 A. No, it has not.

20 Q. Does it accurately reflect the statement that was
21 given to you on November 16th of 2011?

22 A. Yes, it does.

23 MS. DAVID: At this time, Your Honor, the State would
24 move to introduce Exhibit Number ---

25 THE COURT: Prior to introduction, Mr. Shaffer, do

1 you have any cross-examination?

2 MR. SHAFFER: Very briefly, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. SHAFFER:

5 Q. Investigator Seales, have you ever been to a bond
6 hearing?

7 A. Yes.

8 Q. What do they generally do at bond hearings in
9 Marlboro County?

10 A. What happens in want order?

11 Q. I'll be more specific. Do they normally request
12 attorneys at their bond hearings or request public
13 defenders?

14 A. At some point in the hearing, yes, sir.

15 Q. Okay. So there is screening for public defender
16 there?

17 A. In a bond hearing?

18 Q. Yeah.

19 A. Yes. I think they have a form they give them and
20 they fill it out. I think the process starts at that
21 time.

22 Q. Do you know if Mr. King was ever screened?

23 A. I have no idea.

24 Q. Okay. Do you know if he requested an attorney at
25 that time?

1 A. At that bond hearing?

2 Q. Yeah?

3 A. I have no idea.

4 MR. SHAFFER: No further questions.

5 COLLOQUY

6 THE COURT: I will admit the video.

7 MS. DAVID: Okay.

8 (WHEREUPON, State's Exhibit No. 4/JvD was admitted
9 into evidence.)

10 MS. DAVID: Your Honor, at this time we would like to
11 play the video for you, but we need it back from Jamie.

12 THE COURT: Proceed with the video, please.

13 (WHEREUPON, State's Exhibit Four was played in open
14 Court.)

15 MR. SHAFFER: Objection.

16 THE COURT: What's your objection?

17 MR. SHAFFER: Just before this point which is 8:44:33
18 on the November 16th video it -- he begins to talk about
19 he McColl charges. He asks, 'what about my McColl
20 charges'. He's asking this investigator questions.

21 THE COURT: They didn't go any further into it that I
22 recall.

23 MR. SHAFFER: They're about to, Your Honor.

24 THE COURT: Are they going into the McColl charge?

25 MS. DAVID: Yes, Your Honor. They're about to for

1 the next four minutes.

2 THE COURT: Let's strike any mention of the McColl
3 charge.

4 MR. SHAFFER: I believe that right there, actually,
5 he will be -- the end of the tape will be a perfect time
6 because he says, "I appreciate you being honest with me,"
7 and that's almost a natural end of the tape.

8 THE COURT: Does the McColl charge end the tape any
9 way?

10 MS. DAVID: Yes, Your Honor. We do not oppose that.
11 We discussed that in chambers.

12 THE COURT: End it right before he says, 'McColl'.

13 MS. DAVID: Yes, Your Honor.

14 THE COURT: Is that what you want?

15 MR. SHAFFER: Yes, Your Honor.

16 THE COURT: You're entitled to that.

17 MR. SHAFFER: Thank you, Your Honor.

18 THE COURT: Yeah, we discussed that in chambers.

19 Make sure that that's the only change I note in the
20 objection as to that video.

21 MR. SHAFFER: Yes, Your Honor, that's the only
22 objection.

23 THE COURT: Okay. And I sustain that. All right.
24 Does that deal with all the videos?

25 MS. DAVID: Yes, Your Honor.

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF MARLBORO) 2012-GS-34-0024
) 2012-GS-34-0026
) 2012-GS-34-2028

STATE OF SOUTH CAROLINA)
) PLAINTIFF
) vs.) TRANSCRIPT OF RECORD
))
TYRONE J. KING)
) DEFENDANT

September 10-13, 2012
Bennetttsville, South Carolina
VOLUME NO. 02 OF 04

B E F O R E:

THE HONORABLE EDWARD B. COTTINGHAM, JUDGE; and a jury.

A P P E A R A N C E S:

MIA DAVID, ASSISTANT SOLICITOR
Attorney for the State

MARY THOMAS JOHNSON LEE, ASSISTANT SOLICITOR
Attorney for the State

TRISTAN SHAFFER, ESQUIRE
Attorney for the Defendant

RICHARD JONES, PUBLIC DEFENDER
Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

1 (WHEREUPON, State's Exhibit Nos. 1 THROUGH 40 were
2 marked for identification only.)

3 COLLOQUY

4 MR. REDMOND: Before we proceed just a couple of
5 housekeeping matters to help the trial go by a little
6 smoother. There are several exhibits that we have either
7 ruled on -- the Court has ruled on that we need to go
8 ahead and ask the Court to move into evidence at this
9 time. And there are some items that we can stipulate and
10 we can agree to, and I'd like to go ahead and move those
11 into evidence at this time.

12 THE COURT: Please do.

13 MR. REDMOND: First, Your Honor, you ruled on State's
14 Exhibits One, Two, Three and Four and Five yesterday; that
15 being the Jackson v. Denno issue regarding ---

16 THE COURT: And they were without exception.

17 MR. REDMOND: And those were actually -- we had the
18 Jackson v. Denno hearing, and he objected to it, but the
19 Court ruled that they were admissible. So we would move
20 those into evidence at thi time. That's One -- State's
21 One through Five.

22 THE COURT: You have any problems with that?

23 MR. SHAFFER: Pursuant to the redactions for the
24 videotape and the previous objection I've made. I
25 actually made a list of some of the objections with the

1 specific times just for the record.

2 THE COURT: Let's talk about one thing at the time.

3 MR. SHAFFER: All right.

4 MR. REDMOND: And we understand the redactions.

5 That's just the -- with the Court. With the understanding
6 of the Court's ruling I'm moving those in at this time.

7 THE COURT: I'm going to let it in. While we're
8 talking most of his objections dealt with the first
9 portion. Have you redacted that?

10 MR. REDMOND: We have decided not to go for that
11 first portion of the tape.

12 THE COURT: You understand that?

13 MR. SHAFFER: Yes, Your Honor.

14 THE COURT: Then that deals with your objections if
15 they're not going to play it.

16 MR. SHAFFER: Not all of the objections, Your Honor.
17 There are a few that were after the Miranda.

18 THE COURT: Which ones are they?

19 MR. SHAFFER: One you ruled to redact between
20 approximately 15:30 and 15:13:30 and 15:14:03.

21 THE COURT: And what was that?

22 MR. SHAFFER: That was in reference to the stabbing.

23 THE COURT: In reference to what?

24 MR. SHAFFER: In reference to his previous stabbing.

25 The fact that he got ---

1 THE COURT: Yes, we redacted that.

2 MR. SHAFFER: Yes, Your Honor.

3 THE COURT: Did you redact it?

4 MR. REDMOND: Which portion? That was the issues
5 about the stabbing?

6 MS. DAVID: Yes.

7 MR. REDMOND: That has been redacted.

8 THE COURT: That has been redacted. Go ahead.

9 MR. SHAFFER: And I had made two other objections
10 for -- that were not ruled upon -- or that were ruled upon
11 by the Court but were denied. Two that I can think of. I
12 want to preserve ---

13 THE COURT: What are they, please?

14 MR. SHAFFER: One was the mention of the prior
15 stabbing, again.

16 THE COURT: No, they redacted that. Anything to
17 prior stabbing.

18 MR. SHAFFER: Yes, Your Honor. There was another
19 mention of that that was not redacted because the Court
20 ruled not to redact.

21 THE COURT: Where was that and what line?

22 MR. SHAFFER: I think it was at 15:40:50 or
23 approximately 15:40:50.

24 THE COURT: Can you tell me about that?

25 MS. DAVID: 15:40:50; that's the -- could the defense

1 attorney be more specific. Tyra White, who has our times
2 for the video, she said it's not on there.

3 THE COURT: It's not on there.

4 MS. DAVID: It is not on our -- the time that we have
5 is 4:55:20 to be redacted.

6 MR. SHAFFER: Your Honor, there is another reference
7 to the stabbing after the Miranda, and it's at 15:10:50.
8 I believe the Court ruled not to redact it yesterday.

9 THE COURT: I ruled not to redact that one?

10 MR. SHAFFER: Yes, Your Honor.

11 THE COURT: Well, if I ruled on it that's fine.

12 MR. SHAFFER: Thank you, Your Honor. There is -- and
13 there were a few other ones that you ruled not to redact.
14 I would like to actually make this a Court's Exhibit.
15 This is an e-mail with just for clarification of some of
16 the points I objected to.

17 THE COURT: As long as it don't relate to the first
18 part. That's not -- that's been redacted.

19 MR. SHAFFER: Yes, Your Honor.

20 THE COURT: Not going to have any objections to
21 something that is not in existence.

22 MR. SHAFFER: Yes, Your Honor. It is related to the
23 second part.

24 THE COURT: As long as it relates to the second part
25 that's fine.

1 MR. SHAFFER: Thank you, Your Honor. May I have this
2 marked has a Court's Exhibit?

3 THE COURT: What other objection did you make?

4 ~~MR. SHAFFER: I made an objection to a prior murder~~
5 and kidnapping charge at 15:08 ---

6 THE COURT: That's been redacted.

7 MR. SHAFFER: Your Honor, excuse me. It's actually
8 5:08:09 through 5:08:10.

9 THE COURT: Prior burglaries have not been redacted?

10 MR. SHAFFER: That hasn't been redacted, Your Honor.

11 THE COURT: Why?

12 MR. SHAFFER: He mentioned that -- I believe he
13 stated on the record that he couldn't -- that Marlboro
14 County was unable to go through line by line and redact
15 every word or every reference to anything in the
16 statement. I believe that was when you had said that
17 yesterday.

18 THE COURT: Well, this equipment is not the best in
19 the world. They have made every effort to do it. It's
20 not as sophisticated as it should be, but you couldn't
21 redact that part?

22 MR. REDMOND: Beg the Court's indulgence. That was
23 one that at the time, and I recall that section where the
24 Court ruled that that part could stay in. I can't recall
25 exactly ---

1 THE COURT: If I ruled that I'm not going to beat a
2 dead horse to death. If I ruled -- did I rule it stays?

3 MS. JOHNSON LEE: You did.

4 MS. DAVID: You did.

5 MR. SHAFFER: You did. That was denied. The reason
6 that I actually wanted to ask was just for clarification
7 purposes as to where I made those objections.

8 THE COURT: But the McColl stuff is out, you know
9 that?

10 MR. SHAFFER: Yes, Your Honor. And this is basically
11 so if -- for purposes of ---

12 THE COURT: I got you. Okay. Put it in.

13 MR. SHAFFER: Thank you, Your Honor.

14 (WHEREUPON, Court's Exhibit No. 1 was marked for
15 identification and received into evidence.)

16 THE COURT: As I told you before it's obvious to me
17 that the video is such of a poor quality that parts of it
18 are simply not discernible. My law clerk and I both
19 listened to it very carefully as have the staff of the
20 Clerk, and we all agreed to that.

21 And I told you that the lawyers are going to take
22 oral testimony as to what was said and then the jury will
23 have a better position to listen to the testimony. It
24 will be helpful to them in my view. Do you understand
25 that?

1 MR. SHAFFER: Yes, Your Honor. I just wanted the
2 objection noted for the record.

3 THE COURT: What's the objection?

4 MR. SHAFFER: Cumulative and a prior consistent
5 statement.

6 THE COURT: No, sir. Let's get that straight. I can
7 take testimony on it if you choose to.

8 MR. SHAFFER: Yes, Your Honor.

9 THE COURT: You as a good lawyer have to admit that a
10 great part of that deposition is not discernible?

11 MR. SHAFFER: Yes, Your Honor, that is correct.

12 THE COURT: Sir?

13 MR. SHAFFER: That is correct, it's very hard to
14 understand.

15 THE COURT: Then it is my view that it will enable
16 the jury to hear the testimony from the witnesses who he
17 gave it to such that they can then hear the testimony. I
18 don't think it's cumulative because a lot of testimony
19 couldn't even be heard. Don't you agree with that?

20 MR. SHAFFER: Yes, Your Honor. I would agree with
21 that.

22 THE COURT: I conclude it will enable the jury to
23 more properly view and listen to the video, okay?

24 MR. SHAFFER: Yes, Your Honor. And not to argue your
25 ruling I want to put an additional ground for my objection

1 to the tape. Essentially, due process, and it's a ---

2 THE COURT: You got to be clear. That don't tell me
3 nothing.

4 MR. SHAFFER: Okay, Your Honor. I apologize, Your
5 Honor. Equal protection, Your Honor, and essentially,
6 some of the reasons for not redacting certain parts is
7 that the equipment in Marlboro County is not sufficient to
8 do so. I believe that if you were in another county they
9 would have sufficient means to do so.

10 THE COURT: Well, in my view we have redacted that
11 portion which could have been possibly objected. In my
12 view a great portion of that video is not discernible. I
13 made that conclusion. My law clerk has made that
14 conclusion. The Clerk and his staff, all of whom have
15 listened to it intently.

16 MR. SHAFFER: Yes, Your Honor.

17 THE COURT: I conclude that it will enable the jury
18 after hearing the oral testimony to hear the video. In
19 fairness of justice to the defendant I'm going to permit
20 what he side so they can see that part where it's not
21 discernible.

22 MR. SHAFFER: Thank you, Your Honor.

23 MR. REDMOND: And, Your Honor, if I could, and then I
24 want to get back into the stipulation, but because I know
25 there is a record being made on certain issues, and I know

1 that when equal protection comes up. Lieutenant Seales
2 brought up an excellent point as it relates to the reason
3 the equipment -- is actually current equipment, but it's
4 not designed to allow for redacting and editing it so that
5 nobody can then say that law enforcement had tampered with
6 evidence. So I just wanted to make that clear on the
7 record ---

8 THE COURT: He agrees with that.

9 MR. REDMOND: --- just in case there are any issues
10 that come up later on.

11 THE COURT: You agree with that particular equipment
12 is not able to do that?

13 MR. SHAFFER: Yes, Your Honor. I don't believe
14 you're -- currently we're incapable of doing it. I
15 believe that other agencies could do it. There are
16 computer programs that allow you ---

17 THE COURT: Well, we don't have that other agency
18 here. We are in the second day of the trial. We spent
19 most to the time with your objections. I'm ready for the
20 jury.

21 MR. REDMOND: And, Judge ---

22 MR. SHAFFER: And, Your Honor, one thing. Can you
23 make all the objections regarding the -- all the rights
24 ---

25 THE COURT: I'm not going to do it. Objections

1 relative to the part that's been redacted are not
2 appropriate.

3 MR. SHAFFER: Yes, Your Honor. Can you make that a
4 final ruling so I don't have to object to it constantly?

5 THE COURT: No, sir. The objections made are not
6 available because it wasn't shown. You don't understand
7 that?

8 MR. SHAFFER: Your Honor, I do understand your
9 ruling. What I'm asking for you to make it a final ruling
10 so I don't have to constantly object and beat the dead
11 horse throughout the trial every time one of these issues
12 comes up throughout the trial.

13 THE COURT: Oh, yes, you can do that. I agree with
14 that.

15 MR. SHAFFER: Thank you, Your Honor.

16 MR. REDMOND: And, Judge, just to quickly finish up
17 with the stipulations. There are a couple of other items.
18 First thing we would want ---

19 THE COURT: I don't want you to make your objections
20 again as to those items, the second part. You've made
21 them and are protected for the record.

22 MR. SHAFFER: Thank you, Your Honor. I appreciate
23 that.

24 THE COURT: We don't want to waste another day with
25 objections.

1 MR. SHAFFER: Yes, sir.

2 MR. REDMOND: And, Your Honor State's -- for the
3 record, the Defense has agreed and the State would
4 respectfully move into evidence at this time State's
5 Exhibit Numbers 14 through 27. Those are all photographs.
6 The Defense has had a chance to view. Does not have any
7 objection, so we would move these into evidence.

8 (WHEREUPON, State's Exhibit Nos. 14 THROUGH 27 were
9 admitted into evidence.)

10 THE COURT: To save time showing them to him each
11 time you introduce them just say "Defense has been shown."
12 You agree with that?

13 MR. SHAFFER: Yes, Your Honor.

14 MR. REDMOND: And the last thing is the 911 call.
15 Defense has agreed and we are stipulating to move State's
16 Exhibit Number 40; that being the 911 call from the house
17 that night. Again, that's State's Exhibit Number 40. We
18 would move it into evidence at this time.

19 THE COURT: All right, sir. That's fine.

20 (WHEREUPON, State's Exhibit No. 40 was admitted into
21 evidence.)

22 MR. REDMOND: And that would conclude the
23 stipulations at this time, Your Honor. Unless there is
24 something else the State is ready to proceed.

25 MR. SHAFFER: Your Honor, I might have one objection.

1 the Clerk of Court.

2 MR. SHAFFER: Thank you, Your Honor. I apologize.

3 OPENING STATEMENT BY MS. DAVID

4 MS. DAVID: May it please the Court. On
5 November 11th of 2011, 11/11,11, at 2:30 in the morning
6 the Defendant, Tyrone King, entered the home of Mr. James
7 Galloway. At the Galloway home that evening was Mr. James
8 Galloway himself, his wife, Mrs. Karen Galloway, and their
9 first cousin, Mr. Reggie Cousar, along with three of their
10 grandchildren, one of whom happened to be asleep on the
11 couch.

12 At 2:30 that morning there was a knock on the door.
13 Mr. James Galloway, being the nice man that he was,
14 decided so get up and answer that door. It was his
15 neighbor, Mr. Tyrone King. Because it was his neighbor he
16 allowed him to come into the home while he returned to his
17 bedroom to dress himself and come back out for company.
18 However, Mr. Tyrone King wasn't there to be company.

19 As Mr. James Galloway walked back out of his room he
20 was shot right there in his home in his face and in the
21 presence of his grandchild at 2:30 in the morning where
22 his wife and grandson only heard him say, "I ain't got
23 nothing." But wait. It didn't stop there. The defendant
24 then runs into the bedroom where Karen Galloway is located
25 and pistol whips her across to top of her head with a gun

1 causing a stray bullet to go through her bedroom wall and
2 out the roof of her home. But wait. It still doesn't
3 stop there.

4 After shooting James and pistol whipping Karen the
5 defendant then goes to the other side of the home where he
6 holds Mr. Reggie Cousar at gunpoint; holding him there and
7 keeping him there until he realizes that Mrs. Karen
8 Galloway is now on the phone with 911. Upon making that
9 realization Mr. Tyrone King snatches the phone away from
10 her which causes the phone to hang up, but the 911
11 operator immediately calls back.

12 At that point the defendant, Mr. Tyrone King, talks
13 to the 911 operator and says that the bootlegger has been
14 shot. And, yes, let's be clear. I did just say
15 'bootlegger' meaning someone that sold alcohol from his
16 home without a license, but that does not give another man
17 the right to take his life.

18 By this point the police have arrived at the scene.
19 They're in front of the home. The defendant looks out and
20 immediately decides to run. A gun in one hand and the
21 phone still in the other hand. He is caught four houses
22 down lying under a truck.

23 Ladies and gentlemen of the jury, I am Mia David.
24 This is Mary Thomas Johnson Lee and this is Mr. Kernard
25 Redmond, and we are Assistant Solicitors for the State of

1 South Carolina where we represent the people. You are the
2 jury, and it's your job this week to pay close attention
3 to the facts and evidence that will be presented in this
4 case. You will hear testimony from the three family
5 members that were present in the home when this incident
6 took place.

7 You will hear multiple stories from the defendant who
8 will tell you, first, there was someone else with him by
9 the name of Aloysius McLaughlin that actually shot the
10 defendant. And then the second story where he comes back
11 and says he was alone and that it was an accident. You
12 will also hear a 011 recording where you will listen to
13 Mrs. Karen Galloway scream horrifically from the fright
14 and terror that's taking place.

15 MR. SHAFFER: Objection, Your Honor.

16 THE COURT: What's the objection?

17 MR. SHAFFER: Passion and prejudice.

18 THE COURT: She's entitled to make such statement as
19 she thinks her cases is about. What she says is not
20 evidence, and I've explained that to the jury.

21 MR. SHAFFER: Thank you, Your Honor.

22 THE COURT: Go ahead.

23 MS. DAVID: You will hear Mrs. Karen Galloway scream
24 horrifically from the fright and terror that is taking
25 place in her home as her husband has been shot, she has

1 been pistol whipped, and she has three grandchildren in
2 the home that morning.

3 MR. SHAFFER: Objection. Same objection.

4 THE COURT: No, sir. She's entitled to give her
5 position with regard to the case. What she says is not
6 evidence, but she's entitled to tell the jury what she
7 proposes to present.

8 MR. SHAFFER: Thank you, Your Honor.

9 THE COURT: And you're entitled to be quiet and let
10 her do it. Proceed.

11 MR. SHAFFER: Your Honor, may we approach?

12 THE COURT: No, sir. I'll let the jury step out.
13 Wait a minute. No, sir. Come in here and we'll save some
14 time.

15 (WHEREUPON, a bench conference was held off the
16 record in the presence of the jury, but out of the
17 hearing of the jury.)

18 THE COURT: Objection overruled. The facts are
19 appropriate for the jury's consideration understanding
20 what the Solicitor says is not fact. It's merely her
21 presentation of what she proposes to present, and she's
22 entitled to do that. Now, I'm going to let you have a
23 complete opening statement for the Defense at the
24 appropriate time also.

25 MR. SHAFFER: Thank you, Your Honor.

1 THE COURT: But let her make her position to this
2 jury, now, without objection.

3 MR. SHAFFER: Yes, sir.

4 THE COURT: Proceed.

5 MS. DAVID: At the close of my opening argument or
6 opening statement, again, please, keep in mind this week
7 that it is your job to pay close attention to the facts
8 and evidence that you will be presented with as you
9 whether or not the defendant is guilty of murder of
10 Mr. James Galloway in his home, assault and battery of a
11 high and aggravated nature as his pistol whipped Miss
12 Karen Galloway across the top of her head, pointing and
13 presenting as he held Mr. Reggie Cousar at gunpoint and
14 possession of a weapon during the commission of a violent
15 crime.

16 It is the State's request that you find the defendant
17 guilty. Thank you.

18 MR. SHAFFER: Objection, Your Honor. Move to strike
19 the last statement. It's under -- Your Honor, may we
20 approach?

21 THE COURT: Apparently, counsel, you don't understand
22 that she was entitled to tell this jury what her position
23 is.

24 MR. SHAFFER: Your Honor.

25 THE COURT: And what she said in my view was entirely

1 proper for the jury's consideration. They're the finder
2 of fact. Now, I'm going to let you make an opening
3 statement, and I'm going to give you a wide latitude.
4 Have at it.

5 MR. SHAFFER: Your Honor, if I may at some point ---

6 THE COURT: I've just overruled your objection.
7 Proceed.

8 MR. SHAFFER: Your Honor, I didn't actually put the
9 grounds for the objection on the record. I need to do
10 that.

11 THE COURT: Make your grounds and go ahead.

12 MR. SHAFFER: I prefer not to do it in the jury's
13 presence. Would you like to do it later?

14 THE COURT: No, sir. Make your statement. It's
15 clear to me what she said was appropriate under the
16 circumstances given my charge to the jury that they are
17 the finders of the facts and what she said is not
18 evidence. She's entitled to give her view of the case
19 whether you like it or not.

20 MR. SHAFFER: Your Honor ---

21 THE COURT: Counsel, please don't argue with me.
22 Make your statement, now. First time the jury is out I'll
23 let you put it on the record, but I'm not going to delay
24 this jury. Run every time you've got an objection.
25 You've already made five and we haven't started this case

1 but five minutes. Make your statement.

2 MR. SHAFFER: Thank you, Your Honor.

3 THE COURT: Whether or not the jury goes out I'll let
4 him make his objection.

5 OPENING STATEMENT BY MR. SHAFFER

6 MR. SHAFFER: Morning, everyone. My name is Tristan
7 Shaffer. I'm an attorney from Lexington and I represent
8 Mr. King. Now, I'm not going to do what Mia did or
9 Miss David did, excuse me, which is talk about the facts
10 of this case in my opening statement. I'm going to tell
11 you about what my job is. That's the Solicitor's job to
12 talk about the facts of the case the way they see it. My
13 job in a way is to make sure everybody follows the rules.
14 To make sure the cops follow the rules. That's what
15 Defense attorneys do.

16 Strangely, make sure the Court system follows the
17 rules. It's not to make arguments. It's not to convince
18 you of anything. It's just merely to make sure everybody
19 follows the rules. And we make sure that the cops follow
20 the rules. I make sure that the Solicitor follows the
21 rules. Try to make sure the Judge follows the rules, but
22 the one person that I can't make sure follows the rules is
23 the jury. Now, y'all have taken an oath, and that oath is
24 to try this case according to the law as the Judge gives
25 it to you. And that's up to y'all. I can't make y'all

1 follow those rules.

2 THE COURT: Mr. Shaffer, I ask that you back up so we
3 can hear you, too. Thank you.

4 MR. SHAFFER: Apologize, Your Honor.

5 THE COURT: That's okay. Go ahead.

6 MR. SHAFFER: Now, I'm going to talk to you also
7 today during my opening -- like I said I'm not really
8 going to talk about the facts right now, and that's
9 because trials strange. Trial are strange and you can
10 expect one thing going into a trial and get something
11 completely different. So I'm not going to speculate about
12 what the jury -- what the State is going to present. I'm
13 going to let the State present it's case and then I'm
14 going to get a chance to actually talk about that a little
15 bit later.

16 And you will hear my opinion. You will hear my
17 opinion on the facts, but right now you need -- you're
18 going to hear what I think about the actual charges. Now,
19 I'll moving this back if that's possible, Your Honor. The
20 very first thing I'm going to tell y'all about is the
21 primary charge in this case. He's charged with murder.
22 My client is charged with murder. The State alleges that
23 he murdered somebody. They allege that he murdered Mr.
24 Mr. Galloway.

25 And murder is a term that gets overused in our

1 culture and our society. I actually saw a bumper sticker
2 probably about two weeks ago that said, "Meat is murder."
3 And you know -- but murder in the outside word the common
4 definition of murder is not what we're here to define.
5 We're here to define whether or not he meets the actual
6 legal definition of murder. And murder is not just any
7 old killing. Murder is the killing of malice
8 aforethought.

9 The Judge is going to tell you about this later. The
10 definition of murder, according to the South Carolina
11 Legislature, is that murder is the killing of another
12 person with malice aforethought. So you have to have
13 something more than just a killing to make a murder. You
14 have to have malice. Now, the Judge will define malice
15 and the State will try to prove malice to y'all later on.

16 But it's something more than mere -- merely killing
17 someone. You have to have more than that, and the State
18 has taken on this burden. I actually like calling it a
19 challenge. A challenge to prove something. They have
20 taken on this challenge. They have to prove malice. And
21 they have to prove that to you beyond a reasonable doubt.
22 Or beyond any reasonable doubt. They have to say that --
23 they have to convince each and every one of you
24 individually and together that he committed a killing of
25 Mr. Galloway with malice aforethought beyond any

1 reasonable doubt.

2 Now, you're going to hear a bunch of definitions of
3 reasonable doubt. The U.S. Supreme Court, probably about
4 150 years ago, said every time lawyers try to define
5 reasonable doubt they make it more confusing. And,
6 really, that's sort of to be expected because lawyers
7 generally make everybody a little bit more confusing to be
8 honest with you. They can take very simple statements
9 like beyond all reasonable doubt and make it something
10 very confusing.

11 But the way I like to look at it, the way I like to
12 look at beyond a reasonable doubt is this: Is there a
13 doubt in your mind that something happened. Is that doubt
14 reasonable. If it is then that's reasonable doubt, okay.
15 Now, I'm explaining this to y'all as this point because
16 it's the lens. You have to look at all the evidence, and
17 what I mean by that you have to exam each piece of
18 evidence that comes up here, and they're going to have
19 murder charge as well as all the other charges and they're
20 going to have a bunch of different elements.

21 You're going to have to look at that evidence and
22 say, "Does it fit here." You know, is there evidence
23 beyond a reasonable doubt of this. Is there evidence
24 beyond a reasonable doubt of that. And you're going to
25 have to fill in, basically, every single element with some

1 piece of evidence. And every single piece of that element
2 you're going to have to say, "Well, they proved that to me
3 beyond any reasonable doubt," and you know, one things
4 that the Judge asks of you and I ask of you os wait until
5 the very end to make any decision. Pay attention, listen
6 to everything, but wait until the end to make a decision.
7 Because like I said trials change. Trials morph. You
8 don't really know what the evidence is going to show until
9 the very end.

10 You might think from Miss Davis' opening that you
11 know everything about the case. Trust me, you do not know
12 anything about this case. There are many, many more
13 things to talk about. Now, the one thing I would like to
14 talk about which is -- well, what I don't believe they're
15 going to prove. You know the State has to prove the who,
16 what, when, where and why. Basically, that's what they're
17 here to do. That's their job to show you the who, what,
18 when, where and why.

19 So that y'all can fill that in fill in each of those
20 elements of murder and each of every other offense that
21 they have beyond a reasonable doubt. Now, you know.
22 There's going to be various things y'all are going to have
23 problems with the evidence in this case, but one of the
24 main things, one of the most important questions in this
25 case, and I'm going to sit down after this, but the most

1 important question in this case is why. And that's why
2 was Mr. Galloway killed. Thank you.

3 THE COURT: Does that conclude your presentation ---

4 MR. SHAFFER: Yes, Your Honor.

5 THE COURT: --- of your opening statement?

6 MR. SHAFFER: Yes, Your Honor.

7 THE COURT: Thank you. I am not limiting you in any
8 way to your opening statement, but you understand?

9 MR. SHAFFER: Yes, Your Honor.

10 THE COURT: All right.

11 MR. SHAFFER: Thank you.

12 THE COURT: You may call your first witness.

13 MS. JOHNSON LEE: State calls Hosea Lemon.

14 HOSEA LEMON, after being duly sworn, testified
15 as follows:

16 CLERK OF COURT: Please be seated and state your full
17 name.

18 MR. REDMOND: Beg the Court's indulgence just one
19 minute.

20 THE COURT: Sir?

21 MR. SHAFFER: Your Honor, I also need to talk with
22 one person. I need to make sure sequestration order.

23 MR. REDMOND: Exactly. I was just making sure the
24 sequestration order was being enforced.

25 THE COURT: Make sure your's is, too. I want all the

1 MS. JOHNSON LEE: No, Your Honor. May this witness
2 be excused?

3 THE COURT: You may come down, and you are excused.
4 You are released from your subpoena. We thank you.

5 THE WITNESS: Thank you.

6 THE COURT: Your next witness.

7 MS. DAVID: At this time the State would like to call
8 Ms. Karen Galloway.

9 THE COURT: You may remain in the courtroom if you
10 choose to.

11 KAREN GALLOWAY, after being duly sworn,
12 testified as follows:

13 CLERK OF COURT: Be seated right there and state
14 would full name.

15 THE COURT: Won't you please, ma'am, speak into the
16 microphone so these folks at the far end can hear you.
17 Thank you. Can I get you some water or something?

18 THE WITNESS: No, sir. Thank you.

19 THE COURT: Proceed.

20 DIRECT EXAMINATION

21 BY MS. DAVID:

22 Q. Would you please state your full name for the record?

23 A. Karen Denise Galloway.

24 Q. And what's your current age?

25 A. Forty-six.

1 Q. And where do you live?

2 A. [REDACTED]

3 Q. And who lives there with you?

4 A. Me and my three kids..

5 Q. All right. Are you married?

6 A. I'm a widow.

7 Q. Okay. Do you remember the date of November 11th
8 2011?

9 A. Yes.

10 Q. And what's significant about that date to you?

11 A. That's the day my husband was killed.

12 Q. Will you please explain to use what occurred on that
13 evening?

14 A. When that evening at approximately about 11:00 or
15 12:00 I went to bed. We were in the bed and around 2:30,
16 2:45 there was a knock at the door. And I say, "I'm not
17 going to the door." He said, "I'll go." And so he got
18 up. He cut the hall light on and got up, and I guess he
19 asked who was at the door and he proceeded to open the
20 door. He came back in the room, and I said, "Who is
21 that?" He said it was Tyrone. So I just laid in the bed.
22 I was awake, but I was just laying there.

23 And he put his shorts on. He went back out the room,
24 and he said, "Naw, man, I don't have" and I just heard a
25 pop. And I jumps up out the bed, and by the time I jumps

1 up out of the bed and started he runs in the room on me.
2 pointing the gun in my face saying, "Whose in here with
3 you? Whose in here with you?" And I was like -- then he
4 hits me in the top of my head and I sit down on the bed.

5 When he runs out my room again I goes and get the
6 phone and call 911.

7 Q. Now, let's back up for a moment. Would it help you
8 to use this diagram?

9 A. Yes.

10 Q. This diagram has been marked as Exhibit Number Six?
11 Do you think ---

12 THE COURT: Counsel, have you seen this diagram?

13 MR. SHAFFER: Yes, sir, Your Honor. We have
14 stipulated to this.

15 THE COURT: All right, sir.

16 BY MS. DAVID:

17 Q. Is this an accurate depiction of the make up of your
18 home?

19 A. Yes, it is.

20 Q. Okay. And this is [REDACTED] where you live?

21 A. Yes, ma'am.

22 Q. I'm going to hand you this ruler. If you would
23 please show us where you were located when the defendant
24 came into your room and where your husband was located?

25 A. I can. I was right here in this room right here.

1 Q. You were in the master bedroom?

2 A. Yes, ma'am.

3 Q. And where did the defendant come from?

4 A. From the living room through here. The living room.

5 Q. And so you see him coming -- you saw him coming into
6 your bedroom what did you do?

7 A. I was standing getting up out the bed at that point,
8 and he ran in on me.

9 Q. And then what happened?

10 A. And that's when he had the gun in his right hand, and
11 he asked me, "Who is in here with me. Who is in here with
12 you." And that's when I said, "Reggie is here," and
13 that's when he hit me in the top of my head.

14 Q. And how did he hit you?

15 A. With the handle of the gun. And it went off, and the
16 bullet went through the wall.

17 Q. Okay. And is that young man that hit you with that
18 gun in this courtroom today?

19 A. Yes, he is.

20 Q. And what is he wearing?

21 A. A green shirt and some brown khakis.

22 Q. Will you please point him out for me?

23 A. He's right over there.

24 MS. DAVID: May the record reflect that the witness,
25 Mrs. Karen Galloway, has identified Mr. Tyrone King as the

1 individual in her home that night that pistol whipped her
2 with the gun.

3 BY MS. DAVID:

4 Q. Now, after he hit you across the head with the gun
5 what happened next? Where does he go?

6 A. He left out my room and goes towards the end of the
7 trailer. Over towards where my cousin, Reggie, was at and
8 my grandchildren was in the other bedroom, too.

9 Q. And which room are your grandchildren in?

10 A. In the third bedroom over here.

11 Q. Okay. And what are you doing at this time? When he
12 leaves out of your bedroom what do you do?

13 A. I'm on the phone with the 911 operator.

14 Q. Where is the phone located? Can you show me?

15 A. On the side of my bed. Right here on the side of my
16 bed.

17 Q. Right there on the night stand?

18 A. Yeah, right beside my bed.

19 Q. Okay. So you get on the phone with 911 and then you
20 talk to them and then what happened?

21 A. I goes in the living room and I see my husband on the
22 floor.

23 Q. And that was the first time seeing him there?

24 A. Yes. And I'm talking with them, and I'm talking to
25 them and he comes back out with Reggie with the gun on

1 Reggie. And I had the phone in my hand, and he snatched
2 the phone out of my hand and hung up the phone. And the
3 operator called us back, and he speak to the operator at
4 that point, and I'm just on the chair, you know, crying.

5 Q. Can you remember anything that was said during that
6 time?

7 A. Only thing I can remember saying that -- well, she
8 called him back. I guess she asked him what happened or
9 what was going on. He was like, "Yeah, yeah, my home boy
10 shot my neighbor. He came for some liquor. He shot my
11 neighbor." At this point he's still standing there with
12 the gun on my cousin.

13 Q. And then what happened after the 911 call?

14 A. He's talking to her, and I'm asking him to give me
15 the phone. I said, "Tyrone, give me the phone."

16 THE COURT: Turn to the microphone for us, please.

17 THE WITNESS: And he talked to the operator, and at
18 that point, you know, my blinds is open and the police
19 pulls up. And he's like, "No. I'm not about to go to
20 jail. I'm not about to go to jail." I'm asking him to
21 just go out to them and give himself up. And he's like,
22 "No. No. No. So I just said, well, just tell him to
23 leave. Just leave. So he runs to the back door. With
24 the gun and the phone in his hand he runs to the back
25 door.

1 Q. And then after he leaves what happened? What did you
2 do after the officers arrived?

3 A. Well, when he leaves out the back door I open the
4 front door and tell them he's out the back door. He's out
5 the back door, and I goes back in the house. And I just
6 fall out on the chair right there, you know. I just
7 couldn't. And then my niece she came up after. They
8 asked her to take me in the other room.

9 Q. Okay..

10 MS. DAVID: Beg the Court's indulgence just one
11 moment.

12 BY MS. DAVID:

13 Q. Just a few more questions. Would you please tell us
14 your husband's name?

15 A. James Galloway.

16 Q. Mr. James Galloway. And would you tell us who shot
17 your husband in the home that evening?

18 A. Mr. Tyrone King.

19 Q. And how did you know for sure that that was Mr.
20 Tyrone King? Did you know him?

21 A. Yes. He's my neighbor.

22 Q. Okay. For about how many years has he been your
23 neighbor?

24 A. About 12 or 13 years.

25 Q. Did he come over to your house frequently or was this

1 is first time? Had he been there before?

2 A. No, he been there before.

3 Q. Okay. At this time no further questions. Would you
4 please answer any questions the Defense counsel may have
5 for you.

6 CROSS-EXAMINATION

7 BY MR. SHAFFER:

8 Q. Mrs. Galloway, very sorry for the lost of your
9 husband. I want to run through, and I know it's a painful
10 night in your life, but I want to run through the sequence
11 of events one more time. So you heard a knock at the
12 door, correct?

13 A. Yes.

14 THE COURT: You may approach if you need to.

15 MR. SHAFFER: Okay. Thank you, Your Honor.

16 THE COURT: Go ahead.

17 BY MR. SHAFFER:

18 Q. Okay. And when you heard the knock at the door did
19 you -- Mr. Galloway got up? James got up, right?

20 A. Yes.

21 Q. And he went to the door, right?

22 A. Yes.

23 Q. What was he wearing when he went to the door?

24 A. A tee shirt and his boxers.

25 Q. All right. And at what point did you hear them

1 talking?

2 A. Well, I didn't hear them talking. He came back in
3 the room and put his shorts on. And he came back out the
4 room and he said, "Naw, man, I don't have nothing," and he
5 just shot him.

6 Q. Okay. And at that point you heard the gunshot?

7 A. Yes.

8 Q. So the conversations began afterwards; is that right?

9 A. Yes. He asked him -- yeah.

10 Q. Okay. And you're sure it occurred after he got pants
11 on?

12 A. Yes.

13 Q. All right. Did you tell the officer that night it
14 occurred before he got pants on?

15 A. No.

16 Q. Okay. Do you remember talking to the officers that
17 night? That morning?

18 A. Yes. They asked me who came to the house, and I told
19 them.

20 Q. Okay. But you didn't tell them this was before he
21 got pants on?

22 A. No, I did not.

23 Q. Okay. All right.

24 MR. SHAFFER: One second, Your Honor.

25 BY MR. SHAFFER:

1 Q. But you didn't actually see who shot him?

2 A. I didn't see him shoot him, but I know he shot him.

3 Q. And he came in the room immediately after?

4 A. Yes, he did.

5 Q. All right. And your husband sold alcohol?

6 A. Yes, he was disabled.

7 Q. Okay. And they characterize him as a bootlegger. He
8 didn't actually make the alcohol, did he?

9 A. No, he didn't.

10 Q. He just ---

11 A. He did that because I was the only one working at the
12 time.

13 Q. Yes, ma'am. But he just bought the alcohol and then
14 sold it after hours?

15 A. He what?

16 Q. He wasn't the bootlegger that had the still in his
17 room?

18 A. No.

19 Q. Do you know where he kept the alcohol at?

20 A. Yes.

21 Q. Where did he keep it?

22 A. It was sitting in my bedroom.

23 Q. Okay. Now, you had said the night of that you don't
24 know why he would have done this; is that correct?

25 A. Excuse me.

1 Q. You said that you did not know why he would have done
2 this. Why he would have shot him the night of; is that
3 correct?

4 A. Yeah. I don't know why he shot him. That's what I
5 want to know.

6 Q. Yes, ma'am.

7 MR. SHAFFER: Court's indulgence just a moment. No
8 more questions, Your Honor.

9 THE COURT: Any further additional questions?

10 MS. DAVID: No further questions for Miss Galloway.
11 Thank you.

12 THE COURT: Miss Galloway, you may remain in the
13 courtroom now if you care to.

14 THE WITNESS: Thank you.

15 THE COURT: Thank you.

16 MS. DAVID: Your Honor, may we approach?

17 THE COURT: Yes.

18 (WHEREUPON, a bench conference was held off the
19 record in the presence of the jury, but out of the
20 hearing of the jury.)

21 MS. DAVID: Your Honor, at this time the 911
22 recording has been stipulated to by Defense attorney, and
23 we're going to play it for the jury.

24 THE COURT: By stipulation, stipulation meaning the
25 attorneys agree that this be played for your

1. consideration.

2. MR. REDMOND: Your Honor, if the Court would indulge
3. us. Miss White is rebooting it right now, and that should
4. take just a minute and we can go ahead and play it.

5. THE COURT: Sir?

6. MR. REDMOND: It should take just a minute to get the
7. computer rebooted, and as you see the computer has shut
8. itself down for inactivity. She's got it back up. It
9. shouldn't take us but a second to go ahead and play it.

10. (WHEREUPON, State's Exhibit Number 40 was played for
11. the jury in open Court.)

12. MS. DAVID: Thank you, Miss White. At this time the
13. State would like to call our next witness, Mr. Reggie
14. Cousar.

15. THE COURT: Come around, please.

16. REGGIE COUSAR, after being duly sworn, testified
17. as follows:

18. CLERK OF COURT: Please be seated and state your full
19. name.

20. THE WITNESS: My name is Reggie Cousar.

21. DIRECT EXAMINATION

22. BY MS. DAVID:

23. Q. And what's your current age?

24. A. I'm 46 years-old.

25. Q. Where do you live?

1 A. [REDACTED].

2 Q. And where were you living on November 11th?

3 A. [REDACTED].

4 Q. You were living at [REDACTED]. How long had you
5 been staying there?

6 A. About, approximately, eight months to a year.

7 Q. Okay. And what's your current relation to this
8 family?

9 A. First cousins.

10 Q. You're first cousins with James or Karen?

11 A. James and Karen Galloway.

12 Q. Okay. Are you currently married?

13 A. No.

14 Q. Do you have any children?

15 A. No.

16 Q. Okay. Do you remember the early morning of
17 November 11th 2011?

18 A. Yes, I do.

19 Q. And what were you doing at this time when the incident
20 occurred?

21 A. I was asleep.

22 Q. You were asleep. And how did you wake up?

23 A. I heard Karen calling me.

24 Q. You heard her?

25 A. I heard her screaming my name.

1 Q. And then what did you do?

2 A. I got up, walked around the front room and saw Tyrone
3 King with a gun to her face.

4 Q. When you walked in the front room you saw?

5 A. I saw him, Tyrone, point the gun to her face.

6 Q. And then what happened?

7 A. Then he turned and pointed it at me.

8 Q. Where did he point the gun at you?

9 A. Right here in my chest. In my solar plexus.

10 Q. And how did you know it was a gun?

11 A. When I felt it on my chest and saw it.

12 Q. It was hard?

13 A. Um hum.

14 Q. Is the young man that pointed the gun at you in this
15 courtroom today?

16 A. Yes, he is.

17 Q. What is he wearing?

18 A. He's wearing a green striped shirt and black glasses.

19 Q. Are you able to point to him for me, please?

20 A. Yes, I am.

21 Q. Will you?

22 A. Right there.

23 MS. DAVID: May the record reflect that the witness,
24 Mr. Reggie Cousar, has identified Mr. Tyrone King as the
25 individual in the home of Mr. James Galloway pointing a

1 firearm at him on November 11th.

2 BY MS. DAVID:

3 Q. Now, we have already mentioned that we have an
4 exhibit here of [REDACTED]. Is this an accurate
5 depiction of the home?

6 A. Yes, ma'am, it is.

7 Q. Can you sort of show us where you were located and
8 how this incident occurred? Will you walk us through it?

9 A. I was in a room. This room light here.

10 Q. You're going to have to speak up for us. And if you
11 would please use this ruler to kind so you can be closer
12 to the mic?

13 A. I was in Bedroom Number Three. When I heard Karen
14 call me I came out of the room. It's right here. Right
15 here. I came out of the bathroom, and I saw Mr. King
16 holding the gun to Karen's face. I was asking him what
17 was going on. What was going on, and he started talking
18 some of his boys did that. One of his boys did it. One
19 of his boys did that.

20 And I'm asking him what's going on. Still asking him
21 what's going on. Then I hear Karen on the phone talking
22 about, "My husband's been shot. My husband's been shot."
23 Look over there and see James on the floor. I rush to
24 him, and then all of a sudden he runs out the door.

25 Q. About how long do you think this whole thing?

1 A. Oh, it was about five minutes.

2 Q. Five minutes at the most?

3 A. At the most.

4 Q. Prior to you coming out of the room did you hear any
5 shots?

6 A. No, I didn't.

7 Q. What were you doing?

8 A. I was sleep.

9 Q. Okay. Prior to this night did you know Mr. Tyrone
10 King?

11 A. Yeah.

12 Q. How did you know him?

13 A. A neighborhood dude. Hung around the house.

14 Q. And when you walked out of the room you didn't know?

15 A. I didn't know what was going on.

16 MS. DAVID: Beg the Court's indulgence just one
17 moment.

18 BY MS. DAVID:

19 Q. Okay. I need you to tell me two things?

20 A. Sure.

21 Q. Did yes see anyone else in that house?

22 A. No.

23 Q. Please tell me who all was in the house with you?

24 A. Me, James, Karen and the three kids.

25 Q. And?

1 A. Tyrone King.

2 Q. And what happened? How closely did you all live to
3 the Sheriff's Department?

4 A. Man, right around the corner.

5 Q. You would say?

6 A. I would say a block.

7 Q. A block?

8 A. Yeah.

9 Q. Okay. All right, Mr. Cousar. No further questions
10 at this time. Would you please answer any questions that
11 the Defense attorney may have for you?

12 A. Sure.

13 CROSS-EXAMINATION

14 BY MR. SHAFFER:

15 Q. All right, Reggie, tell me this, sir. You said you
16 woke up from a gunshot, correct?

17 A. I did not hear the gunshot.

18 Q. Okay, you did not hear the gunshot. You woke up with
19 her screaming?

20 A. Yes, I did.

21 Q. Okay. So you didn't hear the gunshot?

22 A. No, I didn't.

23 Q. All right. Did you tell the police you heard the
24 gunshot?

25 A. No, I didn't.

1 Q. Okay. Now, did you go through the -- you then, once
2 you woke up, you went into the living room, correct?

3 A. Yes, sir.

4 Q. And you said that he was pointing the gun at Karen;
5 is that correct?

6 A. Yes, sir, he was.

7 Q. All right. And then he pointed the gun at you,
8 correct?

9 A. Yes, he did.

10 Q. Okay. Now, you spoke to the police the morning of,
11 right?

12 A. Yes, I did.

13 Q. Now, is it your testimony today that -- did you leave
14 nothing out that you told the police regarding the chain of
15 events that we just talked about?

16 A. No.

17 Q. Okay. Were you going to jump on him? Do you
18 remember telling the police that you were about to jump on
19 him?

20 A. Yeah.

21 Q. All right. But you didn't testify to that whenever
22 the Solicitor stated?

23 A. No.

24 Q. Okay. But your testimony is definitely that he was
25 pointing the gun at Karen?

1 A. Yes.

2 Q. Okay. And then he came in your room, and he was
3 point the gun at you?

4 A. No, he never came in my room. I came outside room.

5 Q. When you came in the room?

6 A. Yes.

7 Q. I apologize. And you're absolutely sure that Karen
8 didn't come in the room while he was pointing the gun at
9 you instead?

10 A. I'm 100 percent positive.

11 Q. All right.

12 MR. SHAFFER: No further questions.

13 THE COURT: Anything further from the State?

14 MR. REDMOND: Beg the Court's indulgence.

15 MS. DAVID: No further questions from the State.

16 THE COURT: You may come down and remain in the
17 courtroom if you care to.

18 MS. DAVID: The State would now like to call
19 Mr. Devonte Mc [REDACTED] who is currently being sequestered.

20 MR. SHAFFER: Your Honor, may we approach on this?

21 THE COURT: Yes, sir.

22 (WHEREUPON, a bench conference was held off the
23 record in the presence of the jury, but out of the
24 hearing of the jury.)

25 THE COURT:

1 DEVONTE M[REDACTED], after being duly sworn, testified
2 as follows:

3 THE COURT: Good morning, young man.

4 THE WITNESS: Good morning.

5 THE COURT: Good to see you again.

6 CLERK OF COURT: Give us your name, now, please.

7 THE COURT: Give us your name, please.

8 THE WITNESS: Devonte Mc[REDACTED].

9 CLERK OF COURT: There you go.

10 THE COURT: There you go. That's fine, son. Go
11 ahead.

12 DIRECT EXAMINATION

13 BY MS. DAVID:

14 Q. Mr. Devonte, will you tell us how old are you?

15 A. I'm 11.

16 Q. You're 11. And when is your birthday?

17 A. On January 9th.

18 Q. And do you go to school here?

19 A. Yes.

20 Q. Where do you go to school?

21 A. I go to Bennettsville Middle School.

22 Q. What grade are you in?

23 A. The sixth.

24 Q. What is your teacher's name? Do you know your
25 teacher's name? Are you a little bit nervous today? You

1 are. Well, you can just talk to me. Let's pretend these
2 people aren't in here. What's your teacher's name? Do
3 your remember November 11th 2011?

4 A. Yes.

5 Q. Yes. And what happened on that day?

6 A. I was on the chair.

7 Q. You were on the chair. Can you show me on this
8 diagram where you were on the chair? You were laying
9 right there?

10 A. Yes, ma'am.

11 Q. And what were you doing there?

12 A. Sleep.

13 Q. You were sleeping. And then did you hear anybody
14 come to the house that night?

15 A. Yes.

16 Q. Yes. How did you know somebody came to the house?
17 You saw somebody in there?

18 A. Yes.

19 Q. Who did you see?

20 A. Tyrone.

21 Q. Is he in here today?

22 A. I don't know.

23 Q. You don't know. Did you look around? Had you seen
24 Tyrone before this night?

25 A. Yes.

1 Q. Where had you scene him at before this night? Had
2 your scene him at your house before?

3 A. Um hum.

4 Q. Yeah?

5 A. Yes.

6 Q. A lot of times?

7 A. Yes.

8 Q. So ---

9 THE COURT: Talk a little louder for us, please, son.

10 BY MS. DAVID:

11 Q. So you knew who Tyrone was ---

12 THE COURT: You want to put him on the microphone?

13 BY MS. DAVID:

14 Q. --- when you saw him?

15 THE COURT: Why don't you let him sit down and talk
16 in the microphone. You're doing fine, young fellow. Just
17 answer the questions for us.

18 BY MS. DAVID:

19 Q. So you knew who Tyrone was when you saw him?

20 A. Yes.

21 Q. You did. Okay. What did you see Tyrone do while he
22 was in your house?

23 A. He asked for some beer or liquor.

24 Q. He asked for some beer or some liquor. And then what
25 happened?

1 A. He shot James.

2 Q. And who is James?

3 A. My granddaddy.

4 Q. James is your granddaddy. And how did you see him
5 shoot James.

6 A. He just shot him.

7 Q. You saw him with the gun?

8 A. Yes.

9 Q. And where did he have that gun? How did you see the
10 gun.

11 A. In his pants.

12 Q. You saw it in his pants. Did he pull the gun out?

13 A. Yes.

14 Q. How did he pull it out? Can you show us? Stand up
15 and show us?

16 THE COURT: Stand up and show up how he did it.

17 THE WITNESS: The front side.

18 BY MS. DAVID:

19 Q. Yeah, and then what did he do?

20 A. He shot him.

21 Q. He shot him. How did he take it out?

22 A. Like that.

23 Q. He took it out and then did what?

24 A. Pointed the gun and shot him.

25 Q. He pointed the gun at your grandfather and shot him.

1 And then what did you hear?

2 A. A pop.

3 Q. You heard a pop. And what did you do?

4 A. I jumped.

5 Q. You jumped. And then what? Did you run?

6 A. No.

7 Q. No. Were you afraid?

8 A. Yes.

9 MR. SHAFFER: Your Honor, may we approach just one
10 moment?

11 THE COURT: Sir?

12 MR. SHAFFER: May I approach, Your Honor?

13 THE COURT: Okay. Are you through with your
14 examination?

15 MR. SHAFFER: I wanted to approach the bench, Your
16 Honor.

17 THE COURT: Come around.

18 MR. SHAFFER: Thank you, Your Honor.

19 (WHEREUPON, a bench conference was held off the
20 record in the presence of the jury, but out of the
21 hearing of the jury.)

22 THE COURT: Let me get on the record. This is a
23 child of tender years. There is a plithary of cases that
24 say when dealing with a child of tender years she is
25 entitled to use leading questions.

1 MR. SHAFFER: My objection is not leading, Your
2 Honor.

3 THE COURT: What is it?

4 MR. SHAFFER: It's something totally different. I'd
5 like to put on the record if you wouldn't mind getting the
6 Court out. It's something totally different from leading.
7 I'm not objecting to leading.

8 THE COURT: Well, I'm going to let you go to the jury
9 room in just one moment. I'll bring you back. Please go.

10 (WHEREUPON, the jury panel was excused from the
11 courtroom at 11:45 a.m.)

12 THE COURT: All right. The jury is outside the
13 courtroom. What is your objection to this Solicitor's
14 testimony?

15 MR. SHAFFER: Your Honor, my objection is the fact
16 that Ms. David actually pointing the gun and demonstrating
17 what he would have done. The problem with that is: A,
18 it's not accurate according to the child's video which
19 stated the gun was pointed at his stomach. For her to sit
20 there and point the gun up in the air like as if she's
21 pointing it towards someone's head is an inaccurate
22 depiction of his statement.

23 THE COURT: I do not ---

24 MS. DAVID: Your Honor this is inaccurate ---

25 THE COURT: Wait a minute. Wait. I've listened very

1 asking them to find him guilty.

2 MR. SHAFFER: Your Honor, Rule 22 of the Rules of
3 Criminal Procedure also note ---

4 THE COURT: I note your objection. We're going
5 forward with the case. Bring the jury back. Her remarks,
6 given the totality of her remarks were appropriately
7 satisfactory during her opening statement. Bring the jury
8 back for me. That is a child of tender year. She's
9 entitled to recognize that.

10 MR. SHAFFER: For the record I've never objected in
11 any way about the way she's actually handled the witness.
12 I was objecting to her characterization.

13 THE COURT: That's not true. You did do it.

14 MR. SHAFFER: Your Honor, to clarify my objection if
15 I misstated, and I'd like to clarify. What I intended to
16 object to is merely her characterization of where the gun
17 was.

18 THE COURT: Which was wrong. It didn't occur. It
19 didn't happen, and you're -- I reject such a position.

20 MR. SHAFFER: Thank you, Your Honor.

21 THE COURT: Bring the jury in.

22 (WHEREUPON, the jury enters the courtroom at
23 11:51 a.m.)

24 BY MS. DAVID:

25 Q. Young man, relax. You're doing fine.

1 MR. SHAFFER: Objection, Your Honor.

2 THE COURT: What is your objection, now?

3 MR. SHAFFER: May we approach?

4 THE COURT: What is your objection? You do not
5 understand that this is a child of tender age, and our
6 Courts have tried to recognize that we treat them a little
7 differently in the courtroom as is proper. All she said
8 was, "Young man, relax. You're doing fine. There is
9 nothing wrong with that. Your objection is overruled.
10 You may proceed.

11 BY MS. DAVID:

12 Q. Mr. Devonte, I thank you for talking with us today.
13 I just have one more question for you. Did you see anyone
14 else in the house besides Mr. Tyrone King?

15 A. No.

16 Q. No.

17 A. No, ma'am.

18 Q. No, ma'am, you didn't. And thank you. At this time
19 will you answer any questions the Defense attorney may
20 have for you. His name is Mr. Tristan Shaffer. Thank
21 you?

22 THE COURT: You may proceed.

23 CROSS-EXAMINATION

24 BY MR. SHAFFER:

25 Q. Good morning, Devonte. You're a little nervous to be

1 here; is that right? I understand. I would be nervous as
2 well. Now, do you remember speaking to the officers the
3 morning after or the morning of the shooting? Do you
4 remember speaking with the cops? Do you remember them
5 taking you to a room and sayings that it's videotaped and
6 saying that there is -- to give a statement?

7 THE COURT: Son, let me question this. I'm afraid
8 you don't understand. Apparently, the next day the
9 officers took another statement from you. Do you remember
10 that? Yes or no.

11 THE WITNESS: Statement?

12 THE COURT: Did you talk to them the next day?

13 THE WITNESS: Yes.

14 THE COURT: Yes. His answer is yes. Did you talk to
15 them next day?

16 THE WITNESS: Yes.

17 THE COURT: The answer is yes. He doesn't even know
18 that a statement is. Talk to him as a child.

19 MR. SHAFFER: Thank you, Your Honor. I'm sorry.

20 THE COURT: He has said, yes, he remembers giving a
21 statement the next day.

22 BY MR. SHAFFER:

23 Q. Did you see him point the gun?

24 A. Yes.

25 Q. Where did he point the gun at?

1 A. On his stomach.

2 Q. His stomach. You remember him shooting the gun?

3 A. Uh-uh. No.

4 Q. You didn't see the shot. Okay. You weren't watching
5 when he -- you heard the noise?

6 A. Yes, sir. I heard the noise.

7 Q. You heard the noise. Were you looking at him when
8 you heard the noise?

9 A. No.

10 Q. Okay. And do you remember what James was wearing?
11 What your granddad was wearing?

12 A. Yes.

13 Q. What was he wearing?

14 A. His -- had some shoes, something, but me had pants
15 and shirt.

16 MR. SHAFFER: That's all the questions I have for
17 you. I think you did a fantastic job.

18 THE COURT: Thank you. Does that conclude the
19 questions of this young man?

20 MS. DAVID: Yes, it does. No further questions.

21 THE COURT: Young man, thank you so much for coming
22 and being with us, okay. We appreciate it very much.
23 Thank you.

24 MR. SHAFFER: Beg the Court's indulgence just one
25 moment.

1 as follows:

2 CLERK OF COURT: Have a seat and state your full
3 name.

4 THE COURT: Proceed.

5 DIRECT EXAMINATION

6 BY MS. DAVID:

7 Q. Would you please state your full name for the record?

8 A. Timmy Dwayne Shaw.

9 Q. And what is your occupation?

10 A. I'm a Deputy with the Marlboro County Sheriff's
11 Office.

12 Q. How long have you been employed there?

13 A. For 12 years.

14 Q. And what are your duties with the Marlboro County
15 Sheriff's Office?

16 A. Warrant service, answer 911 calls, respond to
17 different emergencies.

18 Q. Do you ever assist with investigations?

19 A. On certain parts of it, yes, ma'am.

20 Q. Okay. Do you remember the incident from
21 November 11th of 2011 with Mr. Tyrone King?

22 A. I do.

23 Q. And how did you become involved in this incident?

24 A. Actually, I was the responding officer for the 911
25 call and at that residence. I think the call was

1 originally dispatched as a burglary in progress, I
2 believe.

3 Q. And how did you receive that call?

4 A. Over the radio from 911 Dispatch.

5 Q. And then what did you do?

6 A. Went to that location on Oriole Lane.

7 Q. About how long did it take you to get there?

8 A. Actually, we were -- the Sheriff's Office is only
9 probably 200-yards away from that location. It was just a
10 couple of -- not even a full minute, probably.

11 Q. Okay.

12 A. So it's just across the street.

13 Q. What did you do when you arrived on the scene or I'll
14 help you out. This has been marked. This diagram has
15 been marked as the State's Exhibit Number Seven. Will you
16 sort of show us where you arrived on the scene?

17 A. Yes, ma'am.

18 Q. And what took place?

19 A. I walked over to the board.

20 Q. You can step down and speak to us. Defense counsel
21 does not oppose.

22 MR. SHAFFER: No objection, Your Honor.

23 THE COURT: You may come around if you care to.

24 THE WITNESS: Actually, when I responded out to the
25 location of that house we were next to is actually this

1 house here. It has another driveway right beside it. I
2 pulled into this driveway and pulled my patrol car here.
3 There is another residence here. I was actually in
4 between the two residences.

5 There was actually some people standing on the front
6 porch of the house. When I got out of my parole car I
7 walked around the front of it. When I got to this corner
8 right here there were people on the front porch saying
9 somebody was still inside. Before I could start towards
10 the front door one of the people on the front porch said
11 he's running for the back door. I stopped. Actually ran
12 to the back of the residence and I could hear someone
13 running inside the residence.

14 When I got to the back corner the back door was still
15 closed, but when I rounded the back corner before I could
16 get to the back door the back door pulled open and someone
17 run out of it. I yelled to them, "Sheriff's Department.
18 Stop. Get on the ground." They did not. They started
19 running on foot.

20 THE COURT: You may take the witness stand.

21 MS. DAVID:

22 Q. Make yourself comfortable.

23 A. The subject ran out. I actually pursued him on foot.
24 He jumped this fence. There are actually houses on the
25 side of the street. I did not want him to be able to be

1 able to clear this side of the fence and run towards the
2 street without me being able to see him. I did not jump
3 the fence. I actually ran around the side of the
4 residence.

5 When I was still in foot pursuit I come to the corner
6 of the fence. I was running across this yard. I could
7 see someone run past the gap in between these next two
8 homes. When I got to this corner of the residence I
9 stopped because I didn't know where he was at.

10 I blocked the way to make sure he was not standing at
11 the corner of the residence here closed in the backyard.
12 I actually seen him slide up under this truck. I started
13 shouting to him, "Show me your hands. Show me your
14 hands." I actually could tell he had something in one of
15 his hands.

16 Q. I was going to ask you that. Upon coming into
17 contact with him did he have anything in his possession?

18 A. Yes. He had -- actually it was the street lamp, yard
19 light, that was beside of this truck. So I had a shadow
20 from the truck and I couldn't really see what was in his
21 hands. And I continued to yell at him to show me what was
22 in his hands. And he never let go, so I started yelling
23 to put it down. He threw something towards the front of
24 the truck up towards to motor. I slid him out from up
25 under the truck and handcuffed and secured him. Patted

1 him down for weapons.

2 Didn't actually find any weapons. Did find a bottle
3 of alcohol that was removed from his pocket. Laid it on
4 the ground, secured him and moved him away from the truck
5 to see what he threw under the truck. And it was actually
6 the top part of a wireless house phone.

7 Q. At this time I would like to show you what has been
8 marked as State's Exhibit 21 and State's Exhibit 22. Do
9 you recognize those photos?

10 THE COURT: Have those exhibits been shown to Defense
11 counsel?

12 MR. SHAFFER: They have been stipulated to.

13 THE COURT: You've seen them? Go ahead.

14 THE WITNESS: It's actually going to be the picture
15 of the truck that he was under. The bottle of alcohol was
16 pulled out of his pocket, and the actual top part of the
17 house phone.

18 BY MS. DAVID:

19 Q. Do these photos fairly and accurately depict the
20 scene of the arrest where the defendant was lying?

21 A. Yes, ma'am.

22 Q. On November 11th?

23 A. Yes, ma'am, it does.

24 Q. Has it been altered or changed in any way?

25 A. No, ma'am, not that I can tell. No, ma'am.

1 MS. DAVID: At this time the State would move to
2 publish those photos to the jury and to also have them
3 admitted into evidence.

4 THE COURT: They are admitted, and you may publish at
5 this time. As I told this jury, it is in evidence and
6 will be with them during their deliberations. But please
7 take a look at it and pass it around, please.

8 (WHEREUPON, State's Exhibit Nos. 21 and 22 were
9 previously admitted into evidence.)

10 MS. DAVID: Would you like for me to continue or
11 allow a moment for the jury to view the photos?

12 THE COURT: Proceed, please.

13 MS. DAVID: Thank you, Your Honor.

14 BY MS. DAVID:

15 Q. At the time of this chase did you see anyone else
16 leave the back door of [REDACTED]?

17 A. No, ma'am. When I started around the corner of the
18 actual residence the door was still closed. Only two
19 people ended up in the backyard while I was there was
20 myself and the subject I ended up chasing on foot.

21 Q. Okay. And do you see that young man in the
22 courtroom?

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

24 Q. And what is he wearing?

25 A. He's wearing a green shirt and glasses.

1 Q. Are you able to point at him for us?

2 A. Yes, ma'am.

3 MS. DAVID: Let the record reflect that Officer

4 Timothy Shaw has identified Mr. Tyrone King as the

5 individual that left [REDACTED] and was placed under
6 arrest four houses down from that location.

7 THE COURT: It will so reflect.

8 BY MS. DAVID:

9 Q. Will you clarify something for me? The phone that
10 you say you found?

11 A. Yes, ma'am.

12 Q. Can you describe how it looked? What do you mean by
13 the top part of the phone?

14 A. It was actually a cordless phone for inside your
15 home. It wasn't a cell phone for mobile use. It was a
16 house phone. It was actually the portion you talk into
17 and walk around your home with. It was not the bottom
18 part of it.

19 Q. Now, upon coming into contact with the defendant and
20 making the arrest what was his demeanor like?

21 A. He really wasn't saying anything. He was out of
22 breath from running. I could smell a little alcohol on
23 him. But other than that like I said he wasn't yelling or
24 screaming.

25 Q. How did he appear?

1 A. Like I said he was out of breath. He really wasn't
2 talking. Actually, I also shortly after that I read him
3 his Miranda rights, but like I said he still didn't speak
4 to me or any other anybody else that was standing there in
5 the immediate area.

6 Q. Was he responsive to you like if you said, "Come
7 here" or "Move there?"

8 A. Yes, ma'am. Whenever I moved him away from the truck
9 so that we could see what was under it like I said he
10 complied. Yes, ma'am.

11 Q. He was responsive just didn't say anything?

12 A. Yes, ma'am.

13 Q. And you are familiar with Miranda rights?

14 A. Yes, ma'am.

15 Q. Did you read him his Miranda rights at that time?

16 A. Yes, ma'am. I read them to him while we were still
17 in the backyard at the residence.

18 Q. Do you have a card or anything or did you ---

19 A. Yes, ma'am, I have a card that I keep with me because
20 I don't -- I didn't remember. I didn't memorize it. I
21 want to make sure I read it off the card word for word.

22 Q. By any chance do you happen to have that card with
23 you?

24 A. Yes, ma'am. I always keep it with me.

25 Q. Will you take it out and read it to us?

1 A. Yes, ma'am. "Suspect Rights. Miranda Warning. You
2 have the right to remain silent. Anything you say can and
3 will be used against you in a court of law. You have the
4 right to talk to an attorney and have him or her present
5 with you while you are being questioned. If you can't
6 afford to hire an attorney one will be appointed to
7 represent you before any questions if you wish.

8 You can decide at any time to exercise these rights
9 and not answer any questions or make any statements. Do
10 you understand each of these rights as I have explained
11 them to you? Having these rights in mind do you wish to
12 talk to us now?"

13 Q. Thank you. Now, what happened after you read him his
14 rights? What did you do next?

15 A. Well, we were just actually waiting. We called the
16 investigators. I talked to Lieutenant Seales on the phone
17 and advised him what had taken -- the call had got
18 dispatched, and we waited there at the location.

19 I was actually going to wait until the investigator
20 got that to the scene before removing him from the scene.
21 But some of the family members, we could hear them from
22 where we were standing, and they were very upset. Yelling
23 and screaming, "Tyrone King killed one of our family
24 members."

25 And I felt for their safety as well as our safety

1 that we needed to move him. So I recalled Lieutenant
2 Seales and Deputy Johnson and myself took Mr. King to the
3 Sheriff's Department and put him in interrogation room.

4 Q. Okay. Did you have any further involvement with the
5 case after that?

6 A. Yes, ma'am. I'm actually the initial reporting
7 officer which means I gathered all the information, put it
8 into an incident report and filed it with the Sheriff's
9 Department and in a computer.

10 Q. When did you do that incident report?

11 A. That same morning.

12 Q. I just have one quick, last question for you. On
13 this particular, I guess, night, early morning, did you
14 see anyone else running?

15 A. No, ma'am.

16 Q. Just that one?

17 A. Yes, ma'am, just the one.

18 Q. Thank you. No further questions at this time.

19 Please answer any questions Defense attorney may have for
20 you.

21 THE COURT: Thank you, Ms. David. Mr. Shaffer.

22 MR. SHAFFER: Yes, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. SHAFFER:

25 Q. Good morning, Deputy.

1 testified as follows:

2 MR. REDMOND: May it please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY MR. REDMOND:

6 Q. Please state your name for the record?

7 A. It's Ricardo Prince.

8 Q. And by whom are you employed?

9 A. South Carolina Law Enforcement Division commonly
10 known as S.L.E.D.

11 Q. And how long have you been so employed?

12 A. A little bit over four years.

13 Q. Now, what are your duties with S.L.E.D?

14 A. I'm a crime scene investigator. My responsibilities
15 include responding to 46 counties and working violent
16 crimes, homicides and property crimes.

17 Q. Okay. And are y'all referred to in a lot of
18 instances in your work as an assisting agency?

19 A. Yes, sir.

20 Q. In other words, you assist local law enforcement in
21 processing crime scenes?

22 A. Yes, sir.

23 Q. And in fact did you do that in this case that we're
24 here about today?

25 A. Yes, sir.

1 Q. All right. Now, could you describe your training and
2 experience to the ladies and gentlemen of the jury?

3 A. I'm a certified law enforcement officer for the State
4 of South Carolina. I have been a police for six years. I
5 have six years experience and I have a Bachelor's degree
6 in sociology. I also have a Master's degree in science of
7 criminal justice.

8 With S.L.E.D. I have went through a two year in house
9 program which also includes basic photography, basic
10 fingerprint, advance palm print and forensic examination
11 of violent crime scenes.

12 Q. Now, that four years that you been with S.L.E.D. has
13 that been in crime scene -- with crime scene?

14 A. Yes, sir, I did other things throughout S.L.E.D, but
15 the majority of that is still with crime scene.

16 Q. Now, let's talk about crime scene and what y'all do.
17 do you respond to a crime scene by yourself or do you
18 operate in what is referred to as in teams?

19 A. Two man teams.

20 Q. All right. And I think Special Agent Vickie Hallman
21 was on your team in this particular instance?

22 A. Yes, sir, she was my partner.

23 Q. Okay, now, let's talk about crime scene work. About
24 how many crime scenes would you say you've investigated
25 all over the State in your capacity in S.L.E.D?

1 A. Over 100.

2 Q. Now, and let's talk about something else
3 procedurally. Do you have what's referred to as a lead
4 senior agent and someone who is assisting?

5 A. Yes, sir.

6 Q. And I guess, initially, were you an assisting senior
7 agent?

8 A. No, sir, I was the lead?

9 Q. You were lead, and let's talk about that. When you
10 have the two man and sometimes the three man team, I
11 believe, there is one agent that --

12 COURT REPORTER: I'm sorry.

13 MR. REDMOND: May it please the Court.

14 THE COURT: Madam Court Reporter, are you ready
15 again?

16 COURT REPORTER: Yes, sir.

17 MR. REDMOND: Thank you, Your Honor.

18 THE COURT: Proceed.

19 BY MR. REDMOND:

20 Q. I think I was talking about lead investigator. Now,
21 out of the 100 crime scenes, and in this case you were
22 lead investigator?

23 A. Yes, sir.

24 Q. And out of those 100 crime scenes how many,
25 estimated, would you say you had operated as the lead

1 investigator?

2 A. About half of them. About 50.

3 Q. Okay. And when you, just from a procedural
4 standpoint, talk about crime scene investigation, just in
5 general, briefly tell the ladies and gentlemen of the jury
6 what is that you do when you get to a crime scene?

7 A. Well, when we get called to the scene the first thing
8 that we do is we have a briefing with the local agency
9 there. They will give us an overview of what occurred.
10 They will walk us through it and just show us the scene.
11 And when we're walking we're looking for evidence. And
12 once we do our general walk through my partner, Vickie
13 Hallman, she will do the photography. We will take all
14 these pictures and just analyze where we are going to
15 start with the crime scene.

16 And this particular one we walked through there. I
17 got some letters, some number markers and marked the
18 evidence in the house. And we started inside the home,
19 walked all the way through and went outside the home. Did
20 the backyard and then we went three houses down to where
21 the subject was found. And we marked some other items of
22 evidence.

23 MR. REDMOND: And before I go any further at this
24 point I would ask that Special Agent Prince be qualified
25 as an expert in the field of crime scene

1 investigation/analysis.

2 THE COURT: I qualify him as an expert in that area.
3 He's been in my courtroom on several occasions and has.
4 qualified as an expert.

5 MR. REDMOND: Thank you, Your Honor.

6 BY MR. REDMOND:

7 Q. Now, let me move on a little bit more as it relates
8 to what you do in general. Do you collect evidence?

9 A. Yes, sir.

10 Q. And often times when you collect evidence do you take
11 it to the S.L.E.D. lab in Columbia? The forensic
12 laboratory for further analysis?

13 A. Yes, sir.

14 Q. Okay. And was that done in this case?

15 A. Yes, sir.

16 Q. And I'll get into specifics in just a little while.
17 So let's now direct our attention to the 11th of November
18 of 2011. Were you in fact dispatched to Marlboro County
19 here in Bennettsville, on its outskirts of Bennettsville,
20 to a crime scene?

21 A. Yes, sir.

22 Q. Could you explain to the ladies and gentlemen what
23 took place at that time?

24 A. When I got there I had a briefing with the officer.
25 It was James Campbell. He gave me a brief and pretty much

1 told me what occurred. Once he pretty much told me what
2 occurred, walked me through the area, we did photography,
3 and like I said we got out markers. We marked evidence,
4 and when I got into the house one of the first things that
5 I observed was a shell casings. It was a shell casings
6 laying on the floor by the front door. We labeled that
7 Marker Number One.

8 And also it was a puddle of blood. The puddle of
9 blood was from the victim. And what we did was I took two
10 D.N.A. swabs and I took that back to S.L.E.D. Also in the
11 master bedroom I observed where it was a bullet hole in
12 the wall. And I marked that as Marker Number Four.

13 And in Bedroom Number One I observed a bloody sock
14 laying on the floor and I marked that as Item Number
15 Three. That was the first thing I did. Then we carried
16 on, worked that area and then eventually went outside.

17 Q. Now, and let me back up for just a minute and ask
18 you. I talked about the date. Was this -- do y'all tend
19 to work 9:00 to 5:00 hours or was this in the overnight
20 hours of the 11th, in the early morning that you record
21 this crime scene?

22 A. I received this call about 3:30 in the morning, and I
23 was on call. Normally, our hours are 8:00 to 5:00, but
24 when you're on call whenever something happens you're
25 required to respond.

1 Q. And in fact you did in the overnight hours?

2 A. Yes, sir.

3 Q. Okay. Now, so you talked about being inside. Now
4 tell us what occurred once you went outside?

5 A. When I went outside it was a couple things. From
6 talking with the investigator, James Campbell, he told us
7 that the subject was found at a residence down the street
8 from the victim's home which was [REDACTED]. And he
9 was up under the truck. I did a diagram of both of these,
10 the inside of the home and the outside of the home.

11 And I saw -- it was two items collected from this
12 truck which was Markers Number Seven and Number Eight
13 which were a telephone that was identified as belonging to
14 the victim's home. And it was -- Number Eight was the
15 liquor bottle. It was a Burnett Sparkle, one half pint
16 bottle of liquor.

17 Q. And, now, talking about the liquor bottle. Inside,
18 did you observe in the master bedroom any liquor bottles?

19 A. Yes, sir, I did. In the closet.

20 Q. And were those the same type of liquor bottles as the
21 one that was found outside?

22 A. Same name brand, yes, sir.

23 Q. Now, let's go back inside for just a moment. Did you
24 observe any bullet holes at any time inside the house?

25 A. In the master bedroom, yes, sir.

1 Q. All right. And we'll talk about that more when I
2 have you step down and show you the diagram. But let me
3 just ask you this. Were y'all able to recover the bullet
4 that made the hole?

5 A. No, sir. We did dowel rod projection that shows that
6 the bullet went from the master bedroom through the wall
7 in the den and kept going through the ceiling out of the
8 roof. And we had an officer from Marlboro County get on
9 the roof and see a physical hole where the bullet kept
10 travelling.

11 Q. Now, and we talked about what you collected outside.
12 Now, was there anything else outside or was that the
13 conclusion of your role in the case? Was there further
14 action that you took in this matter?

15 A. We also eventually found a gun. It was a
16 9-millimeter handgun with extended clip, and it was behind
17 [REDACTED] which is I believe the subject's home.

18 Q. Okay. Behind in the wooded area behind the
19 defendant's house; that's where the gun was found?

20 A. Yes, sir.

21 Q. Now, was that the end of your role in this?

22 A. Pretty much. The next day we came back.

23 Q. Okay. And let me back up. When you say the end of
24 your role, at that particular time once you collected the
25 evidence, and we'll get into that in a little bit more

1 detail a little later, but was that transported back to
2 Columbia?

3 A. Yes, sir, it was.

4 Q. Was that done pursuant to your standard operate
5 procedure?

6 A. Yes, sir, it was.

7 Q. In other words was the evidence collected and
8 packaged pursuant to S.L.E.D's standard operating
9 procedure?

10 A. Yes, sir, it was.

11 Q. Was it taken to Columbia and deposited with S.L.E.D.
12 at the Forensic Laboratory on Broad River Road pursuant to
13 standard operating procedure?

14 A. Yes, sir.

15 Q. All right. Now, was that the last time that you were
16 in Marlboro County regarding this case or did you have to
17 come back?

18 A. I had to come back.

19 Q. All right. Tell the ladies and gentlemen of the jury
20 about that?

21 A. Okay. From the first time I responded the coroner
22 and the doctors, too, at Marlboro Park Hospital we were
23 advised that the bullet that the victim was shot was still
24 inside the victim's head. So when autopsy the doctor
25 there realized that the bullet had went through and

1 through. Through and through means he was shot in the
2 head and kept going. So we were called back to come back
3 I think by Chief Deputy. So we came back out, and you saw
4 that in the living room there was actually a bullet
5 sticking in the wall. And we had to cut the sheet rock
6 and retrieve that bullet.

7 Q. Okay. Now, and did you actually retrieve the bullet?

8 A. Yes, we retrieved the bullet, and we also took two
9 D.N.A. swabs from the bullet.

10 Q. Okay. Was were those again taken to the State Law
11 Enforcement Division Forensic Laboratory in Columbia for
12 further analysis?

13 A. Yes, sir.

14 Q. All right. I did skip something that I forgot, and
15 that's on me. Actually, on the 11th if I'm not mistaken
16 you go to Marlboro Park Hospital?

17 A. Yes, sir, I did.

18 Q. Okay. And what was the purpose for your trip to
19 Marlboro Park Hospital?

20 A. Well, we took pictures of the victim, and also we
21 collected G.S.R. from the victim which is a Gunshot
22 Residue Kit.

23 MR. REDMOND: If the Court would indulge me. I'd
24 like to show Agent Prince what's been marked as State's
25 Exhibit 34, and if we have a pair of scissors so that he

1 can open it. And I ask that the record reflect that
2 exhibit is sealed at this time, and we are going to unseal
3 it at this time with this witness.

4 THE COURT: Record will reflect that it was unsealed
5 in the presence of the Court.

6 BY MR. REDMOND:

7 Q. Okay. Now, have you had a chance to look over that
8 exhibit?

9 A. Yes, sir.

10 Q. And is that the gunshot residue that was taken from
11 the victim, James Galloway?

12 A. Yes, sir. My signature is on it on the back.

13 Q. Now, thank you. And, again, was that taken to
14 S.L.E.D. for further analysis?

15 A. Yes, sir.

16 Q. All right. Now, let me ask you about any evidence
17 that you got from Marlboro County. Did Brittany English
18 with the Marlboro County Sheriff's Office give you any
19 items of evidence?

20 A. Yes, sir.

21 Q. And among them I show you what's been marked as
22 State's Exhibit 35.

23 MR. REDMOND: And same stipulations, Your Honor, that
24 it is sealed and we are unsealing it at this time.

25 MR. SHAFFER: Your Honor, at this moment I object to

1 the chain.

2 THE COURT: What is your objection?

3 MR. REDMOND: I haven't moved it into evidence.

4 MR. SHAFFER: I'm just preempting what he's about to
5 do. To move it into evidence to talk about it.

6 MR. REDMOND: Actually, I was not.

7 MR. SHAFFER: I apologize.

8 MR. REDMOND: All right.

9 THE COURT: Your objection is withdrawn; is that
10 correct?

11 MR. SHAFFER: Yes, sir, Your Honor, until he starts
12 talking about it.

13 MR. REDMOND: Well, on this he's just a chain. I'll
14 just ask one question.

15 BY MR. REDMOND:

16 Q. Is that one of the items that you received from
17 Brittany English from the Marlboro County Sheriff's
18 Office?

19 A. Yes, sir.

20 Q. Did you collect that from the defendant?

21 A. No, I didn't. I got it from Brittany.

22 Q. Did you test it?

23 A. No.

24 Q. Do you have any idea what any of the results from
25 test would have been?

1 A. No.

2 Q. Was your role as it relates to that piece of evidence
3 simply being in the chain of custody?

4 A. Just to pick it up and take it to S.L.E.D.

5 Q. And in fact did you take it to S.L.E.D. and deposit
6 it in the Evidence Box pursuant to S.L.E.D. standard
7 operating procedure?

8 A. Yes, sir.

9 Q. Okay. That's the extent of my questions, now, as it
10 relates to that issue. Thank you. Now, let's move on.
11 So the next thing that you indicated is that you went and
12 you actually recovered the bullet. Did you do a diagram
13 from the scene of both inside and outside of the house?

14 A. Yes, sir.

15 Q. Okay. And did you also take pictures?

16 A. Yes, sir, I did.

17 Q. All right.

18 MR. REDMOND: Now, at this point, Your Honor, if the
19 Court would indulge me, I would like to ask and I would
20 ask if you could speak loud since we don't have like
21 microphones. I don't have that problem, but if you can
22 speak loud so that we can all hear you and the court
23 reporter can pick up what you're saying. If I can ask you
24 to step down.

25 THE COURT: I want you to speak, Mr. Witness, so all

1 the jurors can hear you clearly, please.

2 THE WITNESS: Yes, sir.

3 BY MR. REDMOND:

4 Q. And I'm actually going to turn my back to the court
5 reporter ---

6 THE COURT: Counsel, you may come around and join.

7 MR. REDMOND: --- so that you will be standing facing
8 the court reporter and she can pick you up a little
9 better.

10 A. Okay.

11 Q. Now, as it relates to this first diagram could you
12 tell the ladies and gentlemen what is State's Exhibit
13 Number Six which is already in evidence for the record?

14 A. It's the inside house of [REDACTED] which is the
15 victim's house. This is the address right here.

16 Q. And, now, as it relates to certain evidence that was
17 found let me ask you about, if the Court would indulge me.
18 State's Exhibit 28, would you tell the ladies and
19 gentlemen of the jury what that is?

20 A. This is Marker Number One which is a cartridge case,
21 and this is right here. Time you step into the victim's
22 house it's the first thing I saw lying on the floor.

23 Q. Okay. Now, thank you.

24 MR. REDMOND: And, Your Honor, State's Exhibit 28 is
25 not in evidence at this time. I would actually move it

1 into evidence at this time if there is no objection from
2 the defendant.

3 THE COURT: Counsel, have you had an opportunity to
4 review Exhibit 28?

5 MR. SHAFFER: No, Your Honor, but I understand it is,
6 and I have no objection.

7 THE COURT: Sir?

8 MR. SHAFFER: I have no objection.

9 THE COURT: All right. Without objection.

10 (WHEREUPON, State's Exhibit No. 28 was admitted into
11 evidence.)

12 BY MR. REDMOND:

13 Q. State's Exhibit 29, could you tell the ladies and
14 gentlemen what it is and where it was found?

15 A. This is another cartridge case, Marker Number Two.
16 It was found in the master bedroom right here like under
17 the side of the bed.

18 Q. Okay. And State's Exhibit 31?

19 MR. REDMOND: And, Your Honor, before he answers for
20 the record the State would move State's 29 into evidence
21 as well.

22 MR. SHAFFER: No objection, Your Honor.

23 THE COURT: Without objection.

24 (WHEREUPON, State's Exhibit No. 29 was admitted into
25 evidence.)

1 THE WITNESS: This is the projectile that was
2 recovered from the wall the next day after the 11th follow
3 up, and I put an arrow right here to let me know where I
4 recovered the projectile from.

5 MR. REDMOND: And State's 31, State would move into
6 evidence at this time.

7 MR. SHAFFER: No objection.

8 THE COURT: Again, Mr. Foreman, these matters will be
9 with you in the jury room during your deliberations.

10 (WHEREUPON, State's Exhibit No. 31 was admitted into
11 evidence.)

12 BY MR. REDMOND:

13 Q. Now, let me show you what has been marked as State's
14 Exhibit 38, since we're still dealing with inside the
15 house. Can you tell the ladies and gentlemen what that
16 represents?

17 A. May I open it and see what it is?

18 Q. Oh, certainly.

19 MR. REDMOND: And, Your Honor, it is sealed, and we
20 would ask that the record reflect that it's being unsealed
21 by this witness.

22 THE COURT: It will.

23 THE WITNESS: This right here is I23, Item 23, and I
24 believe this came from the other diagram.

25 Q. Okay?

1 A. It's part of the phone.

2 Q. Of the phone, okay.

3 MR. SHAFFER: Objection, Your Honor.

4 THE COURT: Sir?

5 MR. SHAFFER: May we approach real quick?

6 THE COURT: Yes, come forward.

7 (WHEREUPON, a bench conference was held off the
8 record in the presence of the jury, but out of the
9 hearing of the jury.)

10 MR. SHAFFER: Thank you, Your Honor.

11 THE WITNESS: This was inside.

12 BY MR. REDMOND:

13 Q. Okay. All right. Could you explain, and I'll let
14 Mr. Shaffer get himself situated again. Was that exhibit,
15 I think that is State's 38, was that found inside the
16 house?

17 A. Sorry about that. This was inside the house. Wrote
18 it right here with the corresponding battery cover at the
19 entrance to the kitchen. So it was lying on the floor
20 right here, and we did not put a number on this item right
21 here.

22 Q. All right.

23 MR. REDMOND: Your Honor, the State would move
24 State's 38 into evidence at this time.

25 THE COURT: All right, sir.

1 (WHEREUPON, State's Exhibit No. 38 was admitted into
2 evidence.)

3 BY MR. REDMOND:

4 Q. Is there ---

5 MR. SHAFFER: No objection.

6 BY MR. REDMOND:

7 Q. Now, I think that would conclude inside of the house
8 for right now until we get to your return trip. So let's
9 go to this diagram, State's Exhibit Number Seven. What is
10 State's Exhibit Number Seven?

11 A. Right here is the victim's home. This is the
12 subject's home. And right here, this truck right here,
13 T1, is where Marlboro County officers found him when they
14 came and arrested him.

15 Number Seven and Eight: Number Seven is a telephone
16 that has been identified as belonging to the victim's
17 house.

18 Number Eight is the Burnett half pint liquor bottle
19 that is the same as the liquor that the victims had at his
20 master bedroom closet. And right here behind the
21 subject's home we recovered a 9-millimeter handgun which
22 is Marker Number Nine.

23 Q. Now, let's go through these exhibits. First, I'm
24 going to show you what has been marked as State's Exhibit
25 38, and if you could -- and that actually has been

1 unsealed look like. Could you tell us what that is and if
2 you collected that item?

3 A. It's the cordless cell phone, Marker Number Seven,
4 and this was identified as coming from the victim's home.
5 And I collected this.

6 Q. Okay. All right. Cordless cell phone or cordless
7 house phone?

8 A. Cordless house phone.

9 MR. REDMOND: And, Your Honor, State move Exhibit 36
10 in evidence at that time.

11 THE COURT: All right.

12 MR. SHAFFER: No objection.

13 (WHEREUPON, State's Exhibit No. 36 was admitted into
14 evidence.)

15 BY MR. REDMOND:

16 Q. Let me show you what's been marked as State's Exhibit
17 37, and this one is still sealed. I would ask that you
18 unseal it at this time.

19 MS. JOHNSON LEE: Judge, if I may just put one thing
20 on the record. With the permission of Defense counsel
21 this morning, Madam Court Reporter was going to put the
22 sticker on the phone itself. We opened the back there was
23 fingerprint powder, and that's why that was opened.

24 THE COURT: All right.

25 THE WITNESS: This is part of Item Number Seven which

1 is the battery. The battery from the home phone that we
2 just showed -- that I just showed you guys. This came
3 from the back. It was separate and I collected this also.
4 Q. So the battery was operated, actually, separated from
5 the actual phone ---

6 A. Yes, sir.

7 Q. --- that you found?

8 A. Yes, sir.

9 Q. Thank you. And State's Exhibit 39, could you tell
10 the ladies and gentlemen what that is, and again, this
11 item has been sealed and it is being unsealed at this
12 time.

13 A. It's a Burnett Vodka, half pint. Marker Number
14 Eight. The same bottle that matches what the victim had
15 in his home inside of his closet.

16 Q. Okay. Now, that wasn't all that you found outside,
17 was it?

18 A. No.

19 Q. Let me show you what has been marked as State's
20 Exhibits ---

21 MR. REDMOND: And, Your Honor, for the record the
22 lock is on the trigger of the gun. It's State's 33.
23 State's 32, 30 and 33, could you tell us what each of
24 those exhibits are and where they were found?

25 A. Okay. This is the High Point 9-millimeter handgun

1 that I recover behind the subject's home which is Marker
2 Number Nine, and in it it had an extended magazine clip
3 with six live rounds loaded.

4 Q. And so all of those were together and they've been
5 separated and made separate exhibits; is that correct?

6 A. Yes, sir.

7 Q. Okay. All right. Thank you.

8 MR. REDMOND: And, Your Honor, I don't remember if I
9 asked specifically that State's 38 and 39 and 37 were
10 moved into evidence, but at this time I would like to, out
11 of an abundance of caution move those ---

12 THE COURT: I will admit those in evidence.

13 (WHEREUPON, State's Exhibit Nos. 37 and 39 were
14 admitted into evidence. State's Exhibit No. 38 was
15 previously admitted into evidence)

16 MR. REDMOND: And along with those the State at this
17 time moves State's 33, State's 30 and State's 32 into
18 evidence.

19 THE COURT: I will accept them into evidence.

20 MR. REDMOND: And 32, I think it was in evidence.
21 That's it.

22 THE COURT: You have had no objection as to those
23 items, Mr. Shaffer?

24 MR. SHAFFER: No, Your Honor. No objection.
25

1 (WHEREUPON, State's Exhibit Nos. 30, 32 and 33 were
2 admitted into evidence.)

3 BY MR. REDMOND:

4 Q. All right. Let me show you State's Exhibit Number
5 Six one last time. Did you come back to the scene on the
6 12th of November 2011.

7 A. Yes, sir.

8 Q. And I think you testified earlier about the fact that
9 there was a bullet; that there was a bullet that was found
10 once y'all determined it was a through and through injury.
11 Could you explain where in relation to this diagram that
12 was located?

13 A. It was right here. Where the arrow is drawn.

14 Q. Oaky. Again, tell the ladies and gentlemen what
15 procedure did y'all go through to retrieve that bullet?

16 A. Well, what we did was cut the sheetrock right here.
17 And we even got a tool because it was like embedded into
18 the 2 x 4 type thing. We had to cut some of that to get
19 the projectile out. And we try to get the projectile out,
20 without damaging the projectile because our firearms
21 people will match it up and test it later on.

22 Q. And, again, it's already in evidence, but is that,
23 State's Exhibit 31, that was found in the location that
24 you described?

25 A. Yes, sir.

1 Q. All right. And, lastly, there were some pictures
2 that we talked about that you had, and while you're
3 standing up here get into these pictures with you. And
4 let me do this. Starting with State's Exhibit 14, and
5 what I'd ask you to do to save time, I'm just going to
6 hold it up here where everybody can see. And just
7 describe what each picture represents starting with
8 State's Exhibit 14.

9 MR. REDMOND: And they are already in evidence for
10 the record, Your Honor.

11 THE WITNESS: This is in the master bedroom inside
12 the closet. It's bottles of Burnett, like they're stored
13 maybe for individual sale inside the victim's bedroom.

14 Q. Okay. State's Exhibit 15?

15 A. I took the bottles out and took photographs of them
16 so I could see what kind of bottles that he had of the
17 same product.

18 Q. Thank you. State's Exhibit 16?

19 A. This looks like something, maybe, some kind of
20 gambling slips or something. It didn't really have
21 anything to do with this case. I saw it so I just
22 documented it. That is in the living room.

23 BY MR. REDMOND:

24 Q. And, again, these items are in evidence already.
25 State's 17?

1 A. This is -- okay, this is Item Four. According to the
2 statements when the subject was pistol whipping the wife
3 the gun went out and went through the wall from the master
4 bedroom right here which is labeled Number Four. Also
5 went through the wall right here in the dining room and
6 the projectile kept going out the ceiling. And I've
7 marked it as Number Four.

8 Q. And this would be what we commonly refer to as a
9 ricochet action as far as the bullet is concerned?

10 A. Well, actually, it's just a path of travel. I put
11 these dowel rods in here to show you the direction of
12 travel.

13 Q. Okay. So, basically, it was just the direction of
14 travel?

15 A. Like somebody shot. It was like it hit a wall and
16 bounced off and went in another direction.

17 Q. This one went up and ended up out of the roof?

18 A. Yes.

19 Q. Understood. Thank you. State's Exhibit Number 18,
20 could you tell the ladies and gentlemen what that
21 represents?

22 A. It's a part of the bedroom ceiling, master bedroom.
23 It's not a close up. It's just back. You can see Number
24 Four like where the gun went out, this is before the
25 bullet entered the wall right here. Master bedroom, okay.

1 Q. State's Exhibit Number 19, could you tell us what
2 that represents, and I think it just explained what that
3 is?

4 A. This is the other side of the family room right here.
5 It went through the wall over to the other side, and I'm
6 showing the direction of travel. And these are dowel rods
7 just sticking these little wood pins in the wood and the
8 bullet just kept going through the ceiling and kept going.

9 Q. Okay. And while I'm showing them this is that why it
10 would be classified as a ricochet, which in incorrectly
11 stated earlier?

12 A. Yes.

13 Q. Again, these items are all in evidence. And, again,
14 State's 20, would you tell the ladies and gentlemen what
15 State's 20 represents?

16 A. This is where are the handgun was found. This is
17 Marker Number Nine, and I think it goes like this.

18 Q. Okay.

19 A. This is subject's home. It's like right behind the
20 fence. I drew -- well, on the other one I drew a little
21 line around showing where the chain link fence were, and
22 this is like right past his backyard in a like bushes
23 right here.

24 Q. All right. All right. Let's see. Next is State's
25 Exhibit 23. Actually, could you tell us what that

1 represents?

2 A. Okay. This is Markers Seven and Eight by the pick up
3 truck where they found the victim. This is the telephone
4 and this is the Burnett liquor bottle.

5 Q. The victim or the defendant?

6 A. I mean the subject.

7 Q. Okay?

8 A. Defendant.

9 Q. Okay. Again, what do those represent, again?

10 A. Represents Marker Seven and Marker Eight.

11 Q. Cell phone and liquor bottle?

12 A. Yes.

13 Q. State's 24, could you tell us what that is?

14 A. This is a cartridge case that was found in the
15 victim's master bedroom right here beside the bed which is
16 Marker Number Two on the diagram.

17 Q. Okay. And based on your experience in crime scene
18 analysis would this indicate that a shot was fired inside
19 this bedroom?

20 A. Yes, sir.

21 Q. Okay. State's 25?

22 A. It's the same photograph without the Marker Number
23 Two. That's just a general photograph. We do that before
24 we actually mark an item. just do that to show the original
25 location.

1 Q. All right. I think we've got a couple more and I'll
2 be done. State's 26, could you tell us what that
3 represents?

4 A. The first walk in the home right here is general
5 photography. You can see the cartridge case down here on
6 the floor, actually right there.

7 Q. Okay.

8 A. And that's right here, Marker Number One.

9 Q. And before I show, since it's out, I'll ask you about
10 State's 27 as well?

11 A. Same thing, but it's a mid range photograph. It a
12 little bit closer. You can see right here.

13 Q. All right. And I think they're already seen State's
14 21 and 22, but I do want to ask you a couple of questions
15 regarding State's 21 and State's 22. First State's 22.

16 A. It's Marker Number Seven, Marker Number Eight. This
17 is the cell phone that is identified as belonging to the
18 victim's home. And this is the Burnett liquor bottle,
19 Marker Number Eight.

20 Q. And State's 21?

21 A. This is a general photograph of the same thing,
22 Number Seven, Number Eight, the cordless telephone and the
23 Burnett bottle.

24 Q. And do you get a better -- a further view so you can
25 get a better view of the size of the truck?

1 A. Yes.

2 Q. And, again, they've already seen State's 21. You may
3 take your seat.

4 MR. REDMOND: Beg the Court's indulgence.

5 BY MR. REDMOND:

6 Q. And just out of an abundance of caution did you
7 sign -- I'm going to show you what's been marked as
8 State's Exhibit Number 43 for identification at this
9 point. From that particular copy is that your signature
10 having received the G.S.R. kit on the defendant from
11 Brittany English?

12 A. Yes, sir.

13 Q. Okay. Thank you.

14 MR. REDMOND: Again, beg the Court's indulgence just
15 briefly. That will be all the questions.

16 BY MR. REDMOND:

17 Q. Please answer any questions that Mr. Shaffer may
18 have.

19 THE COURT: It's 1:15. Would you like to have your
20 cross-examination after lunch?

21 MR. SHAFFER: Yes, sir, Your Honor. I think that
22 would be fine.

23 THE COURT: Could you be available to us after lunch?

24 THE WITNESS: Yes, sir.

25 THE COURT: Okay. Let's adjourn for lunch. It's

1 parts of the video.

2 THE COURT: Your agree that under the circumstances
3 that it's proper?

4 MR. SHAFFER: Yes, Your Honor.

5 THE COURT: That's fine. All right. Bring the jury.
6 Let's go as far as we can tonight.

7 MS. DAVID: We'll take the second witness on the
8 second video tomorrow morning.

9 THE COURT: Bring the jury in. Y'all wait a second.
10 (WHEREUPON, the jury enters the courtroom at 4:15
11 p.m.)

12 THE COURT: All right. The jury is present. You may
13 proceed.

14 MS. DAVID: At this time the State would like to call
15 Investigator Shawn Feldner to the stand.

16 SHAWN FELDNER, after being duly sworn, testified
17 as follows:

18 DIRECT EXAMINATION

19 BY MS. DAVID:

20 Q. Would you please state your full name for the record?

21 A. Shawn, S-H-A-W-N. Michael, M-I-C-H-A-E-L. Feldner,
22 F-E-L-D-N-E-R.

23 Q. And what's your occupation?

24 A. I'm an investigator with the Marlboro County
25 Sheriff's Office.

1 Q. And how long have you been employed with the Marlboro
2 County Sheriff's Office?

3 A. For the last five years.

4 Q. And what are your present duties there?

5 A. Investigator.

6 Q. Okay. Were you employed in your present capacity on
7 November 11th of 2011?

8 A. Yes, ma'am, i was.

9 Q. And were you involved in this case with the
10 Defendant, Tyrone?

11 A. Yes, I was.

12 Q. How did you become involved in this case?

13 A. I was called out by cell phone a little after 3:00
14 a.m. on that night or early morning.

15 Q. And once you received the call what did you do?

16 A. I responded to Oriole Lane which is located off of
17 Fruit Street. Almost across the street from the Sheriff's
18 Office. I arrived on the scene and Captain Billy Cheeks
19 briefed me of what we had.

20 Q. Okay. And once he briefed you did you stay on the
21 scene or did you go back to the Office? What happened
22 next?

23 A. I stayed on the scene briefly. Captain Cheeks
24 informed me that there were some witnesses in the
25 residence. So I helped gather the witnesses up which a

1 few of them were some kids, and we had to get them
2 dressed. And between myself and Agent English also with
3 the County we transported the witnesses to the Sheriff's
4 Office.

5 Q. So once you were at the Sheriff's Office did you get
6 a chance to interview or speak with the Defendant, Tyrone
7 King?

8 A. Yes, ma'am, I did.

9 Q. Okay. And was this interview recorded?

10 A. It was. We have an interview room at the Sheriff's
11 Office that's approximately 10 by 10. There is a single
12 desk with a single chair that sits on the back wall and
13 there are two chairs usually where the investigator sit.
14 It's on the front side in the interrogation room or
15 interview room. There is a camera right over the door
16 when you walk in, and right over the table mounted to the
17 ceiling is a microphone. And I advised him that we were
18 on record and that we were being recorded.

19 Q. Okay. Now, during this time did you ask the
20 defendant any questions?

21 A. No, ma'am, not at that time.

22 Q. Did he say anything to you?

23 A. Yes. He was very anxious to say something and talk.
24 Sergeant English was in the process of conducting a G.S.R.
25 Kit which is Gunshot Residue Kit.

1 THE COURT: Talk in the microphone a little bit for
2 me.

3 THE WITNESS: Yes. I'm sorry, Your Honor.

4 BY MS. DAVID:

5 Q. You said he did ask you questions?

6 A. Yes. Part of the process is -- it's kind of lengthy,
7 and he had some questions in reference to the G.S.R. Kit,
8 and us explained the process to him. He made the comment
9 that he had fired the gun and he made the comment more
10 than once.

11 Also during that time he referenced Mr. Maylon
12 Padgett, who is a deceased lawyer in Bennettsville. And
13 he also referenced Mr. Ronnie Crow, who is a practicing
14 attorney here in Bennettsville also. Now, he never wished
15 for any representation. He was just inquiring about their
16 whereabouts and how were they. And I explained to him
17 that they were doing good.

18 He also made some comments and talked about some
19 police officers with the Marlboro County Sheriff's Office
20 and also with the City of Bennettsville. He referenced
21 Marlboro Terry, Charles Lemon and John Valdaliso with the
22 City or was with the City.

23 And during the process he mentioned something about
24 the early morning hours of wanting to talk about it, and I
25 would immediately stop him and advised him that he would

1 have the proper time to talk about that. Right now was
2 not the proper time. He was also wanted to smoke a
3 cigarette, and I told him that as soon as we finished the
4 G.S.R. Kit I give my word we would go and he could smoke a
5 cigarette and when we came back in he could talk about
6 what happened and what occurred that night.

7 Q. Now, during this time was the Defendant speaking with
8 you freely and voluntarily?

9 A. Yes, he was.

10 Q. Did he appear to be under the influence of alcohol or
11 drugs?

12 A. You could smell alcohol, but to me he did not appear
13 to be under the influence. In other words, he knew what
14 he was doing. He didn't have any slurred speech. He was
15 excited and anxious, but as far as being intoxicated I
16 couldn't tell you he was intoxicated.

17 Q. Did he appear to be physically or mentally impaired
18 in any way?

19 A. No, ma'am.

20 Q. Was he denied access to a phone? A bathroom? Food
21 or drink?

22 A. If he had asked, as he did with the cigarette, we
23 would have obliged. We have a bathroom right across the
24 hallway from the interview room. Matter of fact he had a
25 drink -- he had a bottle of water that he was drinking

1 when I entered the room so someone had already gotten him
2 a bottle of water.

3 Q. About how long do you think this interview was?

4 A. The process of the G.S.R. Kit was about 20 minutes,
5 give or take. I'm not really sure on the time.

6 Q. And at what point did you read him his Miranda
7 rights?

8 A. Once the G.S.R. Kit was completed, as I had told him
9 that I would do, we took him out. He smoked a cigarette
10 and we have a small lab, and we were able to turn the
11 exhaust fan on and let him smoke.

12 And it was at that time that we carried him back into
13 the interview room. Once again I advised him that we were
14 on record, pointed to the camera. And it was at that time
15 that I read him the Miranda Warnings.

16 Q. Okay. I show you what has been marked as State's
17 Exhibit Number Two. Do you recognize it?

18 A. Yes, ma'am, I do. This is the standard form that we
19 use at our Sheriff's Office. There is actually a folder
20 inside the interview room that has blanks of our Miranda
21 warnings. At the top I write the case number if I have
22 the case number at the time. And then it says, "Place,
23 Date and Time." Place was Marlboro County Sheriff's
24 Office. Date was November 11th 2011. And the time was
25 0454 military time which is 4:54 a.m.

1 Then says, "Your Rights." It says, "Before we ask
2 you any questions you must understand your rights. And
3 there is one, two, three, four and five, and there are
4 five sentences. I read each sentence. The sentences are:

5 Number One: You have the right to remain silent.

6 Two: Anything you say can and will be used against
7 you in Court.

8 Number Three: You have the right to talk to a lawyer
9 before any -- for advice before we ask you any questions
10 and have him with you during questions.

11 Number Four: If you cannot afford a lawyer the Court
12 will appoint one for you before any questioning if you
13 wish.

14 Number Five: If you decide to answer questions now
15 without a lawyer present you will still have the right to
16 stop at any time until you talk to a lawyer."

17 It was at this time that I advised Mr. King that if
18 he was willing to talk to us that he would need to sign
19 here, but before that I would want to read him his waiver
20 of rights.

21 And there is a paragraph, and on that paragraph it
22 states: "I have read the statement of my rights and
23 understand what my rights are. I am willing to make a
24 statement and answer questions. I do not want a lawyer at
25 this time. I understand and know what I am doing. No

1 promises or threats have been made to me, and no pressure
2 or coercion of any kind has been made or used against me
3 by anyone."

4 Q. Now, was this form signed by you?

5 A. Yes, it was. It was witnessed by me after Mr. King
6 signed the agreement to talk to us, and after I witnessed
7 it I handed it to my partner, Brittany English, and he
8 witnessed it also.

9 Q. At the time did Mr. King appear to understand his
10 rights?

11 A. Yes, ma'am.

12 Q. Did he ---

13 A. I'm sorry.

14 Q. Did he understand English?

15 A. Yes, ma'am.

16 Q. Okay. Did he appear at this time to be affected by
17 drugs or alcohol in any way?

18 A. No, ma'am.

19 Q. How did he respond when asked whether or not he
20 wanted an attorney?

21 A. When he wanted an attorney he didn't respond. He
22 didn't require or request an attorney. He didn't speak to
23 me about any attorney. Like I said prior he talked about
24 Ronnie Crow and about Mr. Maylon Padgett. He just kind of
25 wanted to know how they had been doing. He never, once I

1 read the Miranda, asked about the lawyer.

2 Q. He agreed to talk to you without an lawyer?

3 A. That's correct.

4 Q. Did he ever change his mind once questioning began?

5 A. No, ma'am.

6 Q. To the best of your knowledge the defendant's
7 statement were freely and voluntarily given?

8 A. Yes.

9 Q. Ill now show you what has been marked as State's
10 Exhibit Number Five. Do you recognize it?

11 A. I do. This is a C.D. that would have been recorded.
12 As far as the entire time our recording machines play this
13 is what it's recorded down on to a C.D.

14 Q. Have you had the opportunity to review that C.D. in
15 its entirety?

16 A. I have.

17 Q. Does it accurately reflect what took place that
18 morning?

19 A. Yes, ma'am, it does.

20 MS. DAVID: At this time the State would like to move
21 to have Exhibit Number Five, the D.V.D, moved into
22 evidence.

23 THE COURT: We'll put it in evidence.

24 (WHEREUPON, State's Exhibit No. 5 was admitted into
25 evidence.)

1 BY MS. DAVID:

2 Q. Now, Mr. Feldner, once the Miranda warnings were
3 given to the defendant did you ask him any questions at
4 that time?

5 A. It was at that time that I basically asked Mr. King
6 to tell me in his own words what had happened.

7 Q. And what did he tell you?

8 A. He said that ---

9 THE COURT: Let me explain to the jury. There is in
10 evidence and will be played for your consideration the
11 video to which he referred. That video, unfortunately, in
12 certain aspects is of poor quality. And in some instances
13 what was said can't even be heard.

14 Counsel for the State and the Defendant, for the
15 benefit of the jury, have agreed that we will permit this
16 testimony as to what he said thereafter play the video
17 believing that this will enable you to get the full
18 context of what was said. And counsel for the State and
19 the Defendant have agreed to this procedure. Proceed.

20 THE WITNESS: Mr. King stated that he lived on Oriole
21 Lane right next to Mr. James Galloway in his statement.
22 Known of him for 12 or 15 years, somewhere in there. And
23 that he had gone to that residence that night to purchase
24 a bottle of liquor. And I think he said a pint of liquor
25 somewhere after that there was gentlemen by the name of

1 Aloysius that was riding around the neighborhood and that
2 there was a black female driver with him in a black Acura
3 or Honda.

4 He knew in Aloysius but did not know the female
5 driving. Mr. Aloysius referenced alcohol in their
6 conversation, and the two of them returned to the victim's
7 residence where they go inside. It's at that time that
8 Mr. King states that Aloysius shoots the victim. Mr. King
9 goes over and grabs the gun from Aloysius.

10 His wife comes out, and of course, is hysterical, and
11 he's tries to calm her down. He admits that he did wave
12 the gun at her or swing the gun at her. And she gets on
13 the telephone and calls someone. He doesn't reference who
14 she calls, but knows that she's talking to someone on the
15 phone. He's asking here at this time, "Please, please
16 don't do this. Don't do this. Just calm down." And then
17 he references her husband laying on the ground.

18 Then she was hysterical, and he one again, "Please
19 don't do this. Don't do this." At that time he grabs the
20 phone from her. Snatches it out of her hand. And again
21 tries to rationalize with her, "Don't do this. Don't do
22 this." As he's looking out the front door fixing to exit
23 the residence police officer arrives. He sees the police
24 officer and runs towards the back of the residence to the
25 back door where he sees Aloysius again.

1 He still has the gun, and he says that Aloysius asks
2 him for the gun, so he gives the gun to Aloysius, and they
3 run out the back door. As he exits the back door he sees
4 a police officer. He jumps over the fence and begins to
5 run behind the residence. He says Aloysius keeps running
6 straight behind the residence into the woods where he was
7 apprehended a couple of trailers or residences down
8 underneath a vehicle.

9 Q. Now, just to be clear this is what Mr. Tyrone King is
10 telling you took place?

11 A. That is correct.

12 Q. And will you clarify for the jury who this Aloysius
13 is?

14 A. Aloysius or Aloysius McLaughlin is from McColl, South
15 Carolina.

16 Q. Okay.

17 MS. DAVID: Beg the Court's indulgence for just one
18 moment.

19 BY MS. DAVID:

20 Q. One more question. At any point in time did the
21 defendant admitting to hitting Ms. Karen Galloway in the
22 head with the gun?

23 A. I remember him saying that he swung the gun at her.

24 Q. Okay.

25 A. And it may reference that in the video, and it made

1 reference, but I don't remember him stating he swung the
2 gun at her. He did -- I asked him how much gunshots he
3 heard, and he said he heard one.

4 Q. Okay?

5 MS. DAVID: No further questions at this time, Your
6 Honor.

7 THE COURT: You may examine, Mr. Shaffer.

8 CROSS-EXAMINATION

9 BY MR. SHAFFER:

10 Q. Investigator Feldner, you said that he was -- he had
11 been drinking but he wasn't under the influence?

12 A. I smelled alcohol. Yes, sir.

13 Q. Okay, and regarding what they had said about the gun,
14 swinging the gun, you first described that as waving,
15 correct?

16 A. Waving, swinging. I think he actually said swinging
17 in the video.

18 Q. Okay. Do you -- did you take that to mean that he
19 admitted to shooting -- hitting her or not?

20 A. If I'm not mistaken he does say, 'hit her' in the
21 video. We just have to clarify. You're asking me to
22 remember a long, lengthy video.

23 Q. I understand, but to them you didn't state that,
24 correct? You didn't state that he necessarily did that?

25 A. No. He swung it.

1 Q. Okay.

2 MR. SHAFFER: Court's indulgence. No further
3 questions, Your Honor.

4 THE COURT: You have any reply?

5 MS. DAVID: Nothing further at this time. At this
6 time, Your Honor, the State would move to publish the
7 video to the jury. We will again at Minute 4:54 once his
8 Miranda rights have been read to him which is about 20
9 minutes into the video. Then we will have that one point
10 where we fast forward to which has been previously ruled
11 upon by you.

12 THE COURT: You may proceed.

13 (WHEREUPON, State's Exhibit Number Five was played
14 for the jury in open Court.)

15 THE COURT: Does that conclude the video?

16 MS. DAVID: Yes, Your Honor.

17 THE COURT: All right. With the video having been
18 completed are there any additional questions by the State?

19 MS. DAVID: No, Your Honor.

20 THE COURT: Any additional inquire by the Defense?

21 MR. SHAFFER: Just one or actually a couple.

22 BY MR. SHAFFER:

23 Q. Who is Johnson?

24 A. That he's refers to in the statement?

25 Q. Yes.

1 Sheriff's Office in my vehicle.

2 MR. SHAFFER: No further questions.

3 THE COURT: All right. Was there any other questions
4 from the State?

5 MR. REDMOND: Beg the Court's indulgence. I think
6 may there be a few additional questions base on some
7 questions asked in cross.

8 REDIRECT EXAMINATION

9 BY MS. DAVID:

10 Q. Now, while participating in your investigation in
11 this early morning hour did you investigate any other
12 participants? Did you investigate anybody else that
13 morning?

14 A. No, ma'am, I didn't.

15 Q. Did you -- you did not?

16 A. As far as someone participating in the crime?

17 Q. Well, did you ---

18 MR. SHAFFER: Your Honor, objection.

19 THE COURT: What is your objections?

20 MR. SHAFFER: Outside of the scope of what I asked.

21 THE COURT: I think it does. Go ahead. These
22 questions are appropriate based on your examination. Go
23 ahead.

24 BY MS. DAVID:

25 Q. Did you interview anyone else?

1 A. Yes, we interviewed some other witnesses in the case.
2 Specifically, after this statement myself and Investigator
3 English are familiar with Aloysius. We immediately
4 contacted him, and he was either brought to the Sheriff's
5 Office or drove to the Sheriff's Office where he was
6 interviewed and gave a statement.

7 Q. Okay. Thank you.

8 MS. DAVID: No further questions.

9 THE COURT: All right.

10 MR. SHAFFER: None, Your Honor.

11 THE COURT: This witness, you may come down.

12 THE WITNESS: Thank you, Your Honor.

13 COLLOQUY

14 THE COURT: It's five o'clock. It's a good time to
15 quit. As I understand it -- do you have any other
16 witnesses tonight?

17 A. Yes, Your Honor. If we could I'd like to call at
18 least ---

19 THE COURT: Go ahead. That's fine. I didn't realize
20 you had some more tonight, but that's fine. Go ahead.

21 MS. DAVID: At this time the State would like to call
22 Aloysius McLaughlin.

23 MR. SHAFFER: Your Honor, I have a matter of law.

24 THE COURT: Say what?

25 MR. SHAFFER: Your Honor, I have a matter of law

1 before this begins.

2 THE COURT: Let you go to the jury room. I'll be
3 calling you right back.

4 (WHEREUPON, the-jury panel was excused from the
5 courtroom at at 4:58 p.m.)

6 THE COURT: What's your question of law?

7 MR. SHAFFER: Your Honor, I believe that I had
8 objected under 404(B), 403 and 401 to any reference by
9 this witness to the pending charges..

10 MS. DAVID: Your Honor, you previously ruled on this
11 and said you would allow to defendant to reply to ---

12 MR. SHAFFER: And, Your Honor, that was ruled in
13 chambers, sorry.

14 THE COURT: We're not -- you didn't call him for any
15 pending charges?

16 MS. DAVID: No, Your Honor, but he might reply based
17 on a pending charge. I am going to ask him was he with
18 the defendant on this night, and I am going to ask him,
19 you know, were they friends.

20 THE COURT: You can do that, but don't go into
21 anything further, you understand? About any pending
22 charges. Don't you understand that?

23 MS. DAVID: Yes, Your Honor.

24 THE COURT: Let there be no question about it, now.
25 If you do that you're getting into trouble that we don't

1 need in as much as that video referenced this individual
2 I'm going to let him testify as to whether he was there or
3 not. That's going to end it. Do you understand that?

4 MS. DAVID: Yes, Your Honor. So he is not to mention
5 that he would not have been with the defendant the night
6 before because the defendant had robbed him two weeks
7 prior.

8 THE COURT: We went through that. That's got
9 knowledge to do with this case, all right.

10 MS. DAVID: Yes, Your Honor.

11 THE COURT: If you do that I'm going to declare a
12 mistrial, now, I tell you one more time. How strong can I
13 be with you, Mia, on this issue?

14 MR. SHAFFER: I wont.

15 THE COURT: You tell me what you're going to elicit
16 from him.

17 MS. DAVID: I am only going to ask him if he was at
18 the scene with Mr. Tyrone King.

19 THE COURT: You can do that. Now, what's your
20 objection to that, Mr. Shaffer?

21 MR. SHAFFER: Your Honor, I have no objection to that
22 question.

23 THE COURT: Sir?

24 MR. SHAFFER: I have no objection to that question.

25 THE COURT: I didn't think so. Bring the jury back.

1 Kernard?

2 MR. REDMOND: Yes, sir.

3 THE COURT: I'm warning you both, now.

4 MR. REDMOND: Yes, sir. I'm fine.

5 THE COURT: And I tell this witness respond to her
6 question and hers only. No reference to anything that
7 occurred about an alleged robbery the night before that.
8 You're understand that.

9 THE WITNESS: Yes, sir.

10 MR. REDMOND: Now, Your Honor, just to be clear, and
11 I know it might be necessary to do a proffer just to be
12 sure, but I do think it is proper, without getting into
13 reasons why that, because that was a reference on the
14 table. Well, actually, there was a reference about this
15 incident. We are not getting into that, but he made a
16 comment that we are all good now or we are cool now
17 referring to the defendant and ---

18 THE COURT: I'll permit that as long as you don't
19 talk about a robbery the night before.

20 MR. REDMOND: Absolutely, and that's what we're not
21 getting into.

22 THE COURT: Okay. If they cool, they cool. That's
23 fine with me. I ---

24 MR. REDMOND: Judge, we're not alleging -- time out.
25 Let me ---

1 THE COURT: You're alleging that they're cool.

2 MR. REDMOND: No, Judge. I want to be clear on this
3 point. I'm not alleging that they're cool. We're saying
4 that we want to be able to ask them at the time of this
5 incident were y'all friends. They were not. He says they
6 were. I don't think the defendant -- that Mr. McLaughlin
7 is going to say they were.

8 THE COURT: Whatever his answer. He can answer that.

9 MR. REDMOND: I just want to be clear.

10 THE COURT: I understand that. I understood that he
11 said they were cool. He may not say they were cool. But
12 we'll see. Bring the jury in. Just leave that question
13 of robbery alone, you understand that, Mr. Witness?

14 THE WITNESS: Yes, sir.

15 THE COURT: All right.

16 MR. SHAFFER: Your Honor, before the jury ---

17 THE COURT: Wait a minute. Hold on. What's wrong
18 now?

19 MR. SHAFFER: I think the jury is coming in now?

20 THE COURT: Bring them back. You have something else
21 to say?

22 MR. SHAFFER: I can do it by approaching, Your Honor.

23 THE COURT: Come around.

24 (WHEREUPON, a bench conference was held off the
25 record, but out of the presence of the jury.)

1 THE COURT: Bring the jury in.

2 (WHEREUPON, the jury enters the courtroom at

3 5:03 p.m.)

4 THE COURT: Call your witness.

5 MS. DAVID: At this time the State would like to call

6 Aloysius McLaughlin to the stand.

7 ALOYSIUS MCLAUGHLIN, after being duly sworn,

8 testified as follows:

9 CLERK OF COURT: Be seated.

10 DIRECT EXAMINATION

11 BY MS. DAVID:

12 Q. Would you please state your full name for the record?

13 A. Aloysius McLaughlin.

14 Q. And what is your current age?

15 A. Twenty-seven.

16 Q. And where do you live?

17 A. Clio.

18 Q. Are you married?

19 A. Uh uh.

20 Q. You have any children?

21 A. Two.

22 Q. Will you please tell us where you were on the night
23 of November 10th going into the morning of November the
24 11th?

25 A. I was in McColl at the Ashland Apartments.

1 Q. At whose house?

2 A. Christina Malloy.

3 Q. And who is she to you?

4 A. A friend.

5 Q. Was anybody else with you all?

6 A. My girlfriend and my sister.

7 Q. And where else did y'all go after that? What time is
8 this?

9 A. I was other there around 8:00 to 10:00, 12:00, and we
10 got home around twelve o'clock to my momma's house.

11 Q. Where your mother live?

12 A. In McColl.

13 Q. And what did you do after you got to your mother's
14 house?

15 A. I went to sleep.

16 Q. You went to sleep. When did you wake up?

17 A. When they knocked at the door.

18 Q. And what did they say to you?

19 A. They said, "You need to come with us" and I was like,
20 'for what'. And then they said, "We can't tell you right
21 now. Just come with us."

22 Q. Where did you go?

23 A. To the Sheriff's Department.

24 Q. Did you meet with anybody at the Sheriff's
25 Department?

1 A. Yeah, if I'm not mistaken English.

2 THE COURT: You need to talk a little louder so she
3 can hear down there.

4 THE WITNESS: If I'm not mistaken Brittany English.

5 THE COURT: Thank you.

6 BY MS. DAVID:

7 Q. English?

8 A. Brittany.

9 Q. At any point on the night of November 10th or early
10 morning of November 11th were you with the Defendant,
11 Tyrone King?

12 A. No, ma'am.

13 Q. During that time on the night of November 10th and
14 early morning of November 11th were you cool or in other
15 words friends with Tyrone King at that time?

16 A. No, ma'am.

17 Q. Thank you. At this point the State has no further
18 questions. Please answer any questions that the Defense
19 attorney may have for you.

20 CROSS-EXAMINATION

21 BY MR. SHAFFER:

22 Q. You're currently in jail, is that correct?

23 A. Yes, sir.

24 Q. Okay. I was stating the obvious. Now, are you being
25 promised anything ---

1 A. No, sir.

2 Q. --- to be here?

3 A. No, sir.

4 Q. Okay. You haven't been told ---

5 THE COURT: You need to talk a little bit louder for
6 my court reporter.

7 BY MR. SHAFFER:

8 Q. You haven't been told that you would get help in your
9 charges in any way?

10 A. No, sir.

11 Q. Why are you currently in jail?

12 A. Possession with intent to distribute marijuana near a
13 school proximity and conspiracy.

14 Q. Okay. And do you know how much time you're possibly
15 looking at?

16 A. No.

17 Q. Do you know if -- do you think that testifying here
18 today is going to help you out in any way?

19 A. No, I wasn't told that.

20 Q. Okay. Do you think it would?

21 A. No, I don't think that.

22 Q. Okay.

23 A. I'm just here to state the facts. I wasn't there and
24 I didn't have knowledge to do with it. That's what I'm
25 here for.

1 Q. Okay.

2 MR. SHAFFER: Your Honor, Court's indulgence just one
3 moment. Your Honor, may we approach?

4 THE COURT: Yes, sir.

5 (WHEREUPON, a bench conference was held off the
6 record in the presence of the jury, but out of the
7 hearing of the jury.)

8 COLLOQUY

9 THE COURT: Let you go to your jury room for a
10 moment.

11 (WHEREUPON, the jury panel was excused from the
12 courtroom at 5:10 p.m.)

13 THE COURT: All right. The jury is outside of the
14 presence of the Court. Now what?

15 MR. SHAFFER: Your Honor, I apologize.

16 THE COURT: Come around the front. What have you got
17 for the record now?

18 MR. SHAFFER: Your Honor, I apologize. I interrupted
19 the trial because my client believes he had heard
20 Miss David tell Mr. McLaughlin that his charges would be
21 dismissed immediately prior to calling him to the stand.
22 I understand that she's denying it. I didn't hear
23 anything either. If the other attorney who's at the
24 table, but I need to put that on the record.

25 THE COURT: Have you interrupted on a motion on some

1 5:13 p.m.)

2 MR. SHAFFER: We have no further questions of this
3 witness, Your Honor.

4 THE COURT: All right. You may come down. Call your
5 next witness.

6 MS. DAVID: At this time the State would like to call
7 Melissa Graham to the stand.

8 MELISSA GRAHAM, after being duly sworn,
9 testified as follows:

10 THE COURT: Have a seat, please. I will ask that you
11 please speak into the microphone so those juror way down
12 there can hear you, please. Thank you.

13 DIRECT EXAMINATION

14 BY MS. DAVID:

15 Q. Would you please state your full name for the record?

16 A. Melissa Wyette Graham.

17 Q. And how old are you?

18 A. Twenty-six.

19 Q. And where do you currently live?

20 A. [REDACTED].

21 Q. Do you remember the night of November 10th 2011?

22 Early morning of 2011?

23 A. Yes.

24 THE COURT: Talk a little louder.

25 THE WITNESS: Yes.

1 BY MS. DAVID:

2 Q. And where were you on that night?

3 A. I was at my friend, Christina, house.

4 Q. Around what time is this?

5 A. Well, we were there all day. We were there all day.

6 It was 12:00, about one o'clock. We had left about 1:00

7 or 2:00 when -- something like that 1:00 or 2:00.

8 Q. And who was with you?

9 A. My ex-boyfriend, Aloysius, and his sister, Jazz.

10 Q. Now, you say ex-boyfriend.

11 A. Yeah.

12 Q. When did y'all break up?

13 A. Well, we on the outskirts now, but I wouldn't say
14 broke up, too. But you know what I'm saying. Trials and
15 tribulations, we got our own personal problems.

16 Q. So at the time of November 10th ---

17 A. We were together.

18 Q. --- until November 11th you were with your boyfriend?

19 A. Yes, sir.

20 Q. Aloysius McLaughlin?

21 A. Yeah.

22 Q. And you two were at Christina's house. Where did you
23 go when you left Christina's house?

24 A. To his mother's house.

25 Q. And where did you go from there?

1 A. Just to the Sheriff's Office.

2 Q. How did you get to the Sheriff's Office? What
3 occurred?

4 A. They came by to the house that morning about
5 four o'clock and said they needed to talk to us about
6 something that happened that night. So we looking like,
7 'Oh, Lord, What we done did now' you know what I'm saying.
8 He's talking about he couldn't talk to us right then. He
9 would talk to us when we get down there.

10 THE COURT: Show down a little bit, please.

11 THE WITNESS: He said he would talk when we got down
12 there. So when we got down there that's when he told us
13 that he was dealing with a murder with Tyrone King. So we
14 looking like how we going to help this man murder somebody
15 he just robbed us ---

16 MR. SHAFFER: Objection, Your Honor.

17 THE COURT: Wait. Don't go. Rephrase your question.

18 MR. SHAFFER: Your Honor, I move to strike and ---

19 THE COURT: I'll strike that. Go ahead. Go ahead.

20 BY MS. DAVID:

21 Q. So just to clarify you were with your ---

22 A. Boyfriend's sister.

23 Q. That whole night?

24 A. Yes, ma'am.

25 Q. Did you see the Defendant, Tyrone King, that night?

1 A. Uh-huh. No.

2 Q. At that time we have no further questions. Please
3 answer any questions the Defense attorney may have.

4 MR. SHAFFER: Your Honor, may we approach?

5 THE COURT: Yes, sir.

6 (WHEREUPON, a bench conference was held off the
7 record in the presence of the jury, but out of the
8 hearing of the jury.)

9 MR. SHAFFER: I'm going to have you go to the jury
10 room for just a moment.

11 (WHEREUPON, the jury panel was excused from the
12 courtroom at 5:19 p.m.)

13 THE COURT: Wait a minute right here. Move over so
14 everybody can hear what Hattie says. Hattie, can you play
15 that back for me exactly he what -- can you play it back?
16 Well, tell me what it says, loudly.

17 COURT REPORTER: "How we going to help this man
18 murder somebody he just robbed us." And that's all that I
19 got that she said on that. And that's when he stopped
20 her.

21 THE COURT: I will strike that and tell them not to
22 consider that. Bring the jury back. Don't bring up that.
23 The question is 'were you with him or not'. Do you
24 understand that?

25 THE WITNESS: Um-hum.

1 (WHEREUPON, the jury panel enters the courtroom at
2 5:21 p.m.)

3 THE COURT: The last utterance made by this witness
4 as to this man is stricken from the record. Not a part
5 of the record. You must not and may not consider that
6 remark in any way whatsoever. It's totally irrelevant to
7 any issue in this case. It's stricken, and is not to be
8 considered. I'm referring to that last part, "This man,
9 etc." Everybody understand that?

10 MR. REDMOND: Beg the Court's indulgence.

11 THE COURT: Is that sufficient for your purposes?

12 MR. SHAFFER: Your Honor, may we approach?

13 THE COURT: Yes, sir. One more time.

14 MR. SHAFFER: Thank you.

15 (WHEREUPON, a bench conference was held off the
16 record in the presence of the jury, but out of the
17 hearing of the jury.)

18 THE COURT: All right. Does that conclude the
19 testimony of this witness?

20 MS. DAVID: I have two more questions, Your Honor.

21 THE COURT: All right. You may have your
22 cross-examination in a minute and any motions I'll hear
23 after the jury is gone. Go ahead.

24 BY MS. DAVID:

25 Q. On the night of November 10th and early morning of

1 November 11th were you cool with and/or friends with Mr.
2 Tyrone King?

3 A. No, ma'am. No, ma'am.

4 Q. No further questions. Please answer any questions
5 the Defense attorney may have for you.

6 THE COURT: Yes, sir.

7 MR. SHAFFER: Just one question.

8 CROSS-EXAMINATION

9 BY MR. SHAFFER:

10 Q. Were you promised anything to testify here today?

11 A. No.

12 Q. Okay. Do you have a pending charge.

13 A. Yes.

14 Q. Are you hoping that will -- you get consideration on
15 that pending charge by appearing today?

16 A. No, I had no thought about it, but ---

17 Q. Thank you.

18 THE COURT: All right. You may come down. Is that
19 the last witness for this evening?

20 MS. DAVID: Yes, Your Honor.

21 COLLOQUY

22 THE COURT: Okay. Mr. Foreman, ladies and gentlemen,
23 you have been here very patiently all afternoon, and I
24 note that you've listened with great intent as simply
25 evidence of a good jury doing their duty under their oath,

1 and we all appreciate it. Let you go now. Be back in the
2 jury room at 9:30. Remember my admonitions. Don't
3 discuss the case. Make no independent inquiry. Let no
4 one discuss it with you. See you in the morning at 9:30.

5 (WHEREUPON, the jury panel was excused from the
6 courtroom at 5:23 p.m.)

7 THE COURT: All right. The jury is gone. You had a
8 motion as I understand it? Yes, sir.

9 MR. SHAFFER: Yes, sir, Your Honor. I would be
10 moving for a mistrial. I believe that the instruction is
11 insufficient to cure the fact that he had a previous armed
12 robbery charge pending.

13 THE COURT: You talking to the table. Talk to me.

14 MR. SHAFFER: I apologize, Your Honor. I move for a
15 mistrial. I believe that the instruction that you gave,
16 the curative instruction, was insufficient to cure the
17 prejudice of my client.

18 THE COURT: Why didn't you give me another
19 instruction you want? I'll give it.

20 MR. SHAFFER: Your Honor, I don't believe any
21 instruction, quite honestly, would be sufficient.

22 THE COURT: What is your concern? This witness,
23 young girl, blurted out something that was not
24 unresponsive to the prosecutor's question. You cannot
25 allege in that the prosecutor in any way elicited that

1 remark. You don't allege that, do you?

2 MR. SHAFFER: No, Your Honor. I don't allege that
3 they elicited it.

4 THE COURT: That this witness just blurted it out,
5 and I told the jury to excuse it and to dismiss it and
6 it's not relevant. There is no part in the record, and if
7 you've got an addition instruction to them I'll be glad to
8 do it. But that little statement blurted out by this
9 witnesses is not sufficient to cause a mistrial in this
10 case.

11 I'm not sure that the jury even heard it, but she
12 said it. And I've instructed the jury, and I respectfully
13 decline to mistrial on something that she said that was
14 not asked for by the Solicitor.

15 MR. SHAFFER: Thank you, Your Honor. And just for
16 clarification purposes that statement was that he had
17 previously robbed him.

18 THE COURT: What exactly was the statement? Let's
19 get it on the record.

20 (WHEREUPON, the court reporter reads into the
21 record.)

22 MR. REDMOND: Your Honor, I think we can kill some
23 time here.

24 MR. SHAFFER: Withdraw the second one. I think I can

25 ---

1 THE COURT: Sir?

2 MR. SHAFFER: I'm going to withdraw. It's actually
3 in the video, so I can withdraw.

4 THE COURT: You're going to withdraw the objection?

5 MR. SHAFFER: Yes, Your Honor. I'm going to withdraw
6 the objection to the robbery because it was in the video.
7 I believe it's already in evidence so I don't really have
8 any grounds for a mistrial at this point. Thank you, Your
9 Honor.

10 THE COURT: That's solves that problem. All right.
11 Both of you have had a busy day for the State and the
12 Defense, and I congratulate you both on the way the case
13 is moving along. How many more witness does the State --
14 we've got a video in the morning and that witness. We
15 will deal with it the same way we did with the last one.
16 How many other witnesses you calling?

17 MS. DAVID: We're expecting to call between seven and
18 eight witnesses tomorrow.

19 THE COURT: Some of them will be relatively short,
20 will they not?

21 MS. DAVID: Yes, sir.

22 THE COURT: Can we agree probably that the State will
23 conclude its testimony by lunch?

24 MS. DAVID: No, Your Honor.

25 THE COURT: You will not?

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF MARLBORO) 2012-GS-34-0024
) 2012-GS-34-0026
) 2012-GS-34-2028

STATE OF SOUTH CAROLINA)
) PLAINTIFF
) vs.) TRANSCRIPT OF RECORD
)
TYRONE J. KING)
) DEFENDANT)

September 10-13, 2012
Bennettsville, South Carolina
VOLUME NO. 03 OF 04

B E F O R E:

THE HONORABLE EDWARD B. COTTINGHAM, JUDGE; and a jury.

A P P E A R A N C E S:

MIA DAVID, ASSISTANT SOLICITOR
Attorney for the State

MARY THOMAS JOHNSON LEE, ASSISTANT SOLICITOR
Attorney for the State

TRISTAN SHAFFER, ESQUIRE
Attorney for the Defendant

RICHARD JONES, PUBLIC DEFENDER
Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

1 Investigator Jamie Seales.

2 JAMIE SEALES, after being duly sworn, testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MS. DAVID:

6 Q. Would you please state your full name for the record?

7 A. Jamie Glenn Seales.

8 Q. And what is your occupation?

9 A. I'm an Investigator with the Marlboro County
10 Sheriff's Office.

11 Q. And how long have been an investigator there?

12 A. I've been back with the Sheriff's Office since
13 October 2007.

14 Q. Do you have any previous law enforcement experience?

15 A. Yes, I do. I started with Probation and Parole in
16 1997. I came to the Sheriff's Office in 2005 as an
17 investigator. I then worked with the State Law
18 Enforcement Division, commonly known as S.L.E.D. for about
19 18 months and then back to the Sheriff's Office.

20 Q. What are your present duties at the Sheriff's Office?

21 A. Lieutenant over investigations. I supervise the
22 Investigations Division.

23 Q. And did you participate in this investigation of Mr.
24 Tyrone King?

25 A. I did.

1 Q. And how did you become involved in the investigation?

2 A. On the date in question I received a phone call from
3 Central Dispatch and some of the responding officers come
4 told me what was going on. At that time I began to call
5 other investigators to respond and called the Sheriff to
6 brief the Sheriff. And started assigning investigators.
7 Started assigning them, and then called State Law
8 Enforcement Division for assistance.

9 Q. Okay. Do you have an opportunity to interview Mr.
10 Tyrone King?

11 A. Yes, I did.

12 Q. And when was this?

13 A. You have the form. I think it was 11/16 on the form.

14 Q. That is correct. I show you what has been marked as
15 State's Exhibit Number Three. Do you recognize it?

16 A. Yes, I do.

17 Q. Will you tell us what it is?

18 A. It's an Inmate Request Form for the Marlboro County
19 Detention Center.

20 Q. And how did it first come into your possession?

21 A. It appears that it was faxed to the Marlboro County
22 Sheriff's Office on 11-15-2011 at 1445 which would be
23 2:45 p.m. And we get those in a variety of ways. I don't
24 know if it was on my door or somebody handed it to me.

25 Q. Okay. Is it still in the same condition now as it

1 was then?

2 A. Yes, it is.

3 Q. Will you read it to us and tell what it says.

4 A. Yes, I will. At the very top there is a fax -- some
5 a facsimile information. Says, "11/14/2011." Says it's
6 faxed from 843-479-5629 from the Marlboro County Detention
7 Center, and it's one page. Has a Marlboro County
8 Sheriff's Office Detention Facility. It has Inmate
9 Request Form. Has some initials to the right of that --
10 that is appears to be E.L.H, 11/14/11.

11 It has a space for a name. In handwritten script,
12 Tyrone King. The date in handwritten script is 11/14/11.
13 The unit and room number are A-5. Arresting agency in
14 handwritten script says County. Then has another section
15 that says, "General reason for request," and has four
16 choices. Has inmate account, plea, release date or
17 warrant. None of those are checked.

18 And then has another section that says, "Specific
19 information concerning the item checked." And in that
20 blank, in handwritten script, it says, "I need to speak to
21 Jamie Seals about my case. This is very important
22 period." Further down there is a section that says, Staff
23 response", and it has fax. At the bottom of the document
24 it has a space, "Referred to and date." That is not
25 filled in. And it has staff signature which appears to be

1 Earl Hood who is the warden of our detention center. And
2 a date of 11/15/11.

3 Q. Now, has this form been altered or changed in any
4 way?

5 A. No, it hasn't.

6 MS. DAVID: At this time the State would like to move
7 Exhibit Number Three into evidence.

8 THE COURT: It is so moved.

9 (WHEREUPON, State's Exhibit No. 3 was previously
10 admitted into evidence.)

11 BY MS. DAVID:

12 Q. Now, did you get the opportunity to speak with
13 Mr. Tyrone King after that Inmate Request Form was made to
14 you?

15 A. Yes, I did.

16 Q. Okay. I show you what has been marked as State's
17 Exhibit Number One. Do you recognize that?

18 A. Yes, I do.

19 Q. Will you tell us what it is?

20 A. That is Miranda Rights Form that we use in the
21 Sheriff's Office.

22 Q. Okay. Is it dated? On what date did you actually
23 interview him to get this Miranda Rights Form signed?

24 A. I went 11/16/11.

25 Q. And would that have been after his initial arrest?

1 A. The 17th if I remember correctly. What was the date?

2 I don't know the accident date.

3 Q. And I apologize for asking you that question. The
4 date of the arrest would be 11/11/11?

5 A. It would be five days after.

6 Q. Will you read us what that Miranda Rights Form says?

7 A. Yes. At the top it says, "Place," and I have in my
8 handwriting M.C.S.O. And it has date, 11/16/11 in my
9 handwriting. And time, it has 8:35. And it says "Your
10 Rights." And it says, "Before we ask you any questions
11 you must understand your rights. And it says.

12 "Number One, you have the right to remain silent.

13 Number Two, anything you say can and will be used
14 against you in Court.

15 Number Three, you have the right to talk to a lawyer
16 before you answer any questions and have him with you
17 during questioning.

18 Number Four, if you cannot afford a lawyer the Court
19 will appoint one for you before any questioning if you
20 wish.

21 Number Five, if you decide to answer questions now
22 without a lawyer present you will still have the right to
23 stop answering at any time until you talk to a lawyer
24 first.

25 And then the next section is Waiver of Rights. It

1 says, "I have the statement of my rights and I understand
2 what my rights are and am willing to make a statement and
3 answer questions. I do not want a lawyer at this time,
4 but I understand and know what I'm doing. No promises or
5 threats have been made to me. No pressure or coercion of
6 any kind has been used against me in Court or used against
7 my by anyone" -- excuse me.

8 Q. Did you sign the form?

9 A. I did.

10 Q. Did Mr. Tyrone King sign that form?

11 A. He did.

12 Q. Thank you. At this time the State would like to move
13 the Miranda Form which is State's Exhibit Number One into
14 evidence?

15 THE COURT: I so admit it.

16 (WHEREUPON, State's Exhibit No. 1 was previously
17 admitted into evidence.)

18 BY MS. DAVID:

19 Q. Now, Investigator Seales, during this interview you
20 briefly tell us what you and Mr. Tyrone King discussed.
21 Did you ask him any questions?

22 A. I asked him a few at certain points, but the way it
23 started off was I called over to the Detention Center and
24 had him brought over at he requested. Me and Investigator
25 Alderman talked to him, and the first thing I did was I

1 showed him the request form cause just as I explained to
2 you that he sent. And I showed it to him and I want him
3 to authenticate that, make sure that was his request. I
4 then told him that the reason I wanted to do that was to
5 protect him because certain inmates play games and fill
6 out Inmate Request Forms, sign the other inmate's name on
7 them. I wanted to make 100 percent certain that he was
8 requesting to talk to me. And he did. He agreed that he
9 did.

10 And then I told him that I was going to go over the
11 Miranda Form again, I Showed him the Miranda Form and
12 said, "This is the same one that you signed before when
13 the other investigator spoke to you." He told me that he
14 didn't even remember that. He looked over the form. He
15 read it and he signed and agreed he understood it. And
16 then I told him -- I asked him again. I said, "This is
17 your request? And any time you want to stop during this
18 interview you're free to stop."

19 He then -- he gave us -- this is the summary of what
20 he told me, and you will see it on video. But he told me
21 about 1:00 a.m, somewhere in that neighborhood, we went to
22 the victim's house, and which is the next door neighbor of
23 his. And he said he went over to be buy some liquor. He
24 said that once he got that he went over to the Breeden
25 Street area of Bennettsville.

1 And he got up with a guy named Broom. He said that
2 Broom let him hold the gun, and I would assume by his word
3 let him keep it for a few minutes. And he was going to go
4 try to sell the gun. He said he was going to carry it
5 over to the victim's house to see if the wanted to buy it;
6 that he went to the victim's house. The victim let him
7 inside and that they were looking at the gun.

8 And he said -- I think he said later in the interview
9 that he wanted to -- he didn't never want to give anybody
10 a gun with a magazine or he referred to it as a clip. And
11 the clip being the part of the gun that hold the
12 ammunition because he wanted -- he was trying to be safe
13 about it.

14 So he as he was trying to get the clip out of the gun
15 the gun goes off and shoots the victim. He then said that
16 he got shook up. I don't know exactly the words he used,
17 but he got very upset. He said he yelled, "James. James,"
18 And he said that he was -- his intentions were to sell the
19 gun to the victim. He said that he needed some money for
20 groceries cause he had some kids and he stated that -- he
21 did say that I think when he walked in it was dark. You
22 have to watch the video.

23 He walked into the kitchen. That's when they
24 started -- he attempts to take the clip out of the gun
25 before he let the victim look at the gun. And I asked

1 him, I said, "How many times do you remember it going
2 off?" And I think he replied once. And he said, "My
3 friend fell." And I said, "Did you hit someone else?"
4 And he said, "Well, I saw my warrants. I'm not going to
5 say the victim's wife is lying." He said, "I may have. I
6 don't remember."

7 I asked him, "Do you remember running out the house",
8 and he said he didn't. And then I asked him was there
9 anything else that he wanted to add to his statement. He
10 said he didn't. I told him I appreciate his honesty.

11 Q. At any point during this questions did he ever ask
12 for an attorney?

13 A. No, he didn't.

14 Q. Did he appear to be under the influence of drugs or
15 alcohol in any way?

16 A. No, he didn't.

17 Q. Was he responsive to you?

18 A. Yes.

19 Q. He seem to understand English during the time y'all
20 were talking?

21 A. Yes.

22 Q. And it seems that the statement was given to you was
23 given freely and voluntarily?

24 A. Very much so.

25 Q. Okay. At this time I would like to show you what has

1 been marked as State's Exhibit Number Four. Do you
2 recognize it?

3 A. Yes, I do.

4 Q. Will you tell us what it is?

5 A. It is a D.V.R. disk of this interview that I just
6 described to you with my handwritten notes on the outside.
7 Says, "11/16/11. Second Interview of Tyrone King.
8 8:30 a.m. And has 'Seales/Alderman' who was the second
9 investigator in the room. And it has my handwritten
10 script, 'Tyrone King Interviews'.

11 Q. Have you had an opportunity to review that video?

12 A. I have.

13 Q. Is it in the same condition as it was when you first
14 took it?

15 A. It is.

16 MS. DAVID: At this time this exhibit, which has been
17 marked State's Exhibit Number Four, the State would move
18 to have it admitted and published into evidence.

19 THE COURT: It is introduced into evidence, and you
20 may publish it at t his time.

21 MS. DAVID: Thank you, Your Honor.

22 (WHEREUPON, State Exhibit No. 4 was admitted into
23 evidence.)

24 MS. DAVID: Your Honor, I believe -- may we approach
25 before she publishes it?

1 THE COURT: Yes, sir.

2 (WHEREUPON, a bench conference was held off the
3 record in the presence of the jury, but out of the
4 hearing of the jury.)

5 THE COURT: You may cross at this time.

6 MR. SHAFFER: Thank you, Your Honor. Court's
7 indulgence. I apologize.

8 CROSS-EXAMINATION

9 BY MR. SHAFFER:

10 Q. Investigator Seales, you're currently a lieutenant?

11 A. Yes, sir.

12 Q. Of investigations?

13 A. Yes, sir.

14 Q. Does that mean you're in charge of all the
15 investigators right now?

16 A. That is correct.

17 Q. Okay. And how long have you been a lieutenant?

18 A. Since October of 2007.

19 Q. Okay. And you came from S.L.E.D.?

20 A. That was where I worked previous to that, crime
21 scenes.

22 Q. Okay. What's the job of the investigator?

23 A. To generally take the cases they're assigned, follow
24 up on them, collect evidence, interview witnesses.

25 Q. And to find out what happened, right?

1 Q. Okay. I will save the rest of my questions for
2 later, Your Honor.

3 THE COURT: Sir?

4 MR. SHAFFER: I'll save the rest of my questions
5 until after the video, Your Honor.

6 THE COURT: You may do that.

7 MR. SHAFFER: Thank you.

8 THE COURT: All right. Let's publish the video.

9 (WHEREUPON, State's Exhibit Four was played for the
10 jury.)

11 MR. REDMOND: Your Honor, that's actually the
12 conclusion of the tape. Based on the agreement of the
13 parties the tape had concluded at this time. Ms. David
14 wants to ask additional questions of Officer Seales.

15 THE COURT: Counsel, you may have your additional
16 examination.

17 MR. SHAFFER: I believe Ms. David is first and then I
18 was going to respond.

19 THE COURT: Sir?

20 MR. SHAFFER: I believe Ms. David is going to ask the
21 question first and then I was going to respond.

22 THE COURT: Okay. That's fine.

23 REDIRECT EXAMINATION

24 BY MS. DAVID:

25 Q. Investigator Seales, did the Defendant, Tyrone King,

1 appear to look the same on that day and in the video as he
2 appears today?

3 A. No, he doesn't.

4 Q. How does he differ.

5 A. He's dressed better and his hair is shorter. He has
6 glasses on today. He didn't have any glasses and his hair
7 was a little longer.

8 Q. So he had longer hair prior to today?

9 A. He did.

10 Q. And I have one other question. Was this the first
11 statement that this Defendant, Tyrone King, has made to an
12 investigator?

13 A. No.

14 Q. No. This is his second statement?

15 A. Yes, ma'am.

16 Q. Thank you.

17 MS. DAVID: At this time we would like to take care
18 of a few housekeeping --

19 BY MS. DAVID:

20 Q. Did you retrieve several items of evidence from
21 S.L.E.D. on March 22nd of 2012?

22 A. I did.

23 Q. Specifically, did you retrieve swabs from the trigger
24 of the gun, the magazine from the gun, and the spent
25 bullets among other things?

1 A. I did.

2 Q. Okay. And once you retrieved these items what did
3 you do with them?

4 A. Placed them in the evidence locker at the Marlboro
5 County Sheriff's Office.

6 MS. DAVID: At this time the State would move to
7 admit Exhibit Numbers 44 and 45 into evidence.

8 THE COURT: You may do so.

9 MR. SHAFFER: No objection, Your Honor.

10 THE COURT: Okay.

11 (WHEREUPON, State's Exhibit Nos. 44 and 45 were
12 admitted into evidence.)

13 MS. DAVID: No further questions at this time.

14 THE COURT: All right. You may examine, Mr. Shaffer.

15 RECROSS-EXAMINATION

16 BY MR. SHAFFER:

17 Q. All right. Investigator Seales, did watching that
18 video refresh you memory a little bit about it?

19 A. Yes. About the shackling and distance.

20 Q. And shack -- and he was in a belly chain, right?

21 A. He was.

22 Q. And that belly chain, did it appear to be securely
23 fastened?

24 A. It did.

25 Q. And with that belly chain he would be able to bring

1 Q. Okay. Thank you very much.

2 THE COURT: You may come down and you are excused
3 from your subpoena. Thank you.

4 THE WITNESS: Thank you, Your Honor.

5 MS. JOHNSON LEE: Dr. Nicholas Batalis.

6 NICHOLAS BATALIS, after being duly sworn,
7 testified as follows:

8 CLERK OF COURT: Please state your name.

9 THE COURT: Morning.

10 THE WITNESS: Morning. My name is Nicholas Ike
11 Batalis. That's B-A-T-A-L-I-S.

12 DIRECT EXAMINATION

13 BY MS. JOHNSON LEE:

14 Q. Dr. Batalis, what is your occupation?

15 A. I'm a forensic pathologist.

16 Q. Now, as forensic pathologist are you duly licensed
17 physician and surgeon?

18 A. Yes, I am.

19 Q. And in what state?

20 A. I'm licensed to practice medicine in the State of
21 South Carolina.

22 Q. How long have you been licensed to practice in your
23 profession?

24 A. I had a full unrestricted license for six or seven
25 years now.

1 Q. Are you presently engaged in your profession now?

2 A. Yes, I am.

3 Q. Where did you receive your training in pathology?

4 A. My training, after graduating medical school in
5 Indiana, I came down to the Medical University of South
6 Carolina in Charleston to do training in general pathology
7 and after completing four years of general pathology
8 training I then went on to one year specialized training
9 in forensic pathology in Dallas, Texas before coming back
10 to Charleston to work.

11 Q. What are the duties of a pathologist in South
12 Carolina?

13 A. So a general pathologist -- pathology refers to the
14 study and diagnosis of disease. So a general pathologist
15 would be looking at tissues to see if there is cancer or
16 not. Hoping to get some blood drawn from you doctor we
17 would help your family doctor interpret those values. So
18 that's kind of the practice of a general pathologist.

19 Forensic pathology is a specialized area of pathology
20 that really focuses on determining the cause and manner of
21 death through performing autopsies.

22 Q. You are a forensic pathologist?

23 A. Yes.

24 Q. How many autopsies have you performed?

25 A. I've performed over a thousand autopsies.

1 Q. And are you currently on the staff of the Medical
2 University of South Carolina?

3 A. I am.

4 Q. And is that in Charleston, South Carolina?

5 A. Yes, it is.

6 Q. Now, is pathology or autopsies considered a
7 specialized field of medicine?

8 A. Yes, it is. Pathology is the specialized field of
9 medicine, and forensic pathology is a sub- specialty.

10 Q. Any I believe that you have described what a forensic
11 pathologist involves?

12 A. Yes. Predominately performing autopsies to determine
13 the cause and manner of death.

14 Q. Now, are you a member of any special medical or
15 scientific groups?

16 A. Yes, I'm a member of several national organizations
17 related to forensic pathology, several national
18 organizations related to forensic pathology, and also some
19 local and State societies in regards to pathology.

20 Q. What's the American Board of Pathology?

21 A. The American Board of Pathology is the board that
22 certifies pathologists so that they're the ones that after
23 you complete the training and complete the examination
24 they would be the one to say that you're board certified
25 in your field.

1 Q. So there are certain requirements before they will
2 certify you a deployment ---

3 A. Yes.

4 Q. --- in the American Board of Pathology?

5 A. Yes. In order to be certified by the Board in
6 general pathology you need to complete four years of
7 training and pass a fairly rigorous examination. For the
8 forensic pathology training you must complete a year of
9 training which is then followed by another fairly rigorous
10 examination.

11 Q. Did you complete all that training and successfully
12 complete those examinations?

13 A. Yes, I did.

14 Q. Have you been granted certification and a diploma by
15 the American Board of Pathology?

16 A. Yes, I'm Board certified in anatomic pathology,
17 clinical pathology and forensic pathology.

18 Q. And that certification, that is on a national basis?

19 A. Yes, it is.

20 Q. Now, again you said you performed about 1,000
21 autopsies?

22 A. Yes. Somewhere over a thousand. I don't have an
23 exact number.

24 Q. Now, percentage wise, how many of those in excess of
25 1,000 autopsies were done where the cause of death was a

1 homicide?

2 A. Over the years it's about 15 to 20 percent of the
3 caseload are homicides. Doing the math that's at least
4 150, to 200 homicides in the last few years.

5 MS. JOHNSON LEE: Your Honor, at this time the State
6 moves that Dr. Nicholas Batalis be declared an expert in
7 the field of forensic pathology.

8 THE COURT: I so qualify him as an expert in that
9 field.

10 MS. JOHNSON LEE: Thank you, Your Honor.

11 BY MS. JOHNSON LEE:

12 Q. Dr. Batalis, did you perform an autopsy on Mr. James
13 Galloway in November of 2011?

14 A. Yes, I did.

15 Q. What was the date you performed that particular
16 autopsy?

17 A. I performed that autopsy on November 12th of 2011.

18 Q. Now, when you did the autopsy was that the first time
19 you have ever seen Mr. James Galloway?

20 A. Yes, it was.

21 Q. Was the autopsy also the last time you ever saw
22 Mr. James Galloway's body?

23 A. Yes, it was.

24 Q. Okay, now, where did that autopsy take place at?

25 A. We performed the autopsy at the Medical University of

1 South Carolina down in Charleston.

2 Q. How long did the autopsy last?

3 A. The autopsy lasted approximately two hours.

4 Q. Now, please describe for the jury what you did during
5 that autopsy?

6 A. So what we did for this autopsy is just the standard
7 of what we do in all autopsies. When I first received the
8 body we bring it to our autopsy suite and we get a set of
9 photographs as we receive the body before we have done any
10 manipulation to it. We then document the clothing.

11 We clean up the body and take another set of
12 photographs with the body unclothed. Then we perform our
13 external exam which is basically looking at the body from
14 head to toe at first looking for identifying features,
15 your hair color, your eye color, tattoos, scars, that sort
16 of thing. And then also any evidence of trauma.

17 Once we looked at the outside of the body in detail
18 then we move onto the internal exam which involves making
19 surgical type incisions into the body looking at the
20 organs one by one. It's either a natural disease or a
21 trauma which could have affected the person's death.

22 Q. And please further describe your findings during this
23 autopsy?

24 A. So the major finding on the autopsy of Mr. Galloway
25 was a gunshot wound of the face. That gunshot wound

1 entered just below the right eye. Just on the right cheek
2 here. There was -- the bullet then passed through the
3 soft tissue and bones of the face. The upper part of the
4 mouth is a hard pallet.

5 The upper part of the airway or the larynx, then went
6 through the soft tissues of the next, and there was a
7 gunshot exit wound on the back side of the neck just below
8 and behind the left ear.

9 Q. Now, how do you tell the difference between an
10 entrance wound and an exit wound?

11 A. Just through the course of training and experience
12 exit wounds and entrance wounds have characteristic
13 features that can be the wound itself and other things
14 associated with it.

15 Q. And that gunshot wound is that the cause of the death
16 of Mr. James Galloway?

17 A. Yes, it is.

18 Q. Now, did you prepare a diagram as part of your
19 autopsy?

20 A. Yes, I did.

21 Q. I show you what's marked for identification as
22 State's Exhibit Number 44. It's a two page document. Do
23 you recognize that?

24 A. I do. The first paper is a general diagram that I
25 made during the course of the autopsy with a lot of

1 various notes on it. The second page is a cleaned up
2 versus that just shows the entrance and exit wound where
3 they are located on the body.

4 Q. Now, is that a diagram from the autopsy conducted on
5 Mr. James Galloway?

6 A. Yes, it is.

7 Q. Now, what date did you prepare the diagram?

8 A. The original diagram was prepared on the date of the
9 autopsy which was November 12th 2011. The cleaned up
10 diagram I believe I made in preparation for the trial
11 which was in the last couple months.

12 MS. JOHNSON LEE: At this time I would move to have
13 the diagram put in evidence?

14 THE COURT: Has this been ---

15 MR. SHAFFER: No objection, Your Honor.

16 THE COURT: Have you seen it?

17 MR. SHAFFER: Yes, Your Honor, I have.

18 THE COURT: Without objection.

19 (WHEREUPON, State's Exhibit No. 44 was admitted into
20 evidence.)

21 BY MS. JOHNSON LEE:

22 Q. Now, I believe you already stated this, but based on
23 your autopsy and within the bounds of medical certainty
24 did you form an expert opinion concerning the cause of
25 death of James Galloway?

1 A. Yes, I did.

2 Q. What is your opinion?

3 A. He died as the result of a gunshot wound to the face.

4 Q. Okay. Now, you indicated that photographs are taken
5 when the body first come to you; is that correct?

6 A. Yes.

7 Q. Okay, now, I'm going to show you what's been marked
8 for identification as State's Exhibit 47?

9 MS. JOHNSON LEE: And did we stipulate this was in
10 evidence?

11 MR. SHAFFER: Yeah, I believe we did.

12 MS. JOHNSON LEE: Okay.

13 (WHEREUPON, State's Exhibit No. 47 was admitted into
14 evidence.)

15 BY MS. JOHNSON LEE:

16 Q. So this is State's Exhibit 47. Is that a photograph
17 taken during the autopsy?

18 A. Yes, it is.

19 Q. What does that photograph depict?

20 A. This is a photograph I took during the autopsy of the
21 gunshot entrance wound. This photograph is fairly close
22 up but it's showing where the wound enters on the right
23 side of the face.

24 Additionally, surrounding this entrance wound there
25 are little scrapes on the skin. Some little pink marks

1 around the skin which we refer to as stippling.

2 MS. JOHNSON LEE: Your Honor, can I have him stand up
3 to point out stippling to the jury?

4 THE COURT: You may do so.

5 BY MS. JOHNSON LEE:

6 Q. Come stand right here please, sir. Now, if you can
7 just hold the photograph up and you can just point out and
8 go down and show the area that you would consider
9 stippling.

10 A. So again in this photograph is showing a close up
11 view of the right side of the face. You can see right
12 eye, left eye.

13 THE COURT: I'm going to ask you to speak up a little
14 louder so my court reporter can hear what you say. Please
15 do.

16 THE WITNESS: Down here in the middle of the picture
17 is the gunshot entrance wound. The red material here,
18 this is where the bullet entered the body. The stippling
19 or abrasion we're referring to are the small pink areas
20 that are surrounding the wound. Basically, these are just
21 little scrapes on the surface of the skin. See back
22 there, but it extended about an inch and a half from the.

23 Q. Thank you, sir.

24 THE COURT: Thank you, Doctor.

25 BY MS. JOHNSON LEE:

1 Q. Now, what is the significance of stippling?

2 A. So when we talk about gunshot wounds, other than just
3 saying it's an entrance or exit, sometimes we can also
4 determine the range of fire which is how far the gun was
5 from the body when the wound -- when the gun was fired.
6 And we do that by looking at two things call soot and
7 stippling.

8 So when you pull a trigger on a gun the bullet,
9 obviously, comes out and then there is other material that
10 comes out with the bullet. One thing that comes out is
11 like a cloud of smoke or soot which is basically burned up
12 gunpowder.

13 Also coming out are flakes of gunpowder that don't
14 get burned up in that explosion that causes the gun to
15 fire. So these unburned flakes of gunpowder can go and
16 then strike to skin and just like you fall and scrape your
17 knee this would go and scrape the skin. And that's what
18 we call stippling.

19 So looking at the literature the soot, so that burned
20 up cloud of smoke, that extend out between 6 inches and
21 12-inches from the gun. So if you're closer than that you
22 would expect to see soot if you're within a foot. If
23 you're further than a foot you would not expect to see
24 that soot on there.

25 With stippling, we'll see stippling again, it can

1 start right close to the body and it will extend out to
2 approximately two to four feet from the muzzle of the gun.
3 So depending on the type of gun, the type of ammunition
4 that was used, the stippling would go out to two to four
5 feet away.

6 In this case we had no soot on the skin. So we would
7 say it was at least six inches to a foot from the body
8 when the gun was fired. We did have some stippling so we
9 know that it is inside of four feet. So the range would
10 be a foot based on our findings in this picture would be
11 somewhere between a foot and four feet.

12 Q. And when you're referring to the distance is that
13 from the muzzle of the gun to the wound itself?

14 A. Yes.

15 Q. Thank you. Now, did you also prepare a written
16 report regarding the autopsy and your findings?

17 A. I did.

18 Q. I'm going to show you now what has been marked for
19 identification as State's Exhibit Eight. Is that your
20 report?

21 A. Yes, it is.

22 Q. Now, is your signature on your report?

23 A. Yes, there is an electronic signature that we use.

24 Q. Okay.

25 MS. JOHNSON LEE: At this time I would move this

1 objection that report is in evidence?

2 THE COURT: Without objection. Next witness.

3 MS. DAVID: The State would now call John Roberts.

4 JOHN ROBERTS, after being duly sworn, testified,
5 as follows:

6 CLERK OF COURT: Please be seated and state your full
7 name for me.

8 THE WITNESS: John Roberts.

9 DIRECT EXAMINATION

10 BY MS. DAVID:

11 Q. And what is your occupation?

12 A. State Law Enforcement Division more commonly called
13 S.L.E.D.

14 Q. And how long have you been there?

15 A. Just over seven and a half years.

16 Q. And what do you do at S.L.E.D.

17 A. Work in the Forensic Services Building in the Trace
18 Evidence Department.

19 Q. Okay. And does that include examination for G.S.R.?

20 A. Yes, ma'am, it does.

21 Q. Will you describe what G.S.R. is to us?

22 A. G.S.R. is residue. It is the collection of particles
23 that are spit out of a gun when it's fired. It comes out
24 of the ejector port of the firearm if it's a semiautomatic
25 firearm where the shell gets kicked out. Or it comes out

1 of the end of a barrel where the bullet comes out as you
2 shoot the target to the target down range.

3 Q. What education and training have you had in this
4 area?

5 A. I have bachelor's of science degree in chemistry from
6 Texas A&M, Corpus Christi. When I got the job at S.L.E.D.
7 seven and some years ago I went through our Gunshot
8 Residue Training Program inhouse. I studied underneath my
9 lieutenant and helped him work his cases and learned how
10 to work the instrumentation, how to receive evidence, how
11 to generate results from the evidence, how to write
12 reports and how to issue reports.

13 Q. Are you certified by S.L.E.D. in trace and G.S.R.
14 examinations?

15 A. Yes, ma'am, I am.

16 Q. How many G.S.R. kits have you examined?

17 A. It's in the hundreds.

18 Q. How many times have you been qualified as and expert?

19 A. Almost 60.

20 MS. DAVID: At this time, your Honor ---

21 THE COURT: Is his qualifications admitted as an
22 expert in this field?

23 MR. SHAFFER: Yes, Your Honor. I have no objection.

24 THE COURT: Yes, sir.

25 MR. SHAFFER: I'll stipulate.

1 THE COURT: He is qualified as an expert having
2 testified in my Court on many occasions as an expert.

3 MS. DAVID: Thank you, Your Honor.

4 BY MS. DAVID:

5 Q. Mr. Roberts, would you explain to us how does G.S.R.
6 get on someone?

7 A. There are three main ways you can get G.S.R. on your
8 hands. You can shoot a gun. You can be near it when it
9 goes off, or you can handle it. Now, being near it when
10 it goes off is kind of confusing to some people because
11 you think, 'I haven't touched this gun'.

12 How does it get on me. Well, when it comes out of
13 the gun it comes out in a plume like a cloud. If you have
14 ever seen people take a picture of a gun being shot you
15 see a cloud and the smoke coming out of it. Mixed in with
16 that cloud of smoke is the gunshot residue we analyze for.

17 If you're standing next to somebody shooting a gun
18 you can get it on your hands if their in the area where
19 the G.S.R. is. More than likely you will get it on your
20 clothes. If you're shooting the gun your hands are going
21 to be more exposed to gunshot residue because you're
22 shooting the gun.

23 If you pick up a gun that's been recently fired you
24 can also get gunshot residue on you. If I go to the range
25 and I put 50 rounds in my gun and I set it down and I

1 don't clean it for a couple of days and I go to pick it up
2 after those couple of days I'm going to get gunshot
3 residue on my hands just from the gun having it on it and
4 being transferred to my hand.

5 Q. Now, how long does G.S.R. remain on the living human
6 body?

7 A. On a living person is what we found is that it stays
8 on them about six hours. Six hours is the threshold
9 protocol at S.L.E.D. We found that after six hours all
10 the material that we would find is not in quantities that
11 we would associate with firing a gun, handling a gun or
12 being near it when it goes off. And the reason that it's
13 on there for about six hours is because your body absorbs
14 the material. It just sucks it in.

15 Q. Now, tell us how long the G.S.R. would stay on the
16 body of someone who has passed away?

17 A. On a deceased person it stays until it's removed, and
18 that can either be by somebody washing the body or from
19 somebody removing it with a gunshot residue kit.

20 Q. Would you please explain to us how you actually test
21 for G.S.R.?

22 A. Well, gunshot residue kits that we give out have two
23 different types of sampling in them. There are particle
24 lifts which are sticky tabs that are labeled for the
25 different areas that we test, and there are swabs that are

1 just cotton swabs that also have labels for where they're
2 tested.

3 We test the swabs first, and what we test for are
4 metals that we find in gunshot residue. We look for lead,
5 barium and antimony. Given the result of those swabs we
6 may take the particle lift and test them. And what we're
7 looking for in the particle lift are actual particles of
8 gunshot residue.

9 There are small round particles that come out of the
10 gun when it's fired and land on things nearby the gun when
11 whenever fired, and that's what I look for on the particle
12 lift.

13 Q. Does S.L.E.D. distribute kits to law enforcement
14 agencies?

15 A. Yes, ma'am, we did.

16 Q. And what do those kits consist of?

17 A. They consist of the two different types of sampling
18 that I talked about, the particle lift and the swab. It's
19 all contained in an envelope that was sealed when the
20 investigator or whomever needs to takes the gunshot
21 residue kit knows that they need to take one they just
22 open it up and start with the particle lift and follow the
23 directions right on through the swabs.

24 Q. Now, relative to this case, L11-12-934, did you
25 receive a G.S.R. kit?

1 A. Let me check real quick here. I actually received
2 two gunshot residue kits in this case.

3 Q. Okay. And whose were they for?

4 A. One gunshot residue kit was from Tyrone King, and the
5 second gunshot residue kit was from James Galloway.

6 Q. And will you briefly tell us what were the results of
7 those kits?

8 A. On the gunshot residue kit from Tyrone King. And
9 when we report results we have results from four areas.
10 We have results from the right palm, which is the palm of
11 the hand, and then the right back which is the back of the
12 hand. And then the left palm and the left back of the
13 hand.

14 So when I read these results and I say, "Right palm,
15 right back" you know what I'm talking about. On the right
16 palm I found round lead particles. Round lead particles
17 are a component of gunshot residue. On the back of the
18 right hand the results were inconclusive, and I'll explain
19 inconclusive in just a second. On the left palm and left
20 back I didn't find any gunshot residue.

21 Now, in this case I was looking at the particle lift
22 which means that I was looking for the actual round
23 particles that we find in gunshot residue. On the right
24 palm round lead particles, a component of gunshot residue.
25 On the right back all I found was one particle, and our

1 protocol is such that I can't report a single particle. I
2 have to have at least two to report what I have found. So
3 in this case the back of the right hand was inconclusive.

4 Left palm, left back, no gunshot residue found on
5 anything or two negatives in this case.

6 Q. So to clarify that what you're saying is that there
7 was gunshot residue on the right palm of the Defendant,
8 Tyrone King?

9 A. It was round lead, and it is a particle that we find
10 in gunshot residue. Yes, ma'am.

11 Q. Okay. At this time I show you what has been marked
12 as the State's Exhibit 35. Do you recognize these?

13 A. They're both State's Exhibits 35. Just one of them.

14 Q. Just one. Let me check for you to be sure. State's
15 Exhibits 34 and 35.

16 A. Okay. And I'll go through them in numerical order.

17 Q. Okay?

18 A. Just so it's straight in my head. State's Exhibit 34
19 is my Item 32, and it is a gunshot residue kit from James
20 Galloway. And I recognize it because it's got our lab
21 number on it. It's a unique number given to every
22 individual case or a different number that is given to
23 every single case that comes into the lab. It has the
24 item number that I recognize from my report on it. It
25 also has my initials in blue ink on the back of the

1 envelope.

2 State's Exhibit 35 is a gunshot residue kit from
3 Tyrone King. It also my initials on the back. It has our
4 lab identifier on the front. In addition this has the
5 dates that I ran the particle lift written in red on the
6 envelope. So I do recognize both of these pieces of
7 evidence, and yes, I examined both of those pieces of
8 evidence.

9 Q. And were that still intact when you received them?

10 A. Yes, ma'am, they were.

11 Q. At this time I would like to show you what has been
12 marked as State's Exhibit Number Nine. Do you recognize
13 that?

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

15 Q. What's is it?

16 A. This is a copy of the report that I generated listing
17 the results from my Item 31 and my Item 32, State's
18 Exhibits 34 and 35.

19 Q. Will you briefly tell the Court the results for the
20 Defendant, Tyrone King, as well as the results for Mr.
21 James Galloway?

22 A. Yes, ma'am. The results for Tyrone King were the
23 right palm round lead particles were found. Round lead
24 particles are one of the components of gunshot residue.
25 The right back are inconclusive. The left palm, no

1 gunshot residue found -- or was found. The left back, no
2 gunshot residue was found.

3 My Item 32, a gunshot residue kit from James
4 Galloway, the results for the right palm, the right back,
5 the left palm and the left back are -- the quantities of
6 metals found did not indicate the presence of gunshot
7 residue.

8 Now, those results are a little different than the
9 gunshot residue kit for Tyrone King. In Mr. Galloway's
10 case what we ran was just the swabs. And with the swabs
11 our results start off with the quantifies of metals,
12 because what we're looking for on the swab is an amount.
13 We're looking for concentration of the metal that are
14 present on the swabs. In this case the quantities of
15 metals found did not indicate the presence of gunshot
16 residue meaning it was negative.

17 So Mr. Galloway's result were negative for the right
18 palm, the right back, the left palm and the left back.

19 Q. Has that report been altered or tampered with in any
20 way?

21 A. No, ma'am.

22 MS. DAVID: Your Honor, at this time the State would
23 like to move State's Exhibit Number Nine into evidence.
24 And I beg the Court's indulgence for one moment.

25 THE COURT: Put it into evidence.

1 THE COURT: Correct.

2 MS. JOHNSON LEE: Thank you, Your Honor.

3 MS. DAVID: No further questions at this time.

4 Please answer any questions Defense counsel may have for
5 you.

6 THE COURT: All right.

7 CROSS-EXAMINATION

8 BY MR. SHAFFER:

9 Q. Mr. Roberts, go back through everything. You said
10 you found lead particles on Mr. King's right hand palm?

11 A. Yes, sir.

12 Q. Okay. And the swabs were from his right palm?

13 A. The particles lift from his right palm.

14 Q. From the particle. Explain that one more time?

15 A. All right. Particle lifts are sticky tabs. When you
16 take -- when you take them like if I was going to take a
17 gunshot residue -- the best way to explain how to take a
18 particle lift is by thinking about a bingo marker. You go
19 play bingo, and if you're cheap like me you only buy one
20 or two little sticks with the ink in them.

21 And when they call out 'B5' you stamp B5. That's
22 what the particle lift works like. It's sticky tape, and
23 you just -- you can have them on the palm, in the back.

24 Q. Okay. So the one you tested, the particle tabs from
25 the inside of the palm you found round lead particles?

1 THE WITNESS: Thank you.

2 MR. REDMOND: Michelle Eichenmiller Applicable will
3 be our next witness, Your Honor.

4 MICHELLE EICHENMILLER, after being duly sworn,
5 testified as follows:

6 CLERK OF COURT: Will you please be seated and state
7 your full name for us.

8 THE WITNESS: My name is Michelle Eichenmiller.

9 DIRECT EXAMINATION

10 BY MR. REDMOND:

11 Q. And, Miss Eichenmiller, are you employed by the State
12 Law Enforcement Division?

13 A. I am.

14 Q. And are you employed there as a forensic scientist?

15 A. I am. I work in the Firearms Department.

16 Q. All right. And how long have you been employed with
17 S.L.E.D?

18 A. I started in April of 2006.

19 Q. Okay, and let me go back a little bit. Post-high
20 school, could you tell the jury -- ladies and gentlemen of
21 the jury your educational background?

22 A. I have a Bachelor's degree in biology and
23 psychologist, and I have a Master's in science and
24 forensic science.

25 Q. Okay. And moving further. Within your experience at

1 S.L.E.D. could you tell the ladies and gentlemen of the
2 jury what certifications, what trainings have you gotten
3 in the field of firearm analysis?

4 A. In order to become a firearm examiner and be Court
5 qualified you have to go through an in-house training.
6 That program is pretty extensive. It's three to four
7 years at S.L.E.D. I do a lot of reading. I do a lot of
8 studying. I take tests. I also sit along side firearms
9 examiners that work there.

10 And I learn what they do and how they examine guns.
11 I attend different courses. I go to different meetings
12 and then at the end of it I take a comprehensive exam.
13 After I pass that I do a mock Court, and then I am deemed
14 competent to do casework on my own.

15 Q. And, indeed, have you been working on your own as an
16 examiner?

17 A. Yes, I have. I was signed off on in 2010.

18 Q. Okay. Let me ask you this. In your time as a
19 firearms examiner would it be fair to say that you
20 examined hundreds if not thousands of firearms? And test
21 hundreds and thousands of firearms?

22 A. Yes, it would.

23 Q. And have you had the opportunity to testify in Court
24 on findings that's you've reached?

25 A. I have.

1 Q. And have you been qualified as an expert?

2 A. Approximately ten times in the State of South
3 Carolina.

4 MR. REDMOND: At this time, Your Honor, I would ask
5 that Mrs. Eichenmiller be qualified as an expert in the
6 field of firearms analysis?

7 THE COURT: So find her qualified. She has testified
8 as an expert previously in my Court. Glad to have you.

9 MR. REDMOND: Thank you, Your Honor. May it please
10 the Court.

11 BY MR. REDMOND:

12 Q. Now, let's, and briefly understanding that we are not
13 experts and will not be at the end of this trial, but just
14 a rudimentary background on it. Could you explain to the
15 jury what it is that you do in firearms analysis. In
16 other words in a case like this what do you do? How do
17 you go about examining the firearm and any other items
18 submitted to you.

19 A. In firearms identification our primary consideration
20 is attempting to determine if the bullet or cartridge case
21 is fired by the particular gun. And so I would take the
22 evidence. I do a lot of my own testing and I read up on
23 it. And I would test fire the gun and verify that I know
24 it came from that firearm, and I'll compare it to any
25 evidence that was brought to me from the scene.

1 Q. Okay. And in this case were you given evidence that
2 was brought to the scene? In other words did you have the
3 opportunity to examine a couple of the cartridge cases
4 from the scene?

5 A. I did.

6 Q. And also did you have the opportunity to examine a
7 bullet that was retrieved from the wall of the residence
8 in question?

9 A. I did.

10 Q. And, finally, did you have the opportunity to test
11 those two items against the gun that was submitted?

12 A. I did.

13 Q. Okay. And we'll get to your findings in just a
14 little while. Let me first show you what has been marked
15 as State's Exhibit Number 11. And once you have had a
16 chance to look at that I would just like for you to tell
17 us whether that's an accurate, true copy of the report
18 that you generated in this case.

19 A. May I refer to my notes?

20 Q. Oh, yeah, sure.

21 A. It seems to be an accurate copy.

22 Q. Okay. Now, in being specific to this case could you
23 tell the ladies and gentlemen of the jury before we get
24 into your conclusions what tests were run in this case.

25 MR. REDMOND: And before I do that if I may approach

1 the witness.

2 BY MR. REDMOND:

3 Q. With what has been marked ---

4 THE COURT: You may.

5 BY MR. REDMOND:

6 Q. --- as State's Exhibits 28, 29 and 31. And before --
7 I'm going to back up a minute. Do you recognize those
8 items specifically some of the initials in there as being
9 items that you had tested?

10 A. I do. Whenever I receive evidence in a case I mark
11 on it with an electric pencil my initials, the lab number
12 and the item number.

13 Q. Okay. And, of course, I'll let you finish reviewing
14 the evidence and then I'll ask you a few questions.

15 A. Those are the items that I did.

16 Q. Okay. Now, and I didn't ask you this just to
17 clarify. What is it that constitutes a match? How is it
18 that you take items such as those casings and those
19 cartridges, and a gun. How is it that you determine that
20 there is a match?

21 A. I put the test fires on one microscope. I have a
22 microscope. It's basically two separate microscopes that
23 are combined with an optical bridge. Just meaning that it
24 looks like a pair of binoculars, one eye through one side
25 and one eye sees through the other. And we see them next

1 to each other. I put the standard on one side and the
2 evidence on the other and then I evaluate the impressions
3 that are left by the firearm and attempt to prove that
4 they were fired by the same firearm.

5 Q. Okay. And I didn't ask you earlier, but were the
6 items that are already in evidence, but were those items
7 along with the gun and magazine were the items that you
8 tested were they processed and presented to you in the
9 standard operating procedure for the handling of evidence
10 with S.L.E.D?

11 A. They were.

12 Q. Okay, and if they were not in such -- if they were
13 not appropriately handled would they have been tested?

14 A. If they weren't submitted properly we would have had
15 to get someone to correct that before I would have
16 examined them.

17 Q. And did that happen?

18 A. No, it didn't.

19 Q. All right. Thank you. Now, with the items that I
20 presented to you and now getting into your report let me
21 show you what has been marked as State's Exhibits 33 and
22 32. I'm going to actually -- and could you examine those
23 items briefly and determine if those were -- appear to be
24 the items that you tested?

25 A. They are.

1 Q. Okay.

2 A. Like I said when I receive a firearm I mark it in
3 three different places to verify it is the one I've seen,
4 and I mark the magazine as well. They have my initials
5 and lab number on them as well.

6 Q. Now. Were you able to determine whether or not the
7 bullet -- the bullet and the casings, were you able to
8 determine whether or not they were fired by that gun?

9 A. I was.

10 Q. Okay. Now, again, before I get into that I
11 apologize. Let me address one other issue. The magazine,
12 I noticed something in your report that addresses the
13 magazine and whether or not that's the type of magazine
14 that's supposed to go with that gun. Would you explain
15 that particular finding?

16 A. It's a little long for this firearm. It will work
17 just fine. It test fired with no problem, but it's not
18 designed to go in this firearm, this model.

19 Q. All right. And thank you. And that's listed in your
20 report.

21 MR. REDMOND: Which by the way the State's Exhibit
22 Number 11 we would move into evidence at this time; that
23 being the firearms report from Miss Eichenmiller.

24 MR. SHAFFER: No objection, Your Honor.

25 MR. REDMOND: Thank you.

1 THE COURT: What was that?

2 MR. REDMOND: State's Exhibit Number 11, we are
3 moving State's Exhibit Number 11, the firearms report,
4 into evidence with on Defense objection.

5 THE COURT: Without objection..

6 MR. REDMOND: Thank you, Your Honor.

7 (WHEREUPON, State's Exhibit No. 11 was admitted into
8 evidence.)

9 MR. REDMOND: Now, let's go to the firearm. Could
10 you tell, and I'll just turn it over to you. Tell the
11 ladies and gentlemen of the jury what your findings were
12 regarding those exhibits before you in relation to them
13 being fired by that weapon.

14 A. On State's Exhibit I believe 28 and 29, those are the
15 fired cartridge casings, these were fired by this firearm.
16 When I compared them I found enough individual identifying
17 characteristics to say that they were fired by the
18 firearm.

19 And State's Exhibit 31, exhibited enough individual
20 identify characteristics to say that they were fired by
21 this firearm; that the bullet was fired by this firearm as
22 well.

23 Q. All right. And for the record State's Exhibit 31 I
24 believe would be the bullet that was recovered from the
25 wall that was determined to be a through and through

1 this case that will end your duties for the week.

2 Now, I gave you various admonitions on Monday morning
3 when you started. I want to emphasize them again. Permit
4 no one to talk to you. You must not discuss it with
5 anyone else. Make no independent inquiry on the internet
6 or from any other source. And you must not discuss it
7 even among yourselves until the case is over and I have
8 said to you, Mr. Foreman, "The evidence is in the jury
9 room. You may now begin your deliberations." Until
10 that's said our rules prohibit you under your oath from
11 discussing any part of this case. For the State, any
12 additional inquiry?

13 MR. REDMOND: Nothing from the State, Your Honor.

14 THE COURT: From the Defense?

15 MR. SHAFFER: None, Your Honor.

16 THE COURT: You are excused to be in your jury room
17 promptly at 2:30. Thank you so much.

18 (WHEREUPON, the jury panel was excused from the
19 courtroom at 4:57 p.m.)

20 THE COURT: All right. The jury is out. I'll be
21 glad to hear any motions at this time.

22 MR. SHAFFER: Your Honor, the first I move to -- for
23 directed verdict on all charges. I'd first like to
24 address the assault and battery of a high and aggravated
25 nature.

1 THE COURT: Slow down. You're talking a little fast
2 for me.

3 MR. SHAFFER: I apologize, Your Honor. I first like
4 to -- I'd first like to move for directed verdict of the
5 assault and battery high and aggravated nature.

6 THE COURT: On what grounds?

7 MR. SHAFFER: The statute he's charged with statute,
8 Your Honor. The fairly new statute and what he's charged
9 under I imagine is 16-3-600 (B1) Subsection B. And it
10 says the act was accomplished by means likely to produce
11 death or great bodily injury. Great bodily injury is
12 actually defined in that statute, Your Honor. And great
13 bodily injury is by means of bodily injury which causes
14 substantial risk of death or which causes serious,
15 permanent and ---

16 THE COURT: Let me save you some time. Quote for me
17 Section B of the statute.

18 MR. SHAFFER: Okay. "A person commits the offense of
19 assault and battery of a high and aggravated nature if the
20 person unlawfully injures another person and the act is
21 accomplished by means likely to produce death or great
22 bodily injury.

23 THE COURT: Now, that's your problem. Likely to
24 produce death or great bodily injury. I would conclude
25 that that is for the jury to decide, but if somebody

1 strikes a lady in the head with a loaded nine millimeter
2 using such force as to cause that weapon to discharge it
3 is likely to cause great bodily harm. So it is a two-fold
4 statute, and I would respectfully deny that.

5 MR. SHAFFER: Thank you, Your Honor.

6 THE COURT: The evidence is for the jury to determine
7 that he struck that unfortunate woman in the head with
8 such force that it actually discharged a nine millimeter.
9 And, obviously, if believed that's sufficient for the jury
10 to convict on that count. What's your next one? You want
11 to be heard on that one?

12 MR. REDMOND: Briefly, for the record, because I know
13 this is being set up for appellate issues, Judge. I would
14 like to bring an example of a case that I handled years
15 ago in Dillon County where a pistol whipping caused a gun
16 to discharge. The gun discharged and actually killed the
17 individual involved. So when you look into that statute
18 as it relates to being likely to cause great bodily injury
19 or death the fact that it was a gun that was used to
20 perform the whipping that would be an additional element
21 that I would ask ---

22 THE COURT: Not only that but a blow of that
23 magnitude to the skull is likely to cause great bodily
24 injury.

25 MR. REDMOND: Yes, sir.

1 THE COURT: But the statute is -- the evidence is
2 there to believe for the jury clearly to come within the
3 purview of Section B.

4 MR. REDMOND: Yes, sir. So just for the record so
5 it's clear as to why we would oppose that motion.

6 MR. SHAFFER: Your Honor, I understand the ruling,
7 but I would just like to have one other thing since
8 Mr. Redmond brought it up.

9 THE COURT: I'm going to charge the lessor offenses
10 for you.

11 MR. SHAFFER: Thank you, Your Honor. The substantial
12 risk.

13 THE COURT: Sir?

14 MR. SHAFFER: I think substantial risk -- he talked
15 about these isolated cases ---

16 THE COURT: That doesn't concern me. Anybody in
17 their right mind I think would understand that if you took
18 a loaded nine millimeter and struck a woman in the skull
19 with it to the extent that the gun was discharged it's
20 very likely to cause serious bodily harm. I don't think
21 there can be any argument about that.

22 MR. SHAFFER: Your Honor, I would just like to say
23 that, and I understand your ruling and I'm not trying to
24 argue with you.

25 THE COURT: I'm going to charge the lessor included

1 if the jury decides to do that.

2 MR. SHAFFER: Could I fit it under substantial risk?
3 The reason that I'm making this argument is that I believe
4 under the rules substantial risk.

5 A, substantial is clear and unambiguous meaning -- or
6 a substantial risk is clear and unambiguous; that it means
7 that there is more than just a possibility that he could
8 have done it.

9 THE COURT: I don't see that language under Section
10 B.

11 MR. SHAFFER: It refers to great bodily injury.
12 Great bodily injury is five.

13 THE COURT: It says, "Likely to occur."

14 MR. SHAFFER: Yes, Your Honor.

15 THE COURT: I believe that most folks would think
16 that a blow to the head with nine millimeter is likely to
17 cause serious bodily harm, but I'll leave it to the jury
18 and I'm going to charge two lesser includeds, and they can
19 decide for themselves whether or not it's likely to cause
20 great bodily harm.

21 MR. SHAFFER: And I would appreciate your charging
22 the lesser included, the assault and battery third degree.
23 One thing that I would like to say is that under the rule
24 of limine any ambiguity in the statute, if it was
25 ambiguous, or likely it is ambiguous that it should be

1 decided in favor of the defendant. That's all I have to
2 say, Your Honor.

3 THE COURT: I'm going to charge that. I'll charge
4 the statute as written and approved by the legislature.

5 MR. SHAFFER: Thank you, Your Honor.

6 THE COURT: I will charge they can consider the
7 first, and then they may consider the lessor ones.

8 MR. SHAFFER: And the next thing I was going to argue
9 is directed verdict for the murder charge. I don't
10 believe they have presented sufficient evidence of malice.

11 THE COURT: What's your position on the murder
12 charge?

13 MR. SHAFFER: That they have not proved malice or
14 that they have not presented sufficient evidence of
15 malice.

16 THE COURT: I'll let Mr. Kernard.

17 MR. REDMOND: May it please the Court. I think as
18 the Court realizes that malice can also be inferred by the
19 circumstances as they were presented. We do have
20 testimony in the record that the defendant entered the
21 residence authority and shortly therefore and ended up
22 pointing the weapon.

23 There is also evidence from the unfortunate widow in
24 this case who also stated that she heard comments made by
25 the victim prior to him being shot. I think these

1 circumstances in the light most favorable to the State
2 would allow a jury to infer ---

3 THE COURT: Well.

4 MR. REDMOND: --- malice. And, further, we can argue
5 that the use of a weapon would ---

6 THE COURT: No, sir. Not in this case.

7 MR. REDMOND: It can't be -- no, it can't be
8 instructed, but we can argue -- I'm not saying we will,
9 but the law is as I understand it sort of like ---

10 THE COURT: On the first I will not instruct it. Not
11 instruct ---

12 MR. REDMOND: And we understand that. We understand
13 once the Court ---

14 THE COURT: Oh, you can argue it all you want to.

15 MR. REDMOND: Exactly. That's all I'm saying. We
16 can argue if we want to.

17 THE COURT: No. Given the fact that there is
18 testimony that it was his gun. He entered the place.
19 Little boy said he kill granddaddy. Momma hollered and he
20 struck her. Given the totality of the circumstances if
21 believed there is certainly evidence to subject that it
22 was malice aforethought. Entering the house with a gun in
23 his hand is some evidence of malice. Wouldn't you think,
24 if the jury believes that.

25 MR. SHAFFER: Thank you, Your Honor. The one thing

1 that I would say is, and we can go ahead and deal with all
2 the rulings now since he brought it up.

3 THE COURT: What is that?

4 MR. SHAFFER: I would object to the Belture Argument
5 even. I think it was -- clear ---

6 THE COURT: No, sir. I'm not going to charge it, but
7 they're entitled to argument what the facts are.

8 MR. SHAFFER: Thank you, Your Honor.

9 THE COURT: And there is testimony that it was his
10 gun. He went in with it, and it's testimony abundantly
11 that that weapon not only killed the unfortunate victim,
12 but was the same weapon that was discharged when he hit
13 the wife. And they can argue what the testimony is about
14 that gun. I'm not going to charge that it's an element --
15 permissive element for malice under Belture, but that
16 doesn't keep them from arguing it.

17 MR. SHAFFER: Thank you, Your Honor. I appreciate
18 that. Also I would move for directed verdict on the
19 pointing and presenting charge. I don't believe there was
20 any or there was enough proof that he was pointing and
21 presenting for the purposes of ---

22 THE COURT: I believe there was some direct
23 testimony. I'll ask. You want to respond to that?

24 MR. REDMOND: And, Your Honor, I apologize. Could
25 you briefly restate that?

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF MARLBORO) 2012-GS-34-0024
) 2012-GS-34-0026
) 2012-GS-34-2028

STATE OF SOUTH CAROLINA)
) PLAINTIFF
) vs.) TRANSCRIPT OF RECORD
)
TYRONE J. KING)
) DEFENDANT)

September 10-13, 2012
Bennetttsville, South Carolina
VOLUME NO. 04 OF 04

B E F O R E:

THE HONORABLE EDWARD B. COTTINGHAM, JUDGE; and a
jury.

A P P E A R A N C E S:

MIA DAVID, ASSISTANT SOLICITOR
Attorney for the State

MARY THOMAS JOHNSON LEE, ASSISTANT SOLICITOR
Attorney for the State

TRISTAN SHAFFER, ESQUIRE
Attorney for the Defendant

RICHARD JONES, PUBLIC DEFENDER
Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

1 MS. DAVID: May it please the Court. Good afternoon.
2 At first I want to thank you for your patience this week.
3 I know it's been a long week, and we're all tired. And
4 I'm a bit nervous. I'm not sure if you all know this, but
5 this is actually my first time doing a closing argument.
6 So kind of work with me here. At this point the State has
7 spent the past two days presenting facts and evidence
8 through witness testimony, photos, items collected, and
9 videos to prove to you the Defendant's guilt.

10 The Judge has now instructed you on the law that is
11 to be apply in this case. He has told you that the
12 Defendant is innocent until proven guilty, and the State
13 has the burden of proving that guilt beyond a reasonable
14 doubt. Now, let's get into beyond a reasonable doubt.
15 First, ask yourself what is reasonable? Reasonable is
16 simply something that the average person would think. It
17 doesn't mean the scientist out at Harvard, and it doesn't
18 mean the man that sits on the corner wearing a helmet. It
19 is just the average person.

20 That is a feeling that maybe things didn't happened
21 the way we said they happened or the way the Defense said
22 it happened. Beyond is simply going past that point. So
23 we're about to go beyond the doubt of the average person
24 that may think the Defendant is not guilty. And I will
25 have you firmly convinced that the Defendant is guilty of

1 the crimes charged.

2 Now, to begin. We have four charges at issue today:
3 Murder, assault and battery of a high and aggravated
4 nature, pointing and present a firearm, and possession of
5 a weapon during the commission of a violent crime.

6 First, we have pointing and presenting a firearm.
7 This means that the Defendant pointed at another person a
8 loaded or unloaded firearm. So you should ask yourself,
9 what do you know from the facts that were presented this
10 week. One, you know that the Defendant was at the home of
11 [REDACTED]. How do you know that? Karen saw him in
12 her room. Reggie saw him in the living room. Devonte saw
13 him walk through the door, and the Defendant himself
14 actually places himself in that home twice in both
15 statements, and you heard his voice on that 911 call.

16 You know that he had a firearm. How do you know
17 that? Karen told you because she saw it in her room as he
18 pistol-whipped her. Reggie told you as he said he felt it
19 in his chest. And, of course, again, in both statements
20 the Defendant himself told you at some point he held that
21 gun or swung that gun. You know he pointed that gun. How
22 do you know that? Because Karen told you after he left
23 her bedroom he went to the other side of the house where
24 he held Reggie at gun point. Reggie told you as he sat
25 right there on that witness stand and said he knew it was

1 a gun because he felt that cold steel in his chest.

2 Now, we have two types of evidence. You have direct
3 evidence and you have circumstantial evidence. Direct
4 evidence is testimony of a witness who has actual
5 knowledge of a fact. That's a person that was there.
6 That's somebody that saw the act for themselves.
7 Circumstantial evidence is looking at the facts and
8 circumstances that surround the situation and reach a
9 conclusion from there. In this situation Reggie is direct
10 evidence. He was there. He saw that Defendant put that
11 gun in his chest. He felt the Defendant put that gun in
12 his chest. So now finding the Defendant not guilty of
13 pointing and presenting would simply mean you just don't
14 believe Reggie.

15 Circumstantial evidence would require that you look
16 at the totality of the circumstances and know that by the
17 way Karen was screaming for Reggie in that phone he was
18 bound to wake up at any moment. And if you look at the
19 demeanor and appearance of Reggie right now we all know
20 that he had to have been under gunpoint that night or else
21 we might have another situation on our hands.

22 Now, the second charge we have here is possession of
23 a weapon during the commission of a violent crime. The
24 first element that has to be met there is the Defendant
25 must be found guilty of a violent crime. By statute

1 murder is a violent crime. Involuntary manslaughter is
2 also a violent crime.

3 Our second element, the weapon must have been used in
4 furtherance of that crime. So let's ask ourselves what do
5 we know about the weapon being used to commit these
6 crimes. We know that our now 11 year old child -- ten
7 year old child, Devonte, told us that he saw the Defendant
8 with the gun right here at his stomach when he came into
9 the room.

10 We know from our expert forensic pathologist that
11 performed the autopsy report on the victim, Mr. James
12 Galloway, we know that he was shot in the face by a gun on
13 the right side and the bullet came out the left neck.

14 We know from our Crime Scene Investigator, Ricardo
15 Prince, that this same gun right here was found in the
16 backyard next door to [REDACTED] which also happens
17 to be the Defendant's backyard.

18 We know from Michelle Eichenmiller that the casings
19 found in the house, these casings, they were fired from
20 this gun. And we also know from our crime scene
21 investigators that these bullets were located in the wall.
22 Now, on this situation we've already gone beyond a doubt,
23 but I would like to address the fingerprints.

24 Now Andrena Belton, our fingerprint expert with
25 S.L.E.D. testified that there weren't any fingerprints

1 that were able to be taken from this gun. And if you look
2 at this gun she explained how it had a ridged surface, and
3 that it was hard to take a print off a ridged surface, but
4 that it was much easier to take a print off a flat
5 surface.

6 She also explained to you that sometimes in the heat
7 of the moment if you are sweating that you might sweat
8 your fingerprints off. But, now, I'm curious about one
9 thing. This clip doesn't appear to be a ridged surface,
10 but there weren't any fingerprints on it.

11 Now, the Defendant told us in his second statement
12 that that's how the gun went off. As he was taking the
13 clip out of the gun it accidentally goes off, but here we
14 have no fingerprints. And somehow, if was taking that
15 clip out, he managed to get it back in before he goes into
16 Karen's bedroom because as he hits her across the head
17 with that gun it discharges a bullet.

18 Our third charge that we want to look at today is
19 assault and battery of a high and aggravated nature. Now,
20 the elements for that crime consist of unlawfully injuring
21 another that causes great bodily injury or it is produced
22 by means likely to produce, and that's our key words,
23 'likely to produce great bodily injury'. Now, as you
24 listened to the Judge instruct you on the law he also told
25 you that he would include lesser included of an A.B.H.A.N.

1 which would be assault and battery in the first degree,
2 assault and battery in the second degree, assault and
3 battery in the third degree.

4 But let me tell you why those don't work. Assault
5 and battery in the third degree is unlawfully injuring or
6 attempting to injure another with the present ability to
7 do so. Ladies and gentlemen, that is simply a slap to
8 somebody's face. A heightened level is assault and
9 battery in the second degree. That is unlawfully injuring
10 or attempting to injure another with the present ability
11 to do so causing moderate bodily injury. Now, moderate
12 bodily injury means treatment to a bodily organ, or
13 function, or skin. That means if someone punches another
14 in the face and leaves a bruised eye then that's treatment
15 to the body or the skin. Ladies and gentlemen, that's not
16 the case here.

17 MR. SHAFFER: Your Honor, that's actually an
18 incorrect statement.

19 THE COURT: Sir?

20 MR. SHAFFER: That's actually an incorrect statement
21 of law. Under the definition of moderate bodily injury
22 that's not moderate bodily injury.

23 THE COURT: You may give your definition. She's
24 entitled to her interpretations to the jury. The facts
25 are matters for the jury to determine, and you may give

1 your version and she's entitled to hers. Proceed.

2 MS. DAVID: Now, we'll get back on track.

3 MR. SHAFFER: Your Honor.

4 THE COURT: Yes, sir.

5 MR. SHAFFER: Clarification to my objection.

6 Actually, it specifically excludes skin in the statute.

7 THE COURT: You may argue that. Please, let this
8 distinguished young attorney make her opening.

9 MR. SHAFFER: Yes, Your Honor. Thank you.

10 THE COURT: Proceed. You may argue what you want to,
11 but she's entitled to do the same thing. Proceed. All of
12 which is for this jury to determine as finders of the
13 facts. Proceed, Ms. David.

14 MS. DAVID: You heard the Judge. It's for you to
15 determine. Assault and battery of the first degree, it
16 has three separate parts. The first one is unlawfully
17 injuring another by non-consensual touching of the private
18 parts. That's not what we are here for. That's not in
19 this case. The second part: Unlawful injury to another
20 during the act that occurred during the commission of a
21 robbery, burglary, kidnapping, or theft. Now, it doesn't
22 matter what the prosecution thinks was taking place in
23 this case. But the Defendant has not been charged with
24 any of those crimes. That does not apply.

25 The third part: Offering or attempt to injure

1 another with the present ability to do so. The act was
2 accomplished by means likely to produce death or great
3 bodily injury or during the commission of a robbery,
4 burglary, or kidnapping.. Again, it just certainly doesn't
5 apply. But I will tell you what does apply: Assault and
6 battery of high aggravate nature.

7 Those elements are lawfully injuring another where
8 great bodily injury results or by means likely to produce
9 great bodily injury. Ladies and gentlemen, this is the
10 gun that Tyrone King used to hit Ms. Karen Galloway. This
11 young lady here. This fragile young lady here across her
12 head.

13 Now, if this won't likely produce great bodily
14 injury, this piece of steel that I'm holding in my hand,
15 then I don't know what does. And I think that we should
16 all be thankful that the bullet discharged through the
17 wall and out the roof, and not through her body or through
18 another person's body that was located in the home. This
19 is likely to produce great bodily injury.

20 Now. The Defense attorney might tell you, he mind
21 stand up here and say, 'well, she didn't go to the doctor.
22 She didn't call E.M.S. She didn't have any pictures'.
23 But let me tell you why she didn't have any pictures.
24 Because her husband was face down in the living room.

25 MR. SHAFFER: Your Honor ---

1 THE COURT: Please let her make her statement and you
2 may make yours, sir.

3 MR. SHAFFER: Your Honor, there's also ---

4 THE COURT: What is your objection to this?

5 MR. SHAFFER: The facts not in evidence ---

6 THE COURT: Sir?

7 MR. SHAFFER: Facts not in evidence. She's going off
8 on stuff that ---

9 THE COURT: Her last statement was that the deceased
10 was faced down. I'll let the jury determine whether or
11 not that was in evidence. Proceed.

12 MR. SHAFFER: Thank you, Your Honor.

13 MS. DAVID: As I told you she did not go to the
14 hospital because her husband was face down on the floor.
15 He had just been shot. Mrs. Karen Galloway here, she has
16 five children. She had three children that were in the
17 home that night. She had just lost her husband. She had
18 just lost the father of her kids. She had just lost the
19 grandfather of her grandchildren. At a moment of weakness
20 she had to exhibit the greatest strength that she could
21 find, and worrying about a hit to the head she had bigger
22 problems that night.

23 Now. Before we get into the murder I want to cover
24 voluntary intoxication, and I want to be sure you
25 understand that voluntary intoxication is not, not a

1 defense to a crime in the State of South Carolina.
2 Voluntary intoxication is making a conscious decision to
3 consume drugs or alcohol into your body. Now, the Defense
4 might want you to believe that the Defendant was drunk on
5 that evening, but -- and as the State we do have the
6 bottle. Ricardo Prince recovered this bottle, but I need
7 you to keep in mind it's not a defense.

8 We also have Officer Shawn Feldner which is the
9 officer that did the first video, and we have Officer
10 Timmy Shaw, which is the arresting officer. We asked them
11 if the Defendant was drunk. They both said he smelled
12 like alcohol, but he didn't appear to be drunk. You saw
13 for yourself in the videos. He's not staggering. He's
14 not using slurred speech. He's not being overly
15 obnoxious. He's not bent over like he's hurt from some
16 sort of drugs or alcohol.

17 But even if, even if, even if he had consumed drugs
18 or alcohol, you must remember it is not a defense in the
19 State of South Carolina. Because if it were a defense we
20 would not have laws like driving while under the
21 influence. You cannot get drunk and then just go and do
22 whatever it is that you feel like doing. Not happening
23 here.

24 Now, the fourth crime we have charged here is murder,
25 and this is our most important, most important charge

1 here. The elements of murder is that the Defendant has
2 killed, taken the life, of another with malice
3 aforethought. Now, again, we're going to do what we've
4 done for the other charges. We're going to look at what
5 we know. First, we know that the Defendant did it, and we
6 know that the Defendant was alone. As the child, Devonte,
7 testified he told you Tyrone was the only person that came
8 through that door that night. He told you he knew Tyrone
9 because he had seen him several times before. He lives in
10 the house next door. That child knew Tyrone.

11 Now, you might wonder why he didn't point at Tyrone
12 when I asked him to, and there are two possible reasons
13 for that. One, Tyrone looks substantially different today
14 than he did at the time that crime was committed. He
15 looks substantially different today than he probably
16 looked the last time that child saw him. If you noticed
17 in the videos Tyrone had hair like dread locks, and he
18 didn't wear glasses. Maybe that child was looking for
19 someone else. Not that appearance that he sees today.

20 The second possibility is that you watched that child
21 tremble on the stand as he talked to me. I simply said
22 what's your teacher's name, and his lips started shaking.
23 He got nervous, and he got scared. I had to walk up to
24 him and talk to him, and then it was my fault. It was a
25 mistake on the State's behalf to think that I could stand

1 in this courtroom and ask an 11-year-child to point a
2 finger at the man he knows to have killed his grandfather.
3 I apologize for that.

4 Now, how else do we know that it was Mr. Tyrone King
5 and that he was alone? Because the first officer that
6 arrived on the scene, Mr. Timmy Shaw, said that as he
7 approached the front door he decided to go around the side
8 of the house. And he could hear the footsteps running
9 through the back door, and as he rounded that back corner
10 he saw someone bust out of that back door and take off to
11 the right.

12 Mr. Timmy Shaw testified to you that he only saw one
13 person come out of that back door, and that he only ever
14 chased one person; that no one else came out that door.

15 It wasn't until -- it wasn't until the interview with
16 Investigator Shawn Feldner that another person is
17 introduced into this incident, and we all know that person
18 wasn't there. It was Mr. Aloysius McLaughlin. He came to
19 Court and he testified and he told you that he wasn't
20 there. As a matter of fact, he told you at the time of
21 the incident they weren't cool. They weren't friends.

22 Melissa Graham, his girlfriend, came and she sat
23 there, and she testified and she told you Aloysius was
24 with her and they were at his mother's house. As a matter
25 of fact, she said the same thing. They weren't cool.

1 They weren't friends.

2 To take it a step further we even had a McColl Police
3 Officer come in and testify, Mr. John Westbay, and he sat
4 there and he told you that he knew Aloysius wasn't there.
5 How did he know Aloysius wasn't there? Because he went to
6 the house and woke him up out of the bed. I said, "Well,
7 how did you know that he was waking up?" He said he had a
8 crease to the face, some sleep in his eye. What he was
9 wearing that he could tell that he had been asleep for a
10 while.

11 Now, that second element which is kill, took the life
12 of another. We know that James was killed. How do we
13 know? Because the autopsy report listed the cause of
14 death as homicide. That autopsy report will tell you that
15 he died from a gunshot wound to the right face that exited
16 the left neck.

17 Furthermore, furthermore, our expert from S.L.E.D.
18 with G.S.R, gunshot residue, Mr. John Roberts, did eight
19 tests on two individuals. Four possibilities: The front
20 palms of each hand, the back palms of each hand for victim
21 and Defendant. There were only lead particles indicating
22 gunshot residue on one party, and that was the Defendant
23 Tyrone King's right hand. There was nothing on that
24 victim. And that kind of explains where our second
25 statement comes from.

1 You see, if you were paying attention you notice that
2 the Defendant is arrested on November 11th of 2011. This
3 incident occurs at 2:30 in the morning. So the Defendant,
4 he sits at the jail all day Friday. Wakes up. Sits at
5 the jail all day Saturday. Wakes up, and he sits at that
6 jail all day Sunday. And, finally, on Monday morning,
7 November 14th, the Defendant makes a special request to
8 speak with Investigator Jamie Seals.

9 See, now, by this time the Defendant had been sitting
10 there for three days thinking about what had occurred.
11 And the only thing that he could think about was the very
12 first thing they had done was create -- was took -- was
13 Brittany English had took that gunshot residue from his
14 hand when he was first arrested.

15 He had to get a second statement in that would put
16 him at the house shooting the gun, because they already
17 had the gunshot residue, and he said it was an accident at
18 that point. But we know better. He sat there for three
19 days and then he had an additional two days before Jamie
20 could get there before making that second statement.

21 Now, we are -- this moves us into our third element
22 for murder which is malice aforethought. Malice
23 aforethought can be defined as ill will or hostility
24 towards another party. It is the intentional doing of a
25 wrongful act without just cause. It is acting with

1 reckless or a substantial disregard for the life of
2 another. Now, as we go into this, into malice, malice is
3 sort of like intent. I want you to know that the State
4 does not have to prove motive. We don't have to show you,
5 oh, the Defendant was mad about something from three weeks
6 ago. We don't have to show you, oh, the Defendant had
7 been talking about Mr. Galloway in the neighborhood for
8 the past three weeks. We don't have to do that.

9 And I also want you to know that malice aforethought
10 does not have a time limit. It is not something that has
11 to have been there three months ago. It's something that
12 can be created right now, within ten seconds. But before
13 I go to these -- now, wait. Let me back up a minute. I
14 told you this was my first time, and I see where I sort of
15 missed something here.

16 In discussing the malice and showing that we don't
17 have to show the motive we don't have to prove it with
18 absolute certainty. Because it is impossible for us to go
19 back and get into the mind of Tyrone King from November
20 11th of 2011. We just can't crack his brain open and flip
21 to that page and say, this was the thought he had. We've
22 got it. But before I get too far into that I want to talk
23 a little bit about involuntary manslaughter.

24 The difference between murder and involuntary
25 manslaughter is malice. It is the intent. For murder you

1 need intent. For involuntary manslaughter you need an
2 accident, and I'm about to take you ---

3 MR. SHAFFER: Objection, Your Honor. Invalid
4 statement of the law. Accident is also a defense of
5 involuntary.

6 THE COURT: Let her continue and you can make your
7 statement to the jury. The jury will understand from my
8 instructions the law with regards to involuntary
9 manslaughter. And if they get confused then I will be
10 glad to charge it again. You may proceed, Ms. David.

11 MS. DAVID: Now, in order for it to have been an
12 accident, in order for an accident to have occurred we're
13 looking for three thing. It must be unintentional. The
14 Defendant must be acting lawfully and reasonable care must
15 have been used. Now, I am going to work through those
16 three things backwards for you.

17 First, even if you choose to believe that the
18 Defendant was actually trying to sell that gun reasonable
19 care wasn't being used. The Defendant goes into the home
20 of another man with a loaded semi-automatic gun. The
21 Defendant told you himself on the video that everybody
22 knows you take the clip out of a gun before you sell it to
23 someone. Well, if he knew that, then why didn't he take
24 it out before he entered the home? Cause he just wasn't
25 using reasonable care.

1 The second one, this is pure inference, but nothing
2 about that night says the Defendant was acting lawfully.
3 Keep in mind it's 2:30 in the morning. It's not 9:00 or
4 10:00 at night. It's 2:30 in the morning. The
5 Defendant -- the victim was in the bed with his wife. Mr.
6 Reggie Cousar, a grown man, was in his room asleep. Two
7 other grandchildren are in another room over in Bedroom
8 Number Two asleep. And Little Devonte is asleep on the
9 couch.

10 Now, if he was there to buy alcohol the one selling
11 the alcohol wasn't lawful. But guess what else we know?
12 The one buying the alcohol wasn't lawful either.

13 MR. SHAFFER: Your Honor, objection. Incorrect
14 statement of law again. I can explain if you let me
15 approach.

16 THE COURT: No, sir. I'll let you correct what you
17 think it is at the appropriate time. I've instructed the
18 jury on the law, and I will give it to them again if they
19 request it. You may proceed, Ms. David.

20 MS. DAVID: Thank you, Your Honor. But even if he
21 wasn't there to buy alcohol maybe he was there to sell the
22 gun like he said. But if you recall on that video, on
23 that second video, and if you would like to watch it again
24 we will make it available for you, the Defendant said that
25 he was going to shit someone that night. That sounds real

1 lawful to me.

2 Now, I want to get into the intent for the murder and
3 the accident that would make it involuntary manslaughter.
4 And the only way that we are going to be able to do this
5 is by looking at the totality ---

6 MR. SHAFFER: Objection, Your Honor.

7 THE COURT: Wait a minute. What?

8 MR. SHAFFER: Just to preserve my previous objection.
9 The accident to the involuntary ---

10 THE COURT: Your previous objection. Which one?
11 You've objected already five times. Now, which one you
12 talking about?

13 MR. SHAFFER: Yes, this is the invalid statement of
14 law. Accident is a defense to involuntary. It's not ---

15 THE COURT: You may make your corrections at the
16 appropriate time. Now, go ahead, Ms. David.

17 MS. DAVID: Now, we have to look at the totality of
18 the circumstances and replay that evening in our heads.
19 If I've told you once, I've told you ten times already the
20 Defendant goes to the Galloway home at 2:30 in the
21 morning. He knocks on that door. Mr. James Galloway goes
22 to the door. He allows his neighbor to come inside. He
23 goes back to his bedroom and dresses himself. He comes
24 back out. At that point we have four people involved in
25 the situation. You have Tyrone King that entered the

1 home. You have the victim, James Galloway. You have
2 Karen who is in the bedroom who knows her husband is in
3 the living room area with Tyrone King. And you have that
4 11 year old child who was 10 at the time on the couch.

5 Now, Devonte, who is 10 on the couch, he tells you he
6 saw Tyrone come in there. He saw that gun right here at
7 his stomach. Devonte and Karen both tell you that they
8 heard Mr. Galloway say, "Nah, man, I ain't got nothing."
9 And then, pow. But, now, what we don't know, what we
10 don't know is how Mr. Galloway got shot in the right face
11 and out the left neck.

12 You see, you have Mr. Tyrone King, and according to
13 Devonte, you have him standing there in the living room
14 holding Mr. James Galloway at gunpoint. He has the gun
15 pointed. Devonte told you that he had the gun pointed at
16 his stomach. As you look at the Miranda Rights forms
17 you'll notice the Defendant is 5'9". The victim is 6'2".
18 There are only two people that would know how an
19 individual 5'9" can get a downward slanted bullet into
20 someone 6'2". Because he's taller than him.

21 And so we came with two possible theories. You're
22 entitled to come up with more. The way we see it is
23 Tyrone King has the gun here, and when James Galloway
24 realizes he's about to get shot he possibly goes like,
25 "Nah, man, I ain't got nothing." And the bullet goes

1 here. But it's also possible that he goes, "Nah, man, I
2 ain't got nothing." And turns to run, and the bullet goes
3 here out the left neck and directly into the wall. The
4 problem we have is that Mr. James Galloway isn't here to
5 tell us what happened.

6 The only person who can tell us what happened is the
7 Defendant, Mr. Tyrone King, who has told us three separate
8 stories already. He says one thing on 911. He says
9 another thing on that first video, and he says something
10 else by that second video.

11 Now, right now, we need to talk about what's an
12 accident. An accident is you're out playing baseball and
13 you throw a ball and you accidentally hit an unintended
14 individual. An accident is I go to raise my hand and I
15 don't realize somebody's behind me and I accidentally hit
16 them in the face. I'm not sure if you've been watching
17 this courtroom. But yesterday a Mountain Dew can turned
18 over, and somebody accidentally -- it was an accident.
19 And somebody went to catch that Mountain Dew can. That's
20 an accident. But an intentional act, malice aforethought,
21 it only requires that moment.

22 That was an intentional act. I can tell you I didn't
23 plan to do that last week. I didn't plan to do that
24 yesterday. I created that within the past, oh, I don't
25 know, ten seconds. You saw me move the gun and decide to

1 go. That was an intentional act. The way the Defendant
2 walked in that house with this gun here. Maybe he didn't
3 plan to shoot him right then. He didn't have to, but when
4 he raised that hand up and went pop that was an
5 intentional act. That was malice, and that was murder.

6 Now, if you're still not convinced that was murder
7 we'll go further, and we'll look at what happens after the
8 fact. After the fact the Defendant immediately begins to
9 just go, I don't know, causing chaos. He runs into the
10 room where Karen is and he pistol whips her across the
11 head. He holds Reggie at gunpoint. He snatches that
12 phone from 911 and immediately, immediately he begins
13 throwing the phone and hiding his hand.

14 He tells 911, "Yeah, yeah, they -- somebody they came
15 over there to buy some liquor from the bootlegger."
16 You've been living next door to him for the past 12 years.
17 You've been knowing he's been bootlegging for the past 12
18 years, but all of a sudden you want to tell authorities.
19 You're hiding your hand.

20 The next thing that happens, and this is something
21 that, that I kind of like. This is the point where I feel
22 convinced. In the first video, towards the end of video,
23 the Defendant says, "If I would have done it don't you
24 think I would have shot everybody else in the house?
25 Don't you think I would have shot her?" You know some

1 sort of street reverse psychology, but that's exactly what
2 he does. After he shoots James he take that's loaded gun
3 in the room with Karen. The gun goes off. Bullet in the
4 wall and out the roof. He goes to the other side of the
5 house. Holds Reggie at gunpoint, but Karen is on the
6 phone with 911. They're at Oriole Lane. Their house is
7 about as far as from the Sheriff's Office as we are from
8 Jin Jin right now.

9 So by the timely he could -- by the time 911 was
10 calling back Timmy Shaw was in that front yard. The
11 Defendant was just unable to complete the crime, but he
12 tried. He said, "If I had done it this is how I would
13 have done it," and I'll be dog gone if he didn't try to do
14 it.

15 Now, we're at a point right now that I think that you
16 should feel convinced that the Defendant has committed
17 murder beyond a reasonable doubt. And if you don't feel
18 convinced I want to replay the moment. Replay this 911
19 tape so that you can hear the chaos that was taking place
20 that night. So that you can hear Karen screaming for her
21 life, screaming for Reggie. Listen to it as we play the
22 video.

23 (WHEREUPON, State's Exhibit Number 40 was played for
24 the jury in open court.)

25 MS. DAVID: Tyra, you can stop the video. Ladies and

1 gentlemen of the jury, this wasn't an accident. This was
2 an intentional act, and if it was an accident then why did
3 he continue to run four houses down. As that video
4 stopped you heard them say, "Get the dogs down here.
5 They're looking for him. Something awful has happened."
6 And right now I feel like the State has met it's burden by
7 proving to you beyond a reasonable doubt that the
8 Defendant has committed each and every element of the
9 crimes that have been charged.

10 And I will simply ask as you deliberate and come back
11 with a verdict that you will find the defendant guilty of
12 murder of Mr. James Galloway right there in his home.
13 Assault and battery of a high and aggravated nature of
14 Mrs. Karen Galloway as he hit that lady across the top of
15 her head with a gun. Pointing and presenting a gun at Mr.
16 Reggie Cousar as he held that gun to the center of his
17 chest. And possession of a weapon, that 9 millimeter
18 semi-automatic gun, while he committed this violent crime.

19 I ask that you find the Defendant guilty, thank you.

20 THE COURT: Thank you, Ms. David. Mr. Foreman, we
21 will have one final closing. We will let you go to the
22 jury room for just a moment. I will be calling you back
23 real soon. Please let me know when you are ready to come
24 back. We will have one final closing, and then I'll be
25 giving you the case for your deliberation.

1 entitled to a fair trial, and we cannot have any
2 statements or outbursts. Please follow my admonitions.
3 All right. Mr. Schaffer, you ready?

4 MR. SHAFFER: Yes, Your Honor.

5 THE COURT: Bring the jury in.

6 (WHEREUPON, the jury panel enters the courtroom at
7 4:59 p.m.)

8 THE COURT: Jury is present. You may proceed, Mr.
9 Shaffer.

10 CLOSING STATEMENT BY MR. SHAFFER

11 MR. SHAFFER: Thank you, Your Honor. Now, before I
12 begin speaking to you, at my client's request, I am going
13 to play a portion of his statement from the 16th.

14 (WHEREUPON, a portion of State's Exhibit Number 4 was
15 played for the jury in open court.)

16 MR. SHAFFER: I apologize, Your Honor. A technical
17 issue. Well, I'm not going to make y'all watch a video
18 with no sound so we'll move past that. Thank you.
19 Court's indulgence for a moment. We're going to -- I
20 apologize. Initially I had not planned to do that, but --
21 or else if I had planned that I probably would have set it
22 up before now. I apologize for doing that. My client
23 requested that as sort of a last minute addition.

24 I want to tell y'all a little something. I want to
25 say that I take a lot of pride in my work. I take pride

1 in what I do because I, like I told you in opening
2 argument, I make sure people follow the rules. That's my
3 goal. Not to the prove anything. Merely to make sure
4 people follow the rules. And I take that job very
5 seriously. You probably saw me objecting quite a bit, and
6 y'all probably got your exercise in at least on Monday
7 going back and forth to the jury room. And the reason I
8 was doing that was to try to make sure that the rules are
9 being followed.

10 So even when everyone is looking at me like I am
11 wasting time, and even when a bunch of people in the
12 courtroom hate me and can't stand what I'm doing, I try to
13 make sure people follow the rules because I take pride in
14 what I do. Now, when we picked the jury our goal was to
15 find a diverse group of people with one thing in common.
16 And that one thing was that they took pride or they took
17 pride in what they did.

18 And, of course, you can't tell that someone takes
19 pride in what they do just looking at them. But we tried
20 our best to pick a jury and strike people who we didn't
21 necessarily think took pride in everything that they did.
22 And the reason that we want someone or a jury that takes
23 pride in what they do is because this is a very important
24 matter. It's very rare that you hold the rest of a man's
25 life in your hands.

1 The decision that you will make today will impact Mr.
2 King's life. And because it's important we get people who
3 take pride in that job. And we want to make sure that we
4 get a verdict that y'all are proud of. Sort of a strange
5 concept, but how do you get a verdict that you are proud
6 of? You took an oath at the beginning to follow the law.
7 Not to decide in passion or prejudice. Follow the law.
8 And we want to make sure that each and every one of y'all
9 are proud that you followed that law.

10 Now, that gets me back to the question that I didn't
11 really answer which was how do you get a verdict that
12 you're proud of. And the way you do that ---

13 MS. JOHNSON LEE: Judge, I'm going to object at this
14 point, and I hate doing this but ---

15 THE COURT: Pardon?

16 MRS. JOHNSON-LEE: I'm going to object to this, and
17 the only reason that I am doing this is because the jury
18 is to apply the law to the facts in this case whether it
19 is a pride issue or not. Just apply the law to the facts
20 of the case, and I just don't want that law misstated.

21 MR. SHAFFER: That's just what I asked them to do.

22 THE COURT: Go ahead.

23 MR. SHAFFER: We want you to take pride in applying
24 the law to the case, and I believe I stated that, but I
25 want to clarify that. That's exactly what we want you to

1 do is apply the law to the case. We want you to be proud
2 of that, and how are you proud of that? You're proud of
3 that when the State presents a case that you can be proud
4 of. I want -- I want each of you to think about that.
5 Think about whether the State has presented a case to you
6 that you can be proud of. Now, one way the State can
7 present a case to you that you can be proud of is for them
8 themselves to take pride in their work.

9 Now, at the beginning of this you know they've --
10 we're going to go ahead and say this for the record.
11 Tyrone King was in the house. They've proven that beyond
12 a reasonable doubt. They proven that James Galloway died
13 beyond a reasonable doubt. And that is a tragedy, and I
14 sincerely feel for the victim's family. I work with
15 another attorney who does personal injury cases, and I see
16 various tragedies come in the door every day. I see
17 people who lose their family and they're mad and they
18 should be.

19 For all we know that siren right there is another
20 tragedy, but it doesn't necessarily make it criminal, and
21 ultimately, that's not what this case is about is a
22 tragedy. It's not about a tragedy. It's about whether or
23 not this was murder. Has the State proven that this was
24 murder. Has the Sheriff's Department taken pride in their
25 work. Let's look at some of the other things they've

1 proven. They've proven that Mr. Galloway was killed with
2 this gun. They've proven that my client was holding this
3 gun. They have proved that my client left the back of the
4 Galloway's home and ended up right here hiding underneath
5 the truck. They've proven that. I think that they have
6 proven that beyond a reasonable doubt.

7 But lets look at what they haven't proven. They
8 haven't proven why, and if you remember my opening
9 statement, my opening statement was hard to follow. I
10 understand that. This, too, is -- this is my first trial
11 as well, and this is my murder trial at least. I've tried
12 small traffic violations and things like that. I've never
13 tried a murder case, but you have to think if they've
14 taken -- if they've proven why.

15 Because remember my opening statement, my opening
16 statement said the most important question in all of this
17 is why. And if you remember Mrs. Galloway when she was on
18 the stand she said she had told the police officers that
19 night of that she wanted to know why he would have done
20 this. Why Tyrone King would have came into their house
21 and shot him. She said that is the question that I really
22 want to know is why. Guess what? Sheriff's Department
23 has all utterly failed to prove why.

24 MS. DAVID: Objection, Your Honor. The State does
25 not have to prove motive.

1 MR. SHAFFER: I'm not saying that.

2 THE COURT: I sustain that. The State does not have
3 to prove motive.

4 MR. SHAFFER: I admit to that.

5 THE COURT: Go ahead.

6 MR. SHAFFER: Your Honor, I freely admit that the
7 State does not have to prove motive. Guess what?
8 Colorado, two months ago. Some idiot came into a theater
9 and started shooting up the place. He had no motive. He
10 had no reason to kill any of those people. The State does
11 not need to prove motive. They need to prove malice, and
12 in a case like that Colorado case, motive doesn't matter
13 to prove malice. You can tell there was malice because
14 the man went in there with a -- with several weapons and
15 decided to start firing indiscriminately in a crowd.

16 That is why the State doesn't need to prove motive
17 all the time because sometimes people do stuff for no
18 apparent reason. I freely admit, but in this case they
19 have failed to answer Mrs. Galloway's question. Have they
20 proven anything about why this happened? Have they even
21 proved how it happened necessarily? Sure, they've given
22 theories. The prosecutor come up here and said, "Well, we
23 think this could have happened this way, or we think this
24 could have happened this way." What Ms. David has to say
25 about it doesn't matter. They haven't proven what

1 happened or how it happened.

2 Excuse me one moment. I'm getting a cold and I need
3 to take a drink. Now, Ms. David also said that you would
4 not be able to get into the mind of Tyrone King. I agree
5 with that statement. You will never be able to get into
6 someone else's mind, but you can prove some stuff. Their
7 theories, if they thought that way about how stuff could
8 have happened, why didn't they even attempt to show that?

9 I'm showing you State's 17, 18, and 19 which are in
10 evidence, okay. These are all in evidence. What does
11 this show? This shows the bullet path. Not of the bullet
12 that killed James Galloway, but this is the bullet path of
13 the other bullet. Why didn't they do one on him? Why
14 didn't they do one on the other bullet? Maybe it was
15 because Ricardo Prince for some reason -- Ricardo Prince
16 was the man from S.L.E.D. For some reason he said he
17 didn't even see the bullet hole in the wall the first time
18 he goes there.

19 I'm not sure how you miss a bullet hole. There is
20 not a picture of it in evidence. I didn't present any
21 evidence in this case, okay. But I also told you at the
22 beginning of this trial that I don't have to prove
23 anything. The State has to prove it. He said he took
24 over 100 pictures. Why aren't there any more pictures.
25 That's only 10. Could it be because it shows something

1 the State doesn't want you to see? Could it be that it
2 shows an obvious bullet hole in the wall of the trailer?
3 Could it be that they're not proud that their star
4 witness, their crime scene man, Ricardo Prince, didn't see
5 a bullet hole in a wall of the trailer above blood that
6 was on the floor.

7 How didn't he see that? Because he didn't do a very
8 good investigation. Because he had talked to Hog Head
9 beforehand. Hog Head is Investigator Campbell. He's the
10 man that came up here. He's lead investigator on this
11 case. He told Ricardo Prince, according to Ricardo
12 Prince, that, "Well, Tyrone had kicked in the door, shot
13 the man and then took off running." You didn't hear
14 anything about him shooting the man -- I mean kicking in
15 the door. Where in the evidence do you hear anyone say
16 that he kicked in the door?

17 Mrs. Galloway said that he knocked on the door.
18 Nobody said he kicked in the door. The fact that Hog Head
19 said that he kicked in the door is indicative to this
20 entire investigation. This is what the Marlboro County
21 Sheriff's Department thought. They thought, okay, we
22 caught him red handed. He kicked in the door. Case
23 closed. That's Monday at 3:00 a.m. Case closed. We
24 caught him. We don't really need to do stuff. We'll get
25 Ricardo Prince to do whatever he wants to do. Let him go

1 back. We're not going to request anything more. That's
2 Friday morning. Friday the 11th. They decided this case
3 Friday the 11th.

4 On Monday the Defendant sent a request. Why did he
5 send down a request on Monday? Probably because it was a
6 weekend for two days. It's pretty hard to request an
7 investigator show up on a weekend, but he requested it.
8 He requested him come out on a Monday. He came out on
9 Wednesday, and that was Investigator Seales who took a
10 second statement from Tyrone King.

11 That was the second statement that I was trying to
12 play for y'all, and if y'all request y'all can view that
13 statement, but I'm not gone to take up your time with it
14 right now. And I have to say I give a lot of credit to
15 Investigator Seales. He was honest. He was very honest.
16 Took a statement from the man, and at least he was honest.
17 He had lied to him about Mr. Galloway being alive in the
18 first statement. He had also lied to him about actually
19 talking to the Solicitor's Office about it, but he was
20 honest. He said he didn't do any follow up.

21 What kind of follow up could you have done? Maybe
22 you could have talked to Broom, the man who Tyrone said he
23 got the gun from. I didn't talk to Broom, and I bet you
24 nobody talked to Broom, because if somebody had talked to
25 Broom and Broom had said that it didn't happen or it did

1 he'd be in here. They never followed up on that story.
2 They never asked him to demonstrate what happened. They
3 never uncuffed him so that he could demonstrate what
4 happened.

5 He's sitting there on the videotape right here
6 because his cuffs let him go to right here. We don't know
7 if the man was looking at him like that. We don't know
8 that because they never asked. You know what another
9 question they never asked? What position Mr. Galloway was
10 in when he was shot. They never asked that question. You
11 know why? Because they didn't want to know. They didn't
12 care to know because they don't take pride in their work.

13 You might be thinking, well, what difference would
14 that really make? Well maybe it would have helped us
15 actually have an understanding of how this happened versus
16 relying on, well, we think it happened this way or maybe
17 it happened this way. Theories are not proof. That idea
18 of the Solicitor of how this could have happened isn't
19 proof.

20 Now, one thing the Solicitor said about the second
21 statement which I thought was interesting she built it up
22 like this was this big ah ha moment. Ah ha, we caught
23 him. He spent two days, three days thinking about how
24 he's going to explain away the gun powder. He admitted to
25 handling a gun in the first statement. How is that a big

1 ah ha moment?

2 Another thing she said about the first statement -- I
3 mean the second statement, the one on the 16th, is that
4 Tyrone King was going to "shit someone." He didn't say
5 shit someone. He said, "I was gonna shit Broom. I was
6 going to steal that gun from Broom. I was going to go
7 sell it to James Galloway. I stole the gun from Broom
8 cause he let me hold it. I was gonna go sell it so I
9 could pay for Christmas presents."

10 He said he was going -- he didn't say he was going to
11 shit someone. Don't let them make you think that that
12 somehow means he was going to go out and rob somebody
13 because that's just not the truth. And there's no
14 evidence to show that. Now, they also mentioned -- well,
15 what we personally think is that he's going to go rob
16 somebody. They didn't say that directly. They said it as
17 we don't think this is applicable in -- one of the
18 statutes is applicable because we don't think he was going
19 to go rob somebody. Or we think he was going to go rob
20 somebody but we don't have any proof of that.

21 If they thought he was going to go rob somebody, cops
22 thought it, if they have any evidence to say that? Guess
23 what? They would have charged him with robbing somebody.
24 What they did -- what they did was charged him with the
25 highest offenses that they could.

1 Now, they also mentioned earlier -- well, he was
2 planning, you know he said in his first statement that he
3 didn't want to -- that he would have killed everybody in
4 there. They said, "Well. He tried." Well, why isn't he
5 charged with attempted murder? Why is he only charged
6 with A.B.H.A.N? Because they don't have any proof of it.
7 They are substituting their personal belief as proof, and
8 that's just not right.

9 Courts indulgence just a moment. Now, I will let
10 your judge of credibility for yourself. I will let you
11 believe, as the Judge said, a part, a whole of anyone's
12 statement or none at all. Think about that of Hog Head,
13 the lead investigator in this case. Remember James
14 Campbell? I mean, he's Hog Head. Large black man with
15 the dark suit on that came in yesterday. After I had
16 asked about him magically appeared. Lead investigator
17 hadn't been here the entire time. Why? Why wasn't he
18 here the entire time? Why wasn't he at counsel table?
19 Seales said that normally when he's lead investigator he
20 sits at counsel table.

21 Why wasn't Hog Head here? Because they are not proud
22 of what he had to say. They're not proud that they have a
23 man who's coming up with theories of nothing as their lead
24 investigator. He kicked in the door. He told that to
25 Ricardo Prince. Now, you can either believe Hog Head or

1 Ricardo Prince. I don't think Ricardo Prince is lying. I
2 may think he's not very observant. He didn't observe the
3 bullet hole in the wall. He somehow missed the exit wound
4 at the back of the man's head. I don't think he's a liar
5 though. I just don't think he was paying very much
6 attention. Probably because he thought case closed. The
7 man kicks in a door. He gets caught two houses down.
8 Case closed. They have him. Why should I really do a
9 full work up like this was going to trial.

10 Ricardo Prince prepared this, showing State's Exhibit
11 six, a diagram. He showed this. Listed a whole bunch of
12 stuff, and this is the State's diagram they made so they
13 could show y'all what happened. What's missing from the
14 diagram? What's missing from this diagram is where the
15 body was. They show the bullet that entered the wall that
16 went through his head and entered the wall. It definitely
17 killed him. We're not disputing that. The bullet that
18 they pulled out of the wall killed James Galloway.

19 Maybe they didn't take the time to measure how far it
20 was from the wall before they took that bullet out. How
21 are we going to know what happened? How are we going to
22 be able to say whether Tyrone King's second statement was
23 true or not. We don't know the position he was in. Yeah,
24 we can believe Mia's theory, or Ms. David's theory, but we
25 don't know the position he was in. Nobody ever asked.

1 Nobody knows how high the bullet was out of the wall.
2 Nobody knows if he had his head turned. Nobody knows if
3 he was bending down picking something up. Nobody knows if
4 he was sitting Indian style on the floor. And the reason
5 nobody knows is because they didn't take pride in their
6 work. I do. I spent over 181 hours as of Sunday night at
7 11:30 preparing for this case. Now, this is a Court
8 appointed case which means I got something saying that I
9 need to show up; that I am to represent Mr. King.

10 I'm not going to get rich off of this case, but I
11 don't mind spending the time on this case because I take
12 pride in what I do. Sheriff's Office did not take pride
13 in what they did. If they had taken pride in what they
14 did then possibly we would have an answer to that question
15 of why. At least a better idea of it, but we don't have
16 that because they didn't take pride in what they did.
17 Because of that you don't have a case that you can be
18 proud of.

19 You can't render a verdict that you can be proud of,
20 and I have to tell y'all this. The reason that you can't
21 render a verdict that you can be proud of and the reason
22 that they haven't given you a case that you can be proud
23 of is because one does not exist. It doesn't exist in
24 this case. By that I mean this was not a murder. Why is
25 this not a murder? Why do I say that this is a case that

1 you can find him guilty of murder and be proud of that
2 verdict doesn't exist? Because think about the evidence.
3 These men were neighbors. They were friends. He went
4 over to that house, to his next-door neighbor's house, 200
5 yards away from the Sheriff's Department. And his next
6 door neighbor died. That wasn't murder. He had no reason
7 to shoot him.

8 If he had a reason to shoot him, if they thought he
9 had a reason to shoot him, they would have introduced that
10 evidence. Trust me, they would have said first thing, he
11 shot him because of this, or he shot him because of that,
12 but they don't have that.

13 MS. DAVID: Your Honor, I object again. The State
14 doesn't have to prove motive.

15 THE COURT: We've said that now, counsel, many times.

16 MR. SHAFFER: I agree. The State does not have to
17 prove motive.

18 THE COURT: Well, quit trying to argue motive then.
19 That's the third time you've done it.

20 MR. SHAFFER: Your Honor, I will say this though.
21 Motive is one way that you can prove malice. You can
22 prove malice by motive.

23 THE COURT: I can agree with that.

24 MR. SHAFFER: Thank you, Your Honor. What kind of
25 murderer goes into his neighbor's home, 200 yards away

1 from the Sheriff's Department, and shoots him and then
2 sticks around long enough to run into the bedroom and then
3 sticks around long enough to call the cops. But then, of
4 course, runs away. I'm not doubting that he ran away.
5 I'm not doubting that he called the cops.

6 You heard him on the 911 tape. But think about this,
7 Tyrone King was familiar with law enforcement people. You
8 heard him say that in the first statement. What Feldner
9 took from him is that he was familiar with various people
10 in the Marlboro County Sheriff's Department. Heck, his
11 home was 220 yards away. So he -- and he told a lie, and
12 he acted stupid. He ran around the house and acted
13 stupid.

14 Now, I'm not here to debate with y'all or debate with
15 the State over whether or not Tyrone King acted
16 irresponsibly. But being familiar with Marlboro County
17 Sheriff's Department he also probably had an idea or at
18 least thought he knew what they would do. If Tyrone King
19 walked out of that door and said, "I accidentally shot
20 him. I'm so sorry," you think they would have believed
21 him? You think they would have followed up on that story?
22 They wouldn't have followed up on that story because he
23 told them about it a couple of days later. And guess what
24 they did. They didn't follow up on that story.

25 So what did he do. He told a lie. He was scared and

1 he told a lie, and he caused chaos as they said. I
2 believe Ms. David said in her opening he acted crazy, but
3 he was scared. He had been drinking and he had just shot
4 a man. He didn't mean to, but he had just shot a man.
5 So, yeah, he told a lie because they wouldn't believe him.

6 Now, the State's going to talk about or State talked
7 about the different levels of manslaughter. I mean, no,
8 the different levels of assault. And they went really in
9 depth to it. They charged him with the highest of
10 everything so that y'all could sort of sort it out and
11 figure out what it is. Charged him with murder, the most
12 serious charge available. Charged him with assault and
13 battery of a high and aggravated nature. Assault and
14 battery of a high aggravate nature is something that would
15 cause death or serious bodily injury. Something that is
16 likely to produce -- I'm not going to debate whether or
17 not he hit her with the gun.

18 He said he was waving it. I apologize. Leave it
19 down. He said that he was swinging the gun. Feldner said
20 he was waiving the gun. He didn't say he was hitting her
21 with the gun. He did. He hit her with the gun. I'm not
22 going to say she's lying. He didn't say she was lying.
23 He's known that lady for 12 years. He isn't going to say
24 she was lying about that. But the question is what injury
25 did they prove or what injury, what likely injury, would

1 have resulted from hitting someone over the head with a
2 gun. And I'm not going to go back over all the Judge's
3 charges because if y'all have questions about what the
4 Judge said you can ask him.

5 Now, I'm also going to briefly talk to you about
6 voluntary intoxication. Yeah, he was drunk. Yeah, he had
7 been drinking. That's no defense. I agree with you.
8 That's no defense. I'm not using it as a defense. I'm
9 using it as an explanation. An explanation for how a man
10 fiddling with a gun, fiddling with a gun with a magazine
11 that's not necessarily -- necessarily made for it,
12 fiddling with that, and he was fiddling with it and it
13 went off.

14 Now, Judge says no defense. Basically, the Judge is
15 saying you have to treat him, even though he was drunk,
16 you have to treat him the same way as if he were sober.
17 I'm not saying it's any excuse. Drunk people and guns
18 don't mix, okay. I'm not using that as a defense. What
19 I'm trying to do is to say, yeah, that did happen that
20 way. It's reasonable that it happened that way.

21 Now, quite honestly, I'm not 100 percent sure if that
22 magazine goes in correctly or not. They had said
23 something about it, and quite honestly, I didn't catch
24 that. That was the first time on the stand that I had
25 heard anything about it. So I didn't intend to say

1 anything about the magazine does or does not fit because I
2 really don't know. But what I do know is that there was a
3 chance for them to explain or possibly explain what had
4 happened. And they had a chance to blow a bunch of holes
5 in his story or confirm his story. They didn't take that
6 chance.

7 Case closed, Friday morning, 11-11-11. By 11/16 the
8 case was closed. Why would they reopen it? Why would
9 they reinvestigate. Were just not gonna believe him. We
10 caught him red handed. Why are we gonna believe him? So
11 for the last 10 months no investigation has been done on
12 his statement to prove or disprove it.

13 Now, Ms. David also spoke of another one of her ah ha
14 moments was there was no fingerprints on the magazine. He
15 didn't say he pulled out that magazine. He said he was
16 trying to get it out. Trying to get it out by pressing
17 that button. That's how you release the magazine on this
18 gun, pressing that button. I know that because I have,
19 not a High Point. I, like Mrs. Eichenmiller, prefer more
20 quality firearms than this. But most guns generally --
21 generally that's where the magazine release was.

22 But there's no fingerprints on it even though this is
23 a smooth surface and this isn't. But he didn't say he
24 pulled out the magazine. He said he was trying to pull it
25 out. He said he was trying to pull it out because you

1 don't give a loaded gun to somebody. He probably didn't
2 realize there was one in the chamber as well. How do you
3 realize that? Had he pulled that out maybe we wouldn't be
4 here today. Maybe James Galloway would still be alive.

5 Now, I'm not gonna keep y'all forever because y'all
6 have a lot of talking to do. And the only thing I hope
7 you do is I hope you take pride in what you do. And I
8 hope that you can give a verdict that you can be proud of.
9 Thank you.

10 CHARGE OF THE COURT

11 THE COURT: Foreman and ladies and gentlemen of the
12 Jury, let me first thank all of you for your attention
13 here this afternoon to the charge and to summation of
14 counsel from the State and the Defendant. It's just
15 simply an indication of a good jury intent on doing their
16 duties in accordance with their oath. You've had the
17 charge on the law and you've had the summation of counsel
18 and it is now your duty to consider the evidence in this
19 case as finders of the facts. Apply that evidence to the
20 law of this case and thereafter reach the verdict
21 unanimously. Whatever your verdict is as to each of these
22 four indictments must be unanimous. Cannot be a verdict
23 of the majority. Obviously, it would not be one of the
24 minority.

25 And, Mr. Foreman, I have prepared a form of verdict

1 agree on what goes in as exhibits, please. For the State,
2 let's go see what goes to the jury. Were there any
3 exceptions or additions to the charge?

4 MS. DAVID: No, Your Honor.

5 MR. SHAFFER: No, Your Honor.

6 (WHEREUPON, State's Exhibit No. 50 was marked for
7 identification and received into evidence.)

8 (WHEREUPON, Court was in recess at 5:53 p.m.)

9 JURY QUESTION NUMBER 01

10 (WHEREUPON, back on the record at 7:22 p.m.)

11 CLERK OF COURT: Judge Cottingham said by the consent
12 of both the parties they're going to send a written note
13 in to the jury explaining the questions here on first,
14 second and third on assault and battery with high and
15 aggressive nature. Okay.

16 (WHEREUPON, Court's Exhibit No. 3 was marked for
17 identification and received into evidence.)

18 (WHEREUPON, Court was in recess at 7:23 p.m.)

19 JURY QUESTION NUMBER 02

20 CLERK OF COURT: Both parties agree they're going to
21 send the charges in on involuntary manslaughter and
22 murder.

23 (WHEREUPON, Court's Exhibit No. 4 was marked for
24 identification and received into evidence.)

25 (WHEREUPON, Court was in session at 7:55 p.m.)

VERDICT OF THE JURY

1
2 THE COURT: Ladies and gentlemen, I want you to
3 listen to me real carefully. I understand we have a
4 verdict. I have no idea what the verdict is. I would
5 understand whatever the verdict is would have significant
6 impact on the family of the deceased, equally on the
7 family of the Defendant. But I want it clear I will
8 permit no outbursts, no statement of any kind by anybody.
9 If that occurs you are going to spend the night in jail.
10 I would not wish to do that, but I demand order and
11 decorum in my courtroom.

12 And if anybody feels that they can't live with that I
13 would respectfully urge you to leave at this time.
14 Otherwise, you're invited to stay with me and accept
15 whatever the verdict is remembering I will accept no
16 outbursts of any kind. Please be careful. Bring the jury
17 in.

18 (WHEREUPON, the jury enters the courtroom at
19 8:00 p.m.)

20 CLERK OF COURT: Mr. Foreman, have ya'll reached a
21 verdict?

22 THE COURT: Wait a minute, Bill. Thank you. Mr.
23 Foreman, ladies and gentlemen of the jury, have you
24 reached a unanimous verdict as to all four indictments?

25 JURY FOREMAN: Yes, sir.

1 THE COURT: If you have reached a unanimous verdict
2 please so signify by raising your right hand. The jury
3 has so signified. Now, Mr. Clerk, please proceed and hand
4 me the verdicts. Their verdict is duly executed and
5 signed by the Foreman of the Grand Jury. Mr. Clerk,
6 publish the verdict.

7 CLERK OF COURT: State of South Carolina, County of
8 Marlboro v. Tyrone J. King. As indicted number -- the
9 Indictment Number 2012-GS-34-0024, murder. We the jury
10 unanimously find the Defendant, Tyrone J. King, guilty of
11 murder. Signed, Travis Broddy. 9-13-12.

12 Indictment Number 2012-GS-34-0028, charge of assault
13 and battery of a high and aggravated nature. We the jury
14 unanimously find the Defendant, Tyrone J. King, guilty of
15 third degree assault and battery. 9-13-12 is the date.
16 Travis Broddy, Foreperson.

17 Indictment Number 2012-GS-34-0029, pointing and
18 presenting a firearm. We the jury unanimously find the
19 Defendant, Tyrone J. King, guilty of pointing and
20 presenting a firearm. 9-13-12. Travis Broddy,
21 Foreperson.

22 Indictment Number 2012-GS-34-0026, possession of a
23 weapon during the commission of a violent crime. We the
24 jury unanimously find the Defendant, Tyrone J. King,
25 guilty of possession of a weapon during the commission of

1 a violent crime. 9-13-12. Travis Broddy, Foreperson.

2 Is this your verdict, please say by raising your
3 right hand. Thank you.

4 ~~THE COURT: I'm going to discharge the jury in just a~~
5 moment prior to sentencing. Chief, would you come
6 forward. I want this jury to hear the record of this
7 defendant, please.

8 Let me explain to the jury. Ladies and gentlemen,
9 you will hear in just a few moments from Chief Lemon the
10 long and significant prior record of this defendant. And
11 chances are you will read about it in the newspaper in the
12 morning. And you may properly say, "Well, why didn't
13 Judge Cottingham tell us of his prior record." Well, the
14 reason for that is our law, and properly so, is that if
15 you convict somebody you convict him on the evidence of
16 this case and not what he had done previously.

17 Consequently, that was the reason the law would not
18 have permitted me to let you know of that at that time for
19 your verdict purposes. You certainly are entitled to it
20 now. With reference to your verdict I tell you, and my
21 only comment that I'm gone make, is that the evidence and
22 the law absolutely justified your verdict of murder.

23 Chief, I want this jury to know of the prior record
24 of this Defendant.

25 CHIEF LEMON: Yes sir, Your Honor. Please the Court.

1 Back in May of 2003 this Defendant was charged with
2 assault and battery of a high and aggravated nature. He
3 was also charged with attempted armed robbery. He was
4 also found guilty and was convicted on that back in June
5 of 2005. He was at R&E and he was convicted of assault
6 and battery of a high and aggravated nature. Also he was
7 charged with common law armed robbery and robbery with
8 strong arm robbery and he served eight years on that.

9 Also, he was charged and sentenced on attempted
10 larcenies, and that would have been in -- looks like in
11 2001. Looks like he was sentenced on that, Judge. And in
12 the past -- I know Mr. King in the past. The Sheriff's
13 Department agency here in Marlboro County and the Town of
14 McColl we have had some dealings with him on some cases
15 such as assault and battery of a high and aggravated
16 nature.

17 In the past we had one of the night clubs which is
18 known as the Cotton Club here in Marlboro County, where he
19 and some other codefendants and suspects was involved in a
20 cutting where -- which resulted in Mr. King staying in the
21 hospital for a period of time which was a serious cutting
22 at that time.

23 MS. JOHNSON LEE: Your Honor, if I may. Also he has
24 pending charges now of kidnapping and armed robbery, and
25 those would be set for trial at some point in the future.

1 CHIEF LEMON: And those are from the Town of McColl,
2 too.

3 THE COURT: Well, I wanted the jury to know of this
4 significant prior record, and let this distinguished jury
5 know and understand that we've got a terrible convict off
6 the streets of Marlboro County. And you're entitled to
7 know that. I want to express to you not only my
8 appreciation but the appreciation of the citizens of
9 Marlboro County because by your verdict today you are
10 telling these criminals that the good citizens of Marlboro
11 County are not going to permit this sort of conduct.

12 You know, there's a thought out there with some of
13 them. Oh, lets go ahead and do what we want to. The jury
14 is not gone convict us. You showed them differently. The
15 people of Marlboro County are in your debt of gratitude,
16 and you have this Court. This case, the evidence was just
17 simply overwhelming as to his guilt on these various
18 charges.

19 Here's somebody that comes at three o'clock in the
20 morning with a loaded nine millimeter, kills somebody with
21 malice, strikes his wife over the head with force so
22 strong it caused the gun to explode. Thereafter, point a
23 pistol at another. All of which was done in the presence
24 of a 10 year old boy who said, "He killed my granddaddy."
25 Evidence is just absolutely overwhelming.

1 You as good citizens have done your duty and this
2 Court thanks you for it. You are welcomed to stay for the
3 sentencing, but you may certainly leave at this time with
4 our gratitude and your check for serving will be mailed to
5 you; is that right, Bill?

6 CLERK OF COURT: Yes, sir.

7 THE COURT: Thank y'all. You may leave at that time
8 or remain. However you want to do it. As I understand it
9 some of you care to leave. I want this jury -- I want
10 some deputies to escort this jury out for me, please.
11 Thank you. Before they go for one minute. Mr. Shaffer.

12 MR. SHAFFER: Yes, sir.

13 THE COURT: The jury has indicated unanimously by
14 raising their right hand that the verdict was unanimous.

15 MR. SHAFFER: Yes, sir.

16 THE COURT: The forms also state that they were
17 unanimous. Do you desire the jury poled?

18 MR. SHAFFER: No, Your Honor. No sir.

19 THE COURT: No. Okay. Thank you. They may go.

20 (WHEREUPON, the jury panel was excused from the
21 courtroom at 8:12 p.m.)

22 SENTENCE OF THE COURT

23 CHIEF LEMON: All right. Have the Defendant come
24 around, please. All right. For the State is there
25 anything further at this time?

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF MARLBORO)

2012-GS-34-00024

2012-GS-34-00026

2012-GS-34-00028

2012-GS-34-00029

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

(Motion Hearing)

vs.)

October 10, 2012

TYRONE J. KING,)

Defendant.)

B E F O R E:

Honorable Edward B. Cottingham
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Mary Johnson Lee, Esquire
Mia B. David, Esquire
Kernard E. Redmond, Esquire
Attorney for Plaintiff

Tristan M. Shaffer, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

I N D E X

	<u>Pg.</u>
By the Court	3
Motions	5
Officer Shawn Feldner	
By the Court	10
DVD Interview of Natasha Covington (not transcribed) ..	14
(Plaintiff's Exhibit Number One)	
Motions	16
Certificate of Court Reporter	30

E X H I B I T S

<u>No.</u>		<u>ID</u>	<u>EV</u>
P1	DVD of Interview of Natasha Covington	25	
C1	Defendant's Motion for a New Trial	5	

1 in the courtroom.

2 All right, sir. Is there any further thing that we need
3 to have in connection with that?

4 MR. SHAFFER: Your Honor, not in regard to the first
5 issue. I'm not sure if you want me to comment on the issue
6 regarding the video tape if it's allowed in or not.

7 THE COURT: Well, let me deal -- are we through with this
8 issue?

9 MR. SHAFFER: Yes, Your Honor.

10 THE COURT: Well, let me deal with this.

11 MR. SHAFFER: It's obvious to me that this witness --
12 juror is in no way related to Shakira. It's obvious to me
13 that when it came -- when even the fact came up that she might
14 be, that no hearing was requested and based on what I'd
15 learned in your statement that you wanted her on the jury, no
16 hearing was necessary. But your allegations were based on
17 information that she was related to this lady. All of the
18 testimony from this juror indicates that that was not true.
19 And I want the State to prepare me an appropriate order as to
20 that issue. Clearly, that is not an issue -- there is no
21 suggestion from any source from any kind that that juror was
22 on that jury improperly.

23 Now, I'll hear -- what's your next motion?

24 MR. SHAFFER: Your Honor, the second issue I've raised
25 was regarding the video statement. The video that did get in,

1 there were several parts that I did include in the -- I
2 included two specific parts I objected to at trial. I had made
3 the objection and at some point the State had told me or it
4 said either on record or in private, and I'm not sure which,
5 that they were unable -- the program specifically did not
6 allow for the redaction of the tape in small amounts. That
7 turns out not to be a hundred percent accurate and I'm not
8 saying that they didn't know it, that they knew this. What
9 I'm saying is that if -- by looking at the program, if you
10 went to the help section of it and typed in redact, it would
11 tell you how to redact it down to a -- one second intervals.

12 THE COURT: Well, tell me this, since we were told that
13 it -- and I will address that issue that it couldn't be
14 redacted during this short time at the trial, what specific
15 language was on that video by the Defendant that you found
16 objectionable and incidentally some of it was fairly
17 intelligible anyway, it was a terrible audio, but what part
18 was it that you were concerned with?

19 MR. SHAFFER: Your Honor, there's two parts I actually
20 typed out in the brief. I know that we -- that it was not
21 transcribed at the trial or at least I don't believe it was.

22 THE COURT: Well, we couldn't -- it couldn't -- it was
23 unintelligible, wasn't it?

24 MR. SHAFFER: Your Honor, I believe that the standard
25 practice for court administration has told court reporters not

1 to transcribe audio tapes, not videos. I think that it is
2 irregular for them to actually do that. I know some refuses
3 ---

4 THE COURT: Well, I need to know what you found
5 objectionable. Whatever was said was said voluntarily by this
6 Defendant. What is it he said that you found improper on that
7 video?

8 MR. SHAFFER: Your Honor, he references the -- his
9 pending burglary -- I mean, his pending burglary, armed
10 robbery charge in it.

11 THE COURT: That was elicited voluntarily by him; nobody
12 pursued it.

13 MR. SHAFFER: Your Honor, I believe that even if it was,
14 that it's prior bad acts evidence, clearly not everything --
15 any statement is admissible.

16 THE COURT: So, what else -- what else do you say was --
17 shouldn't have been heard by the jury.

18 MR. SHAFFER: He references his, his previous murder
19 charge as well.

20 THE COURT: I got you. All right, sir. How would the
21 State respond to that, whoever cares to?

22 MR. REDMOND: Your Honor, if it please the Court, and I'm
23 just looking specifically at what is in the motion at this
24 time. And first, let me deal with what was said on the
25 record that is in the motion by the Defendant in that

1 recording in that first statement. The kidnapping charge
2 comes up in the context of him pointing the finger at a Lucius
3 McClaughlin (spelled phonetically), I believe was his name.
4 And he -- and in fact, he goes on to say in that same portion
5 at issue that, yeah, I tried robbing him but we on good terms,
6 man, we -- basically, we were there together and he's the one
7 that shot this guy. So, it was in the context of what was
8 taking place at that time, in essence, trying to explain that
9 yeah, I'm charged for robbing him but we back on good terms
10 and yeah, we were in that house together and that's what ended
11 up happening. So, I think it is absolutely ---

12 THE COURT: He did it in the context of trying to put the
13 blame on that other individual.

14 MR. REDMOND: Absolutely, Your Honor.

15 THE COURT: That's my recollection.

16 MR. REDMOND: That's -- absolutely. And to address the
17 issue concerning the recording system ---

18 THE COURT: Well, was there any other comment about --
19 when was the other comment made that he's referring to?

20 MR. REDMOND: And it's not listed in the motion, I
21 honestly don't know. The only thing that was referenced ---

22 MR. SHAFFER: I think it's footnoted.

23 MR. REDMOND: It's footnoted, okay, beg the Court's
24 indulgence.

25 THE COURT: Mr. Shaffer, my recollection is too that that

1 comment was made by him at the time he was trying to put the
2 blame on the other individual.

3 MR. REDMOND: I don't see it.

4 MR. SHAFFER: We did the ---

5 THE COURT: Sir?

6 MR. SHAFFER: --- the comment concerning the armed
7 robbery charge, that is a correct statement that he was -- it
8 was in the context of the -- contained within his, his story
9 that Mr. McClaughlin had actually done the shooting?

10 THE COURT: Yes.

11 MR. SHAFFER: Your Honor, may I actually look at my
12 motion real quick and I can reference exactly what ---

13 MR. REDMOND: I can't find that, the other reference in
14 the footnotes that you're referring to.

15 THE COURT: That was the comment that you were -- had
16 some concern with. Was there another one on the record -- of
17 course, it's his comment.

18 MR. REDMOND: Now, let me just preface all this by saying
19 I don't think the allegation is that anything that was not
20 approved by the Court after the Jackson v. Denno hearings --
21 he's not saying that stuff got in that was not approved by the
22 Court.

23 MR. SHAFFER: Essentially, it's a renewal of the
24 objection with the extra evidence that it was capable of --
25 the program was capable of actually ---

1 THE COURT: Well, I have two thoughts about it. First, I
2 -- that late date in the trial of the case, it would've
3 delayed the case to at least the following week to have that
4 done because Sherriff's Office of Marlboro County don't have
5 that capability. Secondly, it was his utterance, voluntarily
6 made by him and he made the reference in the context of trying
7 to blame somebody else for the shooting. You can -- have to
8 agree to that. Now, what other statement was in that video
9 that you object to?

10 MR. SHAFFER: The other statement that -- and that
11 statement took place at approximately 5:01:26, if you view the
12 time stamp.

13 THE COURT: Yes, sir. What ---

14 MR. SHAFFER: The other statement was actually in
15 response to an Investigator -- Investigator Feldner's
16 question, which was the Investigator stated, well, that is
17 what I'm saying. I mean, if you didn't do it, I mean, why
18 didn't you just go in the front yard to give the gun to the
19 police and say, Hey, man, Lucius just ran out the back door.
20 Mr. King replied, they didn't give me a goddamn chance, man.
21 She's steady screaming about my goddamn -- I already, I
22 already, I already got a murder/kidnapping charge on my
23 record. She didn't see shit, she was in the room. And that's
24 located at 5:08:08 through 5:08:27, as you read the timestamp.

25 MR. REDMOND: But here's the thing, Your Honor, he was

1 actually being asked that very appropriate question by the
2 investigator and that was his response.

3 THE COURT: I understand.

4 MR. REDMOND: The investigator can't answer the question
5 for him.

6 THE COURT: I understand. And then try and -- and
7 there's no way, no suggestion that the investigator tried to
8 elicit his former record. He's trying to explain that as a
9 basis as to why he hid the gun; isn't that true?

10 MR. SHAFFER: Your Honor, I ---

11 THE COURT: He was trying to use that as an alibi for his
12 own self.

13 MR. SHAFFER: I still believe that it would be
14 inadmissible under the ---

15 THE COURT: Well, I want the record to reflect there were
16 two videos and the first video, I didn't even -- there was
17 continuous statements by him and I didn't even permit that to
18 be played.

19 I conclude in this case that these were his utterances.
20 The first utterance made by him was as he tried to blame a
21 third party for the killing. The second utterance was made by
22 him as an excuse as to why he hid the gun. And they were his
23 utterances not provoked by any question of the State. I
24 conclude that they were harmless in the context that he did it
25 and I certainly would deny a new trial based on that bases.

1 Mr. Shaffer, as Defense counsel, based on what you had,
2 you did the best job you could. But the evidence in this case
3 as to his guilt was simply overwhelming. His own actions
4 showed it. There was a young boy who saw him kill his
5 granddaddy and then the deceased wife came out when it was
6 going on and he knocked her in the head with a 9 millimeter,
7 all of which was uncontradicted. And there is nothing in
8 these comments or that he made as an excuse, he made them
9 trying to cover up his actions. So, I would deny that, too.
10 And I want an order prepared as to those two issues but
11 bringing up both of his utterances, do you understand?

12 MR. REDMOND: Yes, sir. Yes, sir, Your Honor.

13 THE COURT: Both of them were made by him and they were
14 made by him as an excuse; one, as to why somebody else did it;
15 and two as why he tried to hide the gun.

16 MR. REDMOND: Thank you, Your Honor.

17 THE COURT: I'll be glad to hear from you further, Mr.
18 Shaffer.

19 MR. SHAFFER: Your Honor, there is one third issue that I
20 didn't catch at trial. I did not raise the objection
21 immediately and I raise it in my motion for a new trial and
22 it's based off of the Ms. David's description of what
23 reasonable doubt was there in her closing argument. I raise
24 it now basically out of an abundance of caution just because
25 of the fact that I didn't catch it at the time and at the time

1 I sort of honestly, I didn't object fast enough but I think it
2 was objectionable.

3 THE COURT: Well, surely, you are familiar with the rule
4 if it's not raised at the time, it don't give the Judge an
5 opportunity to rule on it, it's not now preserved for review.

6 MR. SHAFFER: Yes, Your Honor.

7 THE COURT: But I have reviewed my notes, even though you
8 raised the issue which you now find objectionable and my
9 response to you is, first, I don't think its burden shifting
10 if you review it in the context of the whole argument. And
11 secondly, we gave them the full reasonable doubt charge to the
12 jury and then at the jurors' request, I presented to them the
13 full charge again with reasonable doubt and both of those
14 instances are in the record. First, I would say that her
15 language does not suggest what you said. Secondly, I suggest
16 that it was not raised properly at all. And thirdly, the jury
17 had my instructions on two separate occasions as to reasonable
18 doubt.

19 What other matters do you have, Mr. Shaffer?

20 MR. SHAFFER: Your Honor, and this is probably my poor
21 recollection of exactly what happened during the deliberation,
22 I was under the impression that they got the charges for the
23 assault and batteries and they got the charges for murder and
24 a involuntary manslaughter. I -- did they receive the full
25 charge?

1 THE COURT: They got the full charge.

2 MR. SHAFFER: Okay. Thank you, Your Honor. I did not
3 recall and I apologize.

4 THE COURT: No, sir. I concluded that it's improper to
5 give a jury a part of the charge. So, I gave them the full
6 charge, made it part of the record and you had a copy of it.

7 MR. SHAFFER: Yes, Your Honor, and I have no objection to
8 that charge.

9 THE COURT: All right. That's fine.

10 All right. Anything further, Mr. Shaffer?

11 MR. SHAFFER: Your Honor, I actually do recall, I did
12 make one objection to the charge but we discussed that at
13 trial, but I didn't have an objection to the reasonable doubt
14 language.

15 THE COURT: Okay.

16 MR. REDMOND: And last thing, Your Honor, we do -- I've
17 been informed that there is a -- it's on the hard drive at the
18 Marlboro County Sherriff's Office, so out of an abundance of
19 caution, I can make this original a part of the Court record
20 and we've marked it as a court's exhibit.

21 PLAINTIFF'S EXHIBIT NUMBER ONE

22 MARKED FOR IDENTIFICATION

23 THE COURT: I want that done. But it's clear and Mr.
24 Shaffer will -- I have -- I don't fault in your bringing the
25 issue up because his client asked him to and he should've done

1 that but -- as clarification, there's just absolutely no basis
2 for the allegation that she was kin to them and even if it
3 did, no hearing was asked and all sides agreed that she would
4 remain.

5 Mr. Shaffer, I couldn't have taken her off had I wanted
6 to based on the fact that both you agreed that she ought to
7 stay. I would not have the authority to do that.

8 MR. REDMOND: Thank you.

9 THE COURT: Okay. Anything further?

10 MR. REDMOND: Yes, I've been advised that there was a
11 felony possession charge, I believe that was dismissed during
12 the trial, judicially dismissed that we need the Court's
13 signature on.

14 THE COURT: Let me have it.

15 MR. REDMOND: Yes, sir.

16 THE COURT: The record will reflect that he did not
17 testify, consequently, no prior record of his -- yes, the
18 record will reflect that I dismissed the charge of a felony
19 charge of a possession in as much as he was a juvenile at that
20 time and that was an adjudication and not a conviction and I
21 concluded that the statute did not contemplate a juvenile's
22 conviction as a basis for this charge.

23 And Mr. Shaffer, I thank you for bringing that Allen case
24 to my attention.

25 MR. SHAFFER: Thank you, Your Honor.

1 as in this case, I propose to charge you the law.

2 After that we'll take a short break and then we will
3 have final summation. I'll be back with you with some
4 concluding remarks, and then I will be giving you the case
5 for your deliberations so that we can conclude this case
6 this afternoon at some point.

7 CHARGE OF THE COURT

8 THE COURT: Now, this indictment or these
9 indictments, there being four in number, charge this
10 Defendant with murder, assault and battery of a high and
11 aggravated nature, point and presenting a firearm or
12 presenting a firearm, and possession of a weapon during
13 the commission of a violent crime. I remind you that the
14 fact that this Defendant was arrested and charged and
15 indicted in these cases is not evidence in these cases and
16 cannot be considered by you as evidence of guilt in any
17 way.

18 These documents raise no presumption against him and
19 are simply the charging papers. As to the indictments I
20 continue to tell you that this Defendant pleads not guilty
21 thereby placing the burden of proof upon the State of
22 South Carolina of proving him guilty, if they can, to your
23 satisfaction.

24 Now, again, I apologize. As to these four
25 indictments each will be with you in the jury room. And I

1 have prepared for you a form of verdict which is self
2 explanatory, but I'll go over it with you, Mr. Foreman,
3 before your deliberations. There are four separate
4 charges. You must consider the evidence as to each charge
5 separately. Your final verdict can be the same as to all
6 indictments. It can be different to one indictment and
7 the same as to the others. Remember each indictment and
8 the evidence there upon stands upon itself. So you will
9 deal with the four indictments separately. Let me
10 reiterate. The first indictment is murder, and under our
11 rules of law a lesser included may include involuntary
12 manslaughter. That will be a possible verdict depending
13 on your findings of the fact with regards to murder.

14 The second charge is assault and battery of a high
15 and aggravated nature. That charge, if the evidence
16 suggests, has lesser-included offenses of assault second
17 and assault third, which are options depending on your
18 view of the facts.

19 Another charge of pointing and presenting a firearm.
20 And the fourth charge is the possession of a weapon during
21 a violent crime. And so you will be dealing with four
22 separate issues.

23 Now, this Defendant has pled not guilty to these four
24 indictments, and that places the burden on the State to
25 prove the Defendant guilty beyond a reasonable doubt. A

1 person charged with committing a criminal offense in the
2 State of South Carolina is never, ever required to prove
3 himself innocent. I charge you that it is an important
4 rule of law that the Defendant in the criminal case, no
5 matter what may be the seriousness of the charges, will be
6 presumed to be innocent of the crime for which the
7 indictment was issued unless his guilt has been proven by
8 evidence satisfying you of that guilt beyond a reasonable
9 doubt.

10 This presumption of innocence does not end when you
11 begin your deliberations, but it accompanies the Defendant
12 throughout the trial until you have reached a verdict of
13 guilty based on evidence satisfying you of that guilt
14 beyond a reasonable doubt. This presumption of innocence
15 to which I refer is said to be like a robe of
16 righteousness placed upon the shoulders of the Defendant,
17 which remains with him until you, the jury, have stripped
18 that from the Defendant by evidence satisfactory to you as
19 finders of the facts beyond a reasonable doubt.

20 I charge you that this presumption of innocence is
21 not merely a legal theory. It is not just a legal phrase.
22 It's a substantial right to which every Defendant is
23 entitled unless you, the jury, are satisfied from the
24 evidence of the Defendant's guilt beyond a reasonable
25 doubt.

1 I have used a term, 'reasonable doubt'. Let me
2 define it for you at this time. As I have said the State
3 has the burden of proving the Defendant guilty beyond a
4 reasonable doubt. Some of you may have had served as
5 jurors in civil cases where you were told that it is only
6 necessary to prove that a fact is more likely true than
7 not true such as by the greater weight of the
8 preponderance of the evidence.

9 In criminal cases, the State's proof must be more
10 powerful than that. It must be beyond a reasonable doubt.
11 Ladies and gentlemen, proof beyond a reasonable doubt is
12 proof that leaves you firmly convinced of the Defendant's
13 guilt. There are very few things in this wide world that
14 we know with absolute certainty, and in criminal cases the
15 law does not require proof that overcomes every possible
16 doubt.

17 If, and I say that advisedly, if based on your
18 consideration of the evidence you are firmly convinced
19 that the Defendant is guilty of the crimes charged you
20 must find him guilty. If on the other hand you think
21 there is a real possibility that the Defendant is not
22 guilty you must give the Defendant the benefit of that
23 doubt and find him not guilty.

24 Now, during the trial of this case you and I have
25 certain duties to perform. As the trial judge it is my

1 responsibility to preside over the trial in this case.

2 And I also have the duty to rule on the admissibility of
3 the evidence offered during the trial. You are to
4 consider only the competent evidence before you. If there
5 was any testimony ordered stricken from the record in
6 this case during this trial you must disregard that
7 testimony.

8 Mr. Foreman, you are to consider only the testimony
9 which has been presented from this witness stand, any
10 exhibits which have been made a part of the record in this
11 case and any stipulations of counsel. This case must be
12 decided on the law and evidence in this courtroom and from
13 no other source.

14 I have the additional duty to charge the law
15 applicable to this case. As the presiding judge, I am the
16 sole judge of the law in this case, and it is your duty
17 under your oath to accept the law as I give it to you.
18 You or I might disagree with what the law is or ought to
19 be, but for the purposes of this trial please accept the
20 law as being the correct law.

21 In every case tried by this Court before a jury the
22 jury becomes the sole and exclusive judge of the facts in
23 this case. I mentioned this as we began on Monday
24 morning, and I want to emphasize to you. A trial judge
25 cannot intimate, state, comment, or make any statements to

1 a trial jury about the facts in the case. Since you the
2 jury are the sole judges of the facts in this case you are
3 not and must not infer anything from what I have said
4 during the progress of this case to consider what I feel
5 about the facts.

6 I want to emphasize to you as strongly as I can I am
7 not entitled to a factual opinion between these litigants.
8 I have none. If any word, ruling, mannerism of mine might
9 tend to indicate to any of you how I feel about any
10 factual situation please disregard that. I am not
11 entitled to a factual opinion, and I absolutely have none.
12 You 12 are the finders of the facts in this case. There
13 is nobody in this wide world that can tell you 12 what the
14 facts in this case are. You are to sole judges of the
15 facts in this case.

16 There were two types of evidence which are generally
17 presented during a trial, direct evidence and
18 circumstantial evidence. Direct evidence is the testimony
19 of a person who claims to have actual knowledge of a fact
20 such as an eyewitness. It is evidence which immediately
21 establishes the main fact to be proven.

22 Circumstantial evidence is proof of a chain of facts
23 and circumstances indicating the existence of a fact. It
24 is evidence which immediately establishes collateral facts
25 which the main fact maybe inferred. Circumstantial

1 evidence is based on inferences and not on personal
2 knowledge or observation.

3 Now, I charge you as follows: The law makes
4 absolutely no distinction between the weight or value to
5 be given to either direct or circumstantial evidence. Nor
6 is a greater degree of certainty required of
7 circumstantial evidence than of direct evidence. You
8 should weigh all of the evidence in this case. And after
9 weighing all of the evidence if you are not convinced of
10 the guilt of the Defendant beyond a reasonable doubt you
11 must acquit that Defendant.

12 Now, I want to continue to emphasize to you that you
13 are the finders of the facts and in doing so necessarily
14 you must determine the credibility of the witnesses who
15 have testified in this case. Credibility, Mr. Foreman and
16 ladies and gentlemen of the jury, simply means
17 believability. Credibility simply means believability.
18 It is your duty as jurors to analyze and to evaluate the
19 evidence and to determine which evidence convinces you of
20 it's truth.

21 In determining the believability of a witness who
22 has testified in this case you may believe, if you choose,
23 one witness against another. You may believe all of a
24 witness' testimony, some or none. You may believe one
25 witness against many or many against one. It's your

1 decision. Obviously, you do not determine the truth or
2 falsity of a matter by counting up the number of witnesses
3 who testified on one side or the other. You know, judging
4 credibility and believability you bring your common sense
5 to the courthouse. And we all know that when folks tell
6 us things we size them up. We decide for ourselves do we
7 want to believe what they say.

8 Sometimes, we always say, 'hey, do they know what
9 they're talking about'. Sometimes we say, 'is this
10 witness prejudiced or biased'. We might say to ourselves,
11 'does this witness want me to believe one thing or
12 another'. These are tools that we usually you, I use,
13 some use. You can think of other tools.

14 In considering the credibility of a witness you may,
15 if you choose, consider was his or her testimony
16 consistent with the other testimony or did it contain
17 discrepancies. You may, if you choose, say to yourself
18 how did this particular witness come to know about the
19 facts which he or she testified to. I just want to
20 emphasize to you that many witnesses have testified here
21 under oath. And as finders of the facts it is your duty,
22 your job, to judge the credibility and believability with
23 regards to the testimony that they may have given.

24 Now, during the trial of this case I have qualified
25 several folks as experts. Under our law a particular

1 person who by training and experience has special
2 knowledge in a field may be qualified as an expert in that
3 field. And during the trial of this case I have qualified
4 several doctors and such others as experts. You may
5 accept or reject in your discretion any part of that
6 testimony based on your experiences. But an expert, based
7 on training and experience, may give their opinion in the
8 field to which they have been qualified.

9 Now, I want to emphasize again, I previously
10 instructed you, and I emphasize again that the fact that
11 this Defendant did not testify is not a factor to be
12 considered by you in any way in your deliberations and in
13 your consideration of the guilt or innocence of this
14 Defendant. It must not, must not, must not be considered
15 by you. Must not even be discussed in the jury room.
16 That is his constitutional right as it is mine and yours.

17 The State that the burden of proof. The Defendant
18 doesn't have to prove anything. The burden, I continue to
19 emphasize, is upon the State of South Carolina.

20 Now, at this point in time, for and with the consent
21 of the State and the Defendant, I have prepared some
22 additional charges for you which I'm going to ask my Law
23 Clerk to read for me because of my throat problem. Please
24 accept this charge as coming from me. These are my
25 preparations, and these are my instructions in the law.

1 You may proceed.

2 LAW CLERK: In order to establish criminal liability
3 criminal intent is required. For example, the mental
4 state required to be proven by the State for a particular
5 crime might be purpose, intent, knowledge, recklessness,
6 or criminal negligence. Criminal intent must be proven by
7 the State beyond a reasonable doubt. Criminal intent is
8 always a matter that must be determined by the jury from
9 the circumstances surrounding the situation.

10 There is no way to prove intent to a mathematical
11 certainty. There is no way that medical science can
12 dissect a person's brain and determine what the person had
13 in mind. So the law says that criminal intent may be
14 inferred from the circumstances shown to have existed.
15 This is how you make a determination of whether or not the
16 element requiring intent was present.

17 It is not necessary to establish intent by direct and
18 positive evidence, but intent may be established by
19 inference in the same way as any other fact by taking into
20 consideration the acts of the parties and all the facts
21 and circumstances of the case. Criminal intent is a
22 mental state, a conscious wrongdoing. It is up to you to
23 determine what the Defendant intended to do based on the
24 circumstances shown to have existed.

25 Criminal intent can arise from action or a failure to

1 act. It may arise from negligence, recklessness, or an
2 indifference to duty or to consequences that is considered
3 by the law to be the equivalent of criminal intent.

4 A statement alleged to have been made by the
5 Defendant has been admitted into evidence in this case.
6 While the Court has determined that the statement is
7 admissible I instruct you that you make the ultimate
8 decision of whether or not the Defendant made the
9 statement. If the Defendant did make the statement you
10 must determine whether the statement was made by the
11 Defendant voluntarily and of his own free will.

12 This means that the statement was not caused by
13 pressure, force, fear, threats, coercion, or intimidation
14 or by hope of a promise of leniency or a reward of any
15 kind. In determining whether the statement was
16 voluntarily you should consider both the characteristics
17 of the Defendant and the details of the questioning.

18 Some of the factors that you must consider are the
19 age of the Defendant, the Defendant's education or lack of
20 education, the Defendant's mental ability or capacity, the
21 Defendant's I.Q. or intelligence, the Defendant's
22 background and environment, the place and length of
23 detention, the nature of the questioning and the advice or
24 lack thereof to the Defendant of his constitutional rights
25 including, but not limited to, the right to remain silent;

1 that any statement could be used against him in a court of
2 law, the right to have a lawyer present; that if he cannot
3 afford a lawyer a lawyer would be appointed to him to
4 represent him without any cost, and that he could stop
5 making a statement at any time.

6 You must carefully consider all of the surrounding
7 circumstances before you give any weight to an alleged
8 statement. The State has the burden of proving beyond a
9 reasonable doubt that the alleged statement was
10 voluntarily. If you determine that it was you may give
11 the statement any further consideration that you deem
12 proper. You must decide what weight if any should be
13 given to the alleged statement. If you've determined that
14 the alleged statement was not the freely and voluntary
15 statement of the Defendant you should not consider the
16 statement at all.

17 During this trial you have heard testimony from a
18 child. Where a witness is a child you must determine, as
19 with any witness, whether that testimony is believable.
20 In deciding believability you may consider not only
21 matters that I have already discussed with you, but you
22 may also consider the age of the child, the child's
23 ability to observe and remember facts, the child's ability
24 to understand and answer questions.

25 Because young children may not fully understand what

1 is happening here it is up to you to decide whether the
2 child understood the seriousness of appearing as a witness
3 at this criminal trial. Whether the child understood the
4 questions, whether the child has a good memory and whether
5 the child understands the difference between lying and
6 telling the truth.

7 In addition, young children may be influenced by the
8 way the questions are asked. It is up to you to decide
9 whether the child understood the questions that were asked
10 to him.

11 The Defendant is charged with murder. The State must
12 prove beyond a reasonable doubt that the Defendant killed
13 another person with malice aforethought. Malice is
14 hatred, ill will, or hostility towards another person. It
15 is the intentional doing of a wrongful act without just
16 cause or an excuse and with an intent to inflict an
17 injury, or under circumstances the law will infer an evil
18 intent.

19 Malice aforethought does not require that malice
20 exist for any particular time before the act is committed,
21 but malice must exist in the mind of the Defendant just
22 before and at the time of that act is committed.
23 Therefore, there must be a combination of the previous
24 evil intent in the act. Malice aforethought may be
25 expressed or inferred. These terms, 'express and

1 inferred' do not mean different kinds of malice but merely
2 the manner in which malice may be shown to exist; that is
3 either be direct evidence or by inference from the facts
4 and circumstances which are proved.

5 Express malice is shown when a person speaks words,
6 which express hatred, or ill will for another or when the
7 person prepared beforehand to do the act which was later
8 accomplished; for example, lying in wait for a person or
9 any other acts of preparation going to show that a deed
10 was within the Defendant's mind, would be express malice.

11 Malice may be inferred by conduct showing a total
12 disregard for human life. If you find that the State has
13 failed to prove beyond a reasonable doubt that the
14 Defendant committed murder you may consider whether the
15 State has proved beyond a reasonable doubt that the
16 Defendant committed involuntary manslaughter.

17 To prove involuntary manslaughter the State must
18 prove beyond a reasonable doubt that the Defendant
19 unintentionally killed the victim without malice but while
20 engaged in an unlawful activity not naturally tending to
21 cause death or great bodily harm, or that the Defendant
22 unintentionally killed the victim without malice while
23 engaged in a lawful activity with reckless disregard for
24 the safety of others.

25 Unintentional means that the Defendant did not intend

1 for anyone to killed or seriously injured. Reckless
2 disregard for the safety of others is more than mere
3 negligence or carelessness. Mere negligence or
4 carelessness is the failure to use the care that a person
5 of ordinary reason would use under the same circumstances.

6 Recklessness is a conscious failure to use ordinary
7 care. Reckless disregard for the safety of others means
8 that you are not interested in the consequences of your
9 acts or the rights and safety of others. If a person who
10 knows or should know that ordinary care requires certain
11 precautions be taken for the safety of others when using a
12 dangerous instrumentality such as a gun or car and that
13 person fails to use those precautions without concern the
14 persons action are consider reckless.

15 The State must also prove beyond a reasonable doubt
16 that the Defendant's act was the proximate cause of death.
17 Proximate cause is the direct cause. It is the immediate
18 cause. It is the efficient cause. It is that cause
19 without which the Defendant or the victim would not have
20 resulted. There must be a chain of causation from the
21 time of the injury inflicted by the death of the Defendant
22 until the time of the victim's death. Proximate cause
23 does not necessarily mean that it occurred immediately
24 prior to death. There may be more than one proximate
25 cause.

1 The acts of two or more persons may combine together
2 to be a proximate cause of the death of a person. The
3 Defendant's act may be regarded as a proximate cause if it
4 is a contributing cause of the death of the victim. The
5 fact that other causes also contributed to the death of
6 the victim does not relieve the Defendant from
7 responsibility. The Defendant's acts need not be the sole
8 cause of the death, but must be a proximate cause
9 contributing to the death of the victim.

10 It is not a defense to show that the victim might
11 have recovered had he been treated according to the most
12 approved surgical or medical standards, or as a reasonably
13 prudent doctor would have treated in the case or even by
14 showing that the treatment was negligent. If, however,
15 the death was caused by you wound or the injury that the
16 victim had but was caused by the gross, erroneous,
17 willful, deliberate treatment the Defendant would not be
18 liable.

19 In other words, negligence on the part of someone
20 else would not relieve the Defendant from liability if the
21 injury was the proximate cause of the victim's death.
22 However, gross negligence or intentional activity on the
23 part of the practitioners would relieve the Defendant of
24 liability. The propriety of the medical procedures is an
25 integral question in determining causation. The violation

1 of the statute if it is the proximate cause of injury, is
2 evidence of recklessness.

3 A person commits the offense of assault and battery
4 of a high and aggravated nature if the person unlawfully
5 injures another person, and great bodily injury to another
6 person results, or the act is accomplished by means likely
7 to produce death or great bodily injury.

8 THE COURT: That is to the second indictment. Go
9 ahead.

10 LAW CLERK: Great bodily injury means bodily injury
11 which causes a substantial risk of death or which causes
12 serious permanent disfigurement, or protractive loss or
13 impairment of the function of the bodily member or organ.

14 A person commits the offense of assault and battery
15 in the first degree if the person unlawfully injures
16 another person, and the act either involves non-consensual
17 touching of the private parts of an adult either under or
18 above the clothing with lewd and lascivious intent, or
19 occurred during the commission of a robbery, burglary,
20 kidnapping, or theft.

21 Private part means the genital area or the buttocks
22 of a male or a female, or the breasts of a female. A
23 person may also commit the offense of assault and battery
24 in the first degree if the person unlawfully offers or
25 attempts to injure another person with the present ability

1 to do so, and the act either is accomplished by means
2 likely to produce death or great bodily injury, or
3 occurred during the commission of a robbery, burglary,
4 kidnapping or theft.

5 Great bodily injury means bodily injury which causes
6 a substantial risk of death or which causes serious
7 permanent disfigurement or protractive loss or impairment
8 of the function of a bodily member or organ.

9 A person commits the offense of assault and battery
10 in the second degree if the person unlawfully injures
11 another person, or offers, or attempts to injure a person
12 with the present ability to do so; and either moderate
13 bodily injury to another person results, or moderate
14 bodily injury to another person could have resulted. Or
15 the act involves the non-consensual touching of the
16 private parts of an adult either under or above the
17 clothing.

18 Moderate bodily injury means physical injury
19 requiring treatment to an organ system of the body other
20 than the skin; muscles and connective tissues of the body
21 except when there is penetration of the skin; muscles and
22 connective tissues that require surgical repair of a
23 complex nature or when treatment of the injuries requires
24 the use of regional or general anesthesia.

25 Private part means the genital area or buttocks of a

1 male or female, and the breast of a female. A person
2 commits the offense of assault and battery in the third
3 degree if the person unlawfully injures another person, or
4 offers, or attempts to injure another person with the
5 present ability to do so.

6 The Defendant is charged with pointing and presenting
7 a firearm. The State must prove beyond a reasonable doubt
8 that the Defendant presented or pointed at another person
9 a loaded or unloaded firearm.

10 The Defendant is charged with possession of a weapon
11 during the commission of or attempt to commit a violent
12 crime. The State must prove beyond a reasonable doubt
13 that the Defendant was in possession of a firearm or
14 physically displayed what appeared to be a firearm, during
15 the commission of a violent crime. A firearm means any
16 machine gun, automatic rifle, revolver, pistol, or any
17 weapon which will or is designed to or make readily
18 converted to expel a projectile.

19 In order to find the Defendant guilty of possession
20 of a weapon during the commission of a violent crime you
21 must first find the Defendant guilty of either committing
22 a violent crime or attempting to commit a violent crime.
23 Murder is a violent crime.

24 The State must prove beyond a reasonable doubt that
25 the weapon further advanced or helped in the commission of

1 the crime.

2 The Defendant has raised the defense of accident. An
3 act may be excused on the ground of accident if it is
4 shown that the act is unintentional; that the Defendant
5 was acting lawfully; and that reasonable care was used by
6 the Defendant in the handling of the weapon. For example,
7 if a person is lawfully armed in self-defense, and the gun
8 accidentally discharges the defense of accident would
9 apply.

10 The burden is on the State to prove beyond a
11 reasonable doubt that this act was not an accident, but
12 was caused by the negligence or carelessness on the part
13 of the Defendant in the handling of a dangerous
14 instrumentality or by unlawful activity by the Defendant.

15 A person who voluntarily becomes intoxicated is just
16 as responsible for the acts committed while intoxicated as
17 when a person is not intoxicated.

18 THE COURT: Foreman, please accept those additional
19 readings as coming from me and prepared by me. I have
20 also prepared for you a verdict form as to each
21 indictment, and that verdict form I will explain in detail
22 to you after summation of counsel. Basically, it has as
23 follows: It has a separate page for each indictment. As
24 an example, under indictment for murder, your verdict
25 would be either guilty or not guilty. Or with reference

1 to voluntary manslaughter either guilty or not guilty. Or
2 not guilty. The verdict form will have the charge and
3 will have the lesser includeds which you will determine as
4 finders of the facts in this case.

5 I will keep you fully advised of that at the
6 appropriate time. I'm going to let you go to the jury
7 room just a moment, and I'll be calling you back. And I
8 want to thank my law clerk for reading the last part of my
9 instructions of the law. My throat was getting a little
10 bad. Please go to your jury room.

11 (WHEREUPON, the jury panel was excused from the
12 courtroom at 3:37 p.m.)

13 THE COURT: With the regards to the State, are there
14 any exceptions or additions to the charge as stated?

15 MS. JOHNSON LEE: None from the State.

16 THE COURT: What says the Defendant?

17 MR. SHAFFER: None. I'd like to preserve my previous
18 arguments.

19 THE COURT: And that is as to circumstantial
20 evidence?

21 MR. SHAFFER: Yes, Your Honor. Thank you.

22 THE COURT: All right, then, the charge will stand as
23 given. Let the jury rest a few minutes to call them back.
24 Then, of course, the Defendant, not choosing to put up any
25 testimony, is entitled to the last argument.



Tristan Shaffer <tristan.m.shaffer@gmail.com>

King Redactions

1 message

Tristan Shaffer <tristan.m.shaffer@gmail.com> Tue, Sep 11, 2012 at 12:09 AM
 To: Mary Thomas Johnson Lee <mtjlee@solicitor4.com>, "Cottingham, Edward Law Clerk (Trey Jones)" <ecottinghamlc@sccourts.org>, Mia David <MiaDavid@solicitor4.com>, "kernardredmond@solicitor4.com" <Kernardredmond@solicitor4.com>

All,

The following is my recollection of what we are excluding. I have also listed a few of the objects I made. I would ask that the State review the redactions to see if I am correct. All times are based on the video date stamp.

To be Redacted

Previous murder charge 4:28:52 -- 4:29:04
 Previous murder charge and Mccoll charge 4:32:20 -- 4:34:04
 Previous murder charge 4:40:44 -- 4:41:14
 Mccoll charge 4:41:40 -- 4:42:36
 Stabbing 5:13:30 -- 5:14:03

Not Granted but Objected to (This is not an exclusive list)

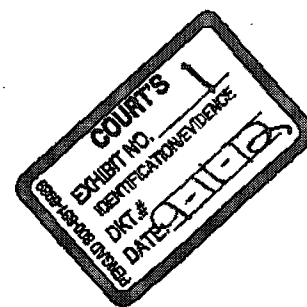
Mentions a lawyer on another charge 4:31:40 (Rules 404b 403)
 Prior Stabbing 4:34:04 -- 4:34:10 (Rule 401)
 Statemment "fuck the police" and "I am a criminal" 4:46:06 -- 4:47:07 (Rules 404b and 403)
 Aloyisious is same as previous charge 4:59:18 -- 4:59:24 and 5:01:13 -- 5:01:25
 Prior stabbing 5:10:50 (401)
 Prior Murder and Kidnapping Charge 5:08:09 -- 5:08:10

Times where he said he shot a gun or carried a gun

4:30:05
 4:36:11
 4:44:31
 5:06:48
 5:10:55

A CERTIFIED
 TRUE COPY
 William B. Zundunburg
 CLERK OF COURT
 MARLBORO COUNTY

Tristan M. Shaffer



Clerk's Office
843-479-5613
1-800-603-7179

Family Court Division
843-479-5616
Fax 843-479-5640

William B. Hunderbark

Clerk of Court, Marlboro County
Courthouse Square, 105 Main Street
P.O. Drawer 996
Bennettsville, S.C. 29512

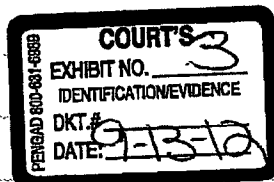
Definitions of

Assault and Battery
of a High And Aggravated
Nature

First

Second

Third



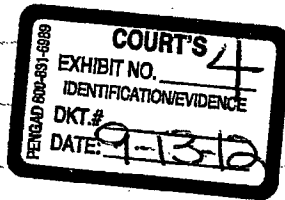
Clerk's Office
843-479-5613
1-800-603-7179

Family Court Division
843-479-5616
Fax 843-479-5640

William B. Funderburk

Clerk of Court, Marlboro County
Courthouse Square, 105 Main Street
P.O. Drawer 996
Bennettsville, S.C. 29512

Can we have a definition of
involuntary manslaughter and
murder?





Patient: GALLOWAY, JAMES
Med Rec: GALLJAMES
DOB: 10/11/1962
Male Race: Black
ACCESSION: FA-11-00693
Date Received: 11/12/2011
Date Collected: 11/12/2011

Page: 1 of 7

**F o r e n s i c A u t o p s y F i n a l
R e p o r t**

Autopsy Information

Date of Death: 11/11/11 Time: 3:41 a.m.
Date of Autopsy: 11/12/11 Time: 9:00 a.m.
County: Marlboro
Coroner: Timothy E. Brown
Attending Pathologist: Nicholas I. Batalis, MD
Pathologist Assistant: Eowyn Corcraan
Autopsy Technician: Brent Grimbail
Prosecutor(s): Nicholas I. Batalis, MD

(If Injury) How occurred: Shot by somebody
Date of Injury: 11/11/11 Time: 2:30 a.m.
Place of Injury: Private residence At Work: No

Cause of Death

Gunshot wound of the face

Manner of Death

Homicide

CASE HISTORY

According to the Marlboro County Coroner, Mr. Tim Brown, the decedent is a 49 year-old black male who was shot, possibly during an altercation, at approximately 2:30 a.m. on 11/11/2011. Authorities were notified and the decedent was transferred to Marlboro Park Hospital where death was pronounced at 3:49 a.m.

GROSS DESCRIPTION

EXTERNAL EXAMINATION

Department of Pathology and Laboratory Medicine
Forensic Pathology

Chair: Janice M. Lage, M.D. Director: S. Erlin Presnell, M.D.

Forensic Pathology Phone: 843-792-3500

Forensic Pathology Fax: 843-792-3537

This is a true and accurate copy of the original.

MAXINE T. ROBINSON
NOTARY PUBLIC
SOUTH CAROLINA

MY COMMISSION EXPIRES APRIL 29, 2014

Patient: GALLOWAY, JAMES
Med Rec: GALLJAMES
DOB: 10/11/1962
Male Race: Black
ACCESSION: FA-11-00693
Date Received: 11/12/2011
Date Collected: 11/12/2011

Page: 2 of 7

F o r e n s i c A u t o p s y F i n a l
R e p o r t

The body is identified by a tag around the left great toe. Photographs are taken. A radiograph of the head and neck is taken.

The body is received nude. A yellow metal ring is around the left fourth finger. Clothing received separately in a plastic bag includes a black belt, previously cut blue jeans, previously cut white underwear, one hundred and forty-seven dollars in cash, two keychains with keys, and a paper with NFL games. All items are retained and submitted to the coroner's office.

The body is that of a normally developed, adult black male, which appears consistent with the stated age of 49 years. When nude, the body measures 74 inches in length and weighs 205 pounds. There is good preservation in the absence of embalming. Rigor mortis is fully fixed and dark lividity is mostly fixed on the posterior surfaces. The body is cool subsequent to refrigeration.

The scalp hair is balding, thin, and black. The decedent has a black-gray beard and mustache. The irides appear brown and there are no petechiae of the bulbar or palpebral surfaces of the conjunctivae. The corneae are cloudy. The ears, nose, and lips are unremarkable. The mouth has natural dentition in fair condition. The neck is without masses or unusual mobility. The chest and back are normally developed. The abdomen is flat. The extremities are symmetric. The external genitalia are those of an uncircumcised adult male.

IDENTIFYING MARKS AND SCARS

A 4 inch diagonal scar is on the right side of the abdomen. A 3 inch linear scar is on the right elbow. Nonspecific scars up to $\frac{3}{4}$ inch are on the trunk and extremities. A 2 inch, hypopigmented patch is on the left foot. Spotty areas of hypopigmentation up to $\frac{1}{2}$ inch are on the trunk and extremities.

EVIDENCE OF TREATMENT

EKG pads are on the trunk. An endotracheal tube extends into the mouth and is secured with a strap around the neck. A pacemaker is implanted in the left side of the chest with the leads appropriately attached in the heart.

Department of Pathology and Laboratory Medicine
Forensic Pathology

Chair: Janice M. Lage, M.D.

Director: S. Erin Presnell, M.D.

Forensic Pathology Phone: 843-792-3500

Forensic Pathology Fax: 843-792-3537

Patient: GALLOWAY, JAMES
Med Rec: GALLJAMES
DOB: 10/11/1962
Male Race: Black
ACCESSION: FA-11-00693
Date Received: 11/12/2011
Date Collected: 11/12/2011

Page: 3 of 7

**F o r e n s i c A u t o p s y F i n a l
R e p o r t**

EVIDENCE OF INJURY

GUNSHOT WOUND OF THE FACE: A gunshot entrance wound is on the right side of the face, centered 1 ½ inches right of midline and 5 ½ inches below the top of the head. The circular entrance wound is 3/16 inch in diameter and has a circumferential marginal abrasion measuring up to 3/16 inch from the 12 – 7 o'clock positions. There is an area of probable stippling in a 1 ½ x 1 ½ inch distribution centered on the gunshot entrance wound. No soot is identified.

After perforating the skin and subcutaneous tissues of the right side of the face, the bullet sequentially perforates the facial bones, the hard palate, the upper left side of the larynx, the deep soft tissues and vasculature of the upper left side of the neck (carotid artery appears intact), and exits the skin of the left side of the neck (no projectile recovered).

An irregular, 3/8 x ¼ inch gunshot exit wound is centered on the left side of the neck, 7 inches below the top of the head 2 inches inferior and 2 inches posterior to the inferior attachment of the left external ear.

The pathway is from front to back, right to left, and slightly downward.

OTHER INJURIES:

A ¼ inch abrasion is on the brow between the eyes.

EVIDENCE SUBMITTED

The following items are collected, sealed within appropriately labeled containers, and submitted to Mr. Danny Gainer of the Marlboro County Coroner's Office:

- Clothing and personal effects
- Right and left fingernail clippings
- Pulled scalp hair
- Blood spot

INTERNAL EXAMINATION

Department of Pathology and Laboratory Medicine
Forensic Pathology

Chair: Janice M. Lage, M.D.

Director: S. Erin Presnell, M.D.

Forensic Pathology Phone: 843-792-3500

Forensic Pathology Fax: 843-792-3537

Patient: GALLOWAY, JAMES
Med Rec: GALLJAMES
DOB: 10/11/1962
Male Race: Black
ACCESSION: FA-11-00693
Date Received: 11/12/2011
Date Collected: 11/12/2011

Page: 4 of 7

**F o r e n s i c A u t o p s y F i n a l
R e p o r t**

BODY CAVITIES: The thoracic and abdominal organs are in their normal anatomic positions. The body cavities contain no abnormal collections of fluid. There are some focal anterior peritoneal adhesions and bilateral pleural adhesions.

HEAD: The brain weighs 1300 grams. The scalp, subscalpular area, and skull are unremarkable. The dura and dural sinuses are unremarkable. There are no epidural, subdural or subarachnoid hemorrhages. The leptomeninges are thin and delicate. The cerebral hemispheres are symmetrical, with an unremarkable gyral pattern. The cranial nerves and blood vessels are unremarkable. Sections through the cerebral hemispheres, brainstem, and cerebellum are unremarkable. There are no hemorrhages within the deep white matter or the basal ganglia. The cerebral ventricles contain no blood. The spinal cord as viewed from the cranial cavity is unremarkable.

NECK: See "EVIDENCE OF INJURY." The hyoid bone and laryngeal cartilages are intact. The lumen of the larynx is not obstructed. The lingual mucosa is intact and there is no hemorrhage within the underlying musculature.

CARDIOVASCULAR SYSTEM: The heart weighs 450 grams. The intimal surface of the abdominal aorta has mild fatty streaks. The aorta and its major branches and the great veins are normally distributed and unremarkable. The pulmonary arteries contain no thromboemboli. The pericardium, epicardium, and endocardium are smooth, glistening, and unremarkable. There are no thrombi in the atria or ventricles. Atherosclerotic plaque narrows the right coronary artery by 50% and the left circumflex artery by 30%. Additionally, there is a nearly occlusive brown thrombus within the left circumflex. The atrial and ventricular septa are intact. The aortic valve contains some calcifications; the other valves are unremarkable. The myocardium is dark red-brown and firm. The posterior aspect of the left ventricular free wall is thinned and white in color. Additionally, a white, glossy lesion up to 1 cm is in the lateral aspect of the left ventricle.

RESPIRATORY SYSTEM: The right and left lungs weigh 520 and 570 grams, respectively. The upper airway is not obstructed. The laryngeal mucosa is smooth and unremarkable, without petechiae. The pleural surfaces are smooth and glistening. The major bronchi are unremarkable. Sectioning of the lungs discloses a dark red-blue, moderately congested parenchyma with increased pulmonary edema.

Department of Pathology and Laboratory Medicine
Forensic Pathology

Chair: Janice M. Lage, M.D.

Director: S. Erin Presnell, M.D.

Forensic Pathology Phone: 843-792-3500

Forensic Pathology Fax: 843-792-3537

Patient: GALLOWAY, JAMES
Med Rec: GALLJAMES
DOB: 10/11/1962
Male Race: Black
ACCESSION: FA-11-00693
Date Received: 11/12/2011
Date Collected: 11/12/2011

Page: 5 of 7

**F o r e n s i c A u t o p s y F i n a l
R e p o r t**

HEPATOBIILIARY SYSTEM: The liver weighs 1960 grams. The liver is covered by a smooth, glistening capsule which covers a nodular, cirrhotic, hepatic parenchyma. The parenchyma is dark red-brown, firm and moderately congested. The gallbladder is not identified.

GASTROINTESTINAL SYSTEM: The esophageal mucosa is gray, smooth, and unremarkable. The stomach contains approximately 250 ml of partially digested food. There are no tablets or capsules. The gastric mucosa has normal rugal folds, and there are no ulcers. The small and large intestines are unremarkable. The appendix is present. The pancreas is unremarkable externally and upon sectioning.

GENITOURINARY SYSTEM: The right and left kidneys weigh 190 grams each. The capsules of both kidneys strip with ease to reveal granular and slightly lobulated surfaces. The cortices are pale and are of normal thickness, with well-demarcated corticomedullary junctions. A 1 cm simple cyst is in the right kidney. The calyces, pelves, and ureters are unremarkable. The urinary bladder contains approximately 10 ml of clear yellow urine. The mucosa is gray, smooth, and unremarkable. The prostate gland is unremarkable both externally and upon sectioning.

LYMPHORETICULAR SYSTEM: The spleen weighs 410 grams. The spleen is covered by a smooth, blue-gray, intact capsule with green-brown discoloration and an apparent fibrinous plaque. The parenchyma is dark red. The cervical, hilar, and peritoneal lymph nodes are not enlarged.

ENDOCRINE SYSTEM: The pituitary, thyroid, and adrenal glands are unremarkable externally and upon sectioning.

MUSCULOSKELETAL SYSTEM: The clavicles, ribs, sternum, pelvis, and vertebral column have no fractures. The diaphragm is intact.

NIB:saw
11/13/11
12/12/11

Nicholas Batalis, M.D./ MTR

Department of Pathology and Laboratory Medicine
Forensic Pathology

Chair: Janice M. Lage, M.D.

Director: S. Erin Presnell, M.D.

Forensic Pathology Phone: 843-792-3500

Forensic Pathology Fax: 843-792-3537

Patient: GALLOWAY, JAMES
Med Rec: GALLJAMES
DOB: 10/11/1962
Male Race: Black
ACCESSION: FA-11-00693
Date Received: 11/12/2011
Date Collected: 11/12/2011

Page: 6 of 7

**F o r e n s i c A u t o p s y F i n a l
R e p o r t**

CASE SUMMARY

A complete autopsy was performed on the body of James Galloway at the Medical University of South Carolina Autopsy Suite on 11/12/2011. The postmortem examination began at 9:00 a.m. The prosecutor was Dr. Nicholas I. Batalis. The autopsy technician was Mr. Brent Grimball. The autopsy was authorized by the Marlboro County Coroner, Mr. Timothy E. Brown.

Samples of peripheral blood were sent to NMS Laboratory for toxicology testing. Results are only positive for atropine, caffeine, and theobromine. Results were reviewed by William Brewer, Forensic Toxicologist.

In light of the history provided and the autopsy findings, it is my opinion that the decedent died as the result of a gunshot wound of the face. Furthermore, the manner of death is best deemed homicide.

FINAL DIAGNOSIS

1. Gunshot wound of the face
 - a. Entrance: Right side of the face
 - b. Range: Intermediate (1 ½ x 1 ½ inch area of stippling surrounding the entrance wound)
 - c. Injuries: Perforation of skin and subcutaneous tissues, facial bones, palate, and soft tissues and vasculature of the neck
 - d. Exit: Left side of the neck
 - e. Pathway: Front to back, right to left, and slightly downward
2. History that the decedent was shot by somebody

CERTIFICATION

I certify that I personally conducted the diagnostic evaluation of the above specimen(s) and have

Department of Pathology and Laboratory Medicine
Forensic Pathology

Chair: Janice M. Lage, M.D.

Director: S. Erin Presnell, M.D.

Forensic Pathology Phone: 843-792-3500

Forensic Pathology Fax: 843-792-3537

Record Page 338 of 361

Patient: GALLOWAY, JAMES
Med Rec: GALLJAMES
DOB: 10/11/1962
Male Race: Black
ACCESSION: FA-11-00693
Date Received: 11/12/2011
Date Collected: 11/12/2011

Page: 7 of 7

F o r e n s i c A u t o p s y F i n a l
R e p o r t

rendered the above diagnosis(es).

Nicholas Batalis, M.D.
(Electronically signed by)
Verified: 12/13/2011 01:27
NB /MTR

Department of Pathology and Laboratory Medicine
Forensic Pathology

Chair: Janice M. Lage, M.D.

Director: S. Erin Presnell, M.D.

Forensic Pathology Phone: 843-792-3500

Forensic Pathology Fax: 843-792-3537

Record Page 339 of 361

FORENSIC AUTOPSY PRELIMINARY REPORT

Date: November 14, 2011

To: Timothy E. Brown
Marlboro County Coroner

Fax Number: 843-454-9326

RE: James Galloway

Number of pages (including fax cover sheet) **2**

From: Maxine T. Robinson
Forensic Operations Coordinator
MUSC, Forensic Autopsy Section
Department of Pathology & Laboratory Medicine
Rm. 281 Main Hospital

The documents accompanying this facsimile contain **CONFIDENTIAL** information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or an employee responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, distribution or copying of this communication is strictly prohibited. If you received this communication in error, please notify Maxine immediately at 843-792-3500. Thank you.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

James Campbell
Marlboro County Sheriff's Department
P.O. Box 577
Bennettsville, SC 29512

LATENT PRINTS
June 22, 2012
SLED LAB: L11-12934
Your Case No: 2011007239
Incident Date: 11/11/2011
[V-Deceased] James Galloway
[S] Tyrone King

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

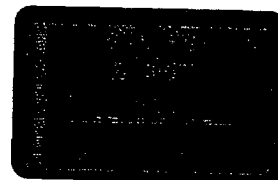
Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 3 One cartridge case collected from Marker 1.

RESULTS:

No fingerprint evidence was developed.



Item: 4 One cartridge case collected from Marker 2.

RESULTS:

No fingerprint evidence was developed.

Item: 7 One liquor bottle "Burnett's" half full collected from 422 Oriole Ln in the backyard Marker 8 on side of Chevy truck.

RESULTS:

NO VALUE for identification



Item: 8 One grey cordless phone collected from 422 Oriole Ln on side of Chevy truck Marker 7.

RESULTS:

NO VALUE for identification

Item: 9 One cordless phone battery collected from 422 Oriole Ln under the Chevy truck.

RESULTS:

NO VALUE for identification

Item: 10 One .9mm Highpoint handgun with a magazine Marker 9 located in woods behind 414 Oriole LN, SN P1473630.

RESULTS:

No fingerprint evidence was developed.

Item: 11 One .9mm unfired cartridge "Luger R-P" from magazine.

RESULTS:

No fingerprint evidence was developed.

Item: 12 One .9mm unfired cartridge "Luger R-P" from magazine.

RESULTS:

No fingerprint evidence was developed.

Item: 13 One .9mm unfired cartridge "Luger R-P" from magazine.

RESULTS:

No fingerprint evidence was developed.

Item: 14 One .9mm unfired cartridge "Luger R-P" from magazine.

RESULTS:

No fingerprint evidence was developed.



Item: 15 One .9mm unfired cartridge "Luger R-P" from magazine.

RESULTS:

No fingerprint evidence was developed.

Item: 16 One .9mm unfired cartridge "Luger R-P" from magazine.

RESULTS:

No fingerprint evidence was developed.

Item: 23 One cordless phone back collected from the floor of victim's home in the entrance to the kitchen.

RESULTS:

NO VALUE for identification

Andrena J. Belton
Andrena J. Belton
Forensic Scientist



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

Case No. 2012-GS-34-0024, 0026, 0028

The State,

Respondent,

v.

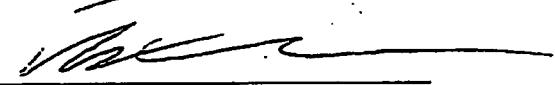
Tyrone J. King,

Appellant.

NOTICE OF APPEAL

Tyrone J. King appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Edward B. Cottingham on September 13, 2012. This appeal is taken from the order of the Honorable Edward B. Cottingham, dated November 12, 2012, which denied appellant's motion for a new trial. Appellant received written notice of entry of this order on November 15, 2012.

November 15, 2012


Tristan Shaffer
1928 Barnwell Street
Columbia, South Carolina 29201
(803) 771-0042
Attorney for Appellant

Other Counsel of Record:
Mia David
Assistant Solicitor
Post Office Box 616
Bennettsville, South Carolina 29512
(843) 479-6519
Attorney for Respondent

RECEIVED

NOV 19 2012

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

Case No. 2012-GS-34-0024, 0026, 0028

The State,

Respondent,

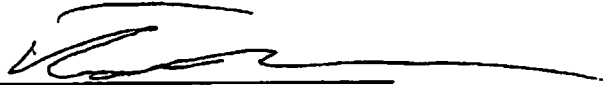
v.

Tyrone J. King,

Appellant.

Certificate of Service

The undersigned attorney hereby certifies that on November 15, 2012 the notice of appeal was served in the above referenced case upon the Attorney for the State, Mia David, via mail, at P.O. Box 616 Bennettsville, South Carolina 29512


Tristan Shaffer
1928 Barnwell Street
Columbia, South Carolina 29201
(803) 771-0042
Attorney for Appellant

RECEIVED

NOV 19 2012

SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF MARLBORO

) IN THE COURT OF GENERAL SESSIONS
) FOR THE FOURTH JUDICIAL CIRCUIT

)
) Indictments: 2012-GS-34-024; 2012-GS-34-
) 025; 2012-GS-34-026; 2012-GS-34-028; 2012-
) GS-34-029

STATE OF SOUTH CAROLINA,

) DEFENDANT'S MOTION FOR
) A NEW TRIAL

vs.

TYRONE KING,

Defendant.

Defendant, Tyrone King, through his attorney, Tristan M. Shaffer, respectfully requests this Court grant him a new trial. Defendant avers that he is entitled to a new trial based on the objections raised during trial and the following additional grounds:

I. Juror Covington's intentional failure to disclose information concerning her relationship with Defendant's common law wife, Shakera Liles.

Relevant Facts

The jury for Defendants trial was selected on September 10, 2012. Natasha Covington was part of the pool of potential jurors. At that time, Defendant common law wife, Shakera Liles, was listed as a potential witness for Defendant. Prior to picking the jury, the Court asked the jury pool if any person knew Shakera Liles – there was no response from any potential juror. Natasha Covington was picked as a Juror for Defendant's case.

A CERTIFIED
TRUE COPY

William B. Zundun

CLERK OF COURT
MARLBORO COUNTY

¹ During the trial Defendant's Counsel mistakenly referred to Ms. Lyles as defendant's girlfriend.

After court on September 11, 2012, Mr. Shaffer was speaking to Ms. Liles on the telephone. Ms. Liles informed Counsel that one of her cousins, Juror Covington, was on the jury panel. Ms. Liles informed Mr. Shaffer that she and Ms. Liles had a history of animosity.

On September 12, 2012, while in chambers, Mr. Shaffer notified the Court and Mr. Redmond of the potential problem with the Juror Covington². The Court found that it was not necessary to excuse Juror Covington or question her on the record. Mr. Shaffer failed to address this issue on the record.

Argument

"The trial court must grant a motion for a new trial based on a juror's failure to disclose information requested during voir dire 'when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges'" *State v. Miller*, 398 S.C. 47, 50, 727 S.E.2d 32, 34 (Ct. App. 2012) (citing *State v. Woods*, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001)).

Prior to picking the jury, the Court asked all potential jurors if they were related to Ms. Liles either by blood or marriage. Juror Covington did not respond to that question. Clearly she intentionally concealed³ this information.

Knowing that Juror Covington was Ms. Liles cousin would have been material factor in deciding how to use his jury strikes. See *Miller*, 398 S.C. at 50, 727 S.E.2d at 24 ("Material means of such a nature that knowledge of the item would affect a person's decision-making ...") *Miller*, 398 S.C. at 50, 727 S.E.2d at 24) (quoting *Black's Law Dictionary* 1066 (9th ed. 2009)).

² At the time Counsel raised this objection he did not remember Juror Covington's name.

³ Should this Court deem that a hearing is necessary for this factor, Defendant would request a hearing and additional investigative funds to look into this matter.

Shakera Liles is Defendant's common law wife and the mother of his two children. Knowing that Juror Covington was related to Ms. Liles certainly would have been material in deciding how to use his strikes. Additionally, had Mr. Shaffer known about the relationship he would have consulted with Ms. Liles⁴ prior to deciding how to use Defendant's peremptory strikes. Moreover, Defendant was aware that he was not liked by several member of Ms. Liles family and would not have wanted any unknown relative of Ms. Liles on the jury.

Therefore, Defendant is entitled to a new trial based on Juror Covington's intentional concealment of her relationship with Shakera Liles.

II. The State's incorrect assertions concerning their ability to redact Defendant's video statement.

Relevant Facts

On the morning of the shooting, Defendant gave a video statement to the police. The video was taken using the Liberty Police Interview Recorder⁵. In that statement Defendant alleged that Aloysius McLaughlin⁶ was the shooter. During the video, Defendant makes numerous references to past and pending charges, including the following:

"Investigator: Well, that's what I am saying. I mean if you didn't do it, I mean why didn't you just go out in the front yard, give the gun to the police and say hey, man, Aloysius just ran out the back door?"

King: They didn't give me a god damn chance. Man she steady screaming about my god damn -- I already got -- I already got -- I already got a murder

⁴ Ms. Liles was in the courthouse during jury selection.

⁵ See Attachment A. Available at http://www.libertyrecording.com/LIR_main.htm (last viewed 9/24/12).

⁶ McLaughlin is an alleged victim in Defendant's pending armed robbery and kidnapping charge.

FILED

2012 SEP 25 PM 2:15

CLERK
COURT

kidnapping charge on my record. She didn't see shit – she was in a room.”

Located at 5:08:08 – 5:08:27⁷

And

“Investigator: Who is that?

King: Aloysius, Same dude that I rubbed, me and him got back on good terms.

Investigator: Aloysius

King: From McColl, that one – same dude that signed a warrant on me back in February. Me and him back on good terms.” Located at 5:01:12 – 5:01:26⁸

During a pretrial hearing, Defendant moved for numerous sections of the video to be redacted pursuant to Rules 401, 403, 404(b), Defendant's constitutional right to due process, and Defendant's constitutional right to equal protection.

The Court suggested that Marlboro County was ill-equipped or otherwise unable to redact the shorter sections of video. The State informed the Court that Liberty Police Interview Recorder System is specifically designed where the files cannot be redacted.

The Court ruled that several sections should not be played for the jury including a section between approximately 5:13:30 and 5:14:03. Prior to trial the Court made all rulings concerning the videos final rulings for the record.

⁷ All times given in this motion correspond to the date stamp on the video.

During trial, the State decided to begin the video when Miranda warnings were read at approximately 4:45:30. The jury watched the entire video from approximately 4:45:30 until 5:13:30 and then 5:14:03. The video was watched on a large screen TV that received a signal from a laptop computer which was using the Liberty Interview Player program. The above transcribed portions of the video were heard⁹ by the jury while the video was played.

After the trial had concluded, Mr. Shaffer researched whether the Liberty Police Interview Recording System truly did not allow for redactions. Mr. Shaffer began by calling the Liberty Recording help line. In less than 3 Minutes, a representative of Liberty Recording told Mr. Shaffer how the *free* downloadable Liberty Interview Player allows the user to redact portions of the video in one-second intervals. This feature is also easily discoverable in the help section of the program by merely searching the term "redact." See Attachment B.

Defendant is entitled to a new trial based on the incorrect assertions from the State concerning their ability to redact the video. The State argued that it was unable to redact the video because the program was specifically designed to prevent redaction. Clearly, this was incorrect. Therefore, Defendant asserts that he is entitled to a new trial based on the objections made at trial concerning the redaction of the video.

III. Burden-shifting instructions given by the Solicitor during closing arguments.

During State's closing argument, Assistant solicitor Mia David argued an incorrect statement of what reasonable doubt is. Essentially¹⁰, she stated that "reasonable" means what a normal person would think, and that since the jury is full of normal people if the jurors do not

⁸ Should the State object to this transcription of these sections, Defendant request that the move for an official transcription of these sections be made by a certified court reporter.

⁹ During trial, Mr. Shaffer conceded that several parts of the video were unclear. However, Mr. Shaffer submits that Defendant's statements between 5:01:12 – 5:01:26 as well as 5:08:08 – 5:08:27 are audible.

¹⁰ At this time Defendant does not have a transcript of the trial.

2012 OCT 5
FILED

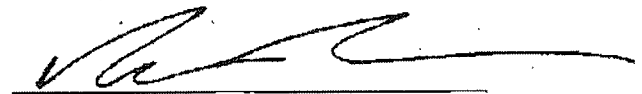
think Defendant is not guilty they should find him not guilty. However if the jury thinks Defendant is guilty then they should find him guilty.

Defendant avers that the description of reasonable doubt used by the Solicitor was confusing and burden-shifting. This argument left the jury open to convict Defendant even if they thought or merely suspected he was guilty. *See State v. Liberte*, 336 S.C. 648, 521 S.E.2d 744 (Cl. App, 1999).

CONCLUSION

Based on the Foregoing arguments and the arguments issues raised during trial, Defendant respectfully request this Court grant him a new trial

RESPECTFULLY SUBMITTED,



Tristan Michael Shaffer
Attorney for Defendant

sept. 24 2012

FILED
2012 SEP 26 PM 2 15
CLERK OF COURT
S.C.

ATTACHMENT A

FILED
2012 SEP 26 PM 2:46
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

All solutions are
developed, marketed
and sold by
High Criteria Inc.

Liberty Police Interview Recorder

Digital Audio / Video Police Interview Recorder



The Liberty Police Interview Recorder is a simple, easy to use recording system that captures interview and interrogation audio, video and notes for police, law enforcement services and other government agencies.

The program uses standard VHS-like Start, Stop and Record buttons. The recorded material is saved into a single file on the recording system hard-drive. Optionally, the file may be automatically and simultaneously recorded to a secure file server and saved onto a CD/DVD. The recordings can later be transcribed or provided to other agencies in a universal playback format.

The recorded notes serve as "bookmarks" or cue points into the recording file. The notes may later be searched to find and identify recordings files. They also eliminate the need to fast-forward or rewind through large recording files.

Application Related Links

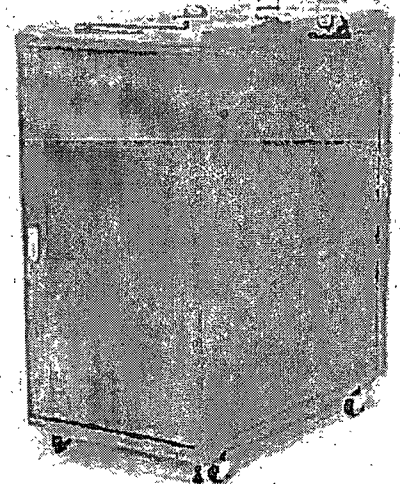
[Download Liberty Interview Player \(available at no-cost\)](#)
[Download Liberty Interview Player for Mac 10.6 or later](#)
[Specification Sheet for Liberty Interview Recorder](#)
 (right click and select "Save Target As" to download and save spec. sheet)
[DVR-DVD and Audio File Conversion Program](#)
[Liberty Feature Details and Knowledge Base](#)



"The Liberty Police Interview Recorder allows police and other agencies to capture interview recordings and document interviews and interrogations."

Just some of the features and benefits of the Liberty Police Interview Recorder include:

- Real-time audio and video display for concurrent monitoring.
- Dual Camera Recording captures dual video feeds from the same interview room. [Follow this link for further information on the dual recording capability of the LIR system.](#)
- Configuration options include recording multiple interview rooms onto a single PC saving money and space on PC hardware.
- Recordings saved into universal formats such as .pdf and .wmv for distribution to other agencies, eliminating the need for the download of proprietary playback programs.
- Custom watermark plus time and date stamp imbedded onto every recording frame.
- Remote monitor capabilities through a standard LAN network.
- Optional remote "start-recording" facility with either a hardware switch, or through a remote control program.
- Recording LED that may be installed into the interview room to confirm that recording is active.
- Optional "case information" prompt so that each interview is documented with a consistent set of information.
- Instantaneous playback cueing; no more delay while waiting for fast-forward or rewind functions.
- Playback program specifically designed for transcription including foot-pedal support.
- Automatic Gain Control and Noise Reduction facilities for the clearest possible audio playback.
- Mute button provides continuous video recording with muted audio.
- Recordings saved in a digital format that may be copied onto any standard Windows supported media including external hard-drives, memory sticks and LIR systems are available that support



Record Page 353 of 361

CD/DVDs.

- Optional ability to automatically save the recording files to a central file server.
- Search facility matches on any text entered into the associated file notes.
- Eliminate bulky tapes and one-off DVDs that are difficult to copy, save and manage over extended periods of time.
- No more lost DVDs or broken VHS tapes.
- Non-proprietary, open source compression formats.
- Configurable frame rates and video resolutions.
- Industry standard off-the-shelf Windows PC components that may be serviced by any IT professional.
- Optional touch-screen support with over-size push-button controls for all recording functions.

multiple recording rooms on one PC as well as multi-PC configurations supporting numerous rooms. An example of a rack configuration for multiple PCs is shown above.

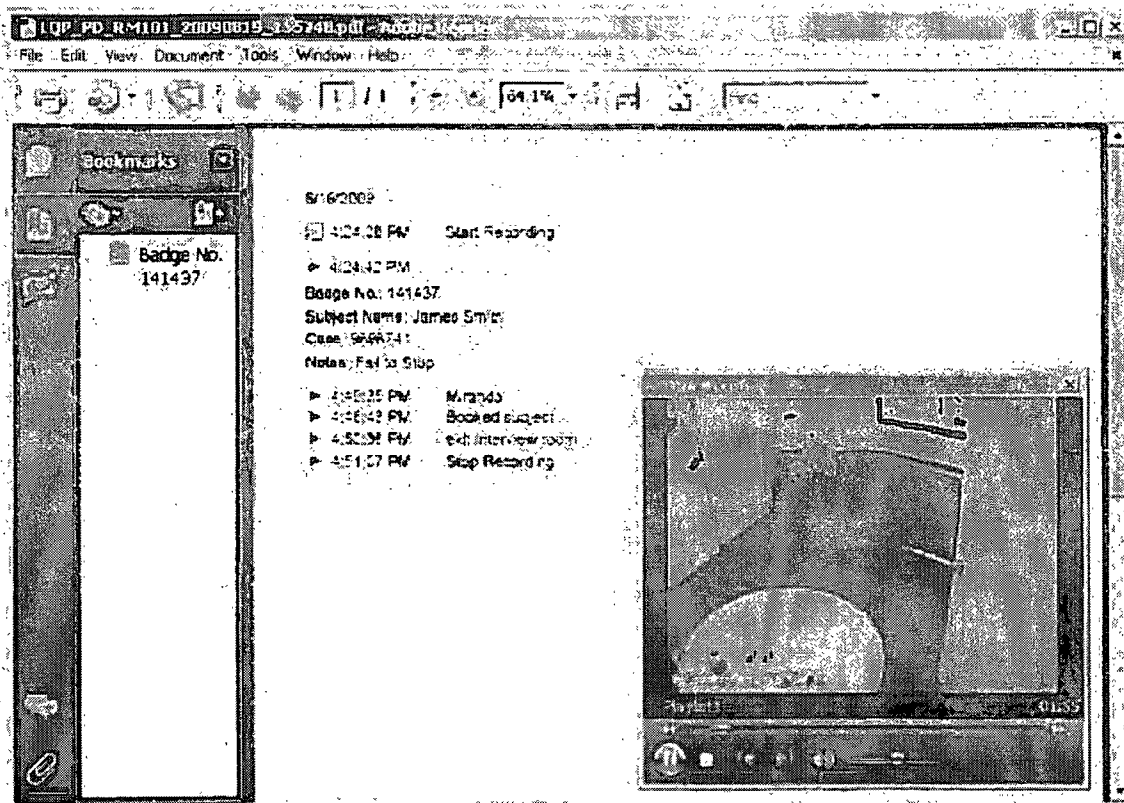
Supports Implementations of All Sizes and Complexities

The Liberty system provides the ideal recording solution for both large and small police organizations. The system has been selected and implemented in large police organizations with over 1,000 badged officers supporting civil populations of over 1 million people. Alternatively, the system has also been selected by smaller police organizations with only a single interview / interrogation room.

In the case of a large police organization, the Liberty Interview System can be supplied with a browser interface facility that links the user to a database of the recording files. The browser interface provides search and retrieve facilities that in turn provides the force with quick access to all of their recording files through a central web interface.

For smaller police organizations, the recorder may be installed onto a single computer to record a single interview room. In such a case, a local search and retrieval program may be used to find files and a database is not generally required.

Save Audio / Video Recordings into standard PDF Files with Cue Points and Annotations



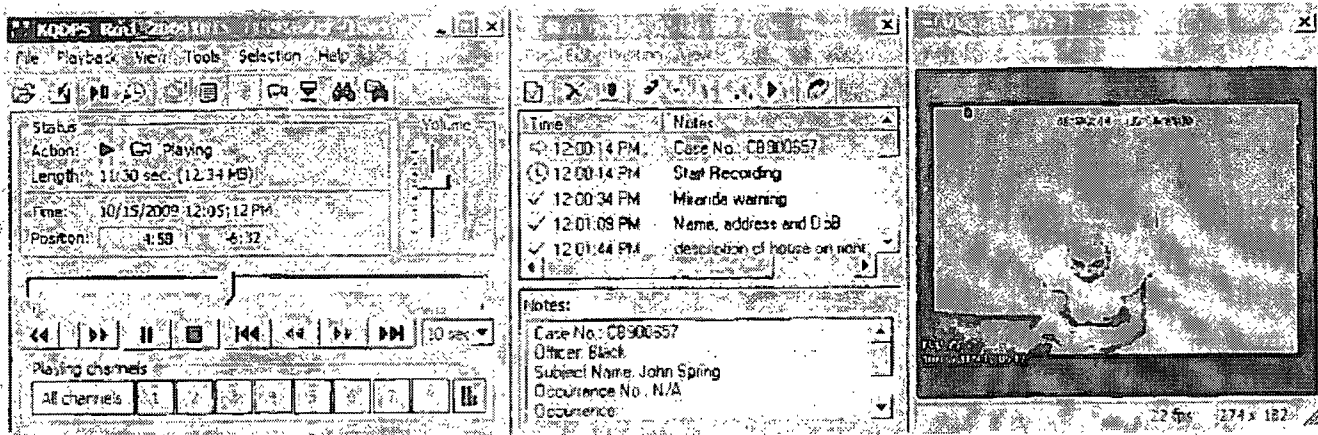
Audio / Video recordings may be saved into standard .pdf documents. Annotations can provide cue points into the recordings and playback is facilitated through Windows Media Player. A proprietary playback program is not required.

Bookmarks provide multiple cue points to where the operator may instantaneously jump the audio / video playback.

The Liberty Interview Recorder integrates with the Liberty Evidence Management System and the Post Recording Manager for a complete and secure file management system.

The Liberty Interview Player

The Liberty Interview Player provides playback facilities for your captured audio files. The Liberty Interview Player is available as a no cost download from the link below. The Player lets you select and listen to individual channels in a recording or a mix of several or all of the channels. The Player runs on any PC with Windows 98 or later that has standard audio capabilities. An optional foot pedal for controlling playback is available, please contact High Criteria for details.



Download the Liberty Interview Player Program

The Liberty Player is a no-cost program that may be downloaded from the following link: [Liberty Interview Player V2.5](#) for the Microsoft install file (4.68MB).

After you have downloaded and installed the Liberty Player, you may wish to review the [Knowledge Base](#) to review how to configure and use the program.

Liberty Interview Player for Mac OS 10.6 and Later

The Liberty Interview Player for Mac OS 10.6 or later provides audio playback facilities for your Liberty Interview recording files on a Mac OS 10.6 or later computer. The Liberty Interview Player is available as a no cost download from the link below. An optional foot pedal for controlling playback is available, please contact High Criteria for details.

The Liberty Interview Player for Mac is a no-cost program that may be downloaded from the following link: [Liberty Police Interview Player for Mac](#).

2DCR Conversion Program

The 2DCR Conversion Program allows users to convert standard DVR-DVDs, mp3 files and wav files into standard .dcr format files. As the files are converted, the user can add standard case information into the meta-data fields for the file. Adding this meta-data allows the file to be searched, just like other files created by the Liberty Recording system.

Further details can be found on [this webpage](#) for the 2DCR Conversion Program.

Contact High Criteria for more Information

The Liberty Interview Recorder is available through dealers located across the United States and directly from High Criteria Inc. Please contact High Criteria at 905-886-7771 for further details.

Home
Site Map

Contact and Corporate Information
Customer Support

Copyright © High Criteria Inc. 2005-2012. All Rights Reserved.

Copyright Information
Corporate Policies

FILED
2012 SEP 26 PM 2 15
CLERK OF COURT
S.C.

ATTACHMENT B

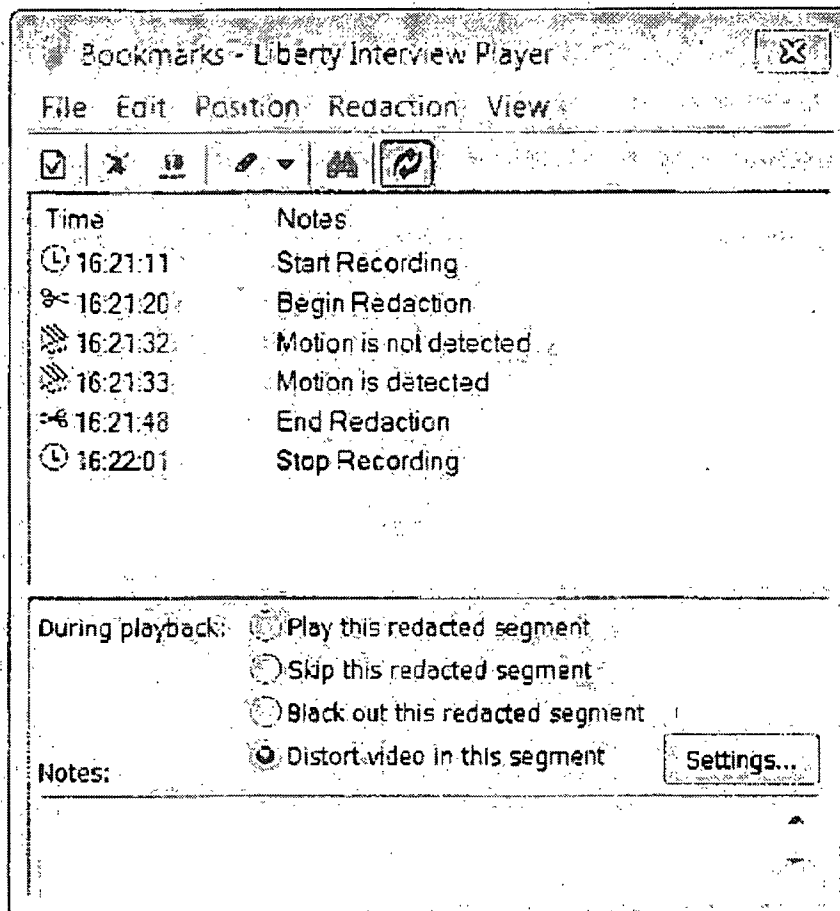
6-6-2016 11:21 AM
CLERK OF COURT
U.S.C.

Using Redaction

[Top](#) [Previous](#) [Next](#)

Liberty Interview Player allows you to use the redaction feature so that redacted segments can be played, skipped over or blacked out during playback. Redacted segments can also be distorted. For example, you may want to exclude a particular comment made by a witness during an interview or distort the video so that the person being recorded cannot be visually recognized when playing back the interview in a room. You can also choose similar options for handling redacted segments in a file when the file is exported.

A redacted segment appears in the Bookmarks window with "Begin Redaction" and "End Redaction" bookmarks, as shown below.



You can set the default behavior of new redacted segments as a configuration option.

Creating a Redacted Segment

To create a redacted segment:

1. Use the Selection Panel to select the segment of the recording you want to redact.
2. From the Redaction menu on the Bookmarks window, click **New Redaction**.
3. In the **During playback** section, choose the behavior of the redacted segment when the file is being played back.
4. Optionally, you can add comments in the **Notes** field.

Distorting a Redacted Segment

When you create a redacted segment, choose "Distort video in this segment" as the playback option.

By default, the entire frame is distorted. To adjust the region being distorted, you can take the following steps:

1. If the Video Preview window is not displayed, from the **View** menu, click **Video Window** to open it.
2. In the Bookmarks window, select the "Begin Redaction" bookmark for the distorted segment.
3. Start to play the file.
4. Click the **Settings** button which will cause playback to pause.
5. In the Video Preview window, click and hold your mouse down, and then drag your mouse to adjust the area to be distorted. Alternatively, you can use the drop-down lists in the "Region" section to adjust the settings and monitor the

FILED
 2012 SEP 26 PM 2:15
 WILLIAM D. FULLERTON
 CLERK OF COURT
 NORTHERN DISTRICT OF CALIF.

corresponding area in the Video Preview window.

6. Optionally, you can click the **Start Distortion Test** button to display the area being distorted. You can then adjust the region being distorted using your mouse or the drop-down lists.

7. Once you are finished, click **OK** to continue playback.

Deleting a Redacted Segment

To delete a redacted segment:

1. Select either the "Begin Redaction" or "End Redaction" bookmark for the segment.
2. From the Redaction menu, click **Delete**.

This doesn't remove any data from the file. It simply changes a segment so that it is no longer redacted.

Repositioning a Redacted Segment

To reposition a redacted segment:

1. Use the Selection Panel to highlight the new starting and/or ending points.
2. Click either the "Begin Redaction" or "End Redaction" bookmark for the redacted segment you want to reposition.
3. From the Redaction menu, click **Reposition**.

Selecting Part of the Recording Based on a Redacted Segment

1. To select the part of a recording that corresponds to a redacted segment, click either the "Begin Redaction" or "End Redaction" bookmark for the redacted segment.
2. From the Redaction menu, click **Set Selection**. In the main window, the slider will reflect the corresponding redacted segment.

Exporting Files with Redacted Segments

When you export a file that contains redacted segments, you can choose to include them all, skip them all, black them all out, or use an individual setting for each redacted segment. You have the option to retain distorted segments.

Playing Files with Redacted Segments

When playing back files that contain redacted segments, the default behavior is to use the individual setting for a redacted segment to determine whether it will be played, skipped, or blacked out. In some cases you may want to override this behavior, for example, to play, skip, or black out all redacted segments during playback.

To change the behavior for redacted segments, from the Redaction menu, click **Playback** and then choose one of the menu items.

FILED
2012 SEP 26 PM 2 15
WILLIAM J. FURBER
CLERK OF COURT
HAMILTON COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF MARLBORO

STATE OF SOUTH CAROLINA,

vs.

TYRONE KING,

Defendant.

) IN THE COURT OF GENERAL SESSIONS
) FOR THE FOURTH JUDICIAL CIRCUIT

)
) Indictments: 2012-GS-34-024; 2012-GS-34-
) 025; 2012-GS-34-026; 2012-GS-34-028; 2012-
) GS-34-029

)
) CERTIFICATE OF SERVICE AND FILING
) FOR DEFENDANT'S MOTION FOR
) A NEW TRIAL

I, Tristan Shaffer, hereby certify that on September 24, 2012, Defendant's Motion for a New Trial was served upon the Attorney for the State, Mia David, via e-mail and via U.S. Mail by addressing it to P.O. Box 616 Bennettsville, South Carolina 29512.

I further certify that on Monday September 24, 2012, Defendant's motion for a new trial was timely filed pursuant to SCRCrimP Rule 29 and SCACR Rule 263(a) by depositing the document in the U.S. Mail in conformity with SCACR Rule 262 by addressing it to Marlboro County Clerk of Court, P.O. Drawer 996, Bennettsville, SC 29512-0996.

RESPECTFULLY SUBMITTED.


Tristan Michael Shaffer
Attorney for Defendant

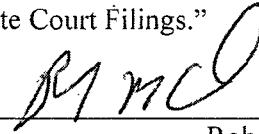
September 24, 2012

A CERTIFIED
TRUE COPY
William B. Zundorbusch
CLERK OF COURT
MARLBORO COUNTY

FILED
2012 SEP 25 PM 2 15
CLERK OF COURT
MARLBORO COUNTY

Attorney Certificate

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Robert M. Dudek
Appellate Defender

Howard W. Anderson III
LAW OFFICE OF
HOWARD W. ANDERSON III, LLC
PO Box 851
Clemson, SC 29633-0851
(864) 643-5790
Appointed Pursuant to the Appellate Practice Project

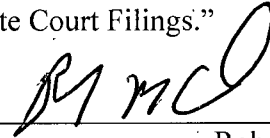
-and-

Robert M. Dudek
DIVISION OF APPELLATE DEFENSE
PO Box 11433
Columbia, SC 29211-1433
(803) 734-1343

Attorneys for Appellant.

Attorney Certificate

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Robert M. Dudek
Appellate Defender

Howard W. Anderson III
LAW OFFICE OF
HOWARD W. ANDERSON III, LLC
PO Box 851
Clemson, SC 29633-0851
(864) 643-5790
Appointed Pursuant to the Appellate Practice Project

-and-

Robert M. Dudek
DIVISION OF APPELLATE DEFENSE
PO Box 11433
Columbia, SC 29211-1433
(803) 734-1343

Attorneys for Appellant.

Certificate of Service

I hereby certify that I served the foregoing paper by first-class mail, proper postage prepaid, this 13th day of June, 2014 on the following parties:

Hon. Alan M. Wilson
c/o Alphonso Simon, Jr., Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211



Brandon Hall
Administrative Specialist

Subscribed to and sworn before me this 13th day of June, 2014.



Notary Public

My commission expires: October 24, 2021

ORIGINAL

Certificate of Service

I hereby certify that I served the foregoing paper by first-class mail, proper postage prepaid, this 13th day of June, 2014 on the following parties:

RECEIVED

JUN 13 2014

SC Court of Appeals

Hon. Alan M. Wilson
c/o Alphonso Simon, Jr., Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211



Brandon Hall
Administrative Specialist

Subscribed to and sworn before me this 13th day of June, 2014.



Notary Public
My commission expires: October 24, 2021